CONFIDENTIAL

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Case Type: Other Civil/Miscellaneous

Minnesota Chamber of Commerce, Minnesota Recruiting and Staffing Association, National Federation of Independe nt Business, TwinWest Chamber of Commerce, Graco Inc., and Otogawa-Anschel General Contractors and Consultants LLC, Plaintiffs, v. City of Minneapolis, Defendant.	Court File No: _____ **Complaint Seeking to Enjoin and Invalidate the Minneapolis Ordinance Mandating Paid Sick Leave and Other Employment Terms**

INTRODUCTION

1. The Plaintiffs in this action include business associations representing a broad base of thousands of Minnesota businesses throughout the State of Minnesota and also individual Minnesota-based businesses—both large and small. Plaintiffs bring this action seeking: (1) a declaration that the recently enacted "Minneapolis Sick and Safe Time Ordinance" (the "Minneapolis Ordinance" or "Ordinance") is invalid because the City of Minneapolis lacks the authority to enact the Ordinance because the Ordinance conflicts with and is

preempted by state law; and (2) an injunction to prohibit the Ordinance from going into effect or being enforced.

2. While Defendant City of Minneapolis (the "City") is a home rule charter city that has extensive powers to self-govern, neither Minneapolis nor any other Minnesota municipality has the power to pass an ordinance that conflicts with state law or that is otherwise preempted by state law. *Mangold Midwest Co. v. Vill. of Richfield*, 274 Minn. 347, 143 N.W.2d 813 (1966). Nor does the general welfare clause in the Minneapolis charter allow it to pass laws that conflict with state law. *State v. Kuhlman*, 729 N.W.2d 577, 580 (Minn. 2007).

3. This Complaint does *not* seek to challenge the underlying policy questions of whether private employers in the State of Minnesota should offer their employees paid sick time off or whether the State of Minnesota should mandate certain employment terms for private employers.

4. Rather, this Complaint seeks to invalidate the City's unprecedented efforts to inject itself into private employer-employee relationships throughout the state and mandate employment terms that conflict with and are preempted by state law.

5. In today's global market, it is not possible to regulate employment terms within private employer-employee relationships and limit those regulations to the boundaries of Minneapolis. Employment regulations

inherently permeate those boundaries and result in a ripple effect—if not a tidal wave—throughout Minnesota as a whole and beyond.

6. As a result, if left standing, the Minneapolis Ordinance will create an unworkable patchwork of municipal regulations that place an unreasonable burden on Minnesota businesses, discourage business investment in Minnesota, and hamper the efficient operation of businesses in and around the City of Minneapolis and throughout the State of Minnesota. *See Board of Supervisors of Crooks Township v. ValAdCo*, 504 N.W.2d 267, 271 (Minn. Ct. App. 1993) (invalidating a local ordinance regarding animal feed lots under a theory of implied preemption, citing concerns about localities creating "a patchwork of different rules" that would "be burdensome and would have a detrimental effect on the efficient operation of the state's agricultural industry.").

7. Plaintiffs ask this Court for a declaration that the Ordinance is invalid and unenforceable. Plaintiffs also seek a preliminary injunction preventing the Ordinance from going into effect during the pendency of the litigation and a permanent injunction at the conclusion of this litigation.

PARTIES

8. The Plaintiffs bringing this suit represent a broad range of businesses throughout the State of Minnesota that are directly impacted by the City's Ordinance. Each of the individual business plaintiffs have standing to bring this

lawsuit because while state law permits their existing sick leave policies and practices, they will suffer injuries in the form of having to spend substantial human and financial resources complying with the Ordinance. The business association plaintiffs have associational standing to assert their members' interests, as their members will similarly be injured by having to comply with the Ordinance. Many of the association plaintiffs are also employers who must themselves comply with the ordinance and thus they will also directly suffer injuries as a result of the Ordinance.

9. Plaintiff Minnesota Chamber of Commerce (the "Minnesota Chamber") is a non-profit corporation incorporated under the laws of Minnesota with its principal place of business in St. Paul, Minnesota. The Minnesota Chamber is a broad-based organization representing more than 1,600 businesses throughout Minnesota who have over half a million employees statewide. Sixty percent of the Minnesota Chamber's members are located in the Twin Cities metropolitan area; the remaining 40% are in Greater Minnesota. While the offices of the Minnesota Chamber are located in St. Paul, its employees regularly work within the boundaries of the City of Minneapolis—along with many other cities and towns throughout the State of Minnesota. Many of its members are subject to the Ordinance. As an employer with some employees who are likely to work 80

hours in Minneapolis over the course of a year, the Minnesota Chamber must also comply with the Ordinance as to those employees.

