

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

---

City of Minneapolis,

Appellate File No.: A18-0771

Appellant,

v.

**BRIEF OF *AMICI CURIAE* IN  
SUPPORT OF THE MINNEAPOLIS  
SICK AND SAFE TIME LAW**

Minnesota Chamber of Commerce, et al.,

Respondents.

---

**STATEMENT OF *AMICI CURIAE*<sup>1</sup>**

The *amici curiae* are nonprofit and labor organizations committed to advocacy for workplace fairness, economic justice, and public health.

SEIU Local 26 (“Local 26”) is a labor organization based in Minneapolis, Minnesota and dedicated to representing thousands of employees in Minneapolis regarding their terms and conditions of employment in Minneapolis. Local 26 itself, and through its members, advocated vigorously for the adoption of the safe and sick leave ordinance in Minneapolis. Local 26 itself, and on behalf of its members, has a significant interest in ensuring that the Minneapolis ordinance is applied as expansively and robustly as possible so that employees there may benefit from the much-needed safe and sick leave provisions.

TakeAction Minnesota (“TakeAction”) is a non-profit organization that works on behalf of employees and residents in Minneapolis concerning an array of issues,

---

<sup>1</sup> No counsel for any party authored this brief in whole or in part. No one other than the *amici* paid for the preparation of this brief or authored this brief, in whole or in part.

including workplace fairness and economic justice. TakeAction participated extensively in the development and adoption of the safe and sick leave ordinance in Minneapolis because that ordinance furthers the mission of the organization in several respects. TakeAction has a continuing interest in ensuring that the Minneapolis ordinance is applied as expansively and robustly as possible so that employees there may benefit from the much-needed safe and sick leave provisions.

Centro de Trabajadores Unidos en la Lucha (“CTUL”) is a non-profit organization based in Minneapolis, Minnesota and dedicated to empowering employees in Minneapolis. CTUL organizes employees to develop leadership, to educate one another, and to build leverage for obtaining fair wages, better working conditions and a meaningful voice in their workplaces. To that end, CTUL served as an *amicus* in the recent litigation regarding the Minneapolis minimum wage ordinance. More to the point, CTUL organized employees in support of the safe and sick leave ordinance adopted in Minneapolis. CTUL has a clear interest in ensuring that the Minneapolis ordinance is applied as expansively and robustly as possible so that employees there may benefit from the much-needed safe and sick leave provisions.

A Better Balance (“ABB”) is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping employees meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, public education, and technical assistance to state and local campaigns, ABB is committed to helping employees care for their families without risking their economic security. ABB has drafted model paid sick days legislation that has been adopted and used in the 44

jurisdictions that have enacted paid sick days laws, including Minneapolis. ABB has served as co-counsel or filed *amicus* briefs in litigation challenging paid sick days legislation in Wisconsin, Massachusetts, and Arizona, cases which affirmed the right of states and localities to enact paid sick days laws that improve the health and welfare of employees and their loved ones.

## INTRODUCTION

The Minneapolis Sick and Safe Time Law (“SST Ordinance”) is an important public health intervention that is designed to reduce the spread of disease by providing pay and security to employees suffering from infectious diseases and whose dependents are suffering from the same. Without paid sick time, employees in Minneapolis are unable to stay at home or keep their children at home when sick because of the economic hardship and threat of job loss that results from lack of paid sick time. By removing the economic incentive to go to work while sick, the SST Ordinance protects the workforce from the spread of disease and protects customers and consumers, such as restaurant patrons or patients in healthcare facilities, from preventable exposure to communicable diseases. The law also protects school populations by giving parents or guardians time to keep sick children at home or take them to seek appropriate treatment rather than spreading infections at school. It cannot serve its intended purpose, however, unless it applies to all employees who work in Minneapolis.

