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 Independent Business, TwinWest Chamber of Commerce, Graco Inc., and Otogawa-Anschel General Contractors and Consultants LLC, Plaintiffs, v. City of Minneapolis, Defendant.	Court File No: _____ **Memorandum of Law in Support of Plaintiffs' Motion for Temporary Injunction and a Rule 65.02(c) Consolidation with a Hearing on the Merits**

I. INTRODUCTION

The City of Minneapolis (the "City") has attempted an unprecedented and far-reaching expansion of municipal regulatory authority that would mandate employment terms for private employers and would adversely impact businesses throughout the State of Minnesota. The Plaintiffs in this action represent a broad base of more than thousands of Minnesota businesses—both large and small—located throughout the State of Minnesota. 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 Ordinance conflicts with and is preempted by state law; and (2) an injunction prohibiting the Ordinance from going into effect or being enforced.

Absent a temporary injunction, the City's looming enforcement of the Ordinance require Plaintiffs and their members to incur substantial burdens and expenses complying with this illegal municipal ordinance. In fact, they are already incurring these burdens and expenses because companies need to take steps now in order to comply with the Ordinance when it becomes effective.

Minneapolis is a home rule charter city with extensive powers to self-govern, but its powers to regulate are limited. No city may enact an ordinance in conflict with or preempted by state law. *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813 (1966). By adopting an Ordinance that conflicts with and is preempted by state law, the City acted outside its proper authority.

The Minnesota Legislature ("Legislature") has extensively regulated many aspects of private employer-employee relationships and has repeatedly and expressly addressed the topic of sick leave. The Legislature has declined, however, to mandate that private employers provide sick leave, paid or unpaid, under the broad circumstances required by the Minneapolis Ordinance. By mandating paid sick leave, the City of Minneapolis seeks to prohibit private employers from doing something that state law permits. Specifically, under state law employers may choose to structure employee benefits to meet the specific needs of the given business and its employees, and either decline to provide sick leave, provide only unpaid sick leave, or provide paid sick leave on different terms than required by the Ordinance. The Minneapolis Ordinance prohibits what state permits and intrudes within a field fully occupied by state law, so the Ordinance is invalid and unenforceable. *Mangold Midwest Co.*, 143 N.W.2d at 816-17; *State v. Kuhlman*, 722 N.W.2d 1, 4 (Minn. Ct. App. 2006).

This lawsuit is not about whether private employers should provide paid sick leave to their employees. In fact, Plaintiffs generally agree that companies should provide employees a variety of flexible benefits to ensure that employees have options for providing for themselves and their families. Nor is this suit about whether the State of Minnesota should require private employers to provide a minimum threshold of sick leave benefits. Rather, the core issue raised in this suit is whether *municipalities* such as Minneapolis have the legal authority to mandate a one-size-fits-all approach to employee benefits and require that private employers provide employees with the paid sick leave benefits required under the Ordinance. The Plaintiffs respectfully submit that

the City lacks the authority to enact such a municipal mandate that plainly conflicts with and is preempted by state law.

Because this is an important question with state-wide impact, Plaintiffs respectfully request that this Court: (1) consolidate this motion for a temporary injunction with a hearing on the merits of Plaintiffs' arguments to invalidate the ordinance under Rule 65.02(c); and (2) enjoin the City from enforcing the Minneapolis Sick Leave Ordinance. This will allow the parties to efficiently obtain a ruling before the Ordinance goes into effect, thereby minimizing the length of time for any temporary injunction—if not negating its need entirely should this Court issue a permanent injunction before July 1, 2017.

II. FACTUAL BACKGROUND

A. The Minneapolis Ordinance

The Minneapolis Ordinance mandates that employers provide all employees, including part-time and temporary employees, with a minimum of one hour of sick time[1] for every 30 hours worked, up to 48 hours a year if the employee works within the City of Minneapolis for at least 80 hours a year. (MINNEAPOLIS, MINN., CODE § 40.210(a) (2016) (Ordinance, Exhibit A to Complaint).) The Ordinance further requires employers to permit an employee to carry over accrued but unused sick time into the following year. *Id.* The total amount of mandated sick time that is accrued but unused by each employee may not exceed 80 hours. *Id.* at § 40.210(c). An employee must begin accruing

[1] "Sick time" and "sick leave" are synonymous. To be clear, the State of Minnesota uses the term "sick leave" while the City uses the term "sick time" to refer to the same concept. The difference in usage does not create a difference in scope.

sick time at the later of the commencement of employment or the Ordinance's effective date and the employee can use it beginning 90 calendar days following commencement of employment. *Id.* at § 40.210(c) and § 40.220.

The Ordinance applies to all covered employers, but those with more than five employees must provide *paid* sick leave. *Id.* at § 40.220(g)-(h). Further, in determining an employer's size, all employees, regardless of whether full-time, part-time, or temporary, are counted—regardless of whether the employees work in Minneapolis at all. *Id.* at § 40.200(c). All employers must maintain records of employees' amount of accrued sick time available and the amount of used sick time for a period of three years. *Id.* at § 40.270(a) and (b).[2]

The Minneapolis Ordinance has an expansive reach beyond the City of Minneapolis and would negatively impact businesses based throughout the State of Minnesota, the United States, and literally around the world. Those extraterritorial impacts flow from the fact that the Ordinance does not apply only to businesses physically located in Minneapolis. Instead, the Ordinance applies to any employer with employees working at least 80 hours a year "within the geographic boundaries of the city"—regardless of where the employer is based or where the employee spends the majority of her working hours. *Id.* at § 40.40; § 40.200(c). Even a business based in another city within Minnesota must comply with the Ordinance if it has employees

[2] Further, if an employee is transferred to a separate division, entity, or location outside of Minneapolis, but remains employed by the same employer and then that employee is then transferred back to a location in Minneapolis within three years, the employee is entitled to all previously accrued sick and safe time. *Id*. at § 40.280(b).

working at least 80 hours within the City. *Id*. *See, e.g.,* Loon Aff., at ¶ 7; McMillan Aff., at ¶ 6; Farr Aff., at ¶¶ 2-4; Hickey Aff., at ¶ 7. By its plain terms, this requirement would ensnare businesses located outside of the City if they have employees who visit job sites, attend meetings, drive through the City on their way elsewhere, or telecommute from locations within Minneapolis. Particularly in these days of virtual offices and flexible work arrangements, the Ordinance imposes a paid sick leave mandate upon many businesses based outside of Minneapolis. *Id*.