10. Plaintiff Minnesota Recruiting and Staffing Association ("MNRSA") is a Minnesota non-profit corporation with its offices in St. Paul, Minnesota. It has over 100 members throughout the State of Minnesota and serves as the voice for the more than 800 staffing and recruiting companies within the State in efforts to communicate industry issues to association members, policy makers, regulators, the news media, and the general public.

11. MNRSA's members, recruiting and staffing companies, most of which are not Minneapolis-based, often place their employees with Minneapolis-based clients, thereby implicating the Ordinance. Many of its members are subject to the Ordinance.

12. The National Federation of Independent Business ("NFIB") is America's leading small business association, promoting and protecting the rights of its members to own, operate, and grow their businesses. NFIB focuses on very small companies who employ an average of 11-12 employees. Nationally, NFIB has approximately 320,000 members, with approximately 11,000 in Minnesota and approximately 200 in Minneapolis. Many of its members are subject to the Ordinance. NFIB is also subject to the Ordinance as some of its employees perform work for at least 80 hours in a year in Minneapolis.

13. Many of NFIB's Minnesota members—most of whom are based outside of Minneapolis—are not even aware that the Ordinance's broad reach may apply to them and their employees.

14. Plaintiff TwinWest Chamber of Commerce ("TwinWest Chamber") has over 700 member business and 3,000 business leaders who make up the voice of business in the west metro. The stated boundaries of TwinWest Chamber are ten cities: Brooklyn Center, Brooklyn Park, Crystal, Golden Valley, Hopkins, New Hope, St. Louis Park, Plymouth, Minnetonka, and Medicine Lake. About 30% of TwinWest Chamber's members, however, come from outside those boundaries, including businesses in Eden Prairie, Edina, Wayzata, St. Paul, and Minneapolis. TwinWest Chamber will also likely be subject to the Ordinance in relation to some of its own employees, who attend work meetings and events in Minneapolis that may total 80 hours or more over the course of a year.

15. Many of TwinWest Chamber's members, even if not based in Minneapolis, will be subject to the Ordinance due to its expansive reach.

16. The Minnesota Chamber, MNRSA, NFIB, and TwinWest Chamber are referred to collectively as the "Association Plaintiffs."

17. Plaintiff Graco Inc. ("Graco") is a Minnesota corporation that has proudly and successfully conducted business in Minneapolis for 90 years. Graco has its corporate headquarters in Minneapolis and employs more than 3,300

people worldwide, with nearly half of its employees working within the State of Minnesota. Many of Graco's Minnesota-based employees work at Graco's facilities located in the City of Minneapolis. Other Graco employees work at Graco facilities in Rogers and Anoka, Minnesota, but those employees often work at the Minneapolis facilities for a variety of reasons—as do Graco employees from other states and countries.

18. Graco is a worldwide leader in the design and manufacture of premium pumps and spray equipment for fluid handling in the construction, manufacturing, processing, and maintenance industries. In February 2016, Fortune Magazine ranked Graco one of the "15 Best Workplaces in Manufacturing and Production" in the United States.

19. Plaintiff Otogawa-Anschel General Contractors and Consultants LLC, known as Otogawa-Anschel Design+Build ("Otogawa-Anschel"), is a design and build company located in Minneapolis. Founded more than 20 years ago by Owner and Principal Michael Anschel, Otogawa-Anschel completes design and build projects in Minneapolis, St. Paul, and many other cities in the metropolitan area. Otogawa-Anschel typically employs between 11-13 employees, who are designers, architects, and builders. Many of its employees will work more than 80 hours per year on design and build projects located in both Minneapolis and

St. Paul, meaning Otogawa-Anschel will have to comply with both the Minneapolis and St. Paul Sick Leave Ordinances.

20. Defendant City of Minneapolis is a home rule charter city under Minnesota law with the capacity to sue and be sued.

VENUE

21. Venue is proper in this district under Minn. Stat. § 542.09 because the Defendant City of Minneapolis is found within this district.

FACTS

I. The Minneapolis Ordinance

A. The Minneapolis Ordinance mandates that private employers provide one hour of sick time for every 30 hours worked, up to 48 hours and allow up to 80 carryover hours.

22. On May 31, 2016, the Minneapolis City Council expanded its regulatory reach into new territory by passing Ordinance No. 2016-040, entitled "the Minneapolis Sick and Safe Time Ordinance."[1] MINNEAPOLIS, MINN., CODE § 40.10 (2016). (Exhibit A to Complaint.) The Ordinance represented the first time a Minnesota *city* has mandated employment terms between private employers and employees. A copy of the Ordinance is attached as Exhibit A. The Ordinance is scheduled to go into effect on July 1, 2017. *Id.* at § 40.90(a).

[1] The Ordinance defines "safe time" as those circumstances set forth in Minn. Stat. § 181.9413(b). MINNEAPOLIS, MINN., CODE § 40.40. (For ease, "sick time" and "safe time" are collectively referred to as "sick time.").

