

# Wis. Court Revives Milwaukee Sick Leave Program

By **Hilary Russ**

Law360, New York (March 24, 2011) -- A Wisconsin appeals court on Thursday resuscitated Milwaukee's mandatory, citywide paid sick leave program with a decision overruling a lower court's finding that the ordinance was unconstitutional and improperly enacted.

A three-judge panel in the State of Wisconsin Court of Appeals, District I, reversed and remanded the lower court's decision with instructions to vacate a permanent injunction that blocked the measure, which voters ratified by a wide margin in November 2008.

While intervening defendant 9to5 National Association of Working Women — the nonprofit group that filed the appeal — hailed the decision as a victory, the business association that first challenged the ordinance, the Metropolitan Milwaukee Association of Commerce, vowed to continue fighting.

"I do believe that this Milwaukee sick pay ordinance is unconstitutional and ill-conceived," said Scott Beightol of [Michael Best & Friedrich LLP](#), counsel for MMAC. He said MMAC will pursue either a motion for reconsideration or an appeal to the Wisconsin Supreme Court.

"We believe that ultimately the wisdom of the Milwaukee County Circuit Court's decision striking down the ordinance will be upheld, and that this sick pay ordinance, which has been on life support for two years, will not see the light of day," Beightol said. "That would be good for businesses in Milwaukee, who shouldn't have to face a mandate that other communities in our state don't have to face."

Declaring the ordinance was a "job-killer," MMAC launched its challenge after 69 percent of Milwaukee voters approved the measure in a 2008 referendum.

In June 2009, Circuit Court Judge Thomas R. Cooper granted summary judgment in favor of MMAC, striking down the measure, which includes domestic abuse-related time off under its definition of "sick day."

Judge Cooper agreed with MMAC in finding that the city had overstepped its constitutional authority by including provisions allowing domestic abuse, sexual assault or stalking victims to use leave for counseling, legal appearances or relocation.

He also found the city failed to provide sufficient ballot notification about the domestic abuse-related leave, saying the "concise statement" required for a referendum vote should have included mention of the domestic abuse provisions.

Those circumstances fell outside the usual realm of situations in which sick leave can be claimed, the lower court ruled.

But the appeals court disagreed, saying that "[w]hether or not the uses of sick leave permitted under the ordinance are typical when compared to other paid sick leave plans,

none of the uses need to be listed on the ballot" under state statute.

"As we have already explained, every voter had the opportunity to read the full ordinance at the polling place if he or she were not already familiar with it," said Judge Margaret Vergeront, writing for the panel.

The panel also found that only a brief statement of the ordinance, rather than a statement that included "every essential" fact, was required.

"This is a victory for democracy, for working family values, and for the city of Milwaukee," said Barbara Zack Quindel of Hawks Quindel SC, which represented 9to5 in the appeal.

"The court found Milwaukee's voters understood what they voted on and that paid sick leave is related to the city's powers to act for the health and welfare of its residents," she said.

Judges Margaret Vergeront, Paul Lundsten and Paul B. Higginbotham sat on the panel.

MMAC is represented by Michael Best & Friedrich LLP.

9to5 is represented by Hawks Quindel SC.

The case is Metropolitan Milwaukee Association of Commerce Inc. v. City of Milwaukee et al., case number 2009AP1874-AC, in the State of Wisconsin Court of Appeals, District I.

--Additional reporting by Jessica Dye. Editing by Greg Ryan.