

Small Business Notes

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Proposed Legislation Responds to Minnesota Court of Appeals Decision Allowing City of Minneapolis to Require Employers to Pay a Minimum Wage Greater than that Required by Minnesota Statute

On March 4, 2019, the Minnesota Court of Appeals affirmed a Minnesota District Court Decision that a Minneapolis ordinance requiring employers to pay a minimum wage greater than that required by state statute was not preempted by state law. *Graco, Inc. v. City of Minneapolis* (A18-0593)

The decision reviewed the three doctrines allowing state preemption of a municipal ordinance: express preemption (where the state law expressly states that it is to prevail); conflict preemption (where a municipal ordinance conflicts with state law); and field preemption (where the legislature has so comprehensively addressed an issue that state law occupies the field). The court found none of these modes of preemption present.

The court also rejected the argument that local regulation of minimum wage rates will result in a patchwork of wage regulation that will be detrimental to employers and to the state as a whole. The court noted that an earlier case concluded that such a “checkerboard” of regulations did not give rise to implied preemption. The court further stated that a minimum wage ordinance like Minneapolis’ is not the type of ordinance that would impose uncertainty and confusion on the general populace.

Senate File 2321, introduced March 13, proposes express preemption of wage rate regulation and provides for uniformity of employer mandates.

Under the proposal a local government shall not adopt, enforce, or administer any local ordinance, resolution, or policy requiring an employer to pay an employee a wage higher than the applicable state minimum wage.

Likewise under the proposal a local government shall not adopt, enforce, or administer an ordinance, resolution, or policy that:

- Regulates the hours or scheduling of work time that an employer provides to an employee;
- Requires an employer to provide either paid or unpaid leave time;
- Requires an employer to provide an employee a particular benefit or terms of employment.

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U.S. Department of Labor Issues Opinion Letter on Delay in Designating Family and Medical Leave Act (FMLA) Qualifying Leave as Actual FMLA Leave and on Providing FMLA leave Beyond the Statutory 12 Week Entitlement

On March 14, the U.S. Department of Labor, Wage and Hour Division, issued an opinion letter (FMLA2019-1-A) that responded to an employer's inquiry whether it is permissible to allow employees to exhaust some or all of their available sick or other leave for an FMLA qualifying event prior to designating the leave as FMLA leave or to provide additional FMLA leave beyond the allowed twelve weeks. (It is unclear from the opinion what motive prompted the inquiry on such action, but it is possible that an employer would seek to allow "stacking" of leave to enable a longer period of qualifying leave for an employee.)

The opinion states that "An employer may not delay the designation of FMLA-qualifying leave or designate more than 12 weeks of leave (or 26 weeks of military caregiver leave) as FMLA leave. The opinion was explicit that once an eligible employee informs the employer of a need to take leave for an FMLA-qualifying reason "neither the employee nor the employer may decline FMLA protection for that leave." Further the opinion letter continued "...an employer may not delay designating leave as FMLA-qualifying even if the employee would prefer that the employer delay the designation."

Noting that courts have determined that an employer must observe "any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA." The opinion adds that providing such leave outside of the FMLA "cannot expand the employee's 12 week or 26 week entitlement under the FMLA. If an employee substitutes paid leave for unpaid FMLA leave, that paid leave counts toward the entitlement and does not expand it.

Briefly Noted: U.S. Supreme Court Holds that Copyright Registration Occurs Only When Copyright Office Actually Issues Registration

On March 4, 2019, the U.S. Supreme Court released its opinion in *Fourth Estate Public Benefit Corp. v. Wall-Street.com*, No. 17-571. At issue in the case was when a copyright registration occurs: on submission of an application or only on actual registration by the Copyright Office.

The Copyright Act provides the author of an "original work of authorship" with exclusive rights to reproduce, distribute, and display the work. These exclusive rights begin on creation of the work. To enforce those rights, however, in a civil action for infringement the author must have first complied with the Copyright Act's requirement that "registration of the copyright claim has been made."

In this case an application for registration had been made and fees paid, but the registration had not been actually effected by the Copyright Office, at the time of the suit for infringement.

The Court held that a copyright owner may sue for infringement only after the Copyright Office actually registers the copyright.

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