23. Until the Ordinance was passed, there was no requirement—by the state or any city—that nearly all private employers provide sick leave to their employees, let alone *paid* sick leave. That has changed.

24. Now, the Ordinance mandates that employees accrue a minimum of one hour of sick time for every 30 hours worked, up to a maximum of 48 hours in a year. *Id.* at § 40.210(a). The Minneapolis Ordinance further requires employers to permit an employee to carry over up to 80 hours of accrued but unused sick time into the following year. *Id.* at § 40.210(a), (c).

25. Amendments to the ordinance allow an employer to satisfy the accrual requirement "by providing at least forty-eight (48) hours of sick and safe time following the initial ninety (90) days of employment for use by the employee during the first calendar year, and providing at least eighty (80) hours of sick and safe time beginning each subsequent calendar year." (Amendment to Ordinance, Exhibit B to Complaint.)

26. Therefore, under the accrual method, an employee who used his 48 hours of sick time in Year 1 would be able to accrue no more than 48 hours in Year 2. But under the lump-sum method, the employer must provide 80 hours in Year 2—nearly *double* the otherwise now-mandated requirement of 48 hours.

B. The Minneapolis Ordinance applies broadly to private employers and employees based outside of Minneapolis.

27. Contrary to its title, the Minneapolis Sick and Safe Time Ordinance reaches far outside the borders of Minneapolis. The Ordinance broadly defines employees to include "any individual employed by an employer, including temporary employees and part-time employees, who perform work within the geographic boundaries of the City for at least eighty (80) hours in a year for that employer." MINNEAPOLIS, MINN., CODE § 40.40.

28. As a result, the Ordinance applies to employers who are not located in Minneapolis, but whose employees' work happens to take them into the City of Minneapolis for at least 80 hours in a year.

29. In today's global market, many of the employees of Plaintiffs and their members do not work in just one location and frequently perform work, attend events, and meet with customers and clients in Minneapolis, thereby triggering the Ordinance. For instance, the Ordinance would apply to employers based outside of the City—or even outside the State of Minnesota—whose employees deliver goods and services within Minneapolis, telecommute from homes located within Minneapolis, or regularly attend meetings or events in Minneapolis as a part of their work for at least 80 hours in a year.

30. This extraterritorial reach of the Ordinance is of particular concern to the Association Plaintiffs as the Ordinance reaches their members who are *not*

located in Minneapolis—many of whom may not even realize they are subject to it.

31. The Minneapolis Ordinance also applies to employees who are based elsewhere, but who happen to spend 80 hours or more in Minneapolis during the course of a year. *Id.* at § 40.40. For instance, although Graco is a Minneapolis-based company, the Ordinance will apply to any of Graco's employees from Anoka, Rogers, another state, or another country who happen to work 80 hours within Minneapolis in a year.

C. The Ordinance requires all employers with six or more employees to provide paid sick leave.

32. The Ordinance applies to all employers who have employees who hit the 80-hours-a-year-in-Minneapolis mark. *Id.* at § 40.40. Employers with six or more employees must pay the employee who uses sick time at the same hourly rate and benefits as the employee was scheduled to earn. *Id.* at § 40.220(g). Employers with five or fewer employees are required to provide employees with accrued sick time, but they are not required to pay them when they use it. *Id.* at § 40.220(h).

33. The size of an employer's business for a given year is based "upon the average number of employees per week during the previous calendar year." *Id.* at § 40.200(a). For new businesses, the employer's business size is based "upon the average number of employees per week during the first ninety (90) days after

its first employee began work." *Id.* at § 40.200(b). In determining an employer's size, all employees (full-time, part-time, or temporary) are counted—regardless of whether the employees work in Minneapolis. *Id.* at § 40.200(c).

D. The Minneapolis Civil Rights Department—not the Department of Health—enforces the Minneapolis Ordinance.

34. While the City claims that the Ordinance was enacted as an exercise of its "police power to preserve and protect safety, health, and general welfare," the enforcement mechanism of the Ordinance does not rest with the Minneapolis Department of Health. *Id.* at § 40.30.

35. Rather, enforcement of the Minneapolis Ordinance rests with the Minneapolis Department of Civil Rights and its Director—the department that enforces the State and City's non-discrimination employment laws, which are identical to each other. *Id.* at § 40.120. Likewise, the Minneapolis Department of Civil Rights has sole discretion whether to investigate a report of a suspected violation of the Ordinance. *Id.* at § 40.120(b).

