

**ARIZONA COURT OF APPEALS**

**DIVISION ONE**

STEPHEN R. ZDANKO,

Appellant,

v.

AMERICAN AIRLINES,

Appellee.

No.: 1 CA-CV-21-0776

Maricopa County Superior Court  
No. LC2021-000077-001

**BRIEF OF AMICUS CURIAE A BETTER BALANCE  
IN SUPPORT OF APPELLANT**

Cassidy L. Bacon

**NAPIER, BAILLIE, WILSON,  
BACON & TALLONE, P.C.**

State Bar No. 031361

2525 E. Arizona Biltmore Circle, #135

Phoenix, Arizona 85016

(602) 248-9107

[clbacon@napierlawfirm.com](mailto:clbacon@napierlawfirm.com)

*Attorney for Amicus Curiae*

## TABLE OF CONTENTS

|  |    |
|--|----|
| TABLE OF CONTENTS.....   | i  |
| TABLE OF AUTHORITIES .....   | ii |
| STATEMENT OF INTEREST .....  | 1  |
| INTRODUCTION .....   | 1  |
| ARGUMENT .....   | 3  |
| I.    The Phrase “Until the Stated Expiration Date” in Arizona’s Fair Wages and<br>Healthy Families Act Provides a Very <i>Limited</i> Exception for Collective<br>Bargaining Agreements in Effect at the Time of the Passage of the Law, An<br>Exception that Only Lasts Until the Date Specified in the Agreement..... | 3  |
| II.   Additionally, this Court Should Interpret the “Stated Expiration Date”<br>Language as Providing Broad Coverage to Workers to Effectuate the Purpose of<br>the Act.....   | 6  |
| CONCLUSION.....  | 9  |

## TABLE OF AUTHORITIES

### Statutes

|  |      |
|--|------|
| A.R.S. § 1-211(B) .....                      | 6    |
| A.R.S. § 23-362 et seq. ....                 | 2    |
| A.R.S. § 23-381.....                         | 2, 3 |
| Jersey City Code of Ord. § 4-3(A)(12).....   | 4    |
| New York City, NY Admin. Code § 20-916 ..... | 4    |
| Newark, NJ Rev. Gen. Ord. § 16:18-3(b).....  | 4    |
| Seattle, WA Mun. Code § 14.16.120(A)(2)..... | 4    |

### Other Authorities

|  |   |
|--|---|
| Appellant’s Opening Brief at 2 (Feb. 28, 2022) .....   | 5 |
| <i>COVID-19: What to Do If You Are Sick</i> , Centers for Disease Control and<br>Prevention, <a href="https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html">https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html</a> (last visited Apr. 28, 2022) .....  | 7 |
| Stefan Pichler et al., <i>COVID-19 Emergency Sick Leave Has Helped Flatten The<br/>Curve in The United States</i> , Health Affairs (October 2020),<br><a href="https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863">https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863</a> .....  | 8 |
| Supriya Kumar et al., <i>The Impact of Workplace Policies and Other Social Factors<br/>on Self-Reported Influenza-Like Illness During the 2009 H1N1 Pandemic</i> , 102<br>Am. J. Pub. Health 134, 139 (2012).....  | 8 |
| Tom W. Smith & Jibum Kim, <i>Paid Sick Days: Attitudes and Experiences</i> , National<br>Opinion Research Center at the University of Chicago (June 2010),<br><a href="http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-attitudes-and-experiences.pdf">http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-attitudes-and-experiences.pdf</a> . .... | 8 |

## STATEMENT OF INTEREST

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 workers care for themselves and their families without risking their economic security. ABB has co-drafted model paid sick leave legislation that has been used and adapted in the 54 jurisdictions that have enacted paid sick leave laws, including Arizona, and the dozens of jurisdictions that have enacted emergency paid sick leave policies since the beginning of the coronavirus pandemic. ABB has filed *amicus* briefs in litigation challenging paid sick leave legislation in Massachusetts, Minnesota, and Pennsylvania—all cases which upheld paid sick leave laws that improve the health and welfare of workers and their loved ones.

On behalf of *Amicus Curiae*, I certify that no persons other than A Better Balance have made any monetary contribution to the preparation or submission of this *Amicus* brief.

## INTRODUCTION

On November 8, 2016, Arizona voters passed—by a more than 16.5 percentage point margin—the Fair Wages and Healthy Families Act (“the Act”), raising the state minimum wage and establishing an earned paid sick time (“EPST”)

requirement. *See* A.R.S. § 23-362 et seq. This landmark victory demonstrated that Arizona voters broadly supported stronger labor standards for workers and new protections for public health through a statewide, guaranteed right to EPST.