The City has acknowledged the burdens that the Minneapolis Ordinance places on businesses. Indeed, less than four months after passage, the City has amended the Ordinance's language. (Ord. No. 2016-065 (Ordinance Amendment), Exhibit B to Complaint.) In relevant part, a September 2016 amendment removed the following sentence: "(d) An employer with employees who occasionally perform work in the city must track hours worked in the city by each employee performing work in the city." *Id.* Any apparent relief to employers located outside of Minneapolis is illusory. The amendment failed to modify the requirement that employers provide sick leave for employees working at least 80 hours in Minneapolis within a year, and the only way employers can ensure that they do not violate the Ordinance is to track all employees' hours who perform work in Minneapolis, even if just occasionally. *Id.*

B. Complying with the Minneapolis Ordinance is Challenging, Costly, and Burdensome; the Ordinance's Negative Impact is Exacerbated because the Ordinance's Impact Extends Far Beyond Minneapolis.

Plaintiffs in this lawsuit and their members have employment policies that are permitted under existing Minnesota law but will be forbidden by the Minneapolis

Ordinance. For instance, Graco Inc. ("Graco"), a global manufacturing company headquartered in Northeast Minneapolis, decided years ago to discontinue use of paid sick time and instead increase its factory and warehouse employees' hourly wages by the value of the 48 hours of sick time that Graco had previously provided. Galdonik Aff., at ¶ 13. Graco's pay reform actually increased the overall value of compensation paid to Graco's hourly factory employees, while avoiding the problem that providing paid sick time undermines Graco's ability to schedule factory production and compete in the global manufacturing market. This approach gave the Graco employees the benefit of being paid to cover any sick time they needed to take but because Graco pays the employees over the course of a year rather than at the time the employees use the sick leave, Graco's policy does not comply with the Ordinance—making Graco subject to fines. *Id.* at ¶ 18. Likewise, Plaintiff Otogawa-Anschel, a small design and build firm based in the Uptown neighborhood of Minneapolis, provides 5 full days of paid sick time—but since Otogawa-Anschel's policy does not provide 6 days of paid sick time and employees cannot roll that time over from year to year, it does not comply with the Ordinance—making Otogawa-Anschel similarly subject to fines. *See* Anschel Aff., at ¶ 6.

Preparing to become compliant with the Minneapolis Ordinance is costly and time consuming because, before this Ordinance, many companies have not had any reason to track where exactly each of their employees work on an hour-by-hour basis.[3]

[3] There is also a cost to providing the additional benefits to employees. But those are not costs that Plaintiffs focus on in this memorandum. Rather, Plaintiffs focus on the

For example, Plaintiff Graco has facilities in Anoka, Rogers, and Minneapolis. Galdonik Aff., at ¶ 19. Factory workers sometimes move from one location to another on either a temporary or permanent basis so that Graco can meet customer demand and maintain U.S. manufacturing jobs in the competitive global market. *Id*. at ¶ 21. It is also common for its employees in Anoka or Rogers—as well as other states and countries—to come to its Minneapolis office for meetings that amount to over 80 hours in a year. McLaughlin Aff., at ¶¶ 8, 10. Graco does not, however, track where each employee works hour by hour and currently has no systematic way to do so. *Id.* at ¶ 5. Creating and administering such a system will impose significant costs. Graco has already begun spending time and resources determining what it would take to become compliant by that date, including evaluating what systems will need to be changed, analyzing how (or if) they can be changed, and executing on those changes. *Id.* at ¶ 3. If an injunction is not granted within the next 6-8 weeks, Graco will start incurring significant costs to third parties to reprogram its systems. *Id.*

Similarly, Plaintiff Otogawa-Anschel, a small design and build company in Uptown, completes projects throughout the metro area. Anschel Aff., at ¶ 3. On a given day, its employees there can spend three hours in Minneapolis, two hours in St. Paul, and another in St. Louis Park. *Id*. at ¶ 9. The Ordinance requires the company to train its employees on how to track their time based on where they go throughout the day. *Id*. at

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compliance costs that result from this policy being mandated at the municipal level and cause irreparable harm. Those costs would be unnecessary if Plaintiffs are successful in this lawsuit. Loon Aff., at ¶ 14.

¶¶ 12, 15. But the logistics of doing so are unclear and tracking would be expensive for Otogawa-Anschel. *Id*. at ¶¶ 12, 14.

Recruiting and staffing agencies, like the members of the Minnesota Recruiting and Staffing Association ("MNRSA"), share in this challenge. The applicant-tracking software that most, if not all, of its member staffing companies use to track where their employees are working is based on ZIP Codes. Farr Aff., at ¶¶ 7, 8. But ZIP Codes often cross municipal lines, so ZIP Code information does not accurately indicate whether the employee is in Minneapolis or a neighboring suburb. *Id.*

Modifying the various time-keeping, applicant-tracking, and payroll systems will cost Plaintiffs and any of their members with employees working in Minneapolis both time and money. *See* Anschel Aff., at ¶ 12; McLaughlin Aff., at ¶ 3; Loon Aff., at ¶¶ 5, 6; Hickey Aff. at ¶ 6; Farr Aff., at ¶¶ 9, 11. For instance, if a staffing company's particular applicant-tracking software cannot be reconfigured, it will have to convert to another system which could cost from $50,000 to well over $100,000. Farr Aff., at ¶ 8. Even if software can be reconfigured, doing so would cost tens of thousands of dollars. *Id.*

C. A Burdensome Patchwork is Emerging, as Other Minnesota Cities Have Started to Pass Similar Ordinances.

Beyond the cost of changing staffing procedures, if the Minneapolis Ordinance is allowed to stand, companies will also be forced to comply with a patchwork of inconsistent municipal regulations mandating that private employers provide sick leave benefits. After Minneapolis enacted the Ordinance at issue in this case, the City of St. Paul passed a sick leave ordinance—with some terms that conflict with those of

Minneapolis—scheduled to go into effect for some employers on July 1, 2017 and smaller employers on January 1, 2018. *See* St. Paul, Minn. Ord. 16-29. Other Minnesota cities, such as Duluth, are also considering similar sick leave ordinances. Pakou Ly, Communications Office of The City of Duluth Minnesota, *Applicants Sought for Duluth Earned Sick and Safe Time Taskforce*, July 28, 2016.

