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BILL



ANALYSIS

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Senate Bill 173 (as reported without amendment)
Sponsor: Senator Mark C. Jansen
Committee: Reforms, Restructuring and Reinventing

(as passed by the Senate)

Date Completed: 6-6-13

RATIONALE

Since 2006, several large cities in the U.S. have adopted regulations or ordinances regarding mandatory leave for employees. The regulations generally give employees the right to paid or unpaid leave for treatment of physical or mental illness, matters relating to domestic abuse, and care for family members. Voters in San Francisco approved a ballot proposal in 2006, and other cities, including Milwaukee, Philadelphia, Portland (Oregon), and Washington, D.C., have since adopted or are in the process of adopting similar regulations. The New York City Council is expected to vote on an employee sick leave policy in April 2013. Arizona, Indiana, Kansas, Louisiana, Mississippi, Tennessee, and Wisconsin, however, have enacted legislation that effectively prohibits local ordinances that require an employer to provide paid or unpaid leave for employees. The Wisconsin legislation voided the Milwaukee regulation. Although no local units of government in this State have adopted regulations regarding mandatory employee leave, it has been suggested that Michigan enact legislation that prohibits local government units from doing so.

CONTENT

The bill would create the "Employment Leave Uniformity Act" to prohibit a county, township, city, or village from adopting or administering an ordinance or policy that required an employer to provide an employee with paid or unpaid leave from employment that is not required under Federal or State law.

The Act, however, would not prohibit a county, township, city, or village ordinance or policy that concerned that municipality's employee leave or other absences.

The Act would nullify any inconsistent county, township, city, or village, ordinance or policy.

(The bill would define "employee" as an individual employed in this State by an employer. "Employer" would mean a person engaging in any activity, enterprise, or business in this State.)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Employers and employees should have the right to negotiate terms of employment regarding employee leave without government interference. The bill would guarantee that this right would stay between the parties in a private employment relationship. Employers also should have the latitude to enforce their own policies. Employees should have the opportunity to freely negotiate terms of employment with their employers. Local regulations mandating leave time deprive employers and employees of these rights. Under the bill, private employers still would be permitted to offer employee leave at their own discretion, and public employers still

could choose to mandate leave for local government employees. Employee leave policies should not encompass entire communities; rather, these policies should be left between employer and employee.

Response: This bill would deprive communities and local governments of their rights to determine and implement good public policy. If a local government decides that it should mandate employee leave to meet certain goals, such as preventing the spread of disease, reducing health care costs, or providing for the well-being of community members, it should have the power to do so. Local governments and local populations should continue to have the ability to negotiate, and apply, community standards for terms of employment.

Supporting Argument

Small businesses should not be forced to shoulder the costs associated with mandated employee leave when society, not the employers, is the primary beneficiary. Local regulations that mandate leave time would result in employers' being responsible for costs such as hiring replacement workers, paying time-and-a-half for employees who earn overtime, losing production due to more employees' taking leave, performing administrative tasks related to tracking employee leave, and incurring litigation expenses. Local regulations regarding employee leave are unfunded mandates and unfairly burden employers.

According to a study from Cleveland University on the likely effects of paid sick leave in Ohio, overall worker absences, and abuse of leave time, would increase. One local example is Dublin Square, a restaurant in East Lansing that does not offer paid sick leave to employees, as reported by WILX news. If it were forced to provide sick days to employees, the general manager stated that more people would miss work while expecting to get paid.

According to the Partnership for New York City, regulations that mandate employee paid leave should be considered alongside other regulations facing employers. Individually, these regulations may not appear overly burdensome, but in the aggregate, they can have a negative effect.

Further, employee leave regulation can burden employees. For example, shift-

trading is advantageous to employees, especially in restaurants. Since restaurant servers typically make most of their earnings in tips, paid leave would not fully compensate them for time off. If a local regulation that mandated employee leave in turn prohibited shift-trading, servers would not be able to make up for tips by working a different shift.

Response: There are several reasons that these arguments are weak or incorrect. First, many unfunded mandates already exist and there is no compelling reason to distinguish local regulations that mandate employee leave. For example, laws generally require children to receive vaccinations to attend public schools, and society deems this acceptable. The parent (or health care insurer) is burdened with any resulting costs, while society benefits.

Second, it is not accurate to say that employers would shoulder the burdens and receive no benefits. Just as parents receive benefits from mandated vaccinations in the form of healthier children and a healthier community, employers would receive benefits from employee leave mandates, such as a healthier workforce. According to the Center for American Progress, paid sick leave policies can strengthen worker loyalty, increase productivity, and reduce turnover. Employers can pass on a portion of extra costs, if any exist and are not outweighed by benefits to the employer, to employees in the form of reduced wages or bonuses, and to customers in the form of increased prices.

