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NEW JERSEY BUSINESS AND INDUSTRY
ASSOCIATION, NEW JERSEY STATE
CHAMBER OF COMMERCE, NEW JERSEY
FOOD COUNCIL, NEW JERSEY
RESTAURANT ASSOCIATION, NEW
JERSEY RETAIL MERCHANTS
ASSOCIATION, NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,

Plaintiffs,

vs.

CITY OF TRENTON,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY

DOCKET NO.:

Civil Action

**VERIFIED COMPLAINT IN LIEU OF
PREROGATIVE WRITS**

Plaintiffs, New Jersey Business and Industry Association (“NJBIA”), New Jersey State Chamber of Commerce (“NJCC”), New Jersey Food Council (“NJFC”), New Jersey Restaurant Association (“NJRA”), New Jersey Retail Merchants Association (“NJRMA”), and National Federation of Independent Business (“NFIIB”) (collectively, “Plaintiffs”), by way of Complaint in Lieu of Prerogative Writs against Defendant, City of Trenton (“Trenton”), state as follows:

NATURE OF THE ACTION

1. This is an action in lieu of prerogative writs, brought by Plaintiffs pursuant to New Jersey Court Rule 4:69 that seeks to invalidate Trenton Ordinance 14-45 (the “Ordinance”)

(attached hereto as Exhibit A) as *ultra vires*, preempted, and unconstitutional under the United States and New Jersey Constitutions.

PARTIES

2. Plaintiff NJBIA is a New Jersey business association with its principal place of business at 10 West Lafayette Street, Trenton, New Jersey 08608. NJBIA provides information, services and advocacy to its member private-sector companies. It is the nation's largest statewide employer association, and its members, as a group, employ more than one million people. NJBIA's 20,000 plus members represent every industry in New Jersey, including contractors, manufacturers, retail and wholesale businesses, and service providers of every kind, many of which will be affected by the Ordinance if it goes into effect.

3. Plaintiff NJCC is a business advocacy organization with its principal place of business at 216 West State Street, Trenton, New Jersey 08608. NJCC has a broad based membership ranging from the Fortune 500 companies to small proprietorships, and represents members on a wide range of business issues. Established in 1911, NJCC continues to work towards promoting a vibrant business environment and economic prosperity through vision, expertise and innovative solutions.

4. Plaintiff NJFC is business association with its principal place of business at 30 West Lafayette Street, Trenton, New Jersey 08608. NJFC is an alliance of food retailers and their supplier partners united to provide vision and leadership to advance the interest of its members. As representatives of New Jersey's food retail and distribution industry, which employ more than 200,000 workers and feed almost 9 million residents a day, NJFC advocates on legislative and regulatory issues on behalf of its members and serves as a resource for policymakers.

5. Plaintiff NJRA is a business association with its principal place of business at 126 West State Street, Trenton, New Jersey 08608. The members of NJRA include the people who own, operate and serve New Jersey's restaurants, which generate nearly \$12 billion in annual economic activity. NJRA makes available the highest quality education and training resources for New Jersey's 315,000 restaurant and hospitality professionals.

6. Plaintiff NJRMA is a business association with its principal place of business at 332 West State Street, Trenton, New Jersey 08608. NJRMA has a membership of more than 3,500 retail businesses in the State of New Jersey. The organization, among other things, advocates on behalf of retail businesses.

7. Plaintiff NFIB is a business association with an office at 118 South Warren Street, Trenton, New Jersey 08608. Founded in 1943, and headquartered in Nashville, Tennessee, the National Federation of Independent Business is America's leading small-business advocacy association. NFIB has a team of lobbyists in Washington, D.C. and in all 50 states fighting to give every type of small and independent business a voice in government policy-making. A nonpartisan, nonprofit association, NFIB has 350,000 small and independent business owners across the nation.

8. Defendant Trenton is a municipal corporation organized and existing under the laws of the State of New Jersey with its principal place of business located at 319 East State Street, Trenton, New Jersey 08608.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Trenton, which is located in Mercer County, New Jersey. Venue is proper in this County, as the events that give rise to this action occurred within Mercer County and the subject of this matter is an Ordinance of the City of Trenton.

BACKGROUND

10. Through mandating that all private employers provide various amounts of paid sick time to employees based upon the size of the employer or, in some cases, the employer's type of business with respect to businesses in the fields of daycare, home healthcare, and food service, the Ordinance purports to:

- (a) "ensure that all workers in the City of Trenton can address their own health needs and health care costs";
- (b) "promote preventative health services in the City of Trenton by enabling workers to seek early and routine medical care for themselves and their family members";
- (c) "protect the public's health in Trenton by reducing the risk of and spread of contagion";
- (d) "promote the economic security and stability of workers and their families, as well as businesses serving the City of Trenton and its residents";
- (e) "protect residents and all workers in the City of Trenton from losing their jobs or facing workplace discipline as a result of illness and the use of sick time to care for themselves or their Family Members"; and
- (f) "safeguard the public welfare, health, safety and prosperity of the people of City of Trenton".

(See Ex. A at 2-3.)

11. The Ordinance was passed by voter referendum on November 4, 2014.

12. The Ordinance defines “Employee” as “defined in N.J.S.A. 34:11-56a1(h) who works in the City of Trenton for 80 hours in a year except that ‘Employee’ for purposes of this Ordinance does not include [(a)] [sic] any person employed by an governmental entity or instrumentality including any New Jersey school district or Board of Education or (b) any person who is a member of a construction union and is covered by a collective bargaining agreement negotiated by that union.” (See id. at § 1.)

13. The Ordinance expressly excludes all employees covered by a collective bargaining agreement that is in effect at the time of the effective date of the Ordinance. (See id. at § 2.)

14. The Ordinance defines “Employer” as “defined in N.J.S.A. 34:11-56a1(g) except that Employer does not include (a) the United States government; (b) the State or its political subdivisions or any office, department, agency, authority, institution, association, society or any instrumentality of the State including the legislature or judiciary; or (c) the City of Trenton.” (See id. at § 1.)

15. The Ordinance does not limit its reach only to those employers that have their principal place of business in Trenton. (See id.)

16. Rather, employers affected by this Ordinance apparently can be located in any municipality, state, or country. (See id.)

17. Under the Ordinance, “[a]ll Employees accrue a minimum of one hour of paid sick time for every 30 hours actually worked, subject to” the following limits:

- (a) Employers with 10 or more employees must provide up to 40 hours of paid sick leave;
- (b) Employers having less than 10 employees are required to provide up to 24

hours of paid sick time; and

- (c) Daycare, home healthcare workers, and food service workers may accrue up to 40 hours in a calendar year regardless of the size of the employer.

(See id. at § 3.)

18. In order to establish the size of the employer so as to determine the amount of paid sick time its employees will accrue under the Ordinance, all full-time, part-time, or temporary employees are counted. (See id.)

19. Accrued sick time can be used for:

- (a) an employee's own physical or mental illness, health condition, or preventative medical care;
- (b) the care of an employee's family member (including children, parents, parents of a spouse or domestic/civil union partner; spouses; domestic/civil union partners; grandchildren; grandparents; the spouse or domestic/civil union partner of a grandparent; and siblings) for physical or mental illness, health condition, or preventative medical care; and
- (c) the closure of an employee's business due to public health emergency, to care for child whose school has been closed due to public health emergency, or to care for family member who has a communicable disease.

(See id. at § 4.)

20. Accrual of sick time begins on the first day of an employee's employment, but paid sick time cannot be used during the first 90 calendar days of employment. (See id. at § 3.)

21. Employers are permitted to ask for general documentation that paid sick time actually was necessary after 3-day absence, however, employers may not require that the documentation explain the nature of the illness. (See id. at § 4.)

22. The Trenton Department of Health and Human Services is tasked with enforcement of the Ordinance. (See id. at § 9.)

23. Employers that violate the provisions of the Ordinance are subject to fines “as provided in Sections 1-17 and 1-18 of the Code of the City of Trenton.” (See id. at § 7.)

24. Section 1-17 of the Code of the City of Trenton is titled “Maximum Penalty” and provides that:

For violation of any provision of this chapter or any other ordinance of the City where no specific penalty is provided regarding the section or sections violated, the maximum penalty shall, upon conviction for such violation, be one or more of the following:

A. A fine not exceeding \$2,000.

B. Imprisonment in the county jail for a period not exceeding 90 days.

C. A period of community service not exceeding 90 days.

See Code of the City of Trenton at § 1-17, attached hereto as Exhibit B.

25. Section 1-18 of the Code of the City of Trenton is titled “Separate Violation” and it provides that “[e]xcept as otherwise provided, each and every day in which a violation of any provision of this chapter or any ordinance of the City exists shall constitute a separate violation.” See id. at § 1-18.

26. The Ordinance is set to take effect 120 days following its enactment, i.e., March 4, 2015. (See Ex. A at § 14.)

FIRST COUNT

(Violation of the Police Powers Granted to Municipalities)

27. Plaintiffs incorporate all of the foregoing paragraphs by reference as if those paragraphs were fully set forth at length herein.

28. The New Jersey Legislature expressly granted powers to municipalities in 31 areas. See N.J.S.A. 40:48-2.

29. None of those areas give the power to municipalities to require employers to provide paid sick time. Id.

30. Instead, the Ordinance purportedly was enacted pursuant to Trenton's "police powers". See N.J.S.A. 40:48-2.

31. Under New Jersey law, police powers permit a municipality to pass ordinances which regulate the "public health, safety, and welfare *of the municipality and its inhabitants*". See id. (emphasis added.)

32. Police powers are, however, subject to constitutional limits:

All police power legislation -- the regulation must not be unreasonable, arbitrary or capricious, *the means selected must have a real and substantial relation to the object sought to be attained, and the regulation or proscription must be reasonably calculated to meet the evil and not exceed the public need or substantially affect uses which do not partake of the offensive character of those which cause the problem sought to be ameliorated.*

Kirsch Holding Co. v. Borough of Manasquan, 59 N.J. 241, 251 (1971) (emphasis added).

33. The grant of police powers from the State of New Jersey to municipalities under N.J.S.A. 40:48-2 has been traditionally limited "to matters of *local concern* which may be determined to be necessary and proper for the good and welfare of *local inhabitants*, and *not to those matters involving state policy or in the realm of affairs of general public interest and*

applicability.” Wagner v. Mayor and Municipal Council of Newark, 24 N.J. 467, 478 (1957) (emphasis added); see also Township of Chester v. Panicucci, 62 N.J. 94, 99 (1973).

34. Moreover, “[m]atters that because of their nature are inherently reserved for the State alone and among which have been the *master and servant . . . relationships . . .* and many other matters of general and statewide significance, *are not proper subjects for local treatment under the authority of the general statutes.* Wagner, 24 N.J. at 478 (emphasis added).

35. A master and servant relationship is one of employer and employee. Carter v. Reynolds, 175 N.J. 402, 408-09 (2003).

36. Therefore, under the law, the Ordinance is not a proper exercise of Trenton’s police powers and is *ultra vires*.

37. Paid sick time is not a matter of local concern relevant only to the inhabitants of Trenton, but rather it is a matter of statewide concern and general public interest.

38. Paid sick time is an issue that is a matter of general and statewide significance. This is especially true as many employers in the State have workforces that span multiple municipalities.

39. Furthermore, Trenton has not limited the reach of the Ordinance only to Trenton, but rather has undertaken to regulate employers located in other municipalities and even other states if those employers have any employees that work at least 80 hours per year in Trenton.

40. Moreover, because employers may not be able to treat individual employees differently in terms of benefits, this Ordinance may impact employees who do not even work in Trenton.

41. The police powers conferred upon Trenton by the New Jersey Legislature do not provide Trenton with the power and authority to require private employers located outside of Trenton to provide paid sick time to employees, nor to regulate matters that are of statewide concern and general public interest.

42. As such, the Ordinance is as *ultra vires* under New Jersey law.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

- (a) Declaring the Ordinance *ultra vires* and unenforceable;
- (b) Granting injunctive relief enjoining enforcement of the Ordinance;
- (c) Costs of suit and attorney's fees pursuant to N.J.S.A. 10:6-2(f).; and
- (d) For such other relief as may be equitable and just.

SECOND COUNT

(Preempted by New Jersey Statutes Addressing Paid Sick Leave)

43. Plaintiffs incorporate all of the foregoing paragraphs by reference as if those paragraphs were fully set forth at length herein.

