

The Impact of Local Minimum Wage and Paid Sick Leave Ordinances on the Transportation Industry

Labor & Employment Law Update

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Over the past few years, cities, counties and local municipalities have been enacting laws and ordinances increasing the minimum wage and requiring paid sick leave for employees. While there have been growing pains with how these apply to normal hourly non-exempt employees and tipped servers, do these apply to motor carriers and employees who are truck drivers? This can be the most frustrating legal response of all, “it depends.”

In most cases, minimum wage laws enacted by states follow the Fair Labor Standard Act (“FLSA”) and provide exemptions for motor carriers. Indeed, under Section 12(b)(1) of the FLSA, employees whose duties, wholly or in part, affect the safety of operation of a motor vehicle and are involved in interstate commerce are exempt from being paid overtime. Whether a municipality’s minimum wage ordinance applies, depends on the language and rules of the ordinance. For example, the rules of the Cook County, Illinois minimum wage specifically state that a regulated motor carrier subject to subsection 3(d)(7) of the Illinois Minimum Wage Law is not a “Covered Employer” that would be required to pay covered employees the Chicago or Cook County minimum wage. Similarly, the rules of the City of Chicago minimum wage states that individuals employed for a motor carrier who are subject to the Department of Transportation regulation are not subject to the Chicago minimum wage.

However, paid sick leave laws and ordinances are different. Neither the Cook County, Illinois earned sick leave ordinance or City of Chicago earned sick leave ordinance have the same exclusion for motor carriers or truck drivers. While neither expressly states that motor carriers are required to provide paid sick leave to employees who are truck drivers, they also do not state that motor carriers or truck drivers are exempt. Due to the plain language exempting motor carriers and truck drivers from the minimum wage ordinances, there is a very strong argument that motor carriers are required to provide their employees who are truck drivers with paid sick leave.

Indeed, this interpretation is not unusual within the growing trend of states, cities and local municipalities expanding employee rights – including those of truck drivers. Currently there are 8 states and 30 cities and municipalities that have paid sick leave laws which include: Illinois (local), Washington (state and local), California (state and local), Arizona (state and local), Oregon (state and local), Minnesota (local), Vermont (state), Massachusetts (state and local), Pennsylvania (local), New Jersey (local), New York (local), Connecticut (state) and Washington, D.C. (local).

Bottom line, the different paid sick leave laws do not address or expressly exempt motor carriers or truck drivers from being subject to the law or ordinance. By not addressing or expressly exempting motor carriers and their employees, these laws are creating significant exposure for motor carriers that fail to make changes by providing employees who are truck drivers with the ability to earn paid sick leave or considering how those employees are being compensated. Certainly, with the patchwork of laws and nuances in each jurisdiction, it can be extremely frustrating and difficult to try and implement a globally compliant policy. Thus, special attention must be taken when crafting such policies and review by experienced counsel should be part of the process. Moreover, motor carriers utilizing truck drivers who are independent contractors or owner/operators should take particular pause to consider the increased liability from misclassification claims and the potential damages under the paid sick leave laws, in addition to any applicable minimum wage law or ordinance.

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