STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

Judge Mel I. Dickstein

Minnesota Chamber of Commerce, Minnesota Recruiting and Staffing Association, National Federation of Independent Business, TwinWest Chamber of Commerce, Graco Inc., and Otogawa-Anschel General Contractors and Consultants LLC,

Plaintiffs,

v.

City of Minneapolis,

Defendant.

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

Court File No. 27-CV-16-15051

The above-entitled matter came on for hearing before the Honorable Mel I. Dickstein, Judge of District Court, on April 11, 2018 pursuant to cross motions for summary judgment. Christopher Larus, Esq., George Ashenmacher, Esq., and Katherine Barrett Wiik, Esq., appeared on behalf of Plaintiffs Minnesota Chamber of Commerce, Minnesota Recruiting and Staffing Association, TwinWest Chamber of Commerce, Graco, Inc., and Otogawa-Anschel General Contractors and Consultants, LLC (collectively, "Plaintiffs"). Susan Segal, Esq., Sara Lathrop, Esq., and Sarah McLaren, Esq., appeared on behalf of Defendant City of Minneapolis (the "City" or "Defendant").

Now, therefore, based upon all the files, records, and proceedings herein, the Court makes the following:

ORDER

1. The parties' Cross Motions for Summary Judgment are each **GRANTED IN PART** and **DENIED in PART**.

a. Defendant's Motion for Summary Judgment asserting the Minneapolis Ordinance is not preempted by state law is **GRANTED**. Plaintiffs' Motion for Summary Judgment on this ground is therefore **DENIED**.

b. Defendant's Motion for Summary Judgment asserting the Minneapolis Ordinance is not in conflict with state is law is **GRANTED**. Plaintiffs' Motion for Summary Judgment on this ground is therefore **DENIED**.

c. Plaintiff's Motion for Summary Judgment on the ground that the Minneapolis Ordinance as written exceeds the City's territorial authority is **GRANTED**. The City of Minneapolis is therefore enjoined from enforcing the Ordinance against employers resident outside the geographic boundaries of the City of Minneapolis, and Defendant's Motion for Summary Judgment on this ground is **DENIED**.

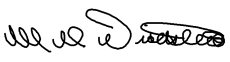
2. The attached memorandum is incorporated herein by this reference.

LET JUDGMENT BE ENTERED ACCORDINGLY

IT IS SO ORDERED.

Dated: May 8, 2018

BY THE COURT:



Mel I. Dickstein
Judge of District Court

MEMORANDUM

I. BACKGROUND

On May 31, 2016, the Minneapolis City Council invoked its police powers to pass Ordinance No. 2016-040, the Minneapolis Sick and Safe Time Ordinance (the "Ordinance"). Compl. ¶ 1; Minneapolis, Minn., Code § 40.30 (2016). In relevant part, the stated purpose of the Ordinance is "to ensure that workers employed in the City [of Minneapolis] can address their own health needs and the health needs of their families by requiring employers to provide a minimum level of paid sick days including time for family care." Id. at § 40.30(a). To this end, the Ordinance requires that employers provide employees with a minimum of one hour of sick and safe time leave for every thirty (30) hours worked, up to a maximum of forty-eight (48) hours in a calendar or fiscal year. Id. at § 40.210(a). For employers with five or fewer employees, the sick and safe leave need not be paid, but for employers with six or more employees, the Ordinance mandates paid leave. Id. at § 40.220(g)-(h). Under the Ordinance, an "employer" includes individuals, corporations, partnerships, associations, nonprofit organizations, or groups of persons that employ one or more employees, but excludes various governmental entities. Id. at § 40.40. An "employee" is "any individual employed by an employer, including temporary employees and part-time employees, who perform work within the geographic boundaries of the City [of Minneapolis] for at least eighty (80) hours in a year… ." Id.

The Ordinance also provides specific directives regarding the accrual of sick and safe time, as well as the records employers are required to keep. Sick and safe time may accrue only in hour unit increments. The Ordinance provides there shall be no accrual of a fraction of an hour of sick and safe time. Id. at § 40.210(a).

The Ordinance also requires employers to record sick and safe time on at least a monthly basis. Id. at § 40.210(f). Employers must keep records of the hours of leave available to an employee, as well as the hours of leave used for sick and safe time purposes. Id. at § 40.270(a). The employer must retain the records for at least 3 years, and allow the records to be inspected by both the employee and the City. Id. at §40.270(c)(d).

In March of 2018, the City amended the Sick and Safe Time Ordinance to clarify its geographic limitations[1]. §40.210(a), which sets forth the rate at which sick and safe time is accrued, now reads: "employees accrue a minimum of one (1) hour of sick and safe time for every thirty (30) hours worked *within the geographic boundaries of the city* up to a maximum of forty-eight (48) hours in a calendar year… " (emphasis added). §40.220(k), which governs the use of accrued sick and safe time, now reads: "an employer is only required to allow an employee to use sick and safe time that is accrued pursuant to this ordinance *when the employee is scheduled to perform work within the geographic boundaries of the city… "* (emphasis added).