Restricting the application of the SST Ordinance to “resident employers” would undermine both the public health and workplace equity purposes of the law. Excluding Minneapolis employees whose employers are located outside of the city from the SST Ordinance creates a population of employees who are more likely to go to work or send their children to school while sick. This outcome affects more than just the uncovered employees and their families. When employees lack access to paid sick leave, their fellow employees – along with the commuters they encounter on their way to work or customers with whom they interact – are more likely to get sick. Access to paid sick

leave has consistently been shown to reduce the impact of outbreaks of infectious disease. Exempting nonresident employers from the scope of the SST Ordinance would significantly weaken the law, frustrating its important public health purpose.

*Amici* support the City of Minneapolis and urge this Court to uphold the SST Ordinance, an important public health measure that will protect the health and safety of Minneapolis residents and promote more equitable workplace policies, and one that appropriately applies to all Minneapolis employees.

## LEGAL ANALYSIS

### **I. There Is No Legal Reason To Require That Employers Subject To The SST Ordinance Reside In Minneapolis When The Ordinance Already Applies Only To Employees Working In The City**

The SST Ordinance defines an employer subject to the ordinance as “an entity that employs one (1) or more employees.” *See* MCO § 40.40. In that context, “employees” are people “who perform work within the geographic boundaries of the City for at least eighty (80) hours in in a year for that employer.” *Id.*

According to the plain meaning of the express language of the SST Ordinance, the trigger for application of the Ordinance is the work location of the employee(s) at issue – within the City of Minneapolis – rather than the physical location of the employer. *Id.*; *see also State v. Nelson*, 68 N.W. 1066, 1067 (Minn. 1896) (upholding a city ordinance barring certain conduct occurring within the city limits despite an arguably extraterritorial impact); *City of Plymouth v. Simonson*, 404 N.W.2d 907, 908-09 (Minn. Ct. App. 1987), *rev. denied* (June 26, 1987) (same).

In a highly analogous case, which addressed the Minimum Wage Ordinance recently enacted by the City of Minneapolis, the Hennepin County District Court rejected the plaintiffs’ extraterritorial-reach argument that closely resembles Plaintiffs’ argument against the SST Ordinance. Relying on the cases cited above, the Hennepin County District Court ruled that the Minimum Wage Ordinance focuses on conduct occurring within Minneapolis and, therefore, does not have an impermissible extraterritorial effect. *Minnesota Chamber of Commerce, et al. v. City of Minneapolis*, Court File No.: 27-cv-

17-17198, Order, pp. 33-34 (Minn. Dist. Ct. Feb. 27, 2018). The reasoning there applies with equal force here.

**II. All Jurisdictions Recognize That Paid Sick Leave Laws Like The SST Ordinance Must Apply To Employees Working In The Jurisdiction Of The Law Regardless Of The Location Of Their Employer In Order To Protect The Health Of City Residents**

Over forty state and local laws have been passed in the United States<sup>2</sup> that require employers to provide paid sick leave to employees, all of which follow the same basic structure. A Better Balance, *Overview of Paid Sick Time Laws in the United States*, <https://www.abetterbalance.org/resources/paid-sick-time-legislative-successes>. Like the SST Ordinance here, these paid sick leave laws allow employees to accrue paid leave and use it to take care of their health and the health of their family. Except for an unusually narrow paid sick leave scheme in Connecticut, these laws require *all* employers, regardless of size or location, to allow employees working in the covered locality to take sick time, though some, like Minneapolis, allow smaller employers to provide unpaid sick time. *Id.*

All of these jurisdictions, like Minneapolis, ensure connection to the city or state by reference to the *connection of the employee – not the employer – to the city*. The most common test for that connection is the number of hours the employee works in the city. The SST Ordinance requires that the employee work at least 80 hours per year in Minneapolis. *See* MCO § 40.40.

---

<sup>2</sup> They include ten states (Arizona, Connecticut, California, Maryland, Massachusetts, New Jersey, Oregon, Rhode Island, Vermont, and Washington State) and the District of Columbia, thirty-two cities, and two counties (Montgomery County, MD and Cook County, IL).

