



TO: Elizabeth Pauli, City Manager
FROM: Melanie Harding, Employment Standards Project Manager, Finance Department
Andy Cherullo, Director, Finance Department
COPY: City Council and City Clerk
SUBJECT: Title 18 Amendments – Employment Standards – Paid Sick Leave– August 15, 2017
DATE: July 27, 2017

SUMMARY:

In November 2016, voters approved Washington State Initiative 1433, changing statewide employment standards by increasing state minimum wage and adding paid sick leave. Tacoma’s local minimum wage will not be impacted until at least 2019; however, amendments to Tacoma Municipal Code (TMC) Title 18 will be needed this year to align City code with the State’s paid sick leave law within a timeframe that will allow the City to educate businesses and workers on the changes that impact them before the new State laws take effect on January 1, 2018. Staff received a recommendation from the Government Performance Finance Committee on May 31, 2017 for the amendments to be considered by the full council.

STRATEGIC POLICY PRIORITY:

The following strategic policy priorities relate to this amendment:

- Strengthen and support a safe city with healthy residents.
- Ensure all Tacoma residents are valued and have access to resources to meet their needs.
- Foster a vibrant and diverse economy with good jobs for all Tacoma residents.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

BACKGROUND:

Since the passage of the Paid Leave Ordinance in January 2015, the City has built an employment standards program that focuses on public education, while providing a high level of support to businesses and protections for precariously-employed workers. Five key factors shaped the City’s current employment standards practices: 1.) Emerging best practices; 2.) Academic research findings; 3.) Retaining the flexibility that allows the laws to be adapted to a variety of workplaces; 4.) A drive to provide outstanding service; and 5.) Effective enforcement of the laws that provide increased community health and economic stability for vulnerable workers. As a result of this work, the city has been recognized as a national model for paid sick leave implementation.

ISSUE:

The primary issue facing Tacoma’s Employment Standards is the fact TMC 18.10 “Paid Leave” will not align with new state law as of January 1, 2018. The greatest differences between the City and State are: 1.) The enforcement models used by the two agencies; and 2.) The amount of sick leave provided under each law.

Enforcement

Across the country, agencies of all sizes have routinely adopted workplace-wide investigations that offer confidentiality for workers who fear losing their job. This model has emerged as a best practice both for incentivizing voluntary compliance and for restoring the rights of workers who may not feel secure enough in their employment to come forward with a complaint, a topic of heightened importance due to changes in immigration practices. Tacoma uses workplace-wide investigations when a complaint is received.

By contrast, Labor and Industries’ (L&I) State Wage and Hour Division conducts individual investigations, seeking information on what is owed only to the individual worker that came forward to file a complaint.



Individual investigations do not allow confidentiality for witnesses. The cost for an employer to remain in non-compliance is usually less expensive than the cost of following the law under this model.

Data from actual cases demonstrate that the City’s workplace-wide model of enforcement returned thirty-six (36) times the amount of wages/paid sick leave hours that would have been collected by the State if they had a similar caseload. Workplace-wide enforcement also resulted in remedies being provided to thirty (30) times as many workers during the period analyzed. See Attachment 1 for details.

Paid Sick Leave Provisions

The differences between the City and State paid sick leave laws can be found in a detailed table in Attachment 2. In general, the law passed by state voters is more generous because there is no cap on the number of hours that can be accrued or used. However, there are some areas where the City paid leave law provides broader protections:

- ***Who’s covered? – State paid sick leave does not cover exempt employees***

The State paid sick leave law has broad exemptions for workers “employed in a bona fide executive, administrative, or professional capacity” or classified as an “outside salesperson.” Because of this, exempt workers and some workers in sales have no right to paid sick leave under the State law.

- ***Reasons for Use – State paid sick leave has more limited uses***

Initiative 1433 did not include bereavement of a close family member. The leave provided by state law also cannot be used to care for a child when there is a school closure unless that school closure is for health reasons (e.g., it cannot be used to care for a child who is at home due to school closures related to a burst water main or inclement weather). State law does expand covered family members to include siblings and grandchildren.

While the State Rules are currently being finalized, initial feedback in that process indicates that stakeholders also appreciate the level of flexibility that has been provided by the City’s law.

ALTERNATIVES:

The alternative to modifying Tacoma’s existing paid leave law is to repeal TMC 18.10 and rely on State laws and State enforcement to determine paid sick leave outcomes within the City. The alternative would not provide employers some of the flexibility currently offered in the TMC nor would it provide employees with the confidential, work-place wide enforcement model that the City currently applies to complaints received.

RECOMMENDATION:

Staff recommends amending TMC 18.10 to preserve Tacoma’s nationally-recognized outreach and enforcement models, the provision of paid sick leave provided to exempt employees, and the flexibility currently offered to employers wherever allowable under State law with an effective date of January 1, 2018.

The City’s minimum wage, set by voter initiative, would require a vote of the public to enact any amendment prior to February 1, 2018 (two years following the initiative’s effective date). Staff recommends deferring action on Tacoma’s minimum wage law until the end of 2018.

FISCAL IMPACT:

There is no fiscal impact.