The current lawsuit was filed against the City of Minneapolis (the "City") on October 13, 2016, by the Minnesota Chamber of Commerce, Minnesota Recruiting and Staffing Association, National Federation of Independent Business[2], TwinWest Chamber of Commerce, Graco, Inc., and Otogawa-Anschel General Contractors and Consultants, LLC (collectively, "Plaintiffs"). Plaintiffs comprise nonprofit corporations, small business associations, and Minneapolis-based corporations and companies. Compl. ¶¶ 8-19. In bringing this action, Plaintiffs seek a declaration by the Court that the Minneapolis Ordinance is invalid because it is preempted by state law and impermissibly extends its reach beyond the City of Minneapolis' borders. Compl. ¶¶ 1, 27-31.

[1] The amendments post-dated this Court's ruling on the Temporary Restraining Order.

[2] Plaintiff National Federation of Independ Business was voluntarily dismissed with prejudice on March 2, 2018.

The Ordinance was scheduled to go into effect on July 1, 2017. Minneapolis, Minn., Code § 40.90(a). In advance of that date, however, Plaintiffs brought a motion for a temporary injunction which the Court granted in part and denied in part on January 19, 2017.

The Court subsequently heard oral argument on the parties' cross-motions for summary judgment on April 11, 2018, and took the matter under advisement. In this memorandum, the Court considers the parties' arguments in both the temporary injunction and summary judgment proceedings.

II. LEGAL STANDARD

Summary judgment is appropriate when the moving party demonstrates there is no genuine issue of material fact and is therefore entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). A genuine issue of material fact exists when reasonable minds can reach different conclusions from the evidence presented. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). Any issue of fact should be viewed in the light most favorable to the non-moving party. *Fabio*, 504 N.W.2d at 761.

When a motion for summary judgment is made and properly supported, the non-moving party may not rely upon unsupported allegations or mere averments or denials in the pleadings, but must come forward with specific, admissible facts to satisfy the burden of production. Minn. R. Civ. P. 56; *see also Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. Ct. App. 2001).

Summary Judgment is a "blunt instrument" that "should be employed only where it is perfectly clear that no issue of fact is involved, and that it is not desirable nor necessary to inquire into facts which might clarify the application of the law. *Donnay v. Boulware*, 144 N.W.2d 711, 716 (Minn. 1966). All reasonable doubts and inferences should be resolved against the moving

party, *328 Barry Ave., LLC v. Nolan Properties Grp., LLC*, 871 N.W.2d 745, 751 (Minn. 2015). In the present case, the parties agree that all issues are ripe for summary judgment.

III. LEGAL ANALYSIS

Plaintiffs move for summary judgment declaring the Minneapolis Ordinance invalid, asserting that it is preempted by state law under the doctrines of field preemption and conflict preemption. Plaintiffs also maintain that the Ordinance has an impermissible extraterritorial reach, and therefore the Temporary Injunction should be extended to permanently enjoin extraterritorial enforcement of the Ordinance. Defendant cross moves for summary judgment declaring the Ordinance, as amended, is a valid exercise of the City's legislative powers, and asks the Court to dissolve the temporary injunction which currently prevents its enforcement against employers outside the geographic boundaries of the City.

For the following reasons, the Court reaffirms its previous determination that the Ordinance neither conflicts with, nor is preempted by, state law. The Court also finds that the Ordinance as amended still constitutes an impermissible extraterritorial extension of the City's legislative powers. The City is therefore enjoined from enforcing the Ordinance against employers resident outside the geographic boundaries of the City of Minneapolis.

a. Preemption

The doctrine of preemption governs the division of power between states and their cities. *State v. Kuhlman*, 722 N.W.2d 1, 3 (Minn. Ct. App. 2006). In general, municipalities have no inherent power; rather, municipalities possess only such powers "as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred." *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 820 (Minn. 1966). A city such as Minneapolis that is granted broad governance authority through a home rule charter, "enjoys as to

local matters all the powers of the state, except when those powers have been expressly or impliedly withheld." *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 347 (Minn. Ct. App. 2002). Ultimately, the powers conferred upon cities are limited because such powers must "always be in harmony with and subject to the constitution and laws of the state." *Id.* (quoting *State ex rel. Town of Lowell v. City of Crookston*, 91 N.W.2d 81, 83 (Minn.1958)).

Under Minnesota law, preemption of local ordinances can occur in three ways: (1) express preemption, when a state statute explicitly defines the extent to which its enactments preempt local regulation; (2) field preemption, when a city ordinance attempts to regulate conduct in a field that the state legislature intended for state law to exclusively occupy; and (3) conflict preemption, when a city ordinance permits what a state statute forbids or forbids what a state statute permits. *Kuhlman*, 722 N.W.2d at 4. In the present case, Plaintiffs challenge the Minneapolis Ordinance on the grounds of field preemption and conflict preemption.