The structure of all paid sick leave laws reflects an understanding that paid sick time is most effective when it is universally available. Due to the nature of infectious diseases, the spread of which paid sick days laws are intended to prevent, exempting groups of employers and their employees from protection would undermine the purpose of the law. These laws recognize that employees cannot or will not take sick time if they need to risk basic economic security to do so. Just one sick employee who needs to go to work because she or he lacks a sick time guarantee can infect dozens to hundreds of other people both during work and on the way there and back. Langdon Dement, UL Workplace Health & Safety, *Controlling The Spread Of Infectious Diseases In The Workplace*, OCCUPATIONAL HEALTH BLOG (Sept. 23, 2013), <http://www.ulworkplace.com/blog/occupationalhealth/controlling-the-spread-of-infectious-diseases-in-the-workplace>.

All of the existing paid sick leave laws reflect the fact that, to be effective, the paid sick leave must be available to all employees in a city – regardless of the location of their employer. Limiting the application of the SST Ordinance to “resident employers” would leave a huge pool of employees in Minneapolis without paid sick leave, undermining the city’s goal of protecting the health and safety of its residents.



### **III. Judge Mel Dickstein Erred By Treating The Effect Of The SST Ordinance On Nonresident Employers As A Key Element For Determining The Extraterritoriality Of The SST Ordinance**

Judge Mel Dickstein correctly noted that “[w]hen determining the extraterritorial reach of an ordinance, Minnesota courts focus on whether the harm to be prevented occurs within a municipality’s border.” *Minneapolis Chamber of Commerce v. Minneapolis*, Court File No.: 27-cv-16 15051, Order, p. 21 (Minn. Dist. Ct. May 9, 2018). Judge Dickstein erred in his application of this standard, however, by essentially creating a new balancing test that compares the benefits of the SST Ordinance to Minneapolis residents with the supposed administrative burden to nonresident employers. *Id.* at 23. Indeed, no legal authority exists to support the conclusion that an ordinance should be considered impermissibly extraterritorial if, in order to carry out the purpose of that ordinance, it imposes an administrative cost on parties outside of the municipality adopting the ordinance.

In a highly similar issue, *Nelson*, the Minnesota Supreme Court upheld a Minneapolis ordinance requiring dairies selling milk in the city to obtain a license and submit their dairy herds to inspection by city officials. 68 N.W. at 1067. While recognizing the propriety of the Minneapolis ordinance, the Minnesota Supreme Court reasoned that the purpose of the ordinance was to “prevent the sale of unwholesome milk within the city” and that “[a]ny police regulations that did not provide means for insuring the wholesomeness of milk thus brought into the city . . . would furnish very inadequate protection to the lives and health of the citizens.” *Id.* at 1068. Significantly, the Minnesota Supreme Court rejected the argument that the Minneapolis ordinance was

burdensome and, instead, considered whether the ordinance had a “reasonable tendency to prevent” the harm the ordinance was meant to address. *Nelson*, 68 N.W. at 1068.

Similarly, the purpose of Minneapolis’s SST Ordinance is to reduce the spread of contagion in Minneapolis by mitigating the financial incentive employees have to go to work while sick. This harm to be avoided undeniably occurs within the municipality’s borders, as the SST Ordinance only applies to those working in Minneapolis. As discussed in more detail below in Section V, it is clear from numerous studies that paid sick leave requirements do have a “reasonable tendency to prevent” the spread of contagious illnesses – in addition to promoting public health and economic security generally – in the dozens of jurisdictions that have implemented such laws.

In short, Judge Dickstein broke from precedent when he created a balancing test that weighed the effect the SST Ordinance has on nonresident employers against the potential benefit to a single Minneapolis employee. This novel test has no basis in law and contravenes compelling public policy. In fact, basing an extraterritoriality analysis on whether a municipal ordinance imposes administrative duties on nonresident employers *whose employees work within the jurisdiction* would undermine a host of local laws that protect residents. *See, e.g.*, MCO § 139.20.