44. The doctrine of preemption is based upon the concept that municipalities, which are agents of the state, cannot act contrary to the state. See Overlook Terrace Mgmt. Corp. v. Rent Control Board of West New York, 71 N.J. 451, 461 (1976); Summer v. Teaneck, 53 N.J. 548, 554 (1969).

45. New Jersey recognizes both field preemption and conflict preemption as the New Jersey Legislature's "intent to preempt a field will be found either where the state scheme is so pervasive or comprehensive that it effectively precludes the coexistence of municipal regulation, or where the local regulation conflicts with the state statutes or stands as an obstacle

to a state policy expressed in enactments of the Legislature.” Garden State Farms, Inc. v. Bay, 77 N.J. 439, 450 (1978).

46. Sick pay is a subject of general and statewide significance because the needs with respect to that matter do not vary locally.

47. The purported goals of the Ordinance that were cited by Trenton to justify its passage, e.g., reducing the spread of infectious disease or promoting the overall health and safety of workers, are goals of general intent, not concerns unique or local to Trenton.

48. The State of New Jersey has addressed sick leave under the state statutory scheme of New Jersey Temporary Disability Benefits Act (“NJTDBA”), the New Jersey Family Leave Insurance Law provision of the NJTDBA, and the New Jersey Family Leave Act.

49. The New Jersey Family Leave Insurance Law permits certain employees to take paid leave to care for the birth or adoption of a child or to care for a family member with a serious health condition. N.J.S.A. 43:21-27(o).

50. This NJTDBA provides paid leave for certain employees who are unable to work due to a non-occupational illness or injury. N.J.S.A. 43:21-26.

51. The New Jersey Family Leave Act permits certain employees to take up to 12 weeks of leave during a 24 month period for the birth or adoption of a child or to care for a family member with a serious health condition. N.J.S.A. 34:11B-3 & 4.

52. Furthermore, a bill currently pending before the New Jersey Legislature would require paid sick leave on a state-wide basis.

53. Thus, the Ordinance is preempted because the State of New Jersey has occupied the field of paid sick leave via current state statutes.

54. As such, the Ordinance is preempted under New Jersey law.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

- (a) Declaring the Ordinance unenforceable because it is preempted by state law;
- (b) Granting injunctive relief enjoining enforcement of the Ordinance;
- (c) Costs of suit and attorney's fees pursuant to N.J.S.A. 10:6-2(f); and
- (d) For such other relief as may be equitable and just.

THIRD COUNT

(Preempted by New Jersey's Statutory Scheme Dictating the Minimum Wage)

55. Plaintiffs incorporate all of the foregoing paragraphs by reference as if those paragraphs were fully set forth at length herein.

56. As noted above, the New Jersey Legislature's "intent to preempt a field will be found either where the state scheme is so pervasive or comprehensive that it effectively precludes the coexistence of municipal regulation, or where the local regulation conflicts with the state statutes or stands as an obstacle to a state policy expressed in enactments of the Legislature." Garden State Farms, Inc., 77 N.J. at 450.

57. The New Jersey Legislature has authorized the New Jersey Department of Labor to set the minimum wage in New Jersey. See N.J.S.A. 34:11-56a, et seq.

58. The New Jersey minimum wage currently is set at \$8.38 per hour. See N.J.A.C. 12:56-3.1.

59. Because the Ordinance mandates that an employee earn "one hour of paid sick time for every 30 hours actually worked", the Ordinance has effectively set the local minimum wage for time worked in Trenton at \$8.66 per hour ($\$8.38 + \0.28 (1/30th of \$8.38)).

60. Requiring mandatory sick pay is a de facto means of raising the minimum wage for employees affected by the Ordinance.

61. Such a result is impermissible because the State of New Jersey has exclusively occupied the field via its minimum wage law and the Ordinance conflicts with that law.

62. As such, the Ordinance is preempted under New Jersey law.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

- (a) Declaring the Ordinance unenforceable because it is preempted by state law;
- (b) Granting injunctive relief enjoining enforcement of the Ordinance;
- (c) Costs of suit and attorney's fees pursuant to N.J.S.A. 10:6-2(f); and
- (d) For such other relief as may be equitable and just.

FOURTH COUNT

(Substantive Due Process Violation)

63. Plaintiffs incorporate all of the foregoing paragraphs by reference as if those paragraphs were fully set forth at length herein.

64. The United States Constitution guarantees that no state may "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

65. Courts have interpreted the New Jersey Constitution to protect those fundamental rights via the language that provides "[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." N.J. Const. of 1947 art. I, § 1.

66. The protections guaranteed by the New Jersey Constitution include the right to substantive due process with respect to legislative enactments: "It is elementary theory that all police power enactments, no matter at what level of government, must conform to the basic

state constitutional requirements of substantive due process and equal protection of the laws.”

Id. at 174.

67. The Supreme Court of New Jersey has recognized that New Jersey’s Constitution provides greater substantive due process protections than afforded by the federal constitution. See, e.g., Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel, 67 N.J. 151, 174-75 (1975).

68. When evaluating substantive due process challenges under the New Jersey Constitution, courts apply a balancing test. Sojourner A. v. N.J. Dep’t of Human Servs., 177 N.J. 318, 332 (2003).

69. For an ordinance or legislation to satisfy the constitutional mandate of substantive due process, “the means selected [must] bear a real and substantial relationship to a permissible legislative purpose.” Taxpayers Ass’n v. Weymouth Township, 80 N.J. 6, 44 (1976), cert. denied, 430 U.S. 977 (1977).

70. That test weighs the “nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction.” Greenberg v. Kimmelman, 99 N.J. 552, 567 (1985).

71. It is against this standard, the “rule of reason”, that the Ordinance must be judged.

72. The purported goals articulated in the Ordinance include promoting preventative health services in the City of Trenton; protecting the public’s health in Trenton by reducing the risk of and spread of contagion; promoting the economic security and stability of workers and their families, as well as businesses serving the City of Trenton and its residents; protecting residents and all workers in the City of Trenton from losing their jobs or facing workplace

discipline as a result of illness and the use of sick time to care for themselves or their Family Members; and safeguarding the public welfare, health, safety and prosperity of the people of City of Trenton. (See Ex. A at 2-3.)

73. The working scope of the Ordinance is poorly designed to achieve those stated goals because it grossly overreaches in some respects and grossly underreaches in other respects.

74. Some examples of how the Ordinance overreaches with little to no effect on the health of the people of Trenton are that: (1) it purports to regulate not just employers located in Trenton, but rather employers in other municipalities with even just one employee who works in Trenton for 80 hours per year; (2) if an employee only spends about 2 weeks in Trenton over the course of a year, and only earns 3 to 5 sick days, paid sick days may be used up on non-Trenton sick days; (3) an employee may use time to care for a relative who does not live in Trenton and has no contact with Trenton; and (4) it purports to regulate seasonal employees who are only in Trenton for short periods and may be located elsewhere for the rest of the year.

75. An example of how the Ordinance underreaches is that it arbitrarily exempts from entitlement to paid sick leave the substantial percentage of the Trenton work force that is made up of public employees and union employees, an exemption which will render ineffective the Ordinance's stated goal of reducing the risk and spread of contagion.

76. The reach of the Ordinance is far too broad and should be struck down as unconstitutional because it violates substantive due process rights guaranteed by the United States and New Jersey Constitutions.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

- (a) Declaring the Ordinance unenforceable and unconstitutional;
- (b) Granting injunctive relief enjoining enforcement of the Ordinance;
- (c) Costs of suit and attorney's fees pursuant to N.J.S.A. 10:6-2(f); and
- (d) For such other relief as may be equitable and just.

FIFTH COUNT

(Equal Protection Violation)

77. Plaintiffs incorporate all of the foregoing paragraphs by reference as if those paragraphs were fully set forth at length herein.

78. "The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985).

79. "Although the term 'equal protection' does not appear anywhere in the New Jersey Constitution, Article I, paragraph 1 of our Constitution has been interpreted as conferring the right to equal treatment under the law, a right analogous to the guarantee of equal protection under the Fourteenth Amendment to the Federal Constitution." Doe v. Poritz, 142 N.J. 1, 94 (1995) (citing Barone v. Department of Human Servs., 107 N.J. 355, 367 (1987)).

80. "Although conceptually similar, the right under the State Constitution can in some situations be broader than the right conferred by the Equal Protection Clause." Doe, 142 N.J. at 94 (citing Right to Choose v. Byrne, 91 N.J. 287, 305 (1982) (holding that statute which satisfies federal equal protection requirements violates equal protection under State Constitution)).

81. For an ordinance or legislation to satisfy the constitutional mandate of equal protection under the law, it must not manifest “arbitrary discrimination between persons similarly situated.” Greenberg, 99 N.J. at 577 (quoting Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 456 (1981)).

82. The Ordinance contains a variety of instances in which similarly situated persons or business are arbitrarily discriminated against, including but not limited to:

- (a) Requiring employers to provide different amounts of paid sick time simply based upon whether the employer has 10 or more employees;
- (b) Applying to private employers while exempting public employers; and
- (c) Applying to all non-union employees while virtually exempting union employees, which would give an unfair economic advantage to union employers, while at the same time failing to give union employees the same purported benefits.

83. As a result, the Ordinance violates Plaintiffs’ rights to equal protection under the United States and New Jersey Constitutions.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

- (a) Declaring the Ordinance unenforceable and unconstitutional;
- (b) Granting injunctive relief enjoining enforcement of the Ordinance;
- (c) Costs of suit and attorney’s fees pursuant to N.J.S.A. 10:6-2(f); and
- (d) For such other relief as may be equitable and just.

SIXTH COUNT

(Unconstitutional Vagueness)

84. Plaintiffs incorporate all of the foregoing paragraphs by reference as if those paragraphs were fully set forth at length herein.

85. An ordinance's or statute's vagueness implicates constitutional considerations because it "creates a denial of due process because of a failure to provide adequate and fair notice or warning that his or her conduct could subject that individual to criminal or quasi-criminal prosecution." Karins v. City of Atlantic City, 152 N.J. 532, 544 (1998).

86. A statute or regulation is facially unconstitutional for vagueness if it "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." Connally v. General Constr. Co., 269 U.S. 385, 391 (1926); State v. Lashinsky, 81 N.J. 1, 17-18 (1979).

87. Examples of the Ordinance's vagueness include: (a) that it does not define the circumstances under which an employee "works in Trenton" for purposes of the Ordinance; (b) it does not expressly state whether employers located outside Trenton are subject to the Ordinance when they have employees that "work in Trenton;" (c) it states that employees "begin to accrue Paid Sick Time on the first day of employment" but does not explain whether that is the employee's first day of work in Trenton or first day of work in general; (d) it does not explain how an employer knows that an employee is going to cross the 80 hour threshold or whether an employer is required to anticipate or guess whether an employee will work in Trenton for 80 hours in an upcoming year; (e) it does not explain whether employers are required to log the number of hours each employee spends within the city limits of Trenton; and (f) it does not explain how its provisions intersect with existing state laws addressing sick

and disability leave, such as the NJTDBA, the New Jersey Family Leave Insurance Law provision of the NJTDBA, and the New Jersey Family Leave Act.

88. Moreover, the Ordinance gives the Trenton Department of Health and Human Services the ability to order penalties, including the possibility of up to 90 days in jail or a fine of \$2000, against non-compliant employers, *for each day of a purported violation*. See Code of the City of Trenton at §§ 1-17 & 1-18.

89. Because of the vagueness it will be impossible for employers to know whether they are in compliance with the Ordinance or instead are subjecting themselves to substantial fines and jail time.

90. By its terms, the Ordinance is vague, ambiguous, and contrary to New Jersey law and impossible to interpret, administer or implement.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

- (a) Declaring the Ordinance unenforceable and unconstitutional;
- (b) Granting injunctive relief enjoining enforcement of the Ordinance;
- (c) Costs of suit and attorney's fees pursuant to N.J.S.A. 10:6-2(f); and
- (d) For such other relief as may be equitable and just.

SEVENTH COUNT

(Contract Clause Violation)

91. Plaintiffs incorporate all of the foregoing paragraphs by reference as if those paragraphs were fully set forth at length herein.

92. The "Contract Clause" of the United States Constitution provides that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1.

93. Similarly, the New Jersey Constitution provides: "The Legislature shall not pass any . . . law impairing the obligation of contracts, or depriving a party of any remedy for

enforcing a contract which existed when the contract was made.” N.J. Const. of 1947 art. IV, § VII, ¶ 3.