1. Field Preemption

The doctrine of field preemption, or implied preemption, "is premised on the right of the state to so extensively and intensively occupy a particular field or subject with state laws that there is no reason for municipal regulation." *Nordmarken*, 641 N.W.2d at 348. When field preemption occurs, a local law that governs, regulates or controls any aspect of the preempted field will be void, regardless of whether the local law actually conflicts with the state law. *Id.*

Minnesota courts consider four factors when determining whether field preemption exists: (1) the subject matter being regulated; (2) whether the subject matter is so fully covered by state law that it has become solely a matter of state concern; (3) whether any partial legislation on the subject matter evinces an intent to treat the subject matter as being solely of state concern; and (4)

whether the nature of the subject matter is such that local regulation will have an unreasonably adverse effect on the general populace of the state. *Mangold Midwest Co.,* 143 N.W.2d at 820.

In weighing the four field preemption factors, as explained in detail below, the Court concludes that the Minneapolis Ordinance is not impliedly preempted by state law.

i. Factor I: The Subject Matter Being Regulated

The Court cannot determine whether the Minnesota Legislature has occupied the field of the Minneapolis Ordinance without first deciding its applicable subject matter, upon which the parties disagree. Plaintiffs argue the subject matter of the Ordinance is employer-provided leave[3]. The City formerly asserted the Ordinance regulates public health, but now appears to adopt the Court's conclusion expressed in the ruling on the temporary injunction motion: the regulated subject matter of the Minneapolis Ordinance is private-employer provided sick and safe leave.

Minnesota Courts provide little guidance on how to define the appropriate subject matter for purposes of a field preemption analysis. A thorough reading of the case law, however, suggests that the subject matter can be neither overly broad nor exceedingly narrow, and must be construed on a case-by-case basis. *Compare State v. Gonzales*, 483 N.W.2d 736, 738 (Minn. Ct. App. 1992) (finding the appropriate subject matter of an ordinance to be "the forfeiture of property used in, or associated with, criminal offenses," instead of "forfeitures arising from prostitution convictions," while noting that "[t]he subject matter involved cannot be defined so selectively that it is impossible for the state to fully regulate the field."), *with Canadian Connection v. New Prairie Twp.*, 581 N.W.2d 391, 394 (Minn. Ct. App. 1998) (rejecting the claim that a local ordinance broadly regulates "pollution" and affirming the District Court's conclusion that the ordinance addresses local concerns over minimizing odor through zoning setback requirements).

[3] In their motion for a temporary injunction Plaintiffs argued the subject matter is "the contractual relationship between private employers and employees."

In the present case, the Court declines to conclude, as Plaintiffs urge, that the proper subject matter of the Minneapolis Ordinance is employer-provided leave. The proffered subject matter is too broad, and fails to take into consideration the object of the statute: employer provided sick and safe leave. Plaintiffs maintain the following statutes evince an intent by the legislature to occupy the field of employer provided leave: Minn. Stat. §181.92 (adoptive parent leave); Minn. Stat. §181.941 (pregnancy and parenting leave); Minn. Stat. §181.9413 (sick and safe leave); Minn. Stat. §§181.945-9458 (leave to donate bone marrow, organs, and blood); Minn. Stat. §181.946 (leave for time spent rendering services as a member of the civil air patrol); Minn. Stat. §181.947 (leave for employees whose family members have been injured or killed while engaged in active service); and Minn. Stat. §181.948 (leave to attend military ceremonies). As discussed in greater detail in the following section, the narrow scope of each cited statute does not evince a sweeping intent to regulate the broad field of employer provided leave. Instead, each statute merely enumerates a specific factual circumstance under which an employee is entitled to leave from work.

Accordingly, the Court holds that the appropriate subject matter of the Minneapolis Ordinance is private-employer provided sick and safe leave, a definition that is neither so broad as to encourage preemption, nor so selective as to inevitably preclude preemption.

ii. Factors II & III: Whether the Field is Solely a Matter of State Concern

Having determined that the applicable subject matter of the Minneapolis Ordinance is private-employer provided sick and safe leave, the Court must next determine, under the second and third *Mangold* factors, whether the field is solely a matter of state concern. The Court concludes it is not.

Minnesota cases holding local ordinances invalid due to field preemption involve a spectrum of statutory schemes, ranging from those demonstrating a clear legislative intent to occupy a specific field, to those where a finding of preemption requires a more nuanced analysis. On one end of the spectrum are cases involving broad statutory schemes that clearly identify the legislature's intent to occupy a field and prevent ad-hoc municipal regulations. For example, in *Bd. of Sup'rs of Crooks Twp., Renville Cty. v. ValAdCo*, 504 N.W.2d 267 (Minn. Ct. App. 2000) the Minnesota Court of Appeals held a local ordinance invalid after finding that the very subject of the ordinance—the control of pollution from manure produced in animal feedlots—was already covered by a comprehensive statutory scheme that "provides for local input but retains ultimate control in the state." 504 N.W.2d at 269.