#### **IV. If The Court Were To Apply A Balancing Test To Determine Whether The SST Ordinance Is Improperly Extraterritorial In Scope, The Court Should Also Consider The Significant Benefits The Ordinance Provides To Residents**

Even if it were appropriate to consider the administrative burden the SST Ordinance might impose on nonresident employers, Judge Dickstein vastly overstated the

burden that local paid sick leave laws impose on employers and, moreover, dramatically understated the benefits those laws confer on employees.

The growing prevalence of local paid sick leave ordinances has shown that the burden they impose on employers is minimal and mostly administrative. In fact, paid sick leave laws tend to increase business growth without negatively affecting profitability. In the year after Seattle passed a paid sick leave law, for example, that city saw significantly stronger employer growth than surrounding Bellevue, Tacoma, and Everett combined. Romich, J., et al., *Implementation and Early Outcomes of the City of Seattle Paid Sick and Safe Time Ordinance*. April 2014, available at <http://www.seattle.gov/Documents/Departments/CityAuditor/auditreports/PSSTOUWReportwAppendices.pdf>. San Francisco similarly experienced greater job growth and business expansion after the implementation of its paid sick days law. Miller, K., and Towne, S., *San Francisco Employment Growth Remains Stronger with Paid Sick Days Law Than Surrounding Counties*, Institute for Women's Policy Research Publication, Sept. 2011, available at <https://iwpr.org/publications/san-francisco-employment-growth-remains-stronger-with-paid-sick-days-law-than-surrounding-counties>.

Moreover, the benefit that paid sick leave laws provide to local residents, especially low-income employees, is significant. Paid sick leave laws reduce the spread of contagion by allowing employees to seek preventative care and removing the financial incentive to go to work while sick. These paid sick leave laws also provide economic security to service industry employees who generally have the least access to paid sick leave despite having the highest levels of public contact.

As explained more fully below in Section V, the benefits of the SST Ordinance are as clear as they are substantial – not only for employees working in Minneapolis but for Minneapolis residents overall. Accordingly, any reasonable balancing test would unquestionably favor upholding the SST Ordinance due to the significant public health and economic benefits provided for all Minneapolis residents compared with the minimal administrative burden the ordinance would potentially impose on some businesses.

**V. Exempting Nonresident Employers From The SST Ordinance Would Undermine The Effectiveness Of A Policy That Has Repeatedly Been Shown To Be Effective At Reducing Contagion**

When Minneapolis passed the SST Ordinance, it did so to “promote the safety, health and welfare of the people.” *See* MCO § 40.20. Indeed, paid sick leave laws serve a vital public health purpose by guaranteeing that employees can use sick days to take care of themselves and their families without threatening their economic livelihood.

The SST Ordinance clearly serves to promote public health and safety. Without the financial protection of that law, employees would be more likely to go to work while sick – a phenomenon called “presenteeism” – and allow their children to attend school while sick. Adults who lack paid sick leave are over 1.5 times more likely to go to work with a contagious illness than those with access to paid sick leave. Nat’l P’ship for Women & Families, *Paid Sick Days: Attitudes and Experiences; Key findings from the 2010 NORC/Public Welfare Foundation national survey on Paid Sick Days*, <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-attitudes-and-experiences-presentation.pdf>. Those with children are almost twice as likely to send their child to school or daycare while sick when they lack paid sick leave.