36. If the Department determines that a violation has occurred, the Director "may order any appropriate relief for a determination, including, but not limited to" (*id.* at § 40.120(d)):

a. Reinstatement and back pay (*id.* at § 40.120(d)(1));

b. Crediting any accrued, but not credited sick time plus payment to the employee the greater of *double* the dollar value of the accrued, but not credited, sick time or $250 (*id.* at § 40.120(d)(2));

c. Payment of any accrued sick time unlawfully withheld plus payment of the dollar amount of accrued sick time withheld multiplied by two, or $250, whichever is greater (*id.* at § 40.120(d)(3));

d. Up to $1,500 administrative penalty per violation to the employee (*id.* at § 40.120(d)(4)); and

e. An administrative fine payable to the City of up to $50 for each day that a violation continues following 5 days after a written notice to the employer of the violation (*id.* at § 40.120(d)(5)).

E. The Minneapolis Ordinance exempts large categories of employees who work in Minneapolis.

37. Despite the City's claim that the Ordinance is motivated by public health concerns (*id.* at § 40.30), the Minneapolis Ordinance does not apply to several large categories of employees who work in Minneapolis. For instance, employees of the United States government, the State of Minnesota, or any county or local government other than the City are exempt from the Ordinance. *See id.* at § 40.40.

38. The Ordinance also does not regulate the employees themselves—even if they are sick.

39. The Minneapolis Ordinance also does not apply to certain Minneapolis employees within the construction industry. *Id.* at § 40.220(j).

F. Mandating paid-sick time at the municipal level creates a patchwork of regulations that burden companies throughout the state.

40. Because the sick-pay mandate arises from the municipal level, it causes unique tracking and reporting challenges to employers and employees that will cause a negative impact throughout the state. These adverse effects will only worsen as more cities follow Minneapolis's lead and enact other paid sick-time ordinances—just as St. Paul did. (*See* paragraph 51 *infra*.)

41. And before the Ordinance takes effect or even an hour of sick leave accrues, the Ordinance also requires companies to undertake an enormous administrative burden just to comply with the Ordinance. The city-level regulation creates a logistical quagmire when it comes to the tracking requirements the Ordinance mandates.

42. Under the Ordinance, an employer must maintain accurate records for each employee showing the sick time accrued and the used sick time for each day of the work week. *Id.* at § 40.270(a).

43. The City seems to recognize the untenable burdens its tracking requirements have placed on Minnesota companies, but its efforts to lessen these

burdens have failed. For instance, the original Ordinance required that "[a]n employer with employees who occasionally work in the city must track hours worked in the city by each employee performing work in the city." (Exhibit A at § 40.270(d).) The amendments to the Ordinance passed in September 2016 removed this provision, but employers still must track employees to determine whether they hit the 80-hour a year threshold (MINNEAPOLIS, MINN., CODE § 40.270(d)) so deleting that language does not eliminate the burden of tracking employees based on their location. Indeed, a presentation to the City Council highlighting this deletion noted: "Caveat: Presumption of violation if adequate records not maintained." (A copy of this presentation, entitled "Amendments to Sick and Safe Time Ordinance," dated September 21, 2016, is attached as Exhibit C.)

44. Furthermore, an employer must allow an employee to inspect records required by the Ordinance that relate to that employee at a reasonable time and place. MINNEAPOLIS, MINN., CODE § 40.270(c). Furthermore, an employer must maintain records under the Minneapolis Ordinance for at least 3 years in addition to the current calendar year. *Id.* at § 40.270(b).

45. The tracking requirements add further burdens for companies like Graco who have employees, including those in Minneapolis, who might transfer between divisions. Under the Ordinance, if an employee is transferred to a

separate division, entity, or location outside of Minneapolis, but remains employed by the same employer and that employer does not allow the use of paid sick time outside Minneapolis, the employer must maintain the employee's accrued sick time on the books for a period of three years from the time of the transfer. *Id.* at § 40.280(b). If that employee is then transferred back to a location in Minneapolis at the same employer, the employee is entitled to all previously-accrued sick and safe time. *Id.*

46. These tracking requirements are particularly onerous because most companies are not currently equipped to track employees' locations precisely on an hour-by-hour basis to determine whether they are within or outside of a given municipality. Moreover, as more and more cities enact paid-sick-time ordinances, the tracking requirements—which are already burdensome and challenging under just the Minneapolis Ordinance—will become untenable.

47. For instance, despite the way its employees regularly move between locations in Minneapolis and elsewhere, Graco's systems are not equipped to track which city the employees are in on an hour-by-hour basis.

48. As a design-build company, Otogawa-Anschel's employees routinely move among multiple projects in different cities throughout a day, including Minneapolis and St. Paul. And like Graco, Otogawa-Anschel too does not currently track where its employees work on an hour-by-hour basis. To do so,

the company would have to rely on the employees to track the time that they spend in each municipality. Tracking time among the various locations would be burdensome, difficult, and potentially inaccurate.

49. NFIB and TwinWest Chamber also share concerns regarding the administrative burden the Ordinance will cause its members. Small companies like Otogawa-Anschel and NFIB's members in particular have little capacity to handle this type of administrative burden. And doing so would take employees' time and attention away from innovating and producing goods and services that consumers want to purchase.