Many St. Paul officials who voted for the sick leave ordinance acknowledge the challenges that multiple ordinances create. 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.

But Plaintiffs and their members cannot wait for the Legislature to act. Mandating terms within the private employer-employee relationship is not within the City of Minneapolis's power and the Court should enjoin enforcement of the Ordinance now.

III. ARGUMENT

Until the Ordinance's validity—or lack thereof—can be decided, this Court should grant a temporary injunction prohibiting the Ordinance from going into effect.[4] "The purpose of a temporary injunction is to preserve the status quo until adjudication

[4] Plaintiffs have moved this Court to consolidate the temporary injunction hearing with a hearing on the merits under Minnesota Rule of Civil Procedure 65.02(c), but regardless of whether the Court decides to accelerate the hearing on the merits of Plaintiffs' arguments to invalidate the ordinance, a temporary injunction is needed to preserve the status quo until the merits are adjudicated.

of the case on its merits." *Yager v. Thompson*, 352 N.W.2d 71, 74 (Minn. Ct. App. 1984). A temporary injunction is necessary here to preserve the status quo and prevent Plaintiffs and their members from having to undertake costly burdens to comply—burdens that will be unnecessary if the Plaintiffs prevail.

Minnesota courts consider and balance five equitable factors when deciding whether to issue a temporary injunction:

> (1) the nature of the relationship between the parties before the dispute giving rise to the request for relief;
> (2) the harm to be suffered by the moving party if the injunctive relief is not granted;
> (3) the likelihood of success on the merits;
> (4) the public interest; and
> (5) administrative burdens in enforcing a temporary decree.

Dahlberg Bros. Inc. v. Ford Motor Co., 137 N.W.2d 314, 321-22 (Minn. 1965). Each of these factors supports granting relief to Plaintiffs.

A. Plaintiffs Are Likely to Succeed on the Merits of Their Claim That the Minneapolis Ordinance Conflicts With and is Preempted By State Law.

Plaintiffs are likely to succeed on the merits of their claim that the Minneapolis Ordinance is invalid on preemption grounds. The City has claimed that it has the authority to pass this Ordinance in order to aid in the "safety, health, and general welfare" of workers in Minneapolis. *See* MINNEAPOLIS, MINN., CODE § 40.30 (2016). But "[t]he fact that health and safety concerns provided the motivation for enacting the ordinance does not make the ordinance valid." *Bd. of Supervisors v. ValAdCo*, 504 N.W.2d 267, 271 (Minn. Ct. App. 1993). "Although municipalities have the power to

regulate in the interest of public health, safety, and welfare, a township cannot invoke 'police power' to accomplish what is otherwise preempted by state statute." *Id*.

Under the Minnesota Constitution, the State Legislature has the exclusive authority to create, organize, administer, consolidate, divide and dissolve local governmental units. Minnesota Constitution, Article XII, Section 3. Pursuant to this authority, the Minnesota legislature has provided for two types of cities in Minnesota: statutory cities organized under Chapter 412 of the Minnesota Statutes, and home rule charter cities, such as Minneapolis. Home rule charter cities "enjoy[] as to local matters all the powers of the state, except when those powers have been expressly or impliedly withheld." *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 347 (Minn. Ct. App. 2002) (citing *A.C.E. Equip. Co. v. Erickson*, 152 N.W.2d 739, 741 (Minn. 1967)); *see also Mangold Midwest Co.* at 820 ("[M]unicipalities have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.").

But no city, including Minneapolis, may pass an ordinance that is in conflict with or preempted by state law. *Mangold,* 143 N.W.2d at 820. The preemption doctrine governs the division of power between the state and the subordinate municipalities within it. *Kuhlman*, 722 N.W.2d at 3. Minnesota law recognizes three types of preemption: (1) express preemption, when the state statute explicitly defines the extent to which its enactments preempt local regulation; (2) field preemption, often referred to as implied preemption, when a city ordinance regulates conduct in a field that the state legislature intended state law to exclusively occupy; and (3) conflict preemption, "when

a city ordinance permits what a state statute forbids or forbids what a statute permits." *Id.* at 4. As detailed below, the Minneapolis Ordinance is invalid under the doctrines of both conflict preemption and implied preemption.

1. The Minneapolis Ordinance conflicts with state law, by forbidding what state law permits.

The Minnesota Supreme Court articulated the standards for both conflict and implied preemption half a century ago in *Mangold Midwest Co. v. Richfield*, 143 N.W.2d 813 (Minn. 1966). In that case, the Supreme Court explained that an ordinance conflicts with state law:

> (a) when both the ordinance and the statute contain express or implied terms that are irreconcilable with each other . . . (b) where the ordinance permits what the statute forbids . . . [or] (c) where the ordinance forbids what the statute *expressly* permits . . . .

Id. at 816-17 (internal citations omitted). The Court also acknowledged that, "generally . . . no conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute." *Id.* at 817. Here, the Minneapolis Ordinance directly conflicts with state law, and it is not complementary to or in aid and furtherance of the statute.

First, the Minneapolis Ordinance forbids what state law permits; specifically, the freedom of private employers and employees to structure employee sick leave benefits to meet the unique challenges of each business—including the freedom to provide no sick leave benefits at all—as opposed to the "one size fits all" approach to sick leave benefits mandated by the Ordinance. –

Minnesota Courts have consistently found ordinances that pose such conflicts are invalid. For example, in *Duffy v. Martin*, the Minnesota Supreme Court invalidated a local ordinance that required drivers to signal before starting parked cars. 121 N.W.2d 343 (Minn. 1963). State law also regulated the matter of traffic regulations and prohibited the moving of a parked car without "reasonable safety," but did not expressly require the signal mandated by the ordinance. *Id.* at 347. Rejecting the argument that the statute and the ordinance were complementary, the Supreme Court reasoned that "we still are confronted with the proposition that the ordinance requires a signal before that movement is made, which requirement is absent from the statute." *Id.*at 348. Thus, the ordinance, despite relating to "safety," conflicted with the statute. *Id.*