At issue in this case is the meaning of a provision that delays the effective date of EPST for workers covered by a collective bargaining agreement (“CBA”) until the “stated expiration date of the collective bargaining agreement.” A.R.S. § 23-381. Appellees erroneously argue that their collective bargaining agreement (“CBA”) does not have a stated expiration date, despite the fact that the CBA clearly states that it remains in full force and effect “until and including September 12, 2018.” Appellees base their argument on a clause in the CBA—often referred to as an “evergreen” clause—that indicates the agreement automatically renews at the end of a defined contract term unless specific steps are taken to change the CBA. Appellees’ reading ignores the careful policy compromise that went into the drafting of the EPST requirement in the Act. The intended meaning—and, in fact, a natural reading—of the term “stated expiration date” is to provide a *limited* and temporary exemption from the Act for CBAs already in effect—*not* to forever insulate workers under existing CBAs from coverage.

ABB submits this brief in support of Appellants to shed light on the meaning of the phrase “stated expiration date” and provide context for its intended and targeted meaning.

## ARGUMENT

### **I. The Phrase “Until the Stated Expiration Date” in Arizona’s Fair Wages and Healthy Families Act Provides a Very *Limited* Exception for Collective Bargaining Agreements in Effect at the Time of the Passage of the Law, An Exception that Only Lasts Until the Date Specified in the Agreement.**

Arizona’s Fair Wages and Healthy Families Act states that “[n]o provisions of article 8.1 [regarding EPST] shall apply to employees covered by a collective bargaining agreement in effect on the effective date of this act *until the stated expiration date in the collective bargaining agreement.*” A.R.S. § 23-381 (emphasis added). It does *not* grant an exemption “while the collective bargaining agreement is in effect,” or “for the duration of the collective bargaining agreement,” or even “until the *effective* expiration date,” as Appellees seem to argue. Rather, the Act’s more targeted language was included so that employers with CBAs could, for a limited time period, continue under the terms of those CBAs until the next opportunity for negotiation or contract renewal, which is the *stated expiration date* of the CBA. To read the statute otherwise would create a tiered system of compliance in the law for employers with CBAs.

In fact, the term “stated expiration date” was designed specifically to avoid such an outcome. Drafters and proponents of the ballot initiative sought a compromise where employers with CBAs already in effect would not be compelled to *immediately* comply with the EPST provisions of the Act. Recognizing that many

CBAAs contain “evergreen” clauses that can automatically renew the CBA on a date marking the end of a contract term, the drafters explicitly provided that the EPST provisions of the Act would apply to those CBAAs after the *stated* expiration date. Although many EPST laws do not delay the effective date for workers covered by a CBA, the compromise language in Arizona’s ballot initiative was a marked and intentional change from a number of earlier EPST laws that contained a delayed effective date for CBAAs already in effect. For example, earlier EPST laws in Seattle, New York City, Jersey City, and Newark all contained language stating that employees under an existing CBA would not be covered by the law until the agreement terminated or expired. Seattle, WA Mun. Code § 14.16.120(A)(2); New York City, NY Admin. Code § 20-916; Jersey City Code of Ord. § 4-3(A)(12); Newark, NJ Rev. Gen. Ord. § 16:18-3(b) (Jersey City and Newark’s EPST ordinances have since been preempted by New Jersey’s comprehensive state-wide paid sick leave law). After becoming aware of the argument that evergreen clauses could be read to indefinitely extend the CBA, EPST advocates in Arizona and around the country, including *amicus curiae* A Better Balance, began to use the term “stated expiration date” to clarify that CBAAs could only be exempted from the law until the CBA’s stated date that marks the expiration of a contract term.

Under Appellee’s strained interpretation, employers with an evergreen clause in their CBAAs may never have to comply with the EPST requirements of the Act,

while employers adopting new CBAs after the adoption of the Act would have to provide EPST benefits unless the CBA expressly waives the benefit.

The issue at stake here is not a small one. Many CBAs—including the contract at issue in this case—contain evergreen clauses that provide a specific date at which a new CBA can be negotiated while ensuring that, if a new agreement with changes is not timely made, the CBA will automatically renew and apply in the new contract term. It is for that exact reason that the Act uses the term “*stated* expiration date” rather than any broader language (emphasis added). The statute was drafted to ensure that the earlier *stated* date for expiration of a current contract term, rather than the *actual* or *effective* expiration date of the CBA as a whole, be the point at which the exemption for employers with existing CBAs runs out.

The language in the CBA at issue in this case supports the argument that the contract includes a stated expiration date. As to the expiration date, the CBA states that the agreement “will become effective as of September 12, 2012 and will continue in full force and effect until and including September 12, 2018 and will renew itself until each succeeding September 12th thereafter, except that written notice of intended change may be served . . . .” Appellant’s Opening Brief at 2 (Feb. 28, 2022). The evergreen clause in the CBA at issue in this case acknowledges that it is in full force and effect *until* September 12, 2018, a stated date marking the expiration of the contract term in which the Act was passed. Following this stated



expiration date for the 2012-2018 contract term, the CBA notes the contract will renew itself each year, marking a new contract term following the initial, stated expiration date. Finally, it is worth underscoring that the CBA did not state that it would remain “in full force and effect” unless either party filed a written notice of intended change, but rather that it would “renew itself,” establishing a stated date at which the CBA’s 2012-2018 term expires and a new term begins. Thus, a plain reading of the CBA and the statute leads to the clear conclusion that this is a stated expiration date, prior to the renewal and beginning of a new contract term, that marks the point at which EPST benefits of the Act take effect for those covered by the CBA.