According to a study by the Institute for Women's Policy Research on the effects of San Francisco's ordinance, most employers did not have any difficulty with administering new policies under the regulation.

Finally, refusing paid sick time causes hardship to employees, according to the director of Mothering Justice, and therefore burdens them. According to the National Partnership for Women and Families, it is also a burden for sick workers to swap shifts or find a replacement when sick leave is not an option.

Supporting Argument

Some Michigan small businesses, especially small restaurants with low profit margins, could be forced to close their doors if they were burdened with costs resulting from

mandated employee leave. Local regulations requiring employee leave would economically harm the State and its businesses. According to a representative from the National Federation of Independent Business, in today's changing business climate, Michigan should be promoted in a positive light as a development destination. Local mandates for employee leave could force businesses to relocate to other states. Businesses that could not leave would be forced to cut pay or increase prices. This would discourage residents from living in the area, and encourage them to relocate. This would diminish the local tax base, and in turn revenue, along with business customers, resulting in a vicious cycle.

According to a study in 2010 by the Partnership for New York City, which examined the potential effects of New York City's proposed Paid Sick Time Act, New York employers would face an increase of 0.3% in payroll costs generally, with construction, utilities, and the hospitality and restaurant industry facing the highest increases at 1.28%, 0.91%, and 0.71%, respectively.

According to a representative from the Michigan Restaurant Association, since San Francisco enacted its employee leave ordinance in 2006, there has been an 8% reduction in the city's restaurant workforce, in addition to layoffs and reduced hours for employees.

Further, according to the Cleveland University study, a proposed statewide paid sick leave policy in Ohio would have a net cost of between \$102 million and \$420 million.

Response: State and local economies, and businesses, would not suffer if local regulations mandated employee leave; rather, they actually could benefit.

According to the Institute for Women's Policy Research study, six out of seven employers in San Francisco did not report any negative impact on profits as a result of that city's ordinance. Also, according to another study by the Institute, in the year after it took effect, overall employment in San Francisco increased by 1.1%, matching two neighboring counties, and substantially above three others. Specifically, restaurant and hospitality employment increased by 3.9%, while four of the five neighboring

counties saw decreases of roughly 2% to 4%.

According to a study of San Francisco by the Drum Major Institute for Public Policy, San Francisco employment levels were stronger than neighboring counties that did not have a similar regulation. Specifically, while employment in the surrounding counties fell by 5.2% between December 2006 (immediately before the employee leave ordinance went into effect) and December 2009, employment in San Francisco fell only 3%. Between December 2006 and December 2008, the city also had higher growth than surrounding counties with regard to employment in the industries of retail trade, leisure and hospitality, and accommodation and food service.

Finally, an article in the *Connecticut Post*, citing the San Francisco Office of Labor Standards Enforcement, indicated that employment in the food service industry increased, and that no businesses relocated or downsized as a result of the San Francisco ordinance.

Supporting Argument

As a preemptive measure, the bill would provide reassurance to businesses that Michigan would maintain uniformity, thereby encouraging economic growth and stability. Local regulation of paid or unpaid leave would result in patchwork legislation throughout the State, increasing administrative burdens on employers because of inconsistent regulation and varying standards from one area to the next. Employers would have to navigate multiple systems and work out splitting up hours between many employees. This could discourage businesses from entering or staying in Michigan. Local regulations regarding leave time have already been passed in various cities throughout the U.S., so it is important to address this issue before any similar regulations are enacted in Michigan.

Response: According to a representative from the Michigan Municipal League, no local governments are considering this type of regulation. Therefore, the bill would not provide a solution to any problems currently facing the State. The bill also proposes an overly broad policy, preventing any local control of matters that are of concern to local governments.

Supporting Argument

The bill would prevent local regulations that would be too difficult or expensive to enforce. According to the Partnership for New York City, if employees' recourse for violations would be to sue their employer under this type of regulation, many employees who were wrongfully denied leave time would likely find it difficult to take an employer to court. Also, there may not be enough resources at the local level to enforce such regulation.

Opposing Argument

Preventing local governments from enacting policies mandating sick leave for contagious diseases would pose a threat to public health, and could result in high costs to the community.