Similarly, in *N.W. Residence, Inc. v. Brooklyn Ctr.*, the Court found a city's denial of a permit to operate a residential facility for 18 mentally-ill clients in conflict with state law because "[t]he state would clearly permit the facility to house eighteen residents and local regulation that forbids what the state expressly permits cannot stand." 352 N.W.2d 764, 774 (Minn. Ct. App. 1984). The court in *Board of Supervisors v. ValAdCo* similarly invalidated an ordinance in conflict with state law "because [the ordinance's] setback requirements would prohibit construction of [feed lot] facilities, which the [state pollution control agency] and county have already approved . . . [and Defendants] could be in compliance with the [state] requirements yet be prosecuted under the local ordinance." 504 N.W.2d 267, 272 (Minn. Ct. App. 1993). *See also State v. Apple Valley Redi-Mix, Inc.*, 379 N.W.2d 136, 139 (Minn. Ct. App. 1985) (finding city ordinances in conflict with Minnesota Pollution Control Act because the city "could very well

prosecute under its ordinances a party who is in compliance with the standards set forth in the MPC Act"); *State v. Andersen*, No. A15-0315, 2015 Minn. App. Unpub. LEXIS 932, at *6 (Minn. Ct. App. Sept. 14, 2015) (finding local ordinance preempted because boaters could meet visibility requirements of Minnesota Rule "but violate the placement requirements of the ordinance," "[t]hus, the ordinance prohibits conduct that is not prohibited by the rule"). (Affidavit of Anne M. Lockner dated October 13, 2016 ("Lockner Aff.") at Exhibit 1.)

Here, the Minneapolis Ordinance forbids what state law permits by prohibiting employers from offering fewer or different sick leave benefits than the Ordinance mandates. Graco's policy, for instance—which provided paid sick time benefits by increasing the hourly wages of all factory and warehouse employees in lieu of a set number of paid sick days – is permitted under state law, but forbidden under the Ordinance. Galdonik Aff., at ¶ 18.

Significantly, the Minnesota Legislature has expressly addressed the types of employment relationships for which sick leave should be mandated, and chose to mandate paid sick leave only for one narrow category of private employer-employee relationships, i.e., when employing disabled individuals.[5] Specifically, the Minnesota

[5]When the State Legislature has expressed a desire to implement a general sick leave requirement, it has been more than capable of implementing the necessary statutes, as it has for some state employees. *See, e.g.*, Minn. Stat. § 3.095 ("The Legislative Coordinating Commission shall adopt plans for sick leave and annual leave for the employees of the legislature and of legislative committees and commissions."). In contrast, the Legislature has chosen not to impose a mandate to provide paid sick leave upon any private employers except to the extent they employ disabled adults under the State's Extended Employment Program.

Legislature made the reasoned policy decision to empower the Commissioner of the Minnesota Department of Employment and Economic Development to mandate certain terms for the private employment of disabled individuals, and the Commissioner implemented state-wide regulations requiring that private employers employing disabled adults under the State's Extended Employment Program must provide disabled employees five paid sick days per year. Admin. Rule 3300.2015, subp. 4(A); Minn. Stat. § 268A.15.

Therefore, an employer who provides a disabled employee with five days of paid sick time would comply with the state's 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.

Significantly, the Minnesota Legislature chose not to more broadly mandate that all private employers provide sick leave, as required under the Minneapolis Ordinance. Rather, for employers of employees not in the Extended Employment Program, including the Plaintiffs and their members, state law:

- Permits employers to choose not to offer paid sick leave at all;
- Permits employers to offer sick leave at an accrual rate less than 1 hour per 30 hours worked;
- Permits employers to provide fewer than 48 hours of sick leave in a year;
- Permits employers to refuse to allow unused sick time to roll over to the next year;
- Permits employers to accrue fewer than 80 hours of sick time;

- Permits employers to limit an employee's use of sick days for actual illness and not for use if the children's school is cancelled due to inclement weather;

- 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

- Permits employers to provide sick leave that is *unpaid*.

Yet, the Ordinance prohibits companies with more than 5 employees from making all of these otherwise-lawful choices. Likewise, the sick time policies of Plaintiffs Graco and Otogawa-Anschel currently comply with state law, but come July 1, 2017, those same policies will be prohibited by the Minneapolis Ordinance.

Moreover, companies with less than 21 employees like Otogawa-Anschel, along with most members of Plaintiff National Federation of Independent Business ("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. *See* Minn. Stat. §§ 181.940, Subd. 3; and 181.9413 (defining employers for purposes of the state sick leave statute as those employing 21 employees or more). Yet, the Ordinance now abolishes that exemption—in direct conflict with state law.

The Ordinance also conflicts with administrative regulations. For instance, a Minnesota Department of Human Services Administrative Rule governs the state's "Senior Companion Program" and requires that "[p]ersonnel policies for the senior companion's insurance, vacation, *sick leave*, holiday, etc., shall be consistent with those of the sponsor . . . ." Minn. Admin. Rule 9555.0900 (emphasis added). If a senior companion works in Minneapolis, but the sponsor organization is located outside of

Minneapolis, the sponsor could comply with this state rule and yet violate the Minneapolis Ordinance by offering no sick time, or by offering fewer sick time benefits than is required by the Ordinance. Again, the Ordinance forbids what Minn. Admin. Rule 9555.0900 permits, therefore conflicts with state law, and therefore is unlawful.

Nor is the Minneapolis Ordinance merely complementary to or in furtherance of any Minnesota law.[6] In *Mangold*, the Supreme Court acknowledged that "generally . . . no conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute." *Mangold*, 143 N.W.2d at 817. *See also State v. Kuhlman*, 729 N.W.2d 577, 580-581 (Minn. 2007) ("If the ordinance covers specifically what the statute covers generally, it does not conflict with the statute."). That is not the situation here and cases that have upheld complementary ordinances are distinguishable.

