

# Fiscal Note & Local Impact Statement

127<sup>th</sup> General Assembly of Ohio

Ohio Legislative Service Commission  
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BILL: **H.B. 536** DATE: **May 28, 2008**  
STATUS: **As Introduced** SPONSOR: **Introduced by Initiative**  
LOCAL IMPACT STATEMENT REQUIRED: **Yes**  
CONTENTS: **Enacts the Healthy Families Act**

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## State Fiscal Highlights

STATE FUND	FY 2009	FY 2010	FUTURE YEARS
<b>General Revenue Fund – Department of Commerce</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Increase for enforcement	Increase for enforcement	Increase for enforcement

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Department of Commerce enforcement.** Oversight of the paid sick leave benefits would likely fall under the auspices of the Department of Commerce's Division of Labor and Worker Safety, which is funded through the GRF. Division staff would likely conduct routine inspections of workplaces throughout Ohio, ensure compliance with the bill, and investigate complaints. The new costs associated with these activities, primarily for personnel, are difficult to estimate at this point.

## Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
<b>Political Subdivisions</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase in paid sick leave and damages	Potential increase in paid sick leave and damages	Potential increase in paid sick leave and damages

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **New paid sick leave costs.** Some municipalities may be subject to new paid sick leave costs for part-time employees who do not currently receive these benefits. In such situations, the costs could be substantial.
- **Damages.** Counties, townships, and municipalities could be subject to damages for any of the violations specified in the bill. Damages would include a calculation of wages, salary or benefits lost, or any other actual monetary losses, the interest on such wages lost, treble damages, and reasonable attorney's fees.



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## *Detailed Fiscal Analysis*

### *Overview of the proposal*

Under the bill, employers must provide at least seven days of paid sick leave annually for employees working 30 hours or more a week, or a pro rata amount of paid sick leave annually for employees working less than 30 hours per week or 1,560 hours per year. The bill also requires employers to retain records documenting hours worked by employees and paid sick leave taken by employees for a period of three years, and must allow the Director of Commerce access to those records to monitor compliance with the bill's requirements. Municipal corporations may not be required to follow the provisions of the bill due to the home rule authority granted under the Ohio Constitution. Indeed, a municipality, pursuant to home rule authority, may be able to enact an ordinance that contradicts the provisions of the bill (*Northern Ohio Patrolman's Benevolent Association v. Parma* (1980), 61 Ohio St.2d 375).

The bill states that "employee" and "employer" have the same definitions as those found in the Minimum Wage Amendment, Article II, Section 34a of the Ohio Constitution, except that "employer" does not include an employer who employs less than 25 employees. Under Section 34a, "employer" has the same meaning as under the federal Fair Labor Standards Act (FLSA), except that the term also includes the state and every political subdivision, meaning that the bill would apply to the state and local governments that employ 25 or more employees. However, under the FLSA, "employee" does not include individuals employed by the state or a political subdivision of a state that are not subject to civil service laws and holds one of various political positions specified in the FLSA, such as a holder of public elective office, being selected to be a member of a public officeholder's personal staff, and so forth.

### *State fiscal effects*

#### *Paid sick leave benefits – likely no new costs*

Under current law, in Chapter 124. of the Revised Code, each full-time permanent and part-time permanent employee whose salary or wage is paid directly by warrant of the Director of Budget and Management receives 3.1 hours of sick leave for each completed 80 hours of service, excluding overtime hours worked. This translates to approximately ten days of paid sick leave per year.

The bill states that nothing in the bill can be construed to discourage an employer from the adoption or retention of a paid leave policy more generous than the one required by the bill. An employer with a leave policy providing paid leave options is not required to modify that policy if that policy offers an employee the option, at the employee's discretion, to take paid leave that is at least equivalent to the sick leave described in the bill. Additionally, an employer may not eliminate or reduce leave in existence on the bill's enactment date, regardless of the type of leave, in order to comply with the bill's provisions. Finally, the bill states that nothing in the bill interferes with, impedes, or in any way diminishes the right of employees to collectively bargain with their employers in order to establish sick leave, paid leave, and other terms and conditions of employment in excess of the minimum sick days established in the bill. Summing

up the provisions of the bill as they would apply to state government, they would not likely impose any new paid sick leave costs for state agencies, since current paid sick leave benefits provided by the state currently exceed those required by the bill.

### **Department of Commerce oversight and enforcement**

The Department of Commerce is required to administer and enforce the requirements of the bill. Oversight would likely fall under the auspices of the Department's Division of Labor and Worker Safety, which is funded through the GRF. The Division currently enforces only the prevailing wage, minimum wage, and minor labor laws. The Department of Administrative Services (DAS) currently oversees the paid sick leave benefits of state employees.

Presumably, the Division of Labor and Worker Safety would enforce the paid sick leave laws in roughly the same manner as it discharges its responsibilities for wage and labor law oversight. This means that Division staff would conduct routine inspections of workplaces, ensure compliance with the paid sick leave laws, investigate complaints, and consult with both employers and employees. The Division currently has a full-time staff of 23. Given the new requirements in the bill, the Department of Commerce noted that it is likely that additional staff will be needed. Since the bill does not repeal the Chapter 124. paid sick leave requirements for state and other public employees, it is uncertain if the Division of Labor and Worker Safety would be responsible for overseeing paid sick leave for state employees or how the Division might coordinate these activities with DAS.

### **Local fiscal effects**

#### **Current law**

Under current law, (1) employees in the various offices of the county, municipal, and civil service township service, other than superintendents and management employees of county boards of mental retardation and developmental disabilities, (2) employees of any state college or university, and (3) employees of any board of education for whom sick leave is not provided by section 3319.141 of the Revised Code are entitled to receive 4.6 hours of paid sick leave for each completed 80 hours of service. This would equal approximately 15 days of paid sick leave per year.

#### **Municipalities and villages – new effects**

Several municipalities reported costs that could be substantial if their roster of part-time and seasonal employees, which currently do not receive paid leave of any kind, would be eligible for paid sick leave under the bill. This may not be the case in all circumstances, however. While the Ohio Municipal League (OML) noted that part-time and seasonal employees are not usually part of a collective bargaining unit, some might have a pro rata benefit that already meets the bill's requirements. Also, many villages may employ fewer than 25 persons, and thus be exempted from the bill. Therefore, depending on the application of home rule authority and whether municipal part-time employees are currently receiving some form of paid sick leave, the bill could entail substantial costs for municipalities.

### **Counties**

Under current law, all county employees are entitled to 4.6 hours of sick leave for each completed 80 hours of service including full-time and part-time employees. As a result of the bill, then, the practical effect on counties would be some minimal costs to comply with things such as (1) approval of sick-leave procedures, (2) health care provider certification, (3) conspicuous placement of statutes and rules by the employer, and (4) recordkeeping. These changes would not appear to result in any significant new costs for county employers.

### **Local government liability for damages**

One area where counties, municipalities, and townships might incur more than minimal costs would be any liability for damages owed to employees under the bill. This would include lost wages and benefits, including interest, other monetary losses, and treble damages. For any affected village or township whose population is under 5,000, this would mean costs that exceed \$1,000. For counties, townships, and municipalities of over 5,000, these would be costs that exceed \$5,000.

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