50. MNRSA members also face significant challenges due to the municipal-level ordinance. For instance, most recruiting and staffing companies rely on an applicant-tracking software to help them manage and track where their employees are placed. But these systems are based on ZIP Codes—not municipal boundaries, and some ZIP Codes can contain both Minneapolis and a neighboring suburb's addresses. As a result of the Ordinance, recruiting and staffing companies will have to either pay to have their software reconfigured or pay for entirely new software which can run from $50,000 to over $100,000.

51. Exacerbating the "patchwork effect" is St. Paul's passage on September 7, 2016 of an ordinance mandating paid sick time. It too goes into effect on July 1, 2017—the same date as the Minneapolis Ordinance—for

employers with 24 or more employees. St. Paul's ordinance is not effective for companies with 23 or fewer employees until January 1, 2018. *See* St. Paul, Minn. Ord. 16-29, § 233.21.

52. St. Paul's ordinance requires employers with just one employee—even a temporary employee or part-time employee—to provide paid sick leave and track the accrued hours, whereas Minneapolis requires provision of paid sick leave only by employers with six employees or more. *See* St. Paul, Minn. Ord. 16-29, § 233.02.

53. Plaintiffs and their members could find themselves being subject to both the Minneapolis and St. Paul ordinances for the very same employees. In a particularly absurd example, the corporate headquarters of Hubbard Broadcasting, Inc., a member of the Minnesota Chamber, straddles the border of St. Paul and Minneapolis, making the company subject to two similar, but different ordinances—at the same time for the very same employees. Otogawa-Anschel's employees will also likely be subject to both ordinances.

54. Many St. Paul officials who voted for the ordinance acknowledge the challenges that the patchwork of ordinances creates. One council member stated that she wanted to "acknowledge that I know this ordinance creates challenges particularly for locally-owned independent businesses. . . . . My goal is to send a

strong message to the State of Minnesota . . . [(for)] a statewide law." *St. Paul approves earned sick leave mandate*, TwinCities.com Pioneer Press, Sept. 7, 2016.

55. St. Paul Mayor Chris Coleman recognized the patchwork that municipal ordinances cause and said "much like how a statewide smoking ban was needed to erase differences from city to city, the Legislature needs to now act." *Id.*

56. The patchwork problem will only get worse if the Minneapolis Ordinance stands and other cities, in addition to St. Paul, enact their own paid-sick-leave ordinances, subjecting Minnesota companies throughout the state to untenable layers of overlapping and even conflicting regulations.

G. The Ordinance, by mandating private employment terms, marks an unprecedented incursion by a municipality into the employer-employee relationship.

57. This Ordinance represents the first intrusion by Minneapolis—or any Minnesota city—into the employment terms of private employers and their employees. The City's mandated employment terms alter the terms and benefits that employers negotiated with their employees—policies that are in compliance with state law but, come July 1, 2017, will violate the Minneapolis Ordinance.

58. Minnesota companies, including Plaintiffs and Association Plaintiffs' members, have established policies and employment terms that fit their businesses and their employees and, until the passage of the Ordinance, only had

to be concerned with complying with the uniform laws of the State of Minnesota and the federal government. But now cities, including Minneapolis, are upending those private employment terms—and the employer-employee relationship—in ways never seen before.

59. For instance, Graco's continued success is based on its unwavering commitment to technical excellence, world-class manufacturing, and superior customer service. To maintain this excellence, Graco has always paid wages to its factory employees that are well above the market rate when compared to comparable competitors in the local marketplace.

60. Twenty years ago, in order to better maintain that excellence, Graco revised its employee benefits in a way that provided increased hourly wages to its factory employees—over and above its usual annual wage increase—instead of a set number of sick days each year. In fact, Graco calculated the value of the paid sick time it had provided and added it to the hourly wage.

61. As a result, even without a set number of sick days, if an employee calls in sick, the employee is effectively paid for the sick day by virtue of the pay increase. This change gave the Graco employee the benefit of being paid to cover any sick time he had been previously entitled to—in fact, if the employee did not use all of his sick time, he would come out ahead financially as he would be paid at a higher rate than he would have if employees were given paid sick time

instead. At the same time, Graco decreased the likelihood that employees would call in sick when, in fact, they were not, and could minimize unnecessary disruptions to its manufacturing lines and warehouse.

62. The Minneapolis Ordinance will require Graco to now provide paid sick leave again, despite having already incorporated the value of that benefit into its pay structure for factory and warehouse workers. It could also disrupt the balance Graco has struck to ensure the continuity of its manufacturing lines.

63. Similarly, Plaintiff Otogawa-Anschel's compensation policy is to provide employees with 5 days of paid sick leave and, depending on tenure, one or two weeks of paid vacation, plus five holidays. Sick time and vacation days are not carried over each year. Nevertheless, when an Otogawa-Anschel employee was hospitalized and missed five weeks of work after having used up all sick time and vacation time, Otogawa-Anschel paid the employee for those weeks, despite the policy.