For instance, the Minnesota Supreme Court in *St. Paul v. Olson* held that a local ordinance prohibiting unreasonable acceleration did not conflict with state motor vehicle law because, although the state law did "not have any provision dealing

[6] The City's civil rights-related ordinances are an example of complementary city regulations. Under the Minneapolis Civil Rights ordinances, the City specifically mandates that no employer may discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital status, or status regarding "any term or condition of employment." MINNEAPOLIS, MINN., CODE § 139.40 (2016). Notably, however, the City does *not* mandate any specific employment term. Rather, the City is simply echoing the State's mandate that regardless of what benefits an employer offers, the benefit must be offered equally to all employees. *See* Minn. Stat. § 363A. This is in stark contrast to the Ordinance, which dictates what those benefit-related terms of employment are—terms that the State does not require.

specifically with unreasonable acceleration, the act of unreasonable acceleration does fall within the general [statutory] prohibition . . . against careless driving" as prohibited under state law. *St. Paul v. Olson*, 220 N.W.2d 484, 485 (Minn. 1974). The court reasoned that because the ordinance covered specifically what the statute covered generally, the ordinance did not conflict with state law. *Id.*

Here, however, there is no state statute requiring employers to provide sick leave to all employees—let alone paid sick leave. Therefore, there is nothing to add to or complement. Instead, the Minneapolis Ordinance fits squarely within the precedent of those cases striking down municipal ordinances because they forbid what a state statute permits and accordingly are preempted by state law.

In addition, nowhere within Chapter 181, the chapter entitled "Employment," or any other statute, has the Minnesota Legislature invited municipal regulation of sick leave. The Minnesota Legislature commonly invites municipalities to regulate any particular issue to complement or fill a void in state regulation. Examples abound, ranging across subject matters as varied as tanning beds to tobacco.[7] Here, the

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[7] *See* Minn. Stat. §§ 325H.10 (inviting local ordinances to provide for more restrictive regulation of tanning facilities than is required by statutes); 461.12 (inviting local ordinances to regulate the retail sale of tobacco and tobacco-related devices). Courts often find no intent to preempt local regulation in light of a statute's express invitation for such local regulation. *See, e.g., State v. Westrum*, 380 N.W.2d 187 (Minn. Ct. App. 1986) (statute evinced an intent to allow municipal licensing of food vendors at local fairs); *Blue Earth Cty. Pork Producers v. Cty. of Blue Earth*, 558 N.W.2d 25, 28 (Minn. Ct. App. 1997) (statute and administrative rules "specifically envision county involvement in feedlot regulation"); *Hannan v. City of Minneapolis*, 623 N.W.2d 281 (Minn. Ct. App. 2001) (statute expressly provided for local regulation of potentially dangerous dogs); *In the Matter of the Appeal of Rocheleau*, 686 N.W.2d 882, 890 (Min. Ct. App. 2004) (statute expressly provided for regulation of individual sewage treatment systems by local

Legislature has not identified a role for municipal regulation in connection with mandated employment terms such as sick leave. The Ordinance conflicts with state law and is therefore an invalid action that exceeds the City's legal authority.

2. Alternatively, the Minneapolis Ordinance is impliedly preempted by state law.

Even if the Minneapolis Ordinance did not directly conflict with state law, it would nevertheless be invalid because the Minnesota Legislature has impliedly preempted the field of mandated terms within the employer-employee relationship—best evidenced by Chapter 181, entitled "Employment." The doctrine of implied preemption is "premised on the right of the state to so extensively and intensively occupy a particular field or subject with state laws that there is no reason for municipal regulation." *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 348 (Minn. Ct. App. 2002) (quoting *Mangold*, 143 N.W.2d at 819). "If preemption has occurred, a local law purporting to govern, regulate, or control an aspect of the preempted field will be void, even if the local law is not in conflict with the state law." *Id.* Courts analyze whether an ordinance is impliedly preempted by state law by evaluating four factors set forth in *Mangold*:

> (1) [what is] the subject matter regulated;
>
> (2) whether the subject matter is so fully covered by state law that it has become solely a matter of state concern;

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governments.); *In re Expulsion of M.A.L.*, No. C8-02-739, 2002 Minn. App. LEXIS 1292 at *7 (Minn. Ct. App. Nov. 20, 2002) (statute "specifically recognized the ability of schools and school districts to make regulations regarding the possession of weapons on school property") (unpublished). (Lockner Aff., Exhibit 2.)

(3) whether any partial legislation on the subject matter evinces an intent to treat the subject matter as being solely a state concern; and

(4) whether the nature of the subject matter is such that local regulation will have an adverse effect on the general state population.

Haumant v. Griffin, 699 N.W.2d 774, 778 (Minn. Ct. App. 2005) (citing *Mangold*, 143 N.W.2d at 819). Applying the four *Mangold* factors, the Minneapolis Ordinance is preempted by the extensive state legislation on this subject.

a. The Ordinance seeks to regulate the terms of private employer-employee relationships.

The Minneapolis Ordinance mandates that nearly all private employers provide and track their employees' sick leave and that many provide *paid* sick leave. The subject matter is therefore mandated employment terms within the employer-employee relationship.

In various forums, the City has asserted that the Ordinance is directed to matters of health or safety, but while health and safety may be a stated *purpose* of the Minneapolis Ordinance, it is not the *subject matter* being regulated.[8] Rather, the City is mandating terms within the employer-employee relationship. The Ordinance's subject matter is further evidenced by the fact that implementation and enforcement authority rests not with the Minneapolis Health Department, but rather with the Director of the Minneapolis Department of Civil Rights, which enforces (among other laws) the State

[8] For instance, the Ordinance does not require that sick employees use their non-paid sick time to stay home when they are sick.

and City's non-discrimination laws against employers allegedly engaging in discrimination.[9] *See* MINNEAPOLIS, MINN., CODE § 40.110 and § 40.120.

b. The State's extensive mandates within the employer-employee relationship demonstrate that this subject is solely a matter of state concern.