94. Generally, a three-step analysis determines whether a particular legislative act violates the Contract Clauses of either the United States or the New Jersey Constitutions: (1) whether there has been “a substantial impairment of a contractual relationship”; (2) whether the legislation was enacted for a “significant and legitimate public purpose”; and (3) “whether the adjustment of ‘the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying’ ” the legislation.

Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411-12 (1983) (quoting United States Trust Co. v. New Jersey, 431 U.S. 1, 22 (1977)); see also Nieves v. Hess Oil Virgin Islands Corp., 819 F.2d 1237, 1243 (3d Cir. 1987); Brown v. Township of Old Bridge, 319 N.J. Super. 476, 504 (App. Div. 1999).

95. Applying the three-step analysis, the Ordinance substantially impairs the contractual relationships between employers and employees in violation of the Contracts Clause.

96. The Ordinance would cause “a substantial impairment of a contractual relationship” by overriding existing employment contracts between employees and employers in which paid sick leave is dealt with differently than in the Ordinance (e.g., by requiring the employer to change an already existing paid sick leave benefit that is part of the terms and conditions of the workplace).

97. As discussed above, while the Ordinance purports to have certain goals generally related to improving public health, it is not actually designed to accomplish those goals because it overreaches in some respects, underreaches in others, and makes arbitrary exceptions in its

application to certain types of employers and employees, all of which substantially undermine the ability to achieve the stated goals.

98. Moreover, it is not appropriate for the Ordinance to force an adjustment to the rights and responsibilities of the employers and employees with existing fairly bargained-for contracts establishing what benefits they will receive.

99. The Ordinance significantly impairs private employer-employee contracts and unreasonably interferes with those contractual relationships without achieving a legitimate governmental purpose.

100. As such, the Ordinance is unconstitutional under the United States and New Jersey Constitutions.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

- (a) Declaring the Ordinance unenforceable and unconstitutional;
- (b) Granting injunctive relief enjoining enforcement of the Ordinance;
- (c) Costs of suit and attorney's fees pursuant to N.J.S.A. 10:6-2(f); and
- (d) For such other relief as may be equitable and just.

EIGHTH COUNT

(Declaratory Judgment)

101. Plaintiffs incorporate all of the foregoing paragraphs by reference as if those paragraphs were fully set forth at length herein.

102. This Court has the authority under the Uniform Declaratory Judgments Act, N.J.S.A. 2A:16-50, et seq., and R. 4:42-3 to enter declaratory judgments.

103. Pursuant to N.J.S.A. 2A:16-53, a person whose rights, status or other legal relations are affected by a municipal ordinance may have determined any question of

construction or validity arising under the ordinance and obtain a declaration of rights, status or other legal relations thereunder.

104. An actual dispute exists between the parties as to the proper construction or validity of the Ordinance, creating an uncertainty as to the Plaintiffs' rights and an actual, substantial and justiciable controversy.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

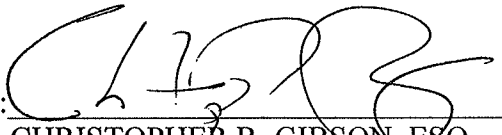
- (a) Declaring the Ordinance unenforceable and unconstitutional;
- (b) Granting injunctive relief enjoining enforcement of the Ordinance;
- (c) Costs of suit and attorney's fees pursuant to N.J.S.A. 10:6-2(f); and
- (d) For such other relief as may be equitable and just.

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that in accordance with R. 4:25-4, Christopher R. Gibson, Esquire, of the firm of Archer & Greiner, is hereby designated as trial counsel for Plaintiffs in the above captioned litigation.

ARCHER & GREINER
A Professional Corporation
Attorneys for Plaintiffs

Dated: March 2, 2014


By: 
CHRISTOPHER R. GIBSON, ESQ.

CERTIFICATION PURSUANT TO R.4:5-1

Pursuant to R. 4:5-1, the undersigned certifies that to the best of his knowledge that the within matter in controversy is not the subject of any other action pending nor is any action or arbitration proceeding contemplated nor are there other persons required to be joined in this action.

ARCHER & GREINER
A Professional Corporation
Attorneys for Plaintiffs

Dated: March 2, 2014

By: 
CHRISTOPHER R. GIBSON, ESQ.

VERIFICATION

MICHELE SIEKERKA, of full age, hereby certifies the following:

1. I am the President of the NJBIA.
2. I am authorized to make this Verification on behalf of the NJBIA.
3. I have read the foregoing Complaint. The facts of the matter stated herein as

related to the NJBIA are true to the best of my knowledge and belief.

I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Date: 2/25/15

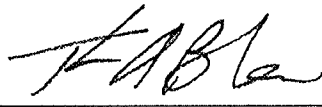
By: 
MICHELE SIEKERKA

VERIFICATION

THOMAS A. BRACKEN, of full age, hereby certifies the following:

1. I am the President and CEO of the NJCC.
2. I am authorized to make this Verification on behalf of the NJCC.
3. I have read the foregoing Complaint. The facts of the matter stated herein as related to the NJCC are true to the best of my knowledge and belief.

I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

By: 
THOMAS A. BRACKEN

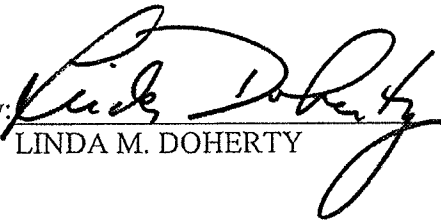
Date: 2/25/15

VERIFICATION

LINDA M. DOHERTY, of full age, hereby certifies the following:

1. I am the President and CEO of the NJFC.
2. I am authorized to make this Verification on behalf of the NJFC.
3. I have read the foregoing Complaint. The facts of the matter stated herein as related to the NJFC are true to the best of my knowledge and belief.

I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

By: 
LINDA M. DOHERTY

Date: 2.26.15

VERIFICATION

MARILOU HALVORSEN, of full age, hereby certifies the following:

1. I am the President and CEO of the NJRA.
2. I am authorized to make this Verification on behalf of the NJRA.
3. I have read the foregoing Complaint. The facts of the matter stated herein as related to the NJRA are true to the best of my knowledge and belief.

I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

By: 
MARILOU HALVORSEN

Date: 2/26/15

VERIFICATION

JOHN R. HOLUB, of full age, hereby certifies the following:

1. I am the President of the NJRMA.
2. I am authorized to make this Verification on behalf of the NJRMA.
3. I have read the foregoing Complaint. The facts of the matter stated herein as related to the NJRMA are true to the best of my knowledge and belief.

I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

By: 

JOHN R. HOLUB

Date: 2-25-15

02/26/2015 12:20 0258

PAGE 02

VERIFICATION

LAURIE A. EHLBECK, of full age, hereby certifies the following:

1. I am the State Director for the NFIB.
2. I am authorized to make this Verification on behalf of the NFIB.
3. I have read the foregoing Complaint. The facts of the matter stated herein as related to the NFIB are true to the best of my knowledge and belief.

I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

By: *Laurie A. Ehlbeck*
 LAURIE A. EHLBECK

Date: 2/25/2015

EXHIBIT A

ORDINANCE

No. 14-45

1st Reading AUG 22 2014

Date to Mayor _____

Public Hearing _____

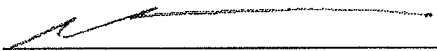
Date Returned _____

2nd Reading & Passage _____

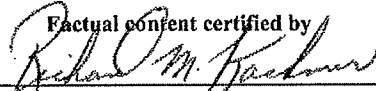
Date Resubmitted to Council _____

Withdrawn _____ Lost _____

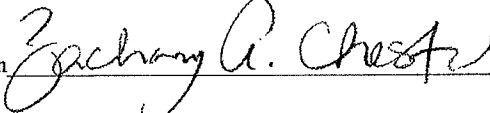
Approved as to Form and Legality



DAVID M. MINCHELLO, ESQ., CITY ATTORNEY

Factual content certified by


RICHARD M. KACHMAR, RMQ, CITY CLERK

Councilman /woman 

presents the following Ordinance:

AN ORDINANCE TO ADD A NEW CHAPTER TO THE ORDINANCES OF TRENTON TO PROMOTE THE OVERALL HEALTH AND SAFETY OF THE RESIDENTS AND WORKERS OF THE CITY OF TRENTON BY REDUCING THE SPREAD OF COMMUNICABLE DISEASE AND CONTAGION BY REQUIRING A POLICY OF PAID SICK LEAVE FOR WORKERS IN TRENTON

WHEREAS, most workers in Trenton will at some time during each year need limited time off from work to take care of his or her own health needs or the health needs of members of their families, and

WHEREAS, nationally nearly 40% of private sector workers are without any paid sick time; in addition, many workers who do have paid sick time are disciplined for using it- or cannot use that time to care for sick children; and

WHEREAS, low income workers are significantly less likely to have paid sick time than other members of the workforce; nationally, only one in five of the lowest income workers (21%) has access to paid sick time; and

WHEREAS, Providing workers time off to attend to their own health care and the health care of family members will ensure a healthier and more productive workforce in Trenton; and

WHEREAS, paid sick time will have a positive effect on the individual and public health of Trenton by allowing sick workers to earn a limited number of hours per year to care for themselves or a close family member when illness strikes or medical needs arise. Paid sick time will reduce recovery time, promote the use of regular medical providers rather than hospital emergency departments, and reduce the likelihood of people spreading illness to other members of the workforce and to the public; and

WHEREAS, paid sick time will reduce health care expenditures by promoting access to primary and preventive care; nationally, providing all workers with paid sick time would result in \$1.1 billion in annual savings in hospital emergency department costs, including more than \$500 million in savings to publicly funded health insurance programs such as Medicare, Medicaid and SCHIP. Access to paid sick time can also help decrease the likelihood that a worker will put off needed care, and can increase the rates of preventive care among workers and their children; and

WHEREAS, paid sick time will allow parents to provide personal care for their sick children. Parental care makes children's recovery faster and can prevent future health problems. Parents who don't have paid sick time are more than twice as likely as parents with paid sick days to send a sick child to school or daycare, and five times as likely to report taking their child or a family member to a hospital emergency room because they were unable to take time off work during their regular work hours.

ORDINANCE

WHEREAS, paid sick time will reduce contagion. Workers in jobs with high levels of public contact, such as restaurant workers and child care workers, are very unlikely to have paid sick time. As a result, these workers may have no choice but to go to work when they are ill, thereby increasing the risk of passing illnesses on to co-workers and customers while jeopardizing their own health. Overall, people without paid sick days are 1.5 times more likely than people with paid sick days to go to work with a contagious illness like the flu; and

WHEREAS, a recent peer-reviewed epidemiological study found that nearly one in five food service workers have come to work vomiting or with diarrhea in the past year, creating dangerous health conditions. The largest national survey of U.S. restaurant workers found that two-thirds of restaurant waitstaff and cooks have come to work sick; and

WHEREAS, in the event of a disease outbreak that presents a threat to public health—for example, the H1N1 outbreak of 2009—government officials request that sick workers stay home and keep sick children home from school or child care to prevent the spread of illness, and to safeguard workplace productivity. However, because many workers lack paid sick time, they may be unable to comply; and

WHEREAS, during the height of the H1N1 pandemic, workers with lower rates of access to paid sick days were more likely than those with higher rates of access to paid sick days to go to work sick and, as a result, the pandemic lasted longer in their workplaces as the virus spread from co-worker to co-worker. A new study estimates that lack of paid sick time was responsible for five million cases of influenza-like illness during the pandemic; and

WHEREAS, providing paid sick time is good for businesses. Paid sick time results in reduced worker turnover, which leads to reduced costs incurred from advertising, interviewing and training new hires. Firing and replacing workers can cost anywhere from 25 to 200 percent of an employee's annual compensation; and

WHEREAS, paid sick time will reduce the risk of "presenteeism"—workers coming to work with illnesses and health conditions that reduce their productivity—a problem that costs the national economy \$160 billion annually; and

WHEREAS, paid sick time will reduce the competitive disadvantage that many employers face when they choose to provide sick time to their workers; and

NOW THEREFORE BE IT ORDAINED THAT to ensure that all workers in the City of Trenton can address their own health needs and the health needs of their Family Members by requiring Employers to provide a minimum level of paid sick time, including time for care for Family Members; and

To diminish public and private health care costs and promote preventative health services in the City of Trenton by enabling workers to seek early and routine medical care for themselves and their Family Members; and

To protect the public's health in Trenton by reducing the risk of and spread of contagion; and

To promote the economic security and stability of workers and their families, as well as businesses serving the City of Trenton and its residents; and

To protect residents and all workers in the City of Trenton from losing their jobs or facing workplace discipline as a result of illness and the use of sick time to care for themselves or their Family Members; and

ORDINANCE

To safeguard the public welfare, health, safety and prosperity of the people of the City of Trenton;
and

To accomplish the purposes described in paragraphs (1)-(6) in a manner that is fair and reasonable to both Employees and Employers, and rationally related to the objectives sought which is to promote the overall health and safety of the residents and workers in the City of Trenton by reducing the risk of and spread of communicable disease and contagion.