Similarly, in *Nordmarken v. City of Richfield*, the Court of Appeals held that the state's Municipal Planning Act ("MPA") and Metropolitan Land Planning Act ("MLPA") collectively preempted a provision in the City of Richfield's home rule charter that would allow for local regulation of land use planning and zoning. 641 N.W.2d at 348–49. The *Nordmarken* Court's holding was based, in part, on its determination that the Minnesota Legislature had created a "single body of law, reflected in the MPA and MLPA, [that] sets out a detailed and elaborate structure of procedural authority and processes for comprehensive land use planning and for ensuring reasonable compatibility with land use plans of other municipalities." *Id.* at 349.

The same was true in *Bicking v. City of Minneapolis*, 891 N.W.2d 304 (Minn. 2017). The statute at issue, Minn. Stat. §§466.01 et. seq., provides that every municipality is subject to liability for the torts of its officers and shall defend and indemnify its officers for damages. The statute specifically provides that it "is exclusive of and supersedes all home rule charter provisions and special laws on the same subject …" Minn. Stat. §466.11.

In *Jennissen v. City of Bloomington*[4], 904 N.W.2d 234, 241-42 (Minn. Ct. App. 2017) the Court of Appeals found field preemption existed even though Minnesota Waste Management Act ("MWMA") specifically stated that it was non-exclusive. "The authority granted in this section to organize solid waste collection is optional and is in addition to authority to govern solid waste collection granted by other law." Minn. Stat. §115A.94 subd. 6(a). The Court distinguished this portion of the statute, and found that "a city's authority to govern collection of solid waste is not preempted and is not an issue in this appeal … Only when a city chooses to establish organized collection, as the city here did, is a city's authority subject to and preempted by the MWMA" due to the detailed process for organized collection set forth in the statute. *Jennisen* 904 N.W.2d at 241.

On the other end of the spectrum are cases where the local ordinances at issue do not clearly encroach on a field of state regulation, and yet the field is still held to be preempted. In *State v. Gonzales*, for example, the Minnesota Supreme Court concluded that a state forfeiture statute (Minn. Stat. § 609.531) requiring motor vehicle forfeitures for some offenses—but not all—nonetheless preempted a St. Paul ordinance that provided for the forfeiture of motor vehicles driven by customers of prostitutes. 483 N.W.2d at 739. The *Gonzales* Court held, "[t]he legislature must have the power to exercise its judgment and exclude some offenses from the statute without leaving them open to municipal enactment." *Id.* In reaching this conclusion, the Court emphasized that allowing municipal regulation of motor vehicle forfeitures would have an unreasonably adverse effect upon the general population: "Under a municipal forfeiture system, motor vehicle owners could risk their vehicles for a different offense in each municipality." *Id.*

[4] *Jennisen* is currently on appeal to the Minnesota Supreme Court and therefore lacks precedential value at this time.

In the present case, the Court cannot conclude that the relevant state law comprises a comprehensive statutory scheme (as in *ValdAdCo* and *Jennisen*), nor reflects an intentional policy decision to promote compatibility among municipal regulations (as in *Gonzales* and *Nordmarken*). Minnesota laws addressing employer-provided sick and safe leave are limited. Minnesota has only two administrative rules that reference employer-provided sick leave, and each relates to a specific government program. The first administrative rule governs the state's Extended Employment Program (which provides for ongoing employment support services for severely disabled workers), under which eligible workers must receive a minimum of five days paid sick leave. Admin. R. 3300.2015, subp. 4(A). The second rule relates to Minnesota's Senior Companion Program (which facilitates part-time volunteer opportunities for low-income older persons), and provides that any personnel policies covering sick leave for senior companions shall be consistent with the sick leave policies of the sponsor organizations. Admin. R. 9555.0900, subp. 2. Thus, to the extent that each of these rules addresses sick leave, the leave benefits are limited to those individuals covered by the respective programs—a decidedly narrow cross section of the state's population.

In addition, state statutes addressing employer provided sick and safe leave are few in number, and those that do exist do not restrict, but expressly permit, granting greater sick leave benefits. For example, under Minn. Stat. § 181.9413, employees may use personal sick time for safe time leave or leave to care for certain family members. The statute, however, specifically states that it "does not prevent an employer from providing greater sick leave benefits than are provided for under this section." Minn. Stat. § 181.9413(g). Similarly, Minn. Stat. § 181.943(b), entitled "Relationship to Other Leave," provides that nothing in sections 181.940 to 181.943—which relate to pregnancy and parenting leave, school conference and activities leave, sick leave

benefits for the care of relatives, and pregnancy accommodation—"prevents any employer from providing leave benefits in addition to those provided in sections 181.940 to 181.944 . . .." The Court, therefore, concludes that the relevant statutes fail to evince a legislative intent to make sick and safe leave benefits a matter solely of state concern.

Even if the Court were to broaden its definition of the Ordinance's subject matter from employer-provided sick and safe leave to employer-provided leave more generally, the result would be the same. The statutes governing leave for bone marrow donations, organ donations, and leave for immediate family members of military personnel injured or killed in active service, each provide that nothing prevents an employer from offering leave benefits greater than those allowed under the respective sections. *See* Minn. Stat. § 181.945, subd. 4; Minn. Stat. § 181.9456, subd. 4; Minn. Stat. § 181.947, subd. 4.