The second and third prongs of the *Mangold* test also weigh heavily in favor of preemption. The Minnesota Court of Appeals, in a series of cases applying *Mangold*, has struck down ordinances where the subject matter at issue is so fully covered by state law that it has become solely a matter of state concern and likewise, where any partial legislation on the topic evinces the legislature's intent to treat the matter as one solely of state concern. In *N.W. Residence, Inc. v. Brooklyn Ctr.*, the court found that a city's special occupancy standard used to deny a permit to operate a residential facility for mentally ill people was preempted by state law. 352 N.W.2d 764 (Minn. Ct. App. 1984). Discussing the second and third *Mangold* factors, the court noted that the state Public Welfare Licensing Act had already established standards for residential facilities, and the Minnesota Legislature had empowered the Commissioner of Public Welfare to promulgate "extensive regulations to ensure an appropriate environment and services in residential facilities for the mentally ill." *Id.* at 772-73. Accordingly, the Minnesota

[9] In contrast to the situation at bar, the Minneapolis Civil Rights ordinances are an example of (1) where the State has expressly invited municipalities to legislate in the given subject matter, *see* Minn. Stat. § 363A.07 ("Local Commissions") (contemplating the establishment of local commissions created by city charters or ordinances), and (2) where the City's Civil Rights ordinances are entirely congruent and consistent with the State's laws. *Compare* MINNEAPOLIS, MINN., CODE § 139.40 *with* Minn. Stat. § 363A.08-.17.

Legislature had "preempted local authority in the area of ensuring an appropriate living environment in residential facilities for the mentally ill." *Id.* at 721.

Similarly, the court in *Nordmarken v. City of Richfield* also determined that local regulation of the process for land use planning and zoning was preempted by two statutes. 641 N.W.2d 343 (Minn. Ct. App. 2002). The court found that the Legislature had declared its intent to provide Minnesota municipalities with a "single body of law," comprised of the Municipal Planning Act and the Metropolitan Land Planning Act, which together contained a "uniform procedure" for municipal planning. *Id.* at 348-49. "Thus, by its statements of policies and purposes and its enactment of comprehensive, uniform procedural laws for land use planning, the legislature has evinced its intent to occupy the field of the process by which municipal land use and development laws are finally approved or disapproved." *Id. See also State v. Gonzales*, 483 N.W.2d 736, 738 (Minn. Ct. App. 1992) (statute which "involves forfeitures for a wide variety of criminal offenses" preempted municipal ordinance which regulated forfeiture of certain vehicles because "the broad regulation of forfeiture for criminal offenses shows that the area is solely a matter of state concern").

The Minnesota Legislature's extensive regulation in the field of mandated terms within the employer-employee relationship demonstrates its intent to treat the matter as one solely of state concern. Until the City passed the Minneapolis Ordinance, Plaintiffs and their members had been able to look to a uniform set of state laws with regards to

mandated employment terms, including Chapters 175 through 186 of the Minnesota Statutes, which cover labor and industry practices.[10]

Within Chapter 181 alone, entitled "Employment," the state has issued numerous statutory mandates covering various terms within 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).

Yet, despite this extensive regulation, the Minnesota Legislature chose not to mandate that all employers provide sick leave, paid or unpaid.

Significantly, the Minnesota Legislature has also repeatedly addressed the regulation of sick leave benefits. For example, through the statute entitled "Sick Leave Benefits; Care of Relatives," that applies only to employers with 21 or more employees,[11] the Minnesota Legislature chose to regulate how sick time that a private employer chooses to offer can be used. Minn. Stat. § 181.9413. Despite this legislative

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[10] In addition to establishing the Department of Labor and Industry (Ch. 175), these chapters regulate 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).

[11] In contrast, the Minneapolis Ordinance requires employers with more than five employees to provide paid sick leave. MINNEAPOLIS, MINN., CODE at § 40.220(g). Plaintiffs Otogawa-Anschel and the Minnesota division of NFIB, which employ 11 to 13 and 17 employees, respectively, are therefore not subject to Minnesota's statute governing use of sick and safe time that an employer chooses to provide (Minn. Stat. 181.9413) , but are subject to the Ordinance. Anschel Aff., at ¶ 4; Hickey Aff., at ¶ 2.

regulation of sick time, the legislature chose not to require that private employers provide, track, or pay sick leave benefits to their employees. Rather, the Minnesota Legislature chose a more modest regulation of sick leave benefits, merely requiring that if a private employer chose to provide sick leave benefits in the first place, the employer allow an employee to "use personal sick leave benefits . . . for absences due to an illness of or injury" to the employee's family members as further defined within that section. *Id.* The legislature also chose to provide that an employee may use for certain defined safety-related purposes any sick time benefits that her employer chooses to provide. . (Exhibit D to Complaint, *A Guide to Minnesota's Laws About Sick and Safe Leave*, Minnesota Department of Labor and Industry).[12]

The Minnesota Legislature has also chosen to broadly regulate various other types of leave that must be provided by private employers. Through Minnesota Statute § 181.92, the Minnesota Legislature chose to regulate leave for adoptive parents, requiring employers who permit paternity or maternity leave to biological parents to extend the benefit to adoptive parents. Similarly, § 181.945 through 181.9458 regulate bone marrow, organ, and blood donation leave, requiring employers to grant paid leave

[12] Further demonstrating the state's intent to treat the matter as a state concern, Minnesota administrative law also covers sick time. For example, Minnesota Department of Health Administrative Rule 4655.1400 outlines the responsibilities of the Administrator in Charge of Boarding Care Homes. These responsibilities include formulating "personnel policies, practices, and procedures that adequately support sound patient or resident care," including those "which specify hours of work, vacations, illness, *sick leave*, holidays, retirement, employee health services, group insurance, promotions, personal hygiene practices, attire, conduct, disciplinary actions, and other items which will enable employees to perform their duties properly." *Id.* (emphasis added); *see also* Minnesota Department of Human Services Administrative Rule 9555.0900.

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. Significantly, the Minnesota Legislature chose not to include in any of these statutes mandating various categories of employee leave any provisions requiring private employers to provide, track, or pay for sick leave for all employees—as required by the Minneapolis Ordinance.

The Minnesota Legislature has similarly addressed sick leave in numerous statutes and rules requiring that in instances where private employers choose to provide sick leave benefits they must provide them consistently or take such voluntary benefits into account when calculating separate benefits, 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.

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.

Given the state's extensive regulation of the employer-employee relationship, including numerous statutes and state regulations that specifically address the state's regulation of sick leave and other employee leave, the Minnesota Legislature has clearly evidenced its intent to treat the regulation of private employment terms as solely a matter of state concern. *Mangold*, 143 N.W.2d at 820. The broad mandates of the City's Ordinance are wholly at odds with this intent.

c. The broad mandates of the City's Ordinance will have an adverse statewide impact.