64. The Ordinance is an unprecedented intrusion by a city that interferes with the ability of these Plaintiffs and the members of Association Plaintiffs to negotiate employment terms with their employees and will inhibit companies' ability to be flexible and generous with their policies when circumstances warrant.

II. The Minneapolis Ordinance is Preempted by State Law.

A. The Minneapolis Ordinance conflicts with state law.

65. The Minneapolis Ordinance, which prohibits what state law permits, conflicts with state law.

66. The Minnesota Supreme Court has stated that an ordinance conflicts with state law where the "ordinance forbids what the statute *expressly* permits . . . . " *Mangold Midwest Co.*, 143 N.W.2d at 816-17 (emphasis in original).

67. It has also held that "a municipality may not prohibit by ordinance conduct that is not prohibited by statute." *State v. Kuhlman*, 729 N.W.2d 577, 581-582 (Minn. 2007). In *Kuhlman*, despite the existence of a state statute expressly authorizing cities to regulate traffic, the Minnesota Supreme Court struck down a city ordinance for prohibiting traffic conduct that was not prohibited by state law.

68. The Minnesota Legislature has already enacted a statute entitled "Sick Leave Benefits; Care of Relatives." Minn. Stat. § 181.9413. This statute, which applies to employers with 21 or more employees, provides that employees may use personal sick leave benefits to care for family members and for time to receive assistance for sexual abuse, domestic abuse, or stalking. *Id.*

69. But "[e]mployers are not required to provide personal sick leave benefits." Minnesota Department of Labor and Industry, *A guide to Minnesota's*

laws about sick and safe leave, version 0714 (Exhibit D to Complaint). *Compare id.*, *with* City of Minneapolis, *City of Minneapolis Sick and Safe Time checklist*, August 2016 (requiring employers to provide side leave) (Exhibit E to Complaint). Rather, § 181.9413 governs the use of sick leave that employers have *chosen* to provide in the first place. And because the statute does not require sick time at all, it does not require any tracking of sick time. It only provides that *if* an employer provides sick leave, that employer must allow employees to use it as the statute provides.

70. The Ordinance also defines "employees" and "employers" more expansively than the state's sick leave statute does. The state statute defines an employee as "a person who performs services for hire for an employer from whom leave is requested under [the relevant statutes] for (1) at least 12 months preceding the request; and (2) for an average number of hours per week equal to one-half the full-time equivalent position in the employee's job classification as defined by the employer's personnel policies or practices or pursuant to the provisions of a collective bargaining agreement, during the 12-month period immediately preceding the leave." Minn. Stat. § 181.940, Subd. 2. In contrast, the Ordinance applies to any employee who works 80 hours in Minneapolis in a year (MINNEAPOLIS, MINN., CODE § 40.40); there is neither a minimum weekly-hours requirement nor a 12-month requirement.

71. Likewise, an employer for the purposes of the Minnesota sick leave statute is defined as "a person or entity that employs 21 or more employees at at least one site . . . ." Minn. Stat. § 181.940, Subd. 3. But the Minneapolis Ordinance defines "employer" more broadly as "a person or entity that employs one (1) or more employees . . . ." MINNEAPOLIS, MINN., CODE § 40.40.

72. The Minneapolis Ordinance also incorporates the requirements of the state's "Sick Leave" statute into its definition of "safe time." *See id.* But as shown above, the Ordinance goes beyond just adopting a similar definition of "safe time." For instance, the Ordinance allows employees to use mandated sick leave if their children's school is closed due to inclement weather or other unexpected closure. *Id.* at § 40.220(b)(6).

73. It also mandates the provision and tracking of sick time far beyond what the state law requires. And for companies with 6 or more employees, it requires sick leave to be *paid*.

74. The only state law that *requires* private employers to provide paid sick leave is an administrative law limited to a narrow circumstance: it mandates five paid sick days to disabled employees under the state's Extended Employment Program. Admin. Rule 3300.2015, subp. 4(A).

75. An employer who provides a disabled employee with five days of paid sick time would comply with the Extended Employment laws, but would be in

violation of the Minneapolis Ordinance, which requires the equivalent of six days, or 48 hours, of paid sick time.

76. For employers of employees not in the Extended Employment Program, including all Plaintiffs, state law:

a. permits employers to choose not to offer paid sick leave at all;

b. permits employers to offer sick leave at an accrual rate of less than 1 hour per 30 hours worked;

c. permits employers to provide fewer than 48 hours of sick leave in a year;

d. permits employers to refuse to allow unused sick time to roll over to the next year;

e. permits employers to accrue fewer than 80 hours of sick time;

f. permits employers to prohibit employee's use of sick days if the children's school is cancelled due to inclement weather;

g. permits employers to provide sick time to employees only after they have been employed with the company at least a year; Minn. Stat. §§ 181.940 and 181.9413; and

h. permits employers to provide sick time that is *unpaid*.