The ordinances of the City of Trenton are hereby amended as to include the following Ordinance, entitled Sick Leave for Private Employees.

Section 1. Definitions.

For purposes of this Ordinance:

- (1) "Agency" means the Department of Health and Human Services.
- (2) "Calendar year" means a regular and consecutive 12 month period, as determined by an employer.
- (3) "Construction union" means a labor organization that represents, for purposes of collective bargaining, employees involved in the performance of construction, reconstruction, demolition, alteration, custom fabrication, or repair work and who are enrolled or have graduated from a "registered apprenticeship program."
- (4) "Employee" is as defined in N.J.S.A. 34:11-56a1(h) who works in the City of Trenton for at least 80 hours in a year except that "Employee" for purposes of this Ordinance does not include any person employed by any governmental entity or instrumentality including any New Jersey school district or Board of Education or (b) any person who is a member of a construction union and is covered by a collective bargaining agreement negotiated by that union.
- (5) "Employer" is as defined in N.J.S.A. 34:11-56a1(g) except that Employer does not include (a) the United States government; (b) the State or its political subdivisions or any office, department, agency, authority, institution, association, society or any instrumentality of the State including the legislature or judiciary; or (c) the City of Trenton.
- (6) "Family Member" means
 - (a) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child of a civil union partner, or a child to whom the employee stands in loco parentis;
 - (b) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or of an employee's spouse, domestic partner or civil union partner or a person who stood in loco parentis when the employee was a minor child;
 - (c) A person to whom the employee is legally married under the laws of New Jersey or any other State or with whom the employee has entered into a civil union under N.J.S.A. Title 37;
 - (d) A grandparent or spouse, civil union partner or domestic partner of a grandparent;
 - (e) A grandchild;
 - (f) A domestic partner of an employee as defined in N.J.S.A. 26:8A-3 et. seq. or
 - (g) A sibling.

ORDINANCE

- (7) "Health Care Professional" means any person licensed under Federal or New Jersey law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel.
- (8) "Paid Sick Time" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the Employee normally earns during hours worked and is provided by an Employer to an Employee for the purposes described in Section 3 of this Ordinance, but in no case shall the hourly wage be less than that provided under N.J.S.A. 34:11-56a.
- (9) "Registered apprenticeship program" means an apprenticeship program that is registered with and approved by the United States Department of Labor and which meets not less than two of the following requirements:
- (a) has active, employed, registered apprentices;
 - (b) has graduated apprentices to journey worker status during a majority of the years that the program has been in operation; or
 - (c) has graduated apprentices to journey worker status during three of the immediately preceding five years, provides each trainee with combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade and meets the program performance standards of enrollment and graduation under 29 C.F.R. Part 29, section 29.63.1.
- (10) "Retaliation" means the denial of any right guaranteed under this Ordinance and any threat, discipline, discharge, suspension, demotion, reduction of hours, or any other adverse action against an Employee for the exercise of any right guaranteed herein, including for filing a complaint or informing any person about any employer's alleged violation of this Act; cooperating with the Agency in its investigations of alleged violations of this Act; participating in any administrative or judicial action regarding an alleged violation of this Act; and informing any person of his or her potential rights under this Act.

Section 2. Employees Covered by Collective Bargaining Agreements.

- (1) All or any portion of the applicable requirements of this Ordinance shall not apply to Employees covered by a collective bargaining agreement, to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.
- (2) With respect to Employees covered by a collective bargaining agreement in effect at the time of the effective date of this Ordinance, no provision of this Ordinance shall apply until the expiration of the collective bargaining agreement; however, if the terms of an expired collective bargaining agreement provide paid sick leave that is more generous than provided by this Ordinance, those terms of the expired collective bargaining agreement apply to the extent required by law.

ORDINANCE

Section 3. Accrual of Paid Sick Time.

- (1) All Employees accrue a minimum of one hour of paid sick time for every 30 hours actually worked, subject to the limits set forth below in paragraphs 2 and 3.
- (2) Employers who employ ten or more Employees for compensation are not required to provide more than 40 hours of paid sick time in a calendar year;
- (3) Employers who employ fewer than ten Employees for compensation are not required to provide more than 24 hours of paid sick time in a calendar year, except for Employees who are child care workers, home health care workers and food service workers. For child care workers, home health care workers and food service workers, Employers are required to provide up to 40 hours of paid sick time, so long as the hours are accrued in a calendar year as set forth in paragraph 1 above.
- (4) In determining the number of Employees performing work for an Employer, all Employees performing work for compensation on a full-time, part-time, or temporary basis shall be counted, provided that where the number of Employees who work for an Employer for compensation fluctuates, business size may be determined for the current calendar year based upon the average number of Employees who worked for compensation during the preceding calendar year,
- (5) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act are assumed to work 40 hours in each work week for purposes of paid sick time accrual unless their normal work week is less than 40 hours, in which case paid sick time accrues based upon that normal work week.
- (6) Employees begin to accrue Paid Sick Time on the first day of employment. Employees are entitled to use accrued Paid Sick Time beginning on the 90th calendar day of their employment and thereafter Employees are entitled to use Paid Sick Time as it is accrued.
- (7) Accrued but unused Paid Sick Time shall be carried over to the following calendar year, provided that no Employer shall be required to carry over more than forty (40) hours of unused Paid Sick Time from one calendar year to the next or allow the use of more than forty (40) hours of Paid Sick Time in a calendar year. An Employer shall not be required to carry over unused Paid Sick Time if the Employee is paid for any unused Paid Sick Time at the end of the calendar year in which such time is accrued.
- (8) Any Employer with a paid leave policy, such as a paid time off policy, that provides an amount of paid leave sufficient to meet the total annual accrual requirements of this section that may be used for the same purposes and under the same conditions as paid sick time under this Ordinance is not required to provide additional paid sick time.
- (9) Nothing in this section shall be construed as requiring financial or other reimbursement to an Employee from an Employer upon the Employee's termination, resignation, retirement, or other separation from employment for accrued paid sick time that has not been used.
- (10) If an Employee is transferred to a separate division, entity, or location, but remains employed by the same Employer in the City of Trenton, the Employee is entitled to all paid sick time accrued at the prior division, entity, or location and is entitled to use all paid sick time as

ORDINANCE

provided in this section. If there is a separation from employment and the employee is rehired within six (6) months of separation, previously accrued unpaid sick time that had not been used shall be reinstated. Further, the employee is entitled to use accrued unpaid sick time and accrue additional unpaid sick time at the re-commencement of employment.

- (11) When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all paid sick time accrued when employed by the original employer and are entitled to use all paid sick leave previously accrued.
- (12) At its sole discretion, an Employer may loan paid sick time to an Employee in advance of accrual by such Employee. A decision by an Employer to deny a loan request by an Employee shall not subject the Employer to any liability under this Ordinance.

Section 4. Use of Paid Sick Time.

- (1) Paid Sick Time shall be provided to an Employee by an Employer for:
 - (a) An Employee's mental or physical illness, injury, or health condition; an Employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; an Employee's need for preventive medical care;
 - (b) Care of a Family Member with a mental or physical illness, injury, or health condition; care of a Family Member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; care of a Family Member who needs preventive medical care;
 - (c) Closure of the Employee's place of business by order of a public official due to a public health emergency or an Employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for Family Member when it has been determined by the health authorities having jurisdiction or by a health care provider that the Family Member's presence in the community would jeopardize the health of others because of the Family Member's exposure to a communicable disease, whether or not the Family Member has actually contracted the communicable disease.
- (2) Nothing in this Act prohibits an Employer from requesting that an Employee confirm in writing following use of Paid Sick Time that the Paid Sick Time was used for an authorized purpose under this Act.
- (3) Where the need to use Paid Sick Time is foreseeable, an Employer may require reasonable advance notice of the intention to use Paid Sick Time. In no event shall an Employee be required to give notice more than seven days prior to the date such sick time is to begin. Where such need is not foreseeable, an Employer may require an Employee to provide notice of the need for the use of sick time before the beginning of the Employee's work shift or work day or, in cases such as emergencies where advance notice is not possible, notice shall be provided by the Employee as soon as practicable.
- (4) An Employer may not require, as a condition of an Employee's taking Paid Sick Time, that the Employee search for or find a replacement worker to cover the hours during which the Employee is absent.

ORDINANCE

- (5) Accrued sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.
- (6) After an Employee has used Paid Sick Time for 3 consecutive days or 3 consecutive instances, an Employer may require an Employee to provide reasonable documentation that the time has been used for a purpose covered by subsection (1). In this instance, the Employer may require documentation signed by a health care professional indicating that the Paid Sick Time was necessary; however, an Employer may not require that the documentation explain the nature of the illness.

Section 5. Exercise of Rights Protected; Retaliation Prohibited.

- (1) No person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Ordinance.
- (2) No person shall retaliate against an Employee because the Employee has properly exercised rights protected under this Ordinance.

Section 6. Notice and Posting and Fines and Penalties for Violations of Notice, Posting and Other Requirements.

- (1) All Employers shall give written notice to each Employee at the commencement of the Employee's employment (or as soon as practicable if the Employee is already employed on the effective date of this law) regarding Employee's rights under this Ordinance. Such notice shall describe the right to paid sick time, the accrual rate and the amount of Paid Sick Time, and the terms of its use under this Ordinance; the right to be free from retaliation for properly requesting use of Paid Sick Time; and the right to file a complaint or bring an action in municipal court if paid sick time is denied by the employer or the employee is retaliated against for requesting or taking paid sick time. Such notice shall be in English and the primary language spoken by that Employee, so long as the primary language of that Employee is also the primary language of at least 10% of the Employer's workforce.
- (2) Employers shall also display a poster in a conspicuous and accessible place in each business establishment where Employees are employed containing the information required in subsection (1). The poster shall be in English and in any language that is the first language of at least 10% of the Employer's workforce.
- (3) The Agency can create and make available to Employers notices and posters in English and Spanish and any other languages deemed appropriate by the Agency that contain the information required under subsection (1) for Employers' use in complying with this section.

Section 7. Fines.

Any Employer who violates the provisions of this Ordinance is subject to a fine as provided in Sections 1-17 and 1-18 of the Code of the City of Trenton. In addition to the fines set forth above, any Employer who violates this Ordinance is subject to payment of restitution in the amount of any Paid Sick Time unlawfully withheld.

ORDINANCE

Section 8. Employer Records.

Employers shall allow the Agency reasonable access to records and to monitor compliance with the requirements of this Act. An Employer's failure to maintain or retain adequate records documenting hours worked by an Employee and Paid Sick Time taken by an Employee creates a rebuttable presumption that the Employer has violated this Ordinance, absent clear and convincing evidence otherwise.

Section 9. Enforcement and Regulations.

- (1) The Agency shall coordinate implementation and enforcement of this Ordinance and promulgate appropriate guidelines or regulations for such purposes.
- (2) The Agency shall have broad powers to ensure compliance with this Ordinance.
- (3) In the event an allegation of noncompliance cannot be resolved by the Agency with the Employer, a complaint may be filed, by the Agency and/or the Employee as the complainant, in the Trenton Municipal Court for any alleged violation of this Ordinance.
- (4) The Municipal Court shall have the power to adjudicate all allegations of violations of this Ordinance and impose fines or penalties provided for in this Ordinance, or any further relief deem appropriate by the court including but not limited to restitution, reinstatement, injunctive or declaratory relief.
- (5) Submitting a complaint to the Agency is neither a prerequisite nor a bar to bringing a private action.
- (6) The Agency shall have the power to do outreach to inform the residents of the City of their rights under this Act and to publicize online and in other media the names of Employers who violate this Act.

Section 10. Confidentiality and Nondisclosure.

- (1) An Employer may not require disclosure of the specific details relating to an Employee's or an Employee's Family Member's medical condition as a condition of providing Paid Sick Time under this Ordinance. If an Employer possesses health information about an Employee or Employee's Family Member, such information shall be treated as confidential and shall not be disclosed by the Employer except to the affected Employee or with the permission of the affected Employee.
- (2) The Agency shall maintain confidential the identity of any complaining person unless disclosure of the identity is necessary for resolution of the investigation. The Agency shall, to the extent practicable, notify a complaining person that the Agency will be disclosing his or her identify prior to such disclosure.