The fourth *Mangold* factor considers whether the "local regulation will have an adverse effect on the general state population" and weighs heavily in favor of preemption. *Haumant v. Griffin*, 699 N.W.2d at 778 (internal citation omitted). Courts look to whether the local regulation will cause a "patchwork" of regulation that would be detrimental to the state as a whole. For instance, in *ValAdCo* the court found a local ordinance regulating pollution from animal feed lots impliedly preempted:

> If every township were allowed to set its own pollution control conditions, the result could be a patchwork of different rules. Compliance with varying local rules would be burdensome and would have a detrimental effect on the efficient operation of the state's agricultural industry.

504 N.W.2d 267, 271 (Minn. Ct. App. 1993). Similarly, in *City of Birchwood Vill. v. Simes*, the Court of Appeals held that "permitting each municipality to enact different regulations regarding the size of boats that may be moored to private docks would have

an adverse effect on the public . . . [because] a boat that is permitted at one dock may not be permitted at a dock across the lake." 576 N.W.2d 458, 462 (Minn. Ct. App. 1998).

Municipal regulation of mandated employment terms like sick time would have an even more dramatic adverse effect on the general state population than the ordinances on feedlots and boat size that the Minnesota Court of Appeals struck down. The broad mandates of the Minneapolis Ordinance are not directed to any single industry or subgroup (such as feedlot operators or boaters), but instead would apply broadly to virtually any employer anywhere in the state that allowed employees to provide services, attend meetings, or telecommute from within the City of Minneapolis. Minnesota companies include global companies like Graco who have employees from Rogers, Anoka, other states, and even other countries such as China, routinely working within the Minneapolis city limits. McLaughlin Aff., at ¶ 8. They also include small entrepreneurial companies like Otogawa-Anschel which, despite being a fraction of Graco's size with just one location, has employees who work all over the metro area, visiting multiple job sites within a single day—some, but not all of which, are in Minneapolis. Anschel Aff., at ¶¶ 3, 10. Staffing and recruiting agencies place employees with companies throughout the state and many of those employees are in Minneapolis one day and in another city the next. Farr. Aff., at ¶ 4. Other companies outside of Minneapolis have employees that telecommute from home in Minneapolis. Hickey Aff. at ¶ 7; McMillan Aff. at ¶ 6.

The Minneapolis Ordinance would impose an immediate and substantial burden on Plaintiffs and their members. If this Court does not grant a temporary injunction, the

Plaintiffs and their members will be forced to spend a great amount of time, resources, and money to make significant changes to their policies and infrastructure that they will never recover. McLaughlin Aff., at ¶ 3; Farr Aff., at ¶ 12; Anschel Aff. at ¶ 18. As is the case with presumably many other affected companies, the Plaintiffs and their members have no systematic way to determine when or if an employee hits 80 hours of work "within the geographic boundaries of Minneapolis" within a year as required by the ordinance. Anschel Aff. at ¶ 12; McLaughlin Aff. at ¶ 5. This is particularly challenging for companies like Graco, Otogawa-Anschel, staffing and recruiting companies, and any other companies with employees who have a need to cross the borders of Minneapolis with any regularity.

Once affected employers determine whether they employ any "employees" as defined by the Minneapolis Ordinance, they must train employees on how to track time within each municipality or reconfigure information systems to do so; coordinate with a payroll processing company and benefits management company to ensure that those companies have set up their tracking function correctly; track accrual, usage, year-to-year banking, and use of the sick time; and comply with the Ordinance's obligation to keep paperwork for the required length of time. Loon Aff., at ¶ 10. And this description of burdens just covers the administrative cost of becoming compliant with the Ordinance; it does not include the costs of providing the actual added benefit to the employees. *Id.*

Another issue courts consider when applying the fourth *Mangold* factor is the degree to which the subject matter is unique to a locality such that local regulation is

especially warranted. *See, e.g., Hannan v. City of Minneapolis*, 623 N.W.2d 281, 286 (Minn. Ct. App. 2001) (determining that "the regulation and control of dangerous dogs is a wholly legitimate issue for municipal interest because it primarily affects the local populace."). This analysis stems from the pre-*Mangold* case *Brooklyn Center v. Rippen*, in which the Supreme Court acknowledged that a "liberal interpretation of what is implied…is limited to those matters which are *peculiarly subject to local regulation.*" 96 N.W.2d 585, 588 (Minn. 1959) (internal citation omitted) (emphasis in original). Where the subject matter of the regulation "is not *peculiarly local in character*, the regulatory power under the general welfare clause is not to be extended beyond its scope unless it clearly appears that the legislature so intended." *Id.* (emphasis in original).

In that case, a Brooklyn Center ordinance mandated boating rules and requirements and also that boaters obtain a license to operate on lakes within the geographic boundaries of the village. *Id.* at 586. The Supreme Court held that Brooklyn Center was "without power"[13] to enact the ordinance, because the "activity" addressed—boater licensing—was not peculiarly local in character, despite the fact that

[13] Notably, the Supreme Court stated that it was not issuing a preemption decision, *see id*. at 587 ("We need not consider other issues relating to alleged preemption of the licensing power by the state") because "[a] consideration of the licensing power alone requires a reversal." *Id*. However, seven years later in *Mangold*, the Supreme Court considered *Brooklyn Center's* decision to be based on preemption, and its analysis regarding the degree to which the activity was local in nature as falling within the fourth implied preemption prong. *See Mangold,* 143 N.W.2d at 821 ("the grounds for finding preemption was that the subject matter was of such a nature that there would be unreasonably adverse effects upon the general populace of the state if local licensing were allowed.").

the licensing requirement would apply only to boating on certain lakes. *Id.* at 589. The Supreme Court explained:

> Where an activity by its nature is customarily enjoyed by its adherents over a wide area which encompasses a number of municipalities or governmental subdivisions, it presents a statewide problem and not a matter which is peculiarly subject to local regulation[.] . . . If the Brooklyn Center ordinance is valid . . . then the same licensing ordinance may be adopted by all other municipalities which have a lake or a portion of a lake within their boundaries. The resulting multiplicity of local license requirements would saddle boat owners with burdensome consequences that are both unreasonable and absurd.

Id. at 588.