*Id.* One study estimated that policies like universal paid sick leave could have prevented five million incidences of swine flu during the 2009 epidemic. Supriya Kumar, Sandra Crouse Quinn, Kevin H. Kim, Laura H. Daniel, & Vicki S. Freimuth, *The Impact of Workplace Policies and Other Social Factors on Self-Reported Influenza-Like Illness During the 2009 H1N1 Pandemic*, 102 AM. J. PUB. HEALTH 134, 139 (2012). Access to paid sick leave will be especially beneficial during events like the 2017-2018 flu season, which caused more hospitalizations than in any other year since Minnesota started tracking such data. Dan Gunderson, *Flu Season Hit Minnesota Hard, and It's Not Over Yet*, MPR News (Apr. 9, 2018), available at <https://www.mprnews.org/story/2018/04/09/flu-season-hit-minnesota-hard-and-its-not-over-yet>.

Paid sick leave requirements also promote workplace equity. For many low-income employees, taking unpaid sick days can jeopardize their ability to pay for groceries, transportation, or rent. Elise Gould, Kai Filion, & Andrew Green, *The Need for Paid Sick Days: The Lack of a Federal Policy Further Erodes Family Economic Security*, Econ. Policy Inst. Briefing Paper 319, at 7 (2011), available at <http://s4.epi.org/files/temp2011/BriefingPaper319-2.pdf>. Low-wage employees, especially in the food service and personal care industries, are the least likely to receive paid sick time from employers who are not required to do so by law. While around 72% of all employees in the country receive paid sick leave, only about one third of those in the bottom wage decile do. Eleanor Krause & Isabel V. Sawhill, *The Flu Is Awful, A Lack of Paid Sick Leave Is Worse*, available at <https://www.brookings.edu/opinions/the->

flu-is-awful-a-lack-of-sick-leave-is-worse. Before Minneapolis passed the SST Ordinance, 42% of all employees lacked paid sick days, while a whopping 70% of low wage employees and 71% of service industry employees lacked access to the same. Inst. Women's Pol'y Res., *Access to Paid Sick Time in Minneapolis, Minnesota*, pp. 1-3 (2015), available at <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B350.pdf>.

Exempting nonresident employers from the SST Ordinance's requirement to provide paid sick leave for employees would leave many Minneapolis employees without sick leave and, thus, undermine both the public health and workplace equity purposes of the law. By allowing certain employers to avoid the law simply because they have no physical presence in Minneapolis – even though they have employees in Minneapolis conducting the employers' business on a regular basis – would allow for the faster spread of communicable diseases and leave low-income employees with little ability to take care of their health and that of their families. In sum, the proven public health and economic benefits provided by paid sick leave requirements far outweigh the small burden they place on employers.

**VI. Even If The Application Of The SST Ordinance Were Somehow To Require Employer Physical Presence, The Ordinance Could Not Reasonably Require That An Employer Reside In The City**

Employers should be considered subject to the SST Ordinance under the terms of the law, which, like all other paid sick leave laws in the United States, ensures a connection to the relevant jurisdiction based on the location of the employee rather than the employer. If the Court were to find that the *employer* must have a physical

connection to Minneapolis before the SST Ordinance would apply, compelling public policy and common sense would dictate that the Ordinance applies to employers that have a *material presence* in Minneapolis.

To conclude otherwise would enable companies with substantial commercial operations in Minneapolis to evade their legal obligations under the SST Ordinance. To illustrate, ABM employs hundreds of employees in Minneapolis to provide comprehensive property-related services in dozens of Minneapolis buildings on a daily basis. To that end, ABM maintains a commercial liability insurance policy that covers all of the Minneapolis buildings where ABM's Minneapolis employees work and, moreover, covers most of the Minneapolis building owners and/or managers as added insureds under ABM's insurance policy. It would contravene the manifest intent of the SST Ordinance and defy common sense to conclude that ABM somehow would not have to comply with the Ordinance regarding its Minneapolis employees simply because ABM does not reportedly own or lease real estate in Minneapolis.