Section 11. No Effect on More Generous Policies.

- (1) Nothing in this Ordinance shall be construed to discourage or prohibit an Employer from the adoption or retention of a paid sick time policy more generous than the one required herein.
- (2) Nothing in this Ordinance shall be construed as diminishing the obligation of an Employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous paid sick time to an Employee than required herein.

RICHARD M. KACHMAR, RMC, CMR
MUNICIPAL CLERK

CORDELIA M. STATON
DEPUTY MUNICIPAL CLERK



OFFICE (609) 989-3187
FAX (609) 989-3190
rkachmar@trentonnj.org

OFFICE OF THE CITY CLERK
CITY OF TRENTON

319 EAST STATE STREET • TRENTON, NEW JERSEY 08608

August 22, 2014

Council President Zachary Chester
Members of City Council
City of Trenton
Trenton, NJ 08608

Dear Council President Chester and Members of City Council.

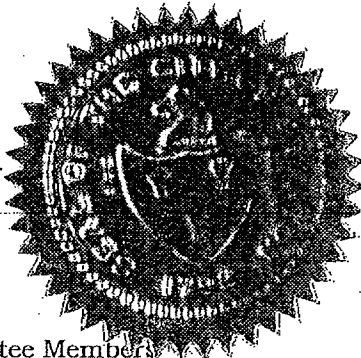
I hereby certify that the Initiative Petitions for an Ordinance entitled:

An Ordinance to add a New Chapter to the Ordinances of Trenton to promote the overall Health and Safety of the Residents and Workers of the City of Trenton by Reducing the Spread of Communicable Disease and Contagion by requiring a policy of Paid Sick Leave for the Workers in Trenton

Filed in the Office of the Municipal Clerk for the City of Trenton on August 8, 2014 and equal in number to at least 10 % of the total votes cast in the municipality at the last election at which members of the General Assembly (1189) were elected. Contained 1551 valid signatures of registered voters of the City of Trenton and their addresses and is now hereby deemed valid and certified.

Signed and Sealed

Richard M. Kachmar
City Clerk



CC: Petition Committee Members

EXHIBIT B

City of Trenton, NJ
Monday, March 2, 2015

Chapter 1. GENERAL PROVISIONS

Article III. General Penalty

[Adopted 9-7-1967 as §§ 3-19 of the Revised General Ordinances as amended through Ord. No. 90-16]

§ 1-17. Maximum penalty.

For violation of any provision of this chapter or any other ordinance of the City where no specific penalty is provided regarding the section or sections violated, the maximum penalty shall, upon conviction for such violation, be one or more of the following:

- A. A fine not exceeding \$2,000.
[Amended 6-20-2002 by Ord. No. 02-54; 8-17-2006 by Ord. No. 06-60]
- B. Imprisonment in the county jail for a period not exceeding 90 days.
- C. A period of community service not exceeding 90 days.

§ 1-18. Separate violation.

Except as otherwise provided, each and every day in which a violation of any provision of this chapter or any ordinance of the City exists shall constitute a separate violation.

§ 1-19. Repeat offenders.

Any person who is convicted of violating any provisions of this chapter within one year of the date of a previous violation of the same provision and who was fined for the previous violation, shall be sentenced by the court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeat offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of this chapter, but shall be calculated separately from the fine imposed for the violation of any provision of this chapter. It shall be the responsibility of the officer signing the complaint to determine before the trial whether the person is subject to the additional fine as a repeat offender. The defendant shall be provided with a reasonable opportunity to dispute any allegation that (s)he is subject to punishment as a repeat offender.

§ 1-20. Default in payment of fine.

Any person convicted of the violation of any provision of this chapter in default of the payment of any fine imposed therefor, may, in the discretion of the court by which (s)he was convicted, be imprisoned in the county jail for a term not exceeding 90 days or be required to perform community service for a period not

exceeding 90 days.

§ 1-21. Appropriateness of maximum penalty.

The maximum penalty stated in this general penalty section is not intended to state an appropriate penalty for each and every violation. Any lesser penalty, including a nominal penalty or no penalty at all, may be appropriate for a particular case or a particular violation.

ARCHER & GREINER
A Professional Corporation
One Centennial Square
P.O. Box 3000
Haddonfield, NJ 08033-0968
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Attorneys for Plaintiffs

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NEW JERSEY BUSINESS AND INDUSTRY
ASSOCIATION, NEW JERSEY STATE
CHAMBER OF COMMERCE, NEW JERSEY
FOOD COUNCIL, NEW JERSEY
RESTAURANT ASSOCIATION, NEW
JERSEY RETAIL MERCHANTS
ASSOCIATION, NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,

Plaintiffs,

vs.

CITY OF TRENTON,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY

DOCKET NO.:

Civil Action

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINTS**

INTRODUCTION

Plaintiffs, New Jersey Business and Industry Association (“NJBIA”), New Jersey State Chamber of Commerce (“NJCC”), New Jersey Food Council (“NJFC”), New Jersey Restaurant Association (“NJRA”), New Jersey Retail Merchants Association (“NJRMA”), and National Federation of Independent Business (“NFIIB”) (collectively, “Plaintiffs”), submit this Memorandum of Law in support of their application for temporary restraints to preserve the status quo until the legal challenge presented in Plaintiffs’ Verified Complaint is resolved.

The subject of Plaintiffs’ Verified Complaint and application for temporary restraints is Trenton Ordinance 14-45 (the “Ordinance”). The Ordinance purports to accomplish goals generally related to promoting the health of the people of Trenton. As a means to accomplish those goals, the Ordinance requires private business to provide certain amounts of paid sick time to covered employees. The Ordinance is set to take effect on March 4, 2015.

Temporary restraints are warranted because the Ordinance stands a reasonable likelihood of being struck down as *ultra vires*, preempted, and/or unconstitutional under the United States and New Jersey Constitutions. The Ordinance far exceeds the police powers granted to the City of Trenton (“Trenton”) by the State of New Jersey in a number of ways. For example, Trenton failed to limit the reach of the Ordinance only to Trenton, but by the Ordinance’s terms it purports to regulate employers located in other municipalities and even other states. The Ordinance is preempted because it regulates the fields of paid sick leave and minimum wage, but the State already occupies those fields through various statutes and regulations like the New Jersey Temporary Disability Benefits Act and New Jersey State Wage and Hour Laws and Regulations.

Moreover, the Ordinance violates the United States and New Jersey Constitutions. The Ordinance infringes on substantive due process rights because the means chosen by Trenton to

accomplish the purported goals of the Ordinance do not bear a rational relationship to those goals. For example, the Ordinance arbitrarily exempts from entitlement to paid sick leave the substantial percentage of the Trenton work force that is made up of public employees and union employees. Such an exemption will render ineffective many of the Ordinance's health related goals. The Ordinance violates equal protection rights by arbitrarily discriminating against similarly situated persons or businesses. For instance, mandating that a business with just 10 employees meet more onerous paid sick leave requirements than another business in the exact same industry that happens to have 9 employees is clearly arbitrary. The Ordinance infringes on contractual rights by, for example, overriding existing employment contracts between employees and employers in which paid sick leave is dealt with differently than in the Ordinance. The Ordinance also is unconstitutionally vague in many respects, including that the Ordinance does not even explain what it means for an employee to "work in Trenton", rendering it unclear which employers are subject to the Ordinance, which employees are entitled to its benefits, and when those benefits accrue. Thus, Plaintiffs have a reasonable probability of success on the merits.

Temporary restraints are necessary to avoid the irreparable injury that Plaintiffs will suffer if Trenton is permitted to implement the Ordinance. If implemented, Plaintiffs would, among other things, suffer injury through being forced to construct new paid sick benefits programs or revamp existing employee benefits program to comply with the Ordinance. Aside from the costs of such efforts, which would be wasted in the event Plaintiffs are successful in this matter, for Plaintiffs and other employers to make such changes, and then change again if Plaintiffs' challenge is successful, would be extremely disruptive to employees.

By contrast, there would be no loss or inconvenience to Trenton if the Ordinance is delayed until this action is resolved. Plaintiffs believe that their challenge to the Ordinance can

be resolved promptly via motion, without the need for lengthy discovery. Trenton's Director of Health and Human Services, the department tasked with implementing and enforcing the Ordinance, was recently quoted in a newspaper article as saying that Trenton is not yet prepared deal with all of the issues that will arise when the Ordinance is implemented on March 4, 2015. In fact, Trenton has not yet made an effort to contact regulated employees or employers about their rights and responsibilities under the new Ordinance. Thus, ordering temporary restraints likely will not have any impact at all on Trenton, but certainly any impact would be minimal and far overshadowed by the prejudice and harm to Plaintiffs and other employers if temporary restraints were not imposed.

STATEMENT OF FACTS

On November 4, 2014, the Ordinance was passed by voter referendum. The Ordinance is entitled “An Ordinance to add a New Chapter to the Ordinances of Trenton to promote the overall Health and Safety of the Residents and Workers of the City of Trenton by Reducing the Spread of Communicable Disease and Contagion by requiring a policy of Paid Sick Leave for the Workers in Trenton.” (See Ex. A at 1.) The Ordinance is set to take effect on March 4, 2015. (See id. at § 14.)

A. The Ordinance’s Goals

The Ordinance purports to accomplish a number of health-related goals through mandating that all private employers provide various amounts of paid sick time to employees based upon the size of the employer or, in some cases, the employer’s type of business (with respect to businesses in the fields of daycare, home healthcare, and food service). For example, the Ordinance claims to “ensure that all workers in the City of Trenton can address their own health needs and health care costs” and to reduce “the risk of and spread of contagion.” (See Id. at 2-3.) The Ordinance also professes to “safeguard the public welfare, health, safety and prosperity of the people of City of Trenton.” (See id.) Unfortunately, the Ordinance is not designed properly to meet those goals.

B. Employees and Employers Regulated under the Ordinance

Under the Ordinance, “Employee” is defined as “defined in N.J.S.A. 34:11-56a1(h) who works in the City of Trenton for 80 hours in a year except that ‘Employee’ for purposes of this Ordinance does not include [(a)] [sic] any person employed by an governmental entity or instrumentality including any New Jersey school district or Board of Education or (b) any person who is a member of a construction union and is covered by a collective bargaining agreement negotiated by that union.” (See id. at § 1.) The Ordinance expressly excludes all employees

covered by a collective bargaining agreement that is in effect at the time of the effective date of the Ordinance. (See id. at § 2.)

The Ordinance defines “Employer” as “defined in N.J.S.A. 34:11-56a1(g) except that Employer does not include (a) the United States government; (b) the State or its political subdivisions or any office, department, agency, authority, institution, association, society or any instrumentality of the State including the legislature or judiciary; or (c) the City of Trenton.” (See id. at § 1.) The Ordinance does not limit its reach only to those employers that have their principal place of business in Trenton. (See id.) Rather, employers affected by this Ordinance apparently can be located in any municipality, state, or country. (See id.)

C. Accruing Paid Sick Time

Under the Ordinance, “[a]ll Employees accrue a minimum of one hour of paid sick time for every 30 hours actually worked, subject to” the some limits. (See id. at § 3.) Employers with 10 or more employees must provide up to 40 hours of paid sick leave. (See id.) Employers having less than 10 employees are required to provide up to 24 hours of paid sick time. (See id.) Daycare, home healthcare workers, and food service workers may accrue up to 40 hours in a calendar year regardless of the size of the employer. (See id.) In order to establish the size of the employer so as to determine the amount of paid sick time its employees will accrue under the Ordinance, all full-time, part-time, or temporary employees are counted. (See id.)

D. Permitted Uses of Paid Sick Time

Accrued sick time can be used for a variety issues, including: (a) an employee’s own physical or mental illness, health condition, or preventative medical care; (b) the care of an employee’s family member (including children, parents, parents of a spouse or domestic/civil union partner; spouses; domestic/civil union partners; grandchildren; grandparents; the spouse or domestic/civil union partner of a grandparent; and siblings) for physical or mental illness, health

condition, or preventative medical care; and (c) the closure of an employee's business due to public health emergency, to care for child whose school has been closed due to public health emergency, or to care for family member who has a communicable disease. (See id. at § 4.)

There is no requirement that a family member being cared for by the employee using sick time reside in Trenton. (See id.)