Rather than reflecting a reasoned legislative resolve to occupy the field of sick and safe time leave (or leave more broadly), the clear language of these rules and statutes demonstrates the Minnesota Legislature's intent to create a floor, not a ceiling, with respect to employer-provided sick and safe leave. Accordingly, these factors weigh against a finding that the Minneapolis Ordinance encroaches on a field wholly occupied by state law.

iii. Factor IV: the Adverse Effect on the General Populace

The fourth and final *Mangold* factor for the Court to consider is the unreasonably adverse effect, if any, that the Minneapolis Ordinance will have on the state's general populace. Plaintiffs assert the term "general populace" refers to the state's private employers—the Court disagrees.

The Court concludes that in a field preemption analysis the proper focus should be on the adverse effects to be borne by the state's general population, not its private employers. In *Mangold*, for example, when determining the validity of a Sunday sales ordinance, the Minnesota Supreme

Court focused on the adverse impact on the public at large, and not on the narrower group of business entities affected by the ordinance. 143 N.W.2d at 821. The Minnesota Supreme Court echoed its *Mangold* analysis less than one month later when it ruled upon the validity of another Sunday sales ordinance in *G.E.M. of St. Louis, Inc. v. City of Bloomington*, 144 N.W.2d 552, 554–55 (Minn. 1966). The *G.E.M.* court determined that the potential for the ordinance to adversely impact the business community was not dispositive:

> We recognize that variances between municipal regulations affecting commercial activity, particularly in a metropolitan area, create serious problems. The absence of preemption by the state legislature may lead in the end to the 'uninhibited commercial warfare, * * * disparate degrees of peace, repose and comfort in different communities and, in the metropolitan areas, * * * a checkerboard of conflicting regulations' envisioned by the trial judge. Nevertheless, for the reasons outlined in the *Mangold* case, we feel that the ordinance, if properly adopted, was within the corporate power of the city of Bloomington.

Id. Instead, the *G.E.M.* court acknowledged that "[i]f the Minnesota Legislature determines that local regulation of commercial activity by ordinances of this type is creating economic confusion, the problem can be corrected by a clear expression of the legislative will that regulation of such commercial activity be uniform throughout the state." *Id.* In the present case the legislature drafted a statute in May of 2017 that would clearly preempt any ordinance or local resolution mandating employer provided leave. The legislation did not become law.

Since *Mangold* and *G.E.M* were decided, Minnesota courts have continued to concentrate their field preemption analyses on the impact municipal regulations have on the public at large rather than the business community. *See, e.g, City of Birchwood Village v. Simes*, 576 N.W.2d 458, 462 (Minn. Ct. App. 1998) (concluding that there would be an adverse effect on the public if municipalities were allowed to regulate the size of boats that may be moored to private docks, because, among other things, "a boat that is permitted at one dock may not be permitted at a dock

across the lake."); *State v. Gonzales*, 483 N.W.2d at 738 (finding that local regulation of motor vehicle forfeitures would have an unreasonably adverse effect upon the state's general population because motor vehicle owners, being transient in nature, would "risk their vehicles for a different offense in each municipality," leading to uncertainty and confusion.); *Canadian Connection*, 581 N.W.2d at 395 (finding no adverse impact on the general populace of the state).

The only cited case suggesting that the proper interpretation of the term "general populace" should encompass the state's business community is *ValAdCo*. In *ValAdCo*, the Minnesota Court of Appeals addressed the validity of a local ordinance requiring permits for animal feedlots. 504 N.W.2d at 271; *see supra* p. 12. The Court held that "the nature of the matter regulated, together with the comprehensive statutory scheme, evidence the legislature's intent to preempt local regulation of pollution from animal feedlots." *Id.* at 272. In so ruling, the Court also focused on the burdensome effect a patchwork of different rules would have on the agricultural industry. While the regulation's adverse effect on the industry may have influenced the *ValAdCo* Court's analysis, this Court is not inclined to veer from the considerable weight of authority that stands for the opposite proposition.

Accordingly, the Court concludes that any adverse impact to be considered should be that which harms the general populace of the State of Minnesota. In the present case, the sick and safe leave time afforded by the Minneapolis Ordinance is unlikely to have an unreasonably adverse impact on the general public of this state; to the contrary, it arguably serves to benefit those who fall within the Ordinance's authority.

iv. Conclusion: Field Preemption Analysis

In sum, the Court finds that the Minnesota Legislature has not evinced an intent to make the subject matter of the Minneapolis Ordinance (private-employer provided sick and safe leave)

of sole state concern. Neither does the Court find that the Ordinance will have an unreasonably adverse effect on the general populace of this state. Accordingly, the Court concludes that as a matter of law the Ordinance does not conflict with a field the legislature intended for state law to exclusively occupy. The City is therefore entitled to summary judgment on this claim.