Concluding that an employer choosing to have a material presence in Minneapolis is nonetheless not subject to the SST Ordinance would also conflict with settled precedent in analogous circumstances. The Minnesota Supreme Court has consistently affirmed that an employer with minimal or even no physical presence in the jurisdiction at issue can nonetheless be subject to the law of that jurisdiction. *See, e.g., Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 327-28 (Minn. 2016), *cert. denied* 137 S.Ct. 1331 (2017) (ruling that the defendant was subject to the jurisdiction's law – despite having no physical presence in the jurisdiction – because the defendant directed commercial

activities at the jurisdiction in the form of sending emails to residents of the jurisdiction); *see also In re Minnesota Asbestos Litig.*, 552 N.W.2d 242, 246 (Minn. 1996) (“When a corporation conducts business within a [jurisdiction] and enjoys the benefits and protections of that [jurisdiction’s] laws, the due process clause is not violated by requiring the corporate defendant to respond to a suit in that [jurisdiction].”). Companies like ABM indisputably direct commercial activities at and even within Minneapolis, so those companies should be subject to the SST Ordinance under the logic of *Rilley* and related Minnesota Supreme Court precedent – despite not owning or renting real estate in Minneapolis.

A recent arbitration decision rendered in a case between ABM and *amicus* Local 26 is instructive. *In Re the Arbitration Between ABM Industry Groups and Service Employees International Union (SEIU) Local 26*, FMCS File No.: 170815-55029, Award (2018) (attached hereto as Exhibit A). In that case, the arbitrator determined that ABM was an employer within the meaning of the SST Ordinance because ABM contracted to perform substantial business in Minneapolis, ABM employees performed the actual work under those contracts in Minneapolis on a daily basis at the same locations, and ABM employees in Minneapolis will materially benefit from the application of the Ordinance. *Id.* at 18. The arbitrator also found that ABM had a physical presence in Minneapolis given the buildings for which ABM provided janitorial services included office space for supervisors and break rooms and storage space for employees. *Id.* at 18-19.

Consistent with compelling public policy, common sense, and analogous precedent, then, a company has a material presence in Minneapolis such that it is subject



to the SST Ordinance if, for example, it operates with a contractual right or a legal duty to have an ongoing physical presence in Minneapolis as a business enterprise. A contractual right or legal duty of a company to have such a presence exists if, by way of illustration, a client of that company (1) licenses or otherwise gives the company a right to use physical space regularly in Minneapolis for a company business purpose, (2) gives the company the right to control or otherwise oversee the use of physical space in Minneapolis, or (3) requires the company to be physically present in Minneapolis on a continuing basis through company employees and/or by requiring the company to provide services regularly in Minneapolis within certain periods of time.

### **CONCLUSION**

The SST Ordinance benefits public health in Minneapolis by protecting the workforce, consumers, children and families from the spread of communicable diseases. Weakening those protections by excluding nonresident employers from the ambit of the law would undermine the important public health benefits and workplace equity that the SST Ordinance seeks to ensure. For the foregoing reasons, *amici* urge this Court to uphold the Minneapolis SST Ordinance as written, which properly applies to *all* employers with employees who spend sufficient time working in Minneapolis.

Dated: August \_\_, 2018

**CUMMINS & CUMMINS, LLP**

/s/Justin D. Cummins  
Justin D. Cummins, #276248  
1245 International Centre  
920 Second Avenue South  
Minneapolis, MN 55402  
612.465.0108  
justin@cummins-law.com

**A BETTER BALANCE**

/s/ Sherry Leiwant  
Sherry Leiwant  
Co-Founder, A Better Balance  
40 Worth Street, 10<sup>th</sup> Floor  
New York, NY 10013  
212.430.5982 x168

**ATTORNEYS FOR *AMICI***

**CERTIFICATION OF LENGTH**

Pursuant to Minn. R. Civ. App. P. 132.01, Subd. 3, I hereby certify that this Memorandum of Law, which is produced with 13-pont font using Microsoft Word 2016, does not exceed the 20-page limit and contains 4,061 words.

/s/Justin D. Cummins