E. Enforcement of the Ordinance

The Trenton Department of Health and Human Services is tasked with enforcement of the Ordinance. (See id. at § 9.) Employers that violate the provisions of the Ordinance are subject to fines “as provided in Sections 1-17 and 1-18 of the Code of the City of Trenton.” (See id. at § 7.) Section 1-17 of the Code of the City of Trenton is titled “Maximum Penalty” and provides that:

For violation of any provision of this chapter or any other ordinance of the City where no specific penalty is provided regarding the section or sections violated, the maximum penalty shall, upon conviction for such violation, be one or more of the following:

- A. A fine not exceeding \$2,000.
- B. Imprisonment in the county jail for a period not exceeding 90 days.
- C. A period of community service not exceeding 90 days.

(See Ex. B at § 1-17.) Section 1-18 of the Code of the City of Trenton is titled “Separate Violation” and it provides that “[e]xcept as otherwise provided, each and every day in which a violation of any provision of this chapter or any ordinance of the City exists shall constitute a separate violation.” (See id. at § 1-18.)

F. Plaintiffs Represent Businesses Affected by the Ordinance

The Plaintiffs in this case represent different kinds of businesses throughout the State of New Jersey, many of which that will be subject to regulation under the Ordinance. Plaintiff NJBIA is a New Jersey business association located in Trenton that provides information, services and advocacy to its member private-sector companies. It is the nation's largest statewide employer association, and its members, as a group, employ more than one million people. NJBIA's 20,000 plus members represent every industry in New Jersey, including contractors, manufacturers, retail and wholesale businesses, and service providers of every kind, many of which will be affected by the Ordinance if it goes into effect. (See Verified Complaint at ¶ 2.)

Plaintiff NJCC is a business advocacy organization located in Trenton with a broad based membership ranging from the Fortune 500 companies to small proprietorships. Established in 1911, NJCC continues to work towards promoting a vibrant business environment and economic prosperity through vision, expertise and innovative solutions. (See *id.* at ¶ 3.)

Plaintiff NJFC is business association located in Trenton that is an alliance of food retailers and their supplier partners united to provide vision and leadership to advance the interest of its members. As representatives of New Jersey's food retail and distribution industry, which employ more than 200,000 workers and feed almost 9 million residents a day, NJFC advocates on legislative and regulatory issues on behalf of its members and serves as a resource for policymakers. (See *id.* at ¶ 4.)

Plaintiff NJRA is a business association located in Trenton whose members include the people who own, operate and serve New Jersey's restaurants, which generate nearly \$12 billion in annual economic activity. NJRA makes available the highest quality education and training resources for New Jersey's 315,000 restaurant and hospitality professionals. (See *id.* at ¶ 5.)

Plaintiff NJRMA is a business association located in Trenton with a membership of more than 3,500 retail businesses in the State of New Jersey. The organization, among other things, advocates on behalf of retail businesses. (See *id.* at ¶ 6.)

Plaintiff NFIB is a business association with an office in Trenton that advocates in New Jersey and nation-wide on behalf of small and independent business owners. (See *id.* at ¶ 7.)

All of these Plaintiffs have full or part-time employees who work in Trenton.

G. Trenton is Not Prepared to Implement, Administer and Enforce the Ordinance on March 4, 2015

As noted above, the Ordinance is set to take effect on March 4, 2015. However, Trenton officials admit that they are not prepared to implement, administer, and enforce the Ordinance. A February 25, 2015 article in the *Times of Trenton* highlighted some of the issues. The Director of Trenton's Department of Health and Human Services, the organization charged with implementing, administering and enforcing the Ordinance, was quoted in the article as saying that the Department has not yet established basic protocols for businesses and employees to follow with respect to the Ordinance. He stated, "We are still doing the internal discussions about the policies and procedures that need to be written to employers and employees." (See Ex. 1 to Certification of Christopher R. Gibson.) Director Jim Brownlee further stated that Trenton has not yet even determined what it will tell the affected business and employees about the Ordinance: "We are still working on the language that will be provided. It is still very much a work in progress." (*Id.*)

Brownlee also described the possibility that Trenton may not be able to handle the implementation of the Ordinance from a personnel standpoint. The article quotes Brownlee stating that "it is still unclear if the workload of handling complaints and enforcement of the law can be handled with the current staff in his department." (*Id.*) Brownlee further said that, "What

we are doing right now is looking at what the workload is going to be in the short term and the long term.” (Id.) Apparently, according to the article, Trenton is still considering whether to reassign personnel from other departments to handle all of the issues related to implementing, administering and enforcing the Ordinance. (Id.)

Nevertheless, despite the admitted lack of preparation, Brownlee said they are still aiming to have the roll out ready by Wednesday, March 4, 2015. “We are doing our best to stay within the time frame.” (Id.)

ARGUMENT

TEMPORARY RESTRAINTS SHOULD BE IMPOSED TO PRESERVE THE STATUS QUO PENDING RESOLUTION OF THIS ACTION.

Injunctive relief, in the form of temporary restraints pending resolution of this action, should be granted to protect Plaintiffs from the injury they will suffer if Trenton is allowed to implement the Ordinance before this Court rules on the merits of the dispute.

A. Standard for Preliminary Injunctive Relief

New Jersey courts have held that preliminary injunctive relief in the form of temporary restraints should be granted when it appears that: (1) there are no material facts in dispute; (2) the ultimate relief sought is based on an established legal right; (3) the applicant has demonstrated a reasonable probability of eventual success on the merits of the claim; (4) the applicant will suffer irreparable injury if the relief is denied; and (5) upon a balancing of the equities, the harm to the applicant if the injunction is denied will be greater than the inconvenience or loss to the opposing party if the injunction is granted. See Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982); Ispahani v. Allied Domecq Retail, 320 N.J. Super. 494, 498 (App. Div. 1999); Morris County Transfer Station, Inc. v. Frank's Sanitation Service, Inc., 260 N.J. Super. 570, 576 (App. Div. 1992); Zoning Bd. of Adjustment v. Service Elec. Cable Television, 198 N.J. Super. 370, 379 (App. Div. 1985). Here, all of the prerequisites for imposition of temporary restraints are satisfied

B. The Undisputed Material Facts Show That Plaintiffs Are Entitled to Relief Based Upon an Established Legal Right.

The first two prerequisites for preliminary injunctive relief require a showing that there are no material facts in dispute and that the ultimate relief sought is based upon an established legal right. Here, there are no facts material to this application for temporary restraints that are in dispute. The Ordinance is set to go into effect on March 4, 2015, at which point all regulated

business will be expected to be in compliance. With a few exceptions, that means that all private businesses will have to provide one hour of sick time to each employee for every 30 hours worked. In private businesses with 10 or more employees, up to five sick days may be earned per year. For those private businesses with fewer than 10 employees, workers are eligible to earn three paid sick days in a year. The penalties that regulated businesses face for non-compliance are similarly not in dispute.

Moreover, the relief that Plaintiffs seek through its action in lieu of prerogative writs is not novel or unusual -- it is soundly based in well-established constitutional and legal principles outlined in this Memorandum of Law. Thus, the ultimate relief sought is based upon an established legal right.

C. Plaintiffs Have a Reasonable Probability of Success on the Merits.

While a plaintiff seeking injunctive relief must “make a preliminary showing of a reasonable probability of ultimate success on the merits . . . that requirement is tempered by the principle that mere doubt as to the validity of the claim is not an adequate basis for refusing to maintain the status quo.” Crowe, 90 N.J. at 133. This standard is not meant to present an insurmountable obstacle to a plaintiff seeking injunctive relief. “Indeed, the point of temporary relief is to maintain the parties in substantially the same condition ‘when the final decree is entered as they were when the litigation began.’” Crowe, 90 N.J. at 134. As explained in more detail below, there is more than a reasonable probability that the Ordinance will be found to be *ultra vires*, preempted, or unconstitutional under the United States and New Jersey Constitutions. In short, Plaintiffs have a reasonable probability of success on the merits.

1. The Ordinance is *Ultra Vires*.

Under the law, the Ordinance is not a proper exercise of Trenton’s police powers and is *ultra vires*. The New Jersey Legislature expressly granted powers to municipalities in 31 areas.

See N.J.S.A. 40:48-2. None of those areas give the power to municipalities to require employers to provide paid sick time. Id. Thus, without express power to pass the Ordinance, Trenton purported to enact the Ordinance pursuant to Trenton's "police powers". See N.J.S.A. 40:48-2.

Under New Jersey law, police powers permit a municipality to pass ordinances which regulate the "public health, safety, and welfare *of the municipality and its inhabitants*". See id. (emphasis added.) Police powers are, however, subject to constitutional limits:

All police power legislation -- the regulation must not be unreasonable, *arbitrary* or capricious, *the means selected must have a real and substantial relation to the object sought to be attained, and the regulation or proscription must be reasonably calculated to meet the evil and not exceed the public need or substantially affect uses which do not partake of the offensive character of those which cause the problem sought to be ameliorated.*

Kirsch Holding Co. v. Borough of Manasquan, 59 N.J. 241, 251 (1971) (emphasis added).

The grant of police powers from the State of New Jersey to municipalities under N.J.S.A. 40:48-2 has been traditionally limited "to matters of *local concern* which may be determined to be necessary and proper for the good and welfare of *local inhabitants*, and *not to those matters involving state policy or in the realm of affairs of general public interest and applicability.*"

Wagner v. Mayor and Municipal Council of Newark, 24 N.J. 467, 478 (1957) (emphasis added); see also Township of Chester v. Panicucci, 62 N.J. 94, 99 (1973). Moreover, "[m]atters that because of their nature are inherently reserved for the State alone and among which have been the *master and servant . . . relationships . . .* and many other matters of general and statewide significance, *are not proper subjects for local treatment under the authority of the general statutes.* Wagner, 24 N.J. at 478 (emphasis added). A master and servant relationship is one of employer and employee. Carter v. Reynolds, 175 N.J. 402, 408-09 (2003).

Paid sick time, as well as the purported goal of the Ordinance to promote public health, are not matters of local concern relevant only to the inhabitants of Trenton, but rather are matters of statewide concern and general public interest. All of the same issues that the Ordinance supposedly was intended to address are experienced by most, if not all, other municipalities in New Jersey. Furthermore, many employers in the State have workforces that span multiple municipalities. Thus, fundamentally, the subject matter of the Ordinance is one that rests outside the scope of the “police powers” granted to Trenton by the State Legislature.

Furthermore, Trenton has not limited the reach of the Ordinance only to Trenton, but rather has undertaken to regulate employers located in other municipalities and even other states. The Ordinance does not confine its reach only to employers based in Trenton, but by its plain terms applies to any private employer that has employees who “work” at least 80 hours annually in Trenton, regardless of where the employer is located. (See Ex. A at § 1.) Thus, the Ordinance would impose obligations on employers whose facilities are located in other municipalities (or even in Pennsylvania) if they have employees who spend time in Trenton. Moreover, because employers may not be able to treat individual employees differently in terms of benefits, this Ordinance may impact employees who do not even step foot in Trenton.

The police powers conferred upon Trenton by the New Jersey Legislature do not provide Trenton with the power and authority to require private employers located outside of Trenton to provide paid sick time to employees. Nor do those powers provide Trenton with ability to regulate matters that, if they are a concern at all, are matters of statewide concern and general public interest. As such, the Ordinance is as *ultra vires* under New Jersey law.

2. **The Ordinance is Preempted by Two Different State Statutory Schemes.**

The doctrine of preemption is based upon the concept that municipalities, which are agents of the state, cannot act contrary to the state. See Overlook Terrace Mgmt. Corp. v. Rent Control Board of West New York, 71 N.J. 451, 461 (1976); Summer v. Teaneck, 53 N.J. 548, 554 (1969). New Jersey recognizes both field preemption and conflict preemption as the New Jersey Legislature's "intent to preempt a field will be found either where the state scheme is so pervasive or comprehensive that it effectively precludes the coexistence of municipal regulation, or where the local regulation conflicts with the state statutes or stands as an obstacle to a state policy expressed in enactments of the Legislature." Garden State Farms, Inc. v. Bay, 77 N.J. 439, 450 (1978).

a. **The State Occupies the Field of Paid Sick Leave.**

Paid sick leave is a subject of general and statewide significance because the needs with respect to that matter do not vary locally. The purported goals of the Ordinance that were cited to justify its passage, e.g., reducing the spread of infectious disease or promoting the overall health and safety of workers, are goals of general intent, not concerns unique or local to Trenton. The State of New Jersey has recognized the general and statewide significance of paid sick leave by addressing it through the state statutory scheme of New Jersey Temporary Disability Benefits Act ("NJTDDBA"), the New Jersey Family Leave Insurance Law provision of the NJTDDBA, and the New Jersey Family Leave Act.