2. Conflict Preemption

i. There is no Express or Implied Conflict Between State Law and the Ordinance

Unlike field preemption, which wholly invalidates local regulations that encroach on an area occupied by state law, conflict preemption requires a specific conflict between a local regulation and state law. *See e.g., Nordmarken,* 641 N.W.2d at 348. As a general rule, a conflict between a state law and a municipal ordinance will render the ordinance invalid only where "both the ordinance and the statute contain express or implied terms that are irreconcilable with each other." *Mangold,* 143 N.W.2d at 816. "[A] conflict exists where the ordinance forbids what the statute Expressly [sic] permits." *Id.* Where the ordinance, "though different, is merely additional and complementary to or in aid and furtherance of the statute," a conflict does not exist. *Id.* at 817.

In this case, Plaintiffs argue that the Minneapolis Ordinance conflicts with state law because the Ordinance prevents private employers from freely structuring employee sick leave benefits to meet the individual needs of their workplaces. This freedom, Plaintiffs assert, is something state law permits—through the absence of employee sick leave regulation to the contrary—thereby creating a direct conflict that renders the Minneapolis Ordinance invalid.

The Court rejects Plaintiffs' argument, in principal part because it negates the requirement that a statute *expressly* permit what an ordinance forbids in order for a conflict to arise. Minnesota cases finding conflict preemption routinely involve irreconcilable tension between local

regulations and explicit statutory grants of authority. For example, in *Nw. Residence, Inc. v. City of Brooklyn Ctr.*, 352 N.W.2d 764, 774 (Minn. Ct. App. 1984), the Minnesota Court of Appeals found that the City of Brooklyn Center's decision not to issue a special use permit for an eighteen-person residential facility for mentally ill adults to be in conflict with a state law that would "clearly permit" the 18-person facility. *Id.* As the Court in *NW Residence* stated, "local regulation that forbids what the state expressly permits cannot stand." *Id.* Similarly, the Court in *ValAdCo* held a local ordinance in conflict with state law where the ordinance's setback requirements for new feedlots would prohibit construction of a facility that was already approved by the Minnesota Pollution Control Agency ("MPCA") following an extensive application review process. 504 N.W.2d at 272.

In other cases Plaintiffs rely upon to support their argument, a statutory scheme existed that expressly limited the scope of local regulation. In *Duffy v. Martin*, 121 N.W.2d 343, 345-46 (Minn. 1963), for example, the Minnesota Supreme Court found that a local traffic ordinance conflicted with state law, where the state legislature specifically "prohibited the enactment of [traffic] ordinances by municipalities in conflict with state statutes . . .." Similarly, in *State v. Apple Valley Redi -Mix, Inc.*, 379 N.W.2d 136, 138 (Minn. Ct. App. 1985), involving a municipal pollution regulation that was stricter than the corresponding state regulation, the Minnesota Pollution Act ("MPA") expressly provided that "[n]o local government unit shall set standards of air quality which are more stringent than those set by the pollution control agency." *Id.*

Here, Plaintiffs fail to direct the Court to any state law that expressly authorizes employers to structure their sick leave policies as they deem fit, or conversely, to any state law that specifically limits municipal regulation of sick leave. To the contrary, to the extent that Minnesota

law specifically addresses employer provided sick and safe leave, the Minneapolis Ordinance is compatible, not irreconcilable, with state law.

As explained above, Minnesota laws that address employer provided sick and/or safe leave expressly permit employees to be granted greater leave benefits than those provided for by statute. *See supra* pp. 12-13; *see also* Minn. Stat. § 181.9413(g); Minn. Stat. § 181.943(b); Admin. R. 3300.2015, subp. 4(A). Thus, rather than forbidding what state law expressly permits, the Minneapolis Ordinance permits what state law also allows. Similarly, the Rule governing the Senior Companion Program requires that the personnel policies for a senior companion's sick leave "shall be consistent with those of the sponsor and be developed in consultation with the project advisory council." Admin. R. 9555.0900, Subp. 2. This Rule does not create an irreconcilable conflict with the Minneapolis Ordinance.

Plaintiffs also assert an express conflict exists between the differing definitions of an "employer" under relevant state statutes and the Ordinance. For the purposes of the leave statutes contained in Minn. Stat. §§181.940-181.944, an employer is defined as a person or entity with 21 or more employees. Minn Stat. §181.940 subd. 3 (2014). Under the Ordinance an employer with 6 or more employees must provide paid sick and safe leave, and employers with 5 or fewer employees must provide unpaid leave. Plaintiffs assert this creates an express conflict because an employer with less than 21 employees is subject to the Ordinance but not the state leave statutes.