77. For instance, the sick leave policies of Plaintiffs Graco and Otogawa-Anschel described above currently comply with state law. Those same policies,

however, conflict with the Minneapolis Ordinance. In other words, the Minneapolis Ordinance forbids what the state law expressly allows—and accordingly conflicts with state law and must be struck down.

78. Indeed, companies like Otogawa-Anschel with less than 21 employees, along with most members of NFIB, are expressly exempted from the state sick leave law and could choose, for example, to disallow an employee from using any sick time unless the employee himself was sick. Minn. Stat. § 181.940, Subd. 3. Yet, the Minneapolis Ordinance prohibits those businesses from making that choice.

79. Again, the Ordinance forbids what the state law allows, and accordingly conflicts with state law and must be struck down.

B. The State has legislated so extensively in the field of mandated employment terms, and sick leave specifically, that there is no room for municipal regulation.

80. The Legislature has extensively regulated terms within the private employer-employee relationship, establishing a wide swath of mandates covering companies of all sizes and industries of all types. And until the City enacted the Minneapolis Ordinance, Plaintiffs and other Minnesota businesses could look to uniform state law with respect to mandated employment terms.

81. This uniform set of state laws is reflected in Chapters 175 through 186 of the Minnesota statutes, covering labor and industry practices.

82. In addition to establishing the Department of Labor and Industry (Ch. 175), these chapters regulate, among other things, workers' compensation insurance (Ch. 175A), labor standards and wages (Ch. 177), employment terms and benefits (Ch. 181), occupational safety and health (Ch. 182), and employment agencies (Ch. 184).

83. Within Chapter 181 alone, the state has enacted numerous statutes covering various aspects of the employer-employee relationship, including the method of wage payment (§§ 181.01-.27); employment contracts (§§ 181.55-.57); costs for medical exams (§§ 181.60-.62); worker recruitment (§§ 181.635-.65); equal pay requirements (§§ 181.66-.71); benefits issues (§§ 181.73-.74, 181.82); drug and alcohol testing (§§ 181.950-.957); protected personnel information (§§ 181.973-.981); non-work activities (§ 181.938); and workplace communications (§ 181.985).

84. The Minnesota Legislature has also repeatedly regulated the specific issue of leave from work. Section 181.92 regulates leave for adoptive parents, requiring employers who permit paternity or maternity leave to biological parents to extend the benefit to adoptive parents. Sections 181.945 through 181.9458 regulate bone marrow, organ, and blood donation leave, requiring employers to grant paid leave to employees who undergo medical procedures to donate bone marrow. *See* Minn. Stat. § 181.945. Section 181.946 requires

employers to grant unpaid leave to employees for time spent rendering service as a member of the civil air patrol, under certain conditions. And § 181.947 requires employers to grant unpaid leave to employees whose family members have been injured or killed while engaged in active service.

85. Numerous statutes and rules contemplate that private employers *may* choose to offer sick leave and, if so, then require that the employer provide sick leave benefits consistently or consider sick leave benefits in calculating separate figures, such as hours-worked or amounts of unpaid pregnancy leave. *See, e.g.*, Minn. Stat. §§ 79.211; 144.4196; 144A.04; 176.221; 181.635; 181.9413; 181.943. For example, state law provides that the length of *unpaid* pregnancy and parenting leave—which the Minnesota Legislature *has* required employers to provide—may be reduced by a period of paid sick leave provided by the employer so that the total leave does not exceed 12 weeks, unless otherwise agreed to by the employer. Minn. Stat. § 181.943.

86. Still other statutes and administrative rules consider that sick leave benefits may impact an individual's benefits packages, taxes, or other calculations such as defined earned incomes. *See, e.g.*, Minn. Stat. §§ 256J.08; 256P.01; 268.085; 290.92; 354B.20; 576.51; Minn. Admin. Rules 3400.0170; 9050.0040; 9050.0710; 9500.1206; 9510.1020.

87. "Sick leave" itself is referenced over 50 times throughout Minnesota statutes and Administrative Rules. Much of the references to sick leave occur in the context of the state's role as employer, creating rules and regulations relating to state employees (*see, e.g.*, Minn. Stat. §§ 3.088; 3.095; 3.096; 12.21; 13.43; 15A.081; 15A.082; 43A.17; 43A.1815; 43A.184; 43A.185; 43A.187; 43A.49; 176.021; 192.26; 192.261; 244.19; 248.07; 261.002); refer to sick leave benefits in calculating state employee retirement plans (*see, e.g.*, Minn. Stat. §§ 352.01; 352.113; 352.115; 352.95; 352B.10; 353.01; 353.031; 353.33; 353.656; 353E.06); or refer to the power of state officers, directors, or county commissions to provide sick leave benefits for state employees (*see, e.g.*, Minn. Stat. §§ 383A.295; 383B.29; 383C.033).