Taken together, the existing laws serve to occupy the field of paid sick leave. The New Jersey Family Leave Insurance Law permits certain employees to take paid leave to care for the birth or adoption of a child or to care for a family member with a serious health condition. N.J.S.A. 43:21-27(o). The NJTDDBA provides paid leave for certain employees who are unable

to work due to a non-occupational illness or injury. N.J.S.A. 43:21-26. The New Jersey Family Leave Act permits certain employees to take up to 12 weeks of leave during a 24 month period for the birth or adoption of a child or to care for a family member with a serious health condition. N.J.S.A. 34:11B-3 & 4.

Thus, because the state of New Jersey comprehensively occupies the field of paid sick leave, the Ordinance is preempted under New Jersey law.

b. The State Occupies the Field of Minimum Wage and the Ordinance Would Conflict with the State Statutory Scheme.

The Ordinance is also preempted because it establishes a minimum wage, something that only the New Jersey Legislature has the power to do. As noted above, the New Jersey Legislature’s “intent to preempt a field will be found either where the state scheme is so pervasive or comprehensive that it effectively precludes the coexistence of municipal regulation, or where the local regulation conflicts with the state statutes or stands as an obstacle to a state policy expressed in enactments of the Legislature.” Garden State Farms, Inc., 77 N.J. at 450.

The New Jersey Legislature has authorized the New Jersey Department of Labor to set the minimum wage in New Jersey. See N.J.S.A. 34:11-56a, et seq. The minimum wage is the “public policy of this State.” See id. at § 56a. It was set to “to establish a minimum wage level for workers in order to safeguard their health, efficiency, and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency and well-being.” See id. The New Jersey minimum wage currently is set at \$8.38 per hour. See N.J.A.C. 12:56-3.1.

Under the Ordinance, private, regulated employees earn “one hour of paid sick time for every 30 hours actually worked”. (See Ex. A at § 3.) Because the Ordinance contains that mandate, the Ordinance has effectively set the local minimum wage for time worked in Trenton

at \$8.66 per hour (\$8.38 + \$.28 (1/30th of \$8.38)). In other words, the Ordinance increases the minimum wage for employees in Trenton.

Requiring mandatory sick pay is a de facto means of raising the minimum wage. However, Trenton is not permitted to do so because the State of New Jersey has exclusively occupied the field via its minimum wage law and the Ordinance conflicts with that law. Thus, the Ordinance is preempted.

3. The Ordinance Violates Substantive Due Process Rights.

The Ordinance should be struck down as unconstitutional because it violates substantive due process rights guaranteed by the United States and New Jersey Constitutions. The United States Constitution guarantees that no state may “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. Courts have interpreted the New Jersey Constitution to protect those fundamental rights via the language that provides “[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.” N.J. Const. of 1947 art. I, § 1.

The protections guaranteed by the New Jersey Constitution include the right to substantive due process with respect to legislative enactments: “It is elementary theory that all police power enactments, no matter at what level of government, must conform to the basic state constitutional requirements of substantive due process and equal protection of the laws.” *Id.* at 174. The Supreme Court of New Jersey has recognized that New Jersey’s Constitution provides greater substantive due process protections than afforded by the federal constitution. See, e.g., Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel, 67 N.J. 151, 174-75 (1975).

When evaluating substantive due process challenges under the New Jersey Constitution, courts apply a balancing test. Sojourner A. v. N.J. Dep't of Human Servs., 177 N.J. 318, 332 (2003). In Katobimer Realty Co. v. Webster, 20 N.J. 114 (1955), Justice Heher described the basic framework under which every exercise of the police power must be judged:

[I]t is basic to . . . every exercise of the police power, that it be contained by the rule of reason; ***constitutional due process and equal protection ordain that the exertion of the authority should not go beyond the public need; there cannot be unnecessary and excessive restrictions*** upon the use of private property or the pursuit of useful activities; a substantial intrusion upon the right infringes essential individual liberties immune to legislative interference. The restrictions may be so unreasonable as to be confiscatory, and the regulation then transgresses the organic law as arbitrary and oppressive.

Id. at 122 (emphasis added). Justice Heher continued:

The constitutional principles of due process and equal protection demand that the exercise of the power be ***devoid of unreason and arbitrariness, and the means selected for the fulfillment of the policy bear a real and substantial relation to that end. In a word, the authority coincides with the essential public need*** [T]here must be a rational relation between the regulation and the service of the general welfare in an area of action within the range of the police power. Excesses in the realization of the statutory considerations are inadmissible.

Id. at 123 (emphasis added).

In short, for an ordinance or legislation to satisfy the constitutional mandate of substantive due process, “the means selected [must] bear a real and substantial relationship to a permissible legislative purpose.” Taxpayers Ass’n v. Weymouth Township, 80 N.J. 6, 44 (1976), cert. denied, 430 U.S. 977 (1977). That test weighs the “nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction.” Greenberg v. Kimmelman, 99 N.J. 552, 567 (1985). It is against this standard, the “rule of reason”, that the Ordinance must be judged.

The purported goals articulated in the Ordinance have to do with general health. They include promoting preventative health services in the City of Trenton and protecting the public's health in Trenton by reducing the risk of and spread of contagion. The Ordinance claims to promote the economic security and stability of workers and their families, as well as businesses serving the City of Trenton and its residents. It also alleges to protect residents and all workers in the City of Trenton from losing their jobs or facing workplace discipline as a result of illness and the use of sick time to care for themselves or their Family Members and to safeguard the public welfare, health, safety and prosperity of the people of City of Trenton. (See Ex. A at 2-3.)

The working scope of the Ordinance is poorly designed to achieve those stated goals. It grossly overreaches in some respects and grossly underreaches in other respects. Some examples of how the Ordinance overreaches with little to no effect on the health of the people of Trenton include that: (1) it purports to regulate not just employers located in Trenton, but rather employers located in other municipalities with even just one employee who works in Trenton for just 80 hours per year; (2) if an employee only spends about 2 weeks in Trenton over the course of a year, and only earns 3 to 5 sick days, paid sick days may be used up on non-Trenton sick days; (3) an employee may use time to care for a relative who does not live in Trenton and has no contact with Trenton; and (4) it purports to regulate seasonal employees who are only in Trenton for short periods and may be located elsewhere for the rest of the year. An example of how the Ordinance underreaches is that it arbitrarily exempts from entitlement to paid sick leave the substantial percentage of the Trenton work force that is made up of public employees and union employees. Such an exemption will render ineffective many of the Ordinance's stated goals, such as reducing the risk and spread of contagion.

The bottom line is that to comport with the requirements of substantive due process, an exercise of the police power cannot be arbitrary and unreasonable, and the means chosen to accomplish the Legislature's purpose must bear a "real and substantial relation" to that purpose. The Ordinance fails that test because the means chosen by Trenton to accomplish the purported goals of the Ordinance do not bear a rational relationship to those goals. Thus, the Ordinance should be struck down as unconstitutional because it violates substantive due process rights guaranteed by the United States and New Jersey Constitutions.

4. The Ordinance Violates Equal Protection Rights.

The Ordinance should be declared unconstitutional because it violates the Equal Protection clauses of the United States and New Jersey Constitutions. "The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). "Although the term 'equal protection' does not appear anywhere in the New Jersey Constitution, Article I, paragraph 1 of our Constitution has been interpreted as conferring the right to equal treatment under the law, a right analogous to the guarantee of equal protection under the Fourteenth Amendment to the Federal Constitution." Doe v. Poritz, 142 N.J. 1, 94 (1995) (citing Barone v. Department of Human Servs., 107 N.J. 355, 367 (1987)). "Although conceptually similar, the right under the State Constitution can in some situations be broader than the right conferred by the Equal Protection Clause." Doe, 142 N.J. at 94 (citing Right to Choose v. Byrne, 91 N.J. 287, 305 (1982) (holding that statute which satisfies federal equal protection requirements violates equal protection under State Constitution)). For an ordinance or legislation to satisfy the constitutional mandate of equal protection under the law, *it must not manifest "arbitrary discrimination between persons similarly situated."* Greenberg, 99 N.J. at

577 (quoting Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 456 (1981)) (emphasis added).

There are a variety of ways in which implementation of the Ordinance will result in arbitrary discrimination against similarly situated persons or businesses. For example, the Ordinance requires employers to provide different amounts of paid sick time simply based upon whether the employer has 10 or more employees. (See Ex. A at § 3.) The Ordinance does not identify any reason why an employer with 9 employees and one with 10 should be treated differently. That different requirements are imposed upon such similarly situated businesses can only be described as arbitrary. Moreover, the Ordinance only applies to private employers while expressly exempting all public employers. (Id. at § 1.) Exempting public employers, which in many cases employ thousands of employees, while regulating private employers, which often have significantly fewer employees and, therefore, the potential for far less negative impact on the public health, is also arbitrary. Another example is that the Ordinance also applies to all non-union employees while virtually exempting union employees. (Id. at §§ 1, 2.) That arbitrary discrepancy would give an unfair economic advantage to union employers, while at the same time failing to give union employees the same purported benefits. The foregoing situations are just three of the examples of arbitrary discrimination inherent in the Ordinance.

The key point is that the Ordinance arbitrarily discriminates against similarly situated persons or businesses in a variety of ways. Thus, the Ordinance violates Plaintiffs' rights to equal protection under the United States and New Jersey Constitutions.

5. The Ordinance is Unconstitutionally Vague.

The Ordinance should be struck down as being unconstitutionally vague. An ordinance's or statute's vagueness implicates constitutional considerations because it "creates a denial of due process because of a failure to provide adequate and fair notice or warning that his or her

conduct could subject that individual to criminal or quasi-criminal prosecution.” Karins v. City of Atlantic City, 152 N.J. 532, 544 (1998). A statute or regulation is facially unconstitutional for vagueness if it “either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.” Connally v. General Constr. Co., 269 U.S. 385, 391 (1926); State v. Lashinsky, 81 N.J. 1, 17-18 (1979).

There are many examples of the Ordinance’s vagueness. For instance, the Ordinance does not define the circumstances under which an employee “works in the City of Trenton” for purposes of the Ordinance. (See Ex. A at § 1.) The Ordinance also does not expressly state whether employers located outside Trenton are subject to the Ordinance when they have employees that “work in the City of Trenton.” The Ordinance states that employees “begin to accrue Paid Sick Time on the first day of employment”, but it does not explain whether that is the employee’s first day of work in Trenton or first day of work in general. (See id. at § 3.) The Ordinance does not explain how an employer knows that an employee is going to cross the 80 hour threshold or whether an employer is required to anticipate or guess whether an employee will work in Trenton for 80 hours in an upcoming year. The Ordinance does not explain whether employers are required to log the number of hours each employee spends within the city limits of Trenton. The Ordinance also does not explain how its provisions intersect with existing state laws addressing sick and disability leave, such as the NJTDBA, the New Jersey Family Leave Insurance Law provision of the NJTDBA, and the New Jersey Family Leave Act.

In fact, Trenton itself still does not know exactly how to advise employees and employers on the implementation of the law, a situation that may be directly related to the vagueness of the Ordinance. The Director of the Trenton Department of Health and Human Services, the division

of the Trenton government tasked with implementing and enforcing the Ordinance, admitted last week that, “We are still doing the internal discussions about the policies and procedures that need to be written to employers and employees.” (See Ex. B.)

The vagueness of the Ordinance is particularly problematic given the penalties that are authorized for non-compliance. The Ordinance gives the Trenton Department of Health and Human Services the ability to order penalties, including the possibility of up to 90 days in jail or a fine of \$2000, against non-compliant employers, *for each day of a purported violation*. See Code of the City of Trenton at §§ 1-17 & 1-18. In short, there are serious repercussions for non-compliance with the Ordinance. Because of the vagueness it will be impossible for employers to know whether they are in compliance with the Ordinance or instead are subjecting themselves to substantial fines and jail time. By its terms, the Ordinance is vague, ambiguous, and contrary to New Jersey law and impossible to implement, administer or enforce.

6. **The Ordinance Violates the Contract Clauses of the United States and New Jersey Constitutions.**

The Ordinance also violates the Contract Clauses of the United States and New Jersey Constitutions, which prohibit the Legislature from enacting any law that substantially impairs existing contractual relationships. The “Contract Clause” of the United States Constitution provides that “No State shall . . . pass any . . . Law impairing the Obligation of Contracts.” U.S. Const. art. I, § 10, cl. 1. Similarly, the New Jersey Constitution provides: “The Legislature shall not pass any . . . law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.” N.J. Const. of 1947 art. IV, § VII, ¶ 3.