Even though the state and local laws set forth different definitions of an "employer," there is nothing incompatible between the laws and thus no express or implied conflict exists. *See Mangold,* 143 N.W.2d at 817 (where the ordinance, "though different, is merely additional and complementary to or in aid and furtherance of the statute," a conflict does not exist). As discussed above, the Ordinance supplements, rather than conflicts, with state law. Under the state statute an

employer with 21 or more employees *who already provides sick leave* must allow its employees to use that leave in the enumerated ways. The Ordinance requires employers with 6 or more employees to allow employees to accrue and use paid sick and safe leave while working in Minneapolis, provided they meet the minimum threshold. Since the laws themselves do not conflict, their use of differing definitions of an "employer" does not create an irreconcilable conflict.

ii. The Court's Construction of the City's Power to Legislate

Relying principally upon *Lily v. City of Minneapolis*, 527 N.W.2d 107 (Minn. Ct. App. 1995), Plaintiffs allege the City's power to legislate must be narrowly construed because the subject matter—employer provided sick and safe leave—involves a matter of statewide concern. Plaintiffs however fail to take into consideration the context in which *Lily* was rendered. In *Lily* the Court of Appeals sustained an injunction that prevented the City of Minneapolis from extending health insurance benefits to same-sex domestic partners when the relevant statute, Minn. Stat. §471.61 (1992), did not include same-sex domestic partners in its enumerated list of eligible dependent beneficiaries. The *Lily* court relied upon the fact that "the legislature has specifically defined dependents," and therefore neither the city nor the courts had the power to engraft an exception to grant benefits to those who were not dependents within the meaning of the statute. *See Lily* 527 N.W.2d at 113.

Thus *Lily* does not stand for the proposition that when an ordinance addresses an issue that is also a statewide problem, the matter is automatically one of statewide, versus local, concern. Rather, the narrow construction is required only when the legislature "by clear definition has made the subject matter one of statewide concern… ." *Id.* In the present matter, as set forth above, the legislature's prior enactments in the area of employer-provided sick and safe leave do not evince

either a clear limitation on employer mandated leave, or, that employer mandated leave is a matter of statewide concern. This Court is therefore not required to narrowly construe the City's power to legislate, especially when the state statute concerning sick and safe leave specifically allows for the grant of additional benefits. *See* Minn. Stat. §181.9413(g).

iii. Conclusion: Conflict Preemption

As a result, the Court rejects Plaintiffs' argument that the absence of a statutory sick and safe leave mandate equates to the Minnesota Legislature's express permission for private employers to structure their sick leave policies as they deem fit. Unlike the facts in *Duffy* and *Apple Valley*, state law does not explicitly limit local regulation of employer-provided sick and safe leave. Accordingly, the Court finds that as a matter of law the Ordinance does not conflict with state law and therefore is not preempted on that basis. The City is entitled to summary judgment that the Ordinance is not invalid on the grounds of conflict preemption.

b. Extraterritoriality

In their final challenge to the Minneapolis Ordinance, Plaintiffs argue the Ordinance is invalid because it improperly extends its reach beyond the geographic borders of the City. Compl. ¶¶ 27-31. In ruling on Plaintiffs' motion for a temporary restraining order, the Court concluded the Ordinance's application to employers outside the geographic boundaries of Minneapolis constituted an impermissible extraterritorial extension of the City's powers. The Court therefore temporarily enjoined the City from enforcing the Ordinance against employers not located within the geographic boundaries of Minneapolis.

In March of 2018, however, the City amended the Sick and Safe Time Ordinance to clarify its geographic limitations. §40.210(a), which sets forth the rate at which sick and safe time is accrued, now reads: "employees accrue a minimum of one (1) hour of sick and safe time for every

thirty (30) hours ***worked within the geographic boundaries of the city*** up to a maximum of forty-eight (48) hours in a calendar year…" (emphasis added). §40.220(k), which governs the use of accrued sick and safe time, now reads: "an employer is only required to allow an employee to use sick and safe time that is accrued pursuant to this ordinance ***when the employee is scheduled to perform work within the geographic boundaries of the city***…" (emphasis added). The City maintains the amendments to the statute remedy the territorial issues previously identified by this Court, and accordingly the temporary injunction should be dissolved. Plaintiffs disagree.

When determining the extraterritorial reach of an ordinance, Minnesota courts focus on whether the harm to be prevented occurs within a municipality's borders. For example, in *City of Plymouth v. Simonson*, 404 N.W.2d 907, 909 (Minn. Ct. App. 1987), the Minnesota Court of Appeals held that a city ordinance prohibiting harassment was not extraterritorial where the defendant mailed harassing letters from outside Plymouth city limits to a resident living within Plymouth's borders. In reaching this conclusion, the *Simonson* Court emphasized that the harm to be prevented occurred within the Plymouth city limits. *Id.* The Court determined that it was not where the communication was sent from, but where it was received, that was the dispositive factor. *Id.* Thus, in *Simonson*, the conduct prohibited by the ordinance was directly connected to preventing an identifiable harm within the city limits.