While many employers offer sick leave, those that do not place ill workers in a position of having to decide between going to work sick or staying home without pay. Many employees are inclined to go to work while sick, because they need the money. These workers endanger themselves and those around them. Workers in the food service industry who come to work ill expose fellow employees, and restaurant patrons, to contagious diseases. According to a study by Policy Matters Ohio, 85% of food service workers do not have paid sick days and are therefore encouraged to work while ill.

According to a briefing paper on the H1N1 pandemic by the Institute for Women's Policy Research, roughly 8 million employees nationwide went to work while infected with the virus. In the public sector, where paid sick leave is more common, 90% of infected employees took sick leave. In contrast, only 66% of infected private sector employees took leave. The study estimated that employees who worked while ill with the virus had spread H1N1 to 7 million coworkers. Finally, after the pandemic reached its peak, the drop in absences in the public sector was twice that of in the private sector, suggesting that private sector employees without paid sick leave prolonged the outbreak's duration in the private sector.

Also, according the study by Policy Matters Ohio, over 500 people were infected with norovirus as a result of going to a local Chipotle restaurant. The spread was likely caused by a sick employee who contaminated food. The study estimated the

costs to the community as a result of the infections to be between \$130,233 and \$305,337. This included estimates of lost wages, tuition for classes not attended, taxpayer education subsidies, lost income tax revenue, and health care costs. In contrast, if paid sick days were mandated as proposed under an Ohio act, the study estimated the cost to Chipotle would be between \$12,601 and \$26,087 annually.

Local governments should be able to provide broad medical leave if they determine it is necessary and existing options available to employees are too limited. For example, although the Family Medical Leave Act (FMLA), a Federal law, provides for 12 weeks of medical leave, this leave is unpaid. Further, the FMLA applies only to employers with 50 or more employees. Local governments should have the option of passing regulations to cover employees who do not receive benefits under this statute.

Response: Reportedly, many employers with fewer than 50 employees still provide employees with leave similar to FMLA requirements, and accommodate pay issues through other policies, like short-term disability to cover lost wages, sick leave, or shift-swapping programs. If a business is successful, an employer will likely provide these types of policies voluntarily. Employee leave mandates, however, require struggling small local businesses to take on costs they cannot yet afford, potentially forcing them to close their doors.

Opposing Argument

The bill would prevent local governments from regulating employee leave for active military personnel, veterans, spouses of military personnel on active duty, victims of domestic abuse, and parents for school-related matters.

Local governments should be allowed to provide broader leave policies than under Federal law with regard to military personnel and spouses. For example, post-traumatic stress disorder is not covered under current law, so local governments could not provide for it under the bill. Also, State and Federal laws are unclear with regard to what types of leave are covered, and this could result in the denial of veteran and military spousal rights. Allowing local governments to regulate these areas would act as a safeguard to prevent wrongful denial.

Response: First, Federal laws sufficiently protect the interests of military personnel. Second, permitting local governments to mandate employee leave for any or all of the individuals listed above would go against the premise of the bill. All of these exceptions would burden employers through no fault of their own. Allowing these as exceptions would present a slippery slope, and give unfair preference to some groups over others.

Employers that can afford to offer employee leave for noble purposes will likely offer it without government requirements. Small employers that do not offer leave typically cannot because of budgetary limitations. These businesses should be left to negotiate with their employees based on the resources they have available, and government should not dictate what terms must be included.

Opposing Argument

Michigan is a strong home rule state, and the State Constitution gives local units of government broad powers to regulate municipal concerns (under Article VII, Sections 22 and 34), which include public health and safety. This responsibility is different from that of employers to employees and the public. Local governments have an obligation to determine whether it is in the public interest to provide leave time, and the bill would prevent local authorities from meeting this obligation. The State should not regulate policies best left to local government control. There should be room for local governments and communities to negotiate these types of issues.

Response: Under Article IV, Section 49, of the Michigan Constitution, the Legislature may regulate conditions of employment, and under Article IV, Section 51, the Legislature must pass laws to protect and promote public health, so this bill is within the scope of the Legislature's authority. The bill speaks to the most local form of regulation – that between an employer and an employee. Policies governing employee leave are negotiable between the employer and the employee, and the bill would not alter this relationship. Employers, not local government, should have the latitude to adopt and enforce their own policies, which should not apply to whole communities.

Additionally, employee leave is already regulated at the Federal level; for example, the FMLA provides for medical leave. If the State has the power to regulate employment, and the Federal government has already exercised powers with regard to employee leave policy, it is logical to conclude that this is not a local issue, and therefore is outside of the concerns of local government.

Finally, the bill would assist in keeping local units of government focused on their core functions of local governance. Regulations regarding employee leave serve only to distract local governments from principal concerns like revenue, services, roads, and safety.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.