88. Despite this extensive regulation of the field of mandated terms within the employer-employee relationship and the field of sick leave in particular, nowhere does the state require private employers to provide and track sick leave for all its employees—let alone *paid* sick leave.

89. The state's extensive—and uniform—regulation of the employment terms within the employer-employee relationship, and the state's decision to permit a private employer to choose whether to provide paid sick leave, has now been disrupted by the Minneapolis Ordinance and the St. Paul ordinance, and will be further disrupted as other cities enact similar laws.

90. The Minneapolis Ordinance is also invalid because it extends the City's power beyond its boundaries. The "general rule, applicable to municipalities as well as to states, is that the power and jurisdiction of the city are confined to its own limits and to its own internal concerns." *Duluth v. Orr*, 132 N.W. 265 (Minn. 1911) (holding invalid a city's ordinance prohibiting the storage of gunpowder within one mile outside of the city's boundaries); *see also Almquist v. Biwabik*, 28 N.W.2d 744, 746 (Minn. 1947) (impact of a city's municipal code is limited to the city's own boundaries). Many Plaintiffs are located outside of the City but employ those who work at least 80 hours within the City.

CLAIM 1:
JUDGMENT UNDER
THE UNIFORM DECLARATORY JUDGMENTS ACT,
MINN. STAT. § 555

91. Plaintiffs incorporate by reference the preceding allegations.

92. Plaintiffs are all affected by the Minneapolis Ordinance and are entitled under Minn. Stat. § 555.02 to ask this Court for a declaration that the Minneapolis Ordinance is invalid.

93. The parties disagree whether the City of Minneapolis has the authority to enact the Minneapolis Ordinance, whether the Minneapolis Ordinance conflicts with state law, or, in the alternative, whether the Minneapolis Ordinance is impliedly preempted by statutes passed by the Minnesota Legislature.

94. Therefore, this Court should resolve this controversy and afford Plaintiffs relief from uncertainty and insecurity with respect to their rights by declaring that the Minneapolis Ordinance is invalid and cannot be enforced.

CLAIM 2:[2]
REQUEST FOR
TEMPORARY INJUNCTION

95. Plaintiffs incorporate by reference the preceding paragraphs.

96. Plaintiffs have shown a likelihood of success on the merits.

97. Plaintiffs will be irreparably harmed if the Ordinance is not enjoined during the pendency of this lawsuit. Indeed, Plaintiffs are already suffering irreparable harm because of the costs and time needed to prepare to comply with the Ordinance upon its impending effective date.

98. The City has never before mandated employment terms, such as provision of sick leave, let alone provision of *paid* sick leave, between a private employer and its employees.

99. A temporary injunction would advance the public interest.

100. There would be no burden on the Court in imposing a temporary injunction.

[2] Plaintiffs are filing a motion for a temporary injunction and memorandum in support of the same simultaneously with this Complaint.

101. Plaintiffs are entitled to a temporary injunction, maintaining the *status quo* and enjoining the Minneapolis Ordinance from going into effect or being enforced, until the merits of this case are decided and all appeals exhausted.

CLAIM 3:
REQUEST FOR
PERMANENT INJUNCTION

102. Plaintiffs incorporate by reference the preceding paragraphs.

103. The Ordinance is invalid and preempted by state law.

104. Plaintiffs seek the entry of a permanent injunction, enjoining the Minneapolis Ordinance from going into effect or being enforced.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. issue an Order pursuant to the Uniform Declaratory Judgments Act, Minn. Stat. § 555, declaring that the Minneapolis Ordinance is invalid, void, and unenforceable;

2. permanently enjoin the Minneapolis Ordinance from going into effect and being enforced;

3. grant a temporary injunction under Minn. R. Civ. P. 65.02 that enjoins the Minneapolis Ordinance from going into effect and being enforced until the merits of this case are decided and all appeals exhausted;

4. order pursuant to Minn. R. Civ. P. 65.02(c) that the hearing on the merits of this case be advanced and consolidated with the hearing on the temporary injunction motion so as to secure a just, speedy, and inexpensive determination of this action as required by Minn. R. Civ. P. 1;

5. award Plaintiffs their costs of bringing this suit under Minn. Stat. § 555.10; and

6. all other relief that the Court deems just and equitable.

Dated: October 13, 2016

By: /s/Christopher K. Larus

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ACKNOWLEDGMENT

The undersigned acknowledges that, pursuant to Minn. Stat. § 549.211, subd. 3, sanctions may be imposed by this Court if it determines that Minn. Stat. § 549.211, subd. 2 has been violated.

/s/Christopher K. Larus
Christopher K. Larus

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