Similarly, in *State v. Nelson*, 68 N.W. 1066, 1068 (Minn. 1896), the Minnesota Supreme Court found no extraterritorial operation of a Minneapolis ordinance that regulated the sale of milk within the city while also providing for the inspection of milk dairies and dairy herds, regardless of where the dairies were located. The *Nelson* Court concluded that the ordinance was not extraterritorial because "the only subject upon which it operates is the sale of milk within the city." *Id.* As the Court stated, "[a]ny police regulations that did not provide means for insuring the

wholesomeness of milk thus brought into the city for sale and consumption would furnish very inadequate protection to the lives and health of the citizens." *Id.* Once again, the Court's analysis centered on an identifiable harm that the ordinance was created to specifically protect against—the sale of impure milk within the city limits.

Finally, in *City of Duluth v. Orr*, 132 N.W. 265, 265 (Minn. 1911), the Minnesota Supreme Court addressed the validity of a municipal ordinance that regulated the storage of gunpowder and other combustibles "within the city, or within one (1) mile from the limits thereof." *Id.* In holding the ordinance invalid insofar as it operated beyond the city limits, the *Orr* Court recognized that "[t]he general rule, applicable to municipalities as well as to states, is that the power and jurisdiction of the city are confined to its own limits and to its own internal concerns." *Id.* The possibility that an explosion outside city limits could potentially impact people and property within city boundaries was insufficient to justify the extraterritorial reach of the Duluth ordinance.

What emerges from an analysis of the cited cases is that the Minneapolis Ordinance is unlike the ordinances discussed in *Simonson* and *Nelson*, which were narrowly crafted to prevent an identifiable harm to the city's residents. The Minneapolis Ordinance is so broad that in material respects it lacks a sufficient nexus with the harm it is intended to protect against—preventing employees who, for lack of adequate sick and safe time, feel compelled to go to work within the City of Minneapolis.

The Court recognizes that its "authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked." *White Bear Docking and Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 2d 174, 175 (Minn. 1982). The Court also acknowledges that the City has the authority to "adopt ordinances for all or a part of its jurisdiction to regulate actual or potential threats to the public health …" Minn. Stat. §145A.05.

The Minneapolis Ordinance, however, is not narrowly drafted to protect against the harm it is purportedly designed to address. An employee who works in Minneapolis the threshold 80 hours per year receives 1 hour of sick and safe leave for each 30 hours worked within the City—2 and 2/3 hours. Under the Ordinance, only 2 hours accrue to be potentially carried over to the following year. At that rate, it takes 4 years for an employee to obtain even 1 full day of sick and safe time. An individual would have to work in Minneapolis at least 240 hours per year—three times the 80 hour threshold set by the Ordinance—to obtain a single day of time off. Any potential benefit to the health and safety of Minneapolis residents from an employee who works the requisite 80 hours pales when weighed against the imposition of record keeping and administrative obligations incurred by companies located outside the City.

There is, therefore, no apparent rational explanation for the 80 hour threshold and the City has offered none. At oral argument, able counsel explained that the 80 hour threshold was based on ordinances adopted by some cities in foreign jurisdictions—ordinances that have yet to withstand judicial scrutiny.

In the final analysis, the Ordinance casts its net too far. As the courts did in *Simonson*, *Nelson*, and *Orr*, courts of this state must find the balance, on a case by case basis, regarding the permissible bounds of a statute that has an extraterritorial impact. It is one thing to impose tracking and record keeping requirements on companies located outside of Minneapolis whose employees work for significant periods in Minneapolis, and will materially benefit from the Minneapolis Ordinance. It is quite another matter to impose, extraterritorially, requirements regarding employees who rarely work in Minneapolis, and who won't materially benefit from its provisions. The Court concludes the Minneapolis Ordinance exceeds the City's territorial authority.

The conclusion that the Minneapolis Ordinance exceeds the City's territorial authority does not render the Ordinance entirely invalid. Under the doctrine of severability, that portion of the Ordinance that impermissibly exceeds the City's territorial authority can be severed. *See* Minn. Stat. § 645.20 ("Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable."); *Krmpotich v. City of Duluth*, 474 N.W.2d 392, 397 (Minn. Ct. App. 1991), *rev'd on other grounds,* 483 N.W.2d 55 (Minn. 1992) (applying severability under Minn. Stat. § 645.20 to a municipal ordinance); *see also Canadian Connection,* 581 N.W.2d at 394 ("Further, we note that to the extent the township intruded into pollution control issues, the district court properly determined a provision of the ordinance dealing with water pollution was preempted."). Neither party has argued that invalidating the extraterritorial reach of the Ordinance invalidates the Ordinance as a whole, and the Court is unaware of any reason why the City should be prevented from exercising its police power over those companies resident within its borders.

III. Conclusion

The Court reaffirms its prior determination that the Minneapolis Sick and Safe Leave Ordinance is not preempted by state law, whether as a matter of field preemption or conflict preemption. The state legislature has not evinced an intention to occupy the field of employer-provided sick and safe leave. In addition, the Ordinance does not create an irreconcilable conflict with any state law. Finally, even as amended, the Ordinance exceeds the territorial authority of the City of Minneapolis. The City is therefore enjoined from enforcing the Ordinance against any employer resident outside the geographic boundaries of the City of Minneapolis.

M.I.D.