Generally, a three-step analysis determines whether a particular legislative act violates the Contract Clauses of either the United States or the New Jersey Constitutions: (1) whether

there has been “a substantial impairment of a contractual relationship”; (2) whether the legislation was enacted for a “significant and legitimate public purpose”; and (3) “whether the adjustment of ‘the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying’” the legislation. Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411-12 (1983) (quoting United States Trust Co. v. New Jersey, 431 U.S. 1, 22 (1977)); see also Nieves v. Hess Oil Virgin Islands Corp., 819 F.2d 1237, 1243 (3d Cir. 1987); Brown v. Township of Old Bridge, 319 N.J. Super. 476, 504 (App. Div. 1999).

Applying the three-step analysis, the Ordinance substantially impairs the contractual relationships between employers and employees in violation of the Contracts Clause. The Ordinance would cause “a substantial impairment of a contractual relationship” by overriding existing employment contracts between employees and employers in which paid sick leave is dealt with differently than in the Ordinance (e.g., by requiring the employer to change an already existing paid sick leave benefit that is part of the terms and conditions of the workplace). As discussed above, while the Ordinance purports to have certain goals generally related to improving public health, it is not actually designed to accomplish those goals because it overreaches in some respects, underreaches in others, and makes arbitrary exceptions in its application to certain types of employers and employees, all of which substantially undermine the ability to achieve the stated goals. Moreover, it is not appropriate for the Ordinance to force an adjustment to the rights and responsibilities of the employers and employees with existing and fairly bargained contracts establishing what benefits they will receive.

The Ordinance significantly impairs private employer-employee contracts and unreasonably interferes with those contractual relationships without achieving a legitimate

governmental purpose. As such, the Ordinance is unconstitutional under the United States and New Jersey Constitutions.

In sum, given all of the foregoing issues with the Ordinance, Plaintiffs have demonstrated a reasonable probability of eventual success on the merits of their claim.

D. Plaintiffs Will Suffer Irreparable Injury if a Temporary Restraints Are Denied, a Harm Far Greater Than Any Loss or Inconvenience That Trenton Might Suffer if Relief is Granted.

The final two prerequisites for temporary injunctive relief are irreparable injury and a showing that the harm to the applicant if the injunction is denied will be greater than the inconvenience or loss to the opposing party if the injunction is granted. See Crowe, 90 N.J. at 132-34. Denial of Plaintiffs' application for temporary restraints, under circumstances in which (1) Trenton admits that it is not ready to implement, administer, or enforce the Ordinance; (2) Trenton has not informed regulated employers and employees of any of their rights and responsibilities; and (3) Trenton possesses the authority to fine or jail parties that are non-compliant with the terms of an Ordinance that are at the very least unclear and in dispute, would cause immediate and irreparable injury. Such disruption can be avoided merely by preserving the status quo until resolution of this declaratory judgment action.

Plaintiffs also would suffer irreparable injury through being forced to implement or revamp paid sick benefits programs to comply with an Ordinance that may ultimately be declared *ultra vires*, preempted or unconstitutional. The costs associated with doing so are substantial. Besides expenditures that may ultimately prove unnecessary, the disruption to employees and the uncertainty as to what benefits the employees actually have is significant. In fact, employers that have not received any information regarding how to be compliant with the Ordinance from Trenton may nevertheless be subject to fines and jail time beginning March 4, 2015. Under such circumstances, Plaintiffs would be irreparably harmed by having to disrupt

their businesses and pay costs associated with the Ordinance that never would be incurred without the implementation of the Ordinance.

In contrast, Trenton will not suffer any loss or inconvenience by delaying implementation of the Ordinance until resolution of this action. Trenton has had since November 4, 2014 to prepare for implementation of the Ordinance. Yet, the Director of Health and Human Services has admitted that Trenton is not prepared to implement, administer, and enforce the Ordinance. Thus, ordering temporary restraints likely will not have any impact at all on Trenton, but certainly any impact would be minimal and far overshadowed by the prejudice and harm to Plaintiffs and other employers if temporary restraints were not imposed.

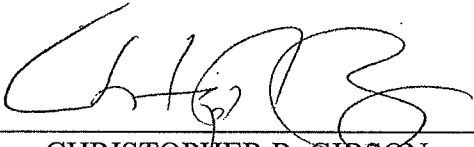
In short, Plaintiffs will suffer a substantial injury that is both immediate and irreparable if Trenton is permitted to implement the Ordinance prior to resolution of this action. Such injury can be avoided, without substantial harm to Trenton, by granting temporary restraints to preserve the status quo until the issue of whether the Ordinance is *ultra vires*, preempted or unconstitutional is resolved.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that the Court enter an Order imposing temporary restraints to preclude the Trenton from implementing the Ordinance on March 4, 2015.

Respectfully submitted,

ARCHER & GREINER,
A Professional Corporation
Attorneys for Plaintiffs

By: 
CHRISTOPHER R. GIBSON

DATED: March 2, 2015

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Paulsboro Refining Company LLC

BY: Christopher R. Gibson (ID# 029861985)
Patrick M. Flynn (ID# 020141995)

PAULSBORO REFINING COMPANY LLC,

Plaintiff,

vs.

SMS RAIL SERVICE, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

GLOUCESTER COUNTY

DOCKET NO.: L-519-12

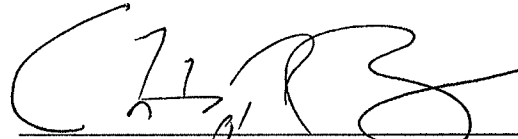
CERTIFICATION OF CHRISTOPHER R. GIBSON, ESQUIRE

CHRISTOPHER R. GIBSON, of full age, hereby certifies as follows:

1. I am an attorney-at-law admitted to practice before this Court, and a shareholder in the law firm of Archer & Greiner, a Professional Corporation, attorneys for Plaintiff Plaintiffs, New Jersey Business and Industry Association, New Jersey State Chamber of Commerce, New Jersey Food Council, New Jersey Restaurant Association, New Jersey Retail Merchants Association, and National Federation of Independent Business (collectively, "Plaintiffs") in the above-captioned matter. In this capacity I am fully familiar with the facts set forth herein.
2. I submit this Certification in support of Plaintiffs' Verified Complaint and memorandum of Law in Support of Application for Temporary Restraints.

3. Attached hereto as **Exhibit 1** is true and correct copy of a February 25, 2015 article in the *Times of Trenton*.

I hereby certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.



CHRISTOPHER R. GIBSON, ESQ.
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Attorneys for Plaintiffs

Dated: March 2, 2015

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With Trenton paid sick leave requirement looming, city scrambles to prepare education, enforcement

Jenna Pizzi | Times of Trenton By **Jenna Pizzi | Times of Trenton**

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on February 25, 2015 at 8:22 AM, updated February 25, 2015 at 12:08 PM

TRENTON - With Trenton's paid sick leave law set to take effect next week, city officials are still drafting information to send to employers and no enforcement plan has been established, officials said Tuesday.

"We are still doing the internal discussions about the policies and procedures that need to be written to employers and employees," said Jim Brownlee, the city's director of Health and Human Services. "We are still working on the language that will be provided. It is still very much a work in progress."

The **paid sick leave referendum was overwhelmingly approved by Trenton voters in a November referendum**. The ordinance gave the city 120 days before the new law takes effect, setting the deadline as March 4.

The law entitles workers to earn one hour of sick time for every 30 hours worked. In businesses with 10 or more employees, up to five sick days may be earned per year. For those with fewer than 10 employees, workers are eligible to earn three paid sick days in a year.

Employers that offer better benefits packages to their employees are not affected by the change. The sick days can be used for employees to care for themselves or members of their immediate families.

When the new law takes effect, Trenton will be one of eight municipalities in New Jersey with a local paid sick leave law.

The group of nonprofits that helped champion the paid sick leave ballot measure in Trenton and other towns provided city officials with a packet of educational information for employers specifically tailored to Trenton. But that information, which includes a list of frequently asked questions, has not been sent to businesses.

"It is ready and a matter of hitting a key and saying 'go,'" said Yarrow Willman-Cole assistant director of the Working Families Program at the Rutgers Center for Women and Work.

Willman-Cole and Analilia Mejia, the new executive director of the New Jersey Working Families Alliance have been working together to help Trenton and other New Jersey municipalities toward implementation using best practices from towns like Jersey City, which has been successfully enforcing the requirement.

Because the law is enforced based on reported violations, Mejia said it is important that employees are also educated as to their rights.

"We have full faith that it will be an effective roll out," Mejia said.

Trenton spokesman Michael Walker said he has been fielding calls from local business owners who are looking for more information about the requirements and the city's law department has been working to answer questions.

Bob Prunetti, executive director of the MIDJersey Chamber of Commerce and an opponent of the law, said communication with business owners and employees is an important part of the process.

"I haven't heard very much from businesses or that they have been notified," Prunetti said. "I think we would certainly talk to the city about sending some notification out for sure."

Bob Goodwin, president of Griffith Electric, said he didn't even know that the measure had been approved. Goodwin, who employs 52 people at the Trenton-based business, said he doesn't think the change would affect his employees because the company already pays for more than the minimum required 40 hours of paid sick time each year.

Brownlee, whose department is charged with implementing and enforcing the law, said they are still aiming to have the roll out ready by Wednesday.

"We are doing our best to stay within the time frame," he said.

Brownlee said it is still unclear if the workload of handling complaints and enforcement of the law can be handled with the current staff in his department.

"What we are doing right now is looking at what the workload is going to be in the short term and the long term," he said. The city is looking to reassign staff in the interim to handle the issues.

*Jenna Pizzi may be reached at jpizzi@njtimes.com. Follow her on Twitter @JennaPizzi. Find **The Times of Trenton on Facebook**.*

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CHAMBER OF COMMERCE, NEW JERSEY
FOOD COUNCIL, NEW JERSEY
RESTAURANT ASSOCIATION, NEW
JERSEY RETAIL MERCHANTS
ASSOCIATION, NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,

Plaintiffs,

vs.

CITY OF TRENTON,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY

DOCKET NO.:

Civil Action

**ORDER IMPOSING
TEMPORARY RESTRAINTS**

THIS MATTER having been opened to the Court by Archer & Greiner, a Professional Corporation, attorneys for Plaintiffs, New Jersey Business and Industry Association, New Jersey State Chamber of Commerce, New Jersey Food Council, New Jersey Restaurant Association, New Jersey Retail Merchants Association, and National Federation of Independent Business (collectively, "Plaintiffs"), upon the application by Plaintiffs for the imposition of temporary restraints related to the Verified Complaint seeking, in part, to preserve the status quo by enjoining Defendant, the City of Trenton ("Trenton"), from putting Trenton Ordinance 14-45 (the "Ordinance") into effect; and the Court having considered the papers submitted on behalf of Plaintiffs and any papers submitted in opposition; and the Court finding that Plaintiffs have

satisfied all of the prerequisites for preliminary injunctive relief, and that considering the equities, the same preponderate in favor of Plaintiffs and preservation of the status quo pending resolution of Plaintiffs' Verified Complaint; and good cause having been shown;

IT IS ON THIS _____ day of _____, 2015,

ORDERED that until further order of the Court or final resolution of Plaintiffs' Verified Complaint, Trenton shall be enjoined from putting the Ordinance into effect.

IT IS FURTHER ORDERED that a copy of this Order shall be filed and served upon the Trenton's counsel within _____ days of its entry.

Opposed

Unopposed

12241959v1

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(856) 795-2121
Attorneys for Plaintiffs

BY: Christopher R. Gibson (ID# 029861985)

NEW JERSEY BUSINESS AND INDUSTRY
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FOOD COUNCIL, NEW JERSEY
RESTAURANT ASSOCIATION, NEW
JERSEY RETAIL MERCHANTS
ASSOCIATION, NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,

Plaintiffs,

vs.

CITY OF TRENTON,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY

DOCKET NO.:

Civil Action

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2015, I arranged for a copy of Plaintiffs' Civil Case Information Statement, Verified Complaint, Memorandum of Law in Support of Application for Temporary Restraints, Certification of Christopher R. Gibson, and Proposed Order Imposing Temporary Restraints, to be served upon the following people via hand delivery:

City of Trenton Municipal Clerk
City Hall
319 E. State Street
Trenton, NJ 08608

I HEREBY CERTIFY that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



William F. Gill IV

DATED: March 2, 2015

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