**II. Additionally, this Court Should Interpret the “Stated Expiration Date” Language as Providing Broad Coverage to Workers to Effectuate the Purpose of the Act.**

In addition to the plain meaning of the Act, the statute should be construed broadly to effectuate its purpose of providing paid leave benefits to the greatest number of workers. *See* A.R.S. § 1-211(B) (“Statutes shall be liberally construed to effect their objects and to promote justice”). Here, the purpose of the Act is to guarantee workers across the State a minimum amount of paid sick time, and there are strong public health rationales for ensuring that exemptions to these requirements are few and limited.

First, paid sick time laws are at their core public health laws. The title of the Act—the Fair Wages and *Healthy Families* Act (emphasis added)—reflects this understanding. Broad coverage across the State’s entire workforce is what allows paid sick time laws to reduce the spread of contagion. As the COVID pandemic has made clear, going to work or school while sick is not a decision made in a vacuum. Many workers, especially those with high levels of public contact, are often faced with the untenable dilemma of whether to go to work while sick or sacrifice a paycheck or their very jobs.

According to the Centers for Disease Control, the best ways to prevent the spread of the COVID-19, like with the flu or the common cold, include avoiding close contact with people who are sick and staying at home while sick. *COVID-19: What to Do If You Are Sick*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html> (last visited Apr. 28, 2022). But without paid sick leave and non-retaliation guarantees, many workers—especially those employed in lower-wage positions—are financially incentivized to go to work sick or send sick children to school, resulting in poorer health outcomes, decreased productivity, and the spread of contagion. Overall, people without paid sick leave are 1.5 times more likely than people with paid sick leave to go to work with a contagious illness. Tom W. Smith & Jibum Kim, *Paid Sick Days: Attitudes and Experiences*, National Opinion

Research Center at the University of Chicago (June 2010), <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-attitudes-and-experiences.pdf>.

Studies have consistently shown that access to paid sick leave has a significant impact on the incidence of contagious illnesses. During the beginning of the COVID-19 pandemic, expanded access to paid sick leave under the Families First Coronavirus Response Act (“FFCRA”) resulted in 400 fewer confirmed cases *per day* in states that newly required paid sick leave under the law. Stefan Pichler et al., *COVID-19 Emergency Sick Leave Has Helped Flatten The Curve In The United States*, Health Affairs (Oct. 15 2020), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863>. This finding comports with results of earlier studies, such as one showing that the lack of paid sick leave was responsible for 5 million cases of influenza-like illnesses during the H1N1 pandemic. Supriya Kumar et al., *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).

In addition to these public health benefits, Arizona’s Fair Wages and Healthy Families Act was approved by voters to establish more uniform, minimum labor standards across Arizona. A statewide paid sick leave requirement ensures that workers can use their leave for sufficient purposes, such as to seek preventative care

in addition to using it while actively sick, or to take care of their loved ones who fall ill. It also ensures that workers are not subject to onerous notice and documentation requirements, and that they cannot be retaliated against for taking time off. CBAs do not necessarily provide as robust paid sick leave benefits as the law. That is exactly why the exemption for CBAs in effect at the time of its adoption no longer applies once the “stated expiration date”—which, in this case, is September 12, 2018—of the CBA has been reached.

To best give effect to the public health and employee protection purposes of the EPST requirement, the Act should not be read to provide an indefinite exemption for CBAs with evergreen clauses in effect at the time the law was adopted. Rather, since the intent of the law is to cover as many workers as possible with a small, temporally limited carve-out for workers covered by an existing CBA, the “stated expiration date” of the CBA must be interpreted as the stated date at the end of a CBA’s contract term, even if an evergreen clause provides for automatic renewal if steps are not taken to re-negotiate the CBA in its next contract term.

## **CONCLUSION**

The plain language and the intended purpose of Arizona’s EPST requirement both point to reading the “stated expiration date” of the CBA as September 12, 2018, when the initial term of the agreement expired. An evergreen clause does not change the fact that the CBA includes a stated expiration date that ends one contract term

and provides for either renegotiation or renewal in a subsequent contract term. For the foregoing reasons, *amicus curiae* A Better Balance urge the court to affirm that Appellant and other workers covered by similar CBAs are eligible to earn the paid sick time due to them under Arizona's Fair Wages and Healthy Families Act.

RESPECTFULLY SUBMITTED this 23rd day of May 2022,

*/s/ Cassidy L. Bacon*

Cassidy L. Bacon (031361)

**NAPIER, BAILLIE, WILSON,**

**BACON & TALLONE, P.C.**

2525 E. Arizona Biltmore Circle, #135

Phoenix, Arizona 85016

(602) 248-9107

[clbacon@napierlawfirm.com](mailto:clbacon@napierlawfirm.com)

*Attorney for Amicus Curiae*