The Supreme Court's reasoning in *Brooklyn Center* is instructive here. Terms within an employer and employee relationship, and sick-time benefits specifically, are an issue of statewide concern. Minneapolis is not uniquely impacted by the issue, and the City's Ordinance would dramatically impact employers outside of the City. The City, in fact, recognized that the problems the Ordinance is intended to address are present statewide and are not peculiar to Minneapolis, noting the "public health implications … *in Minnesota*." *See, e.g.*, MINNEAPOLIS, MINN., CODE § 40.20(g) (2016) (emphasis added); *see generally Id.* at § 40.20(l)-(n) (citing national statistics). This further affirms that the Minneapolis Ordinance is preempted by state law and that Plaintiffs are likely to succeed on the merits, weighing in favor of injunctive relief.

3. The City of Minneapolis lacks the authority to regulate beyond city boundaries.

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) ("The right given to the people within prescribed territorial limits to adopt a complete municipal code does not warrant the assumption by them of power over territory and people beyond those limits, even though the control of such territory and people would be convenient and gratifying to the people within the city.").

Here, the Minneapolis Ordinance is not confined to the "internal concerns" of Minneapolis, because business based all over the state—and even in other states and countries—would come within the purview of the Ordinance if they have employees who work for at least 80 hours a year within Minneapolis city limits. Although the Ordinance focuses on employees "within the boundaries of the City of Minneapolis," the City ignores the fact that many business, including many Plaintiffs and their members, are located outside of the City but employ those who work at least 80 hours within the City. Therefore, the Ordinance improperly expands the City's power outside of "its own limits" and beyond "its own internal concerns," rendering the ordinance invalid.

B. If injunctive relief is not granted, Plaintiffs will be irreparably harmed.

The Plaintiffs and their members will suffer irreparable harm should the temporary injunction be denied. Conversely, the City will suffer no harm should the injunction be granted. Thus, the injunction is warranted. *See Pacific Equip. & Irrigation,*

Inc. v. Toro Co., 519 N.W.2d 911, 915 (Minn. App. 1994). Under the Ordinance, businesses have been given less than a year to adopt sweeping changes to their accounting systems, information and technology systems, and business practices and policies. Once implemented, the Ordinance will require employers to monitor where their employees work on an hour-by-hour basis like never before. For the first time, a term central to an employee's compensation will vary in legality for employees doing the same job depending on whether the she works in Minneapolis or elsewhere in the state.

Under the enacted ordinance, the Plaintiffs and their members will have to begin providing paid sick leave benefits on July 1, 2017. But employers, including Plaintiffs and their members, have already started the challenging and costly exercise of taking the necessary steps to become compliant. McLaughlin Aff., ¶ 3. If the Minneapolis Ordinance is held invalid, Plaintiffs and their members will have been irreparably harmed by incurring costs and altering information systems in ways that prove unnecessary—and may need to be undone. Forcing companies to comply with the Ordinance before its validity is established could also cause further confusion and hardship for employers and employees when those policies and systems have to be changed back if Plaintiffs are successful in this lawsuit.

Plaintiffs and their members will have no legal recourse to recover these expenses from the City. Thus, the monetary damages that Plaintiffs suffer preparing for and complying with the invalid Minneapolis Ordinance are irreparable. *See DiMa Corp. v. City of Albert Lea*, No. A12-1284, 2013 Minn. App. Unpub. LEXIS 328, *15–16 (Minn.

Ct. App. Apr. 15, 2013) ("Although the parties have provided only limited briefing on this issue, it appears that the city would be immune from liability for damages and, thus, that DiMa will suffer irreparable harm from the denial of its motion for a temporary injunction."). (Lockner Aff., Exhibit 3.) Accordingly, this factor too weighs in favor of an injunction.

C. The nature of the parties' relationship supports granting Plaintiffs' Motion.

The "nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief" also weighs in favor of granting the temporary injunction. *Dahlberg*, 137 N.W.2d at 321. Before the enactment of the Minneapolis Ordinance, Minneapolis did not intrude on the terms of private employer-employee relationships by imposing mandates above and beyond what state law requires as the City now attempts to do.

The City's relationship with the Plaintiffs will not change should the temporary injunction be granted. The City chose to delay the effective date for the Ordinance by more than a year, and clearly signaled that it does not believe there is any urgent need for enforcement. In the absence of an urgent need to implement the ordinance, the *status quo* should be maintained. *See, e.g., Dailey v. City of Long Lake*, No. C3-98-1663, 1999 Minn. App. LEXIS 219 (Minn. Ct. App. Mar. 9, 1999) (unpublished). (Lockner Aff., Exhibit 4.) In *Dailey*, the appellate court affirmed the district court's grant of a temporary injunction to halt the revocation of a conditional use permit under a zoning ordinance, finding that because the plaintiff's business had been operating before the change by the city, "the parties' relationship could be maintained while awaiting trial

on the merits." *Id.* at *6. Such is the case here. Where the City is changing the bedrock of its relationship with business, the parties' relationship supports an injunction.

D. Public interest favors granting Plaintiffs' motion.

Public policy weighs in favor of granting a temporary injunction in two ways. First, the public interest is advanced by ensuring that only valid city ordinances are enforced against residents and businesses alike. "[M]aintaining the status quo . . . is the most reasonable [way] to solve any public policy considerations that would result in either denying or granting the temporary injunction" while determining whether the City's action is valid. *See Reibel v. County of Washington*, No. 82-CV-12-3111, 2012 Minn. Dist. LEXIS 185, at *11 (Minn. Dist. Ct. Oct. 3, 2012). (Lockner Aff., Exhibit 5.)

Second, delaying the Ordinance's effective date until this matter is resolved is not contrary to public policy. *See City of St. Louis Park v. Fantasy House*, No. CX-95-1709, 1996 Minn. App. LEXIS 61, at *8 (Minn. Ct. App. Jan. 9, 1996) (unpublished) (Lockner Aff., Exhibit 6). In *City of St. Louis Park*, the appellate court affirmed the district court's finding that "[t]he City of St. Louis Park, as a matter of public policy, has allowed this business to function . . . for over 12 years without any problems. There is no emergency nor factual basis to warrant a present change." *Id.* Similarly, here, public policy weighs in favor of a temporary injunction.

IV. CONCLUSION

For the reasons above, a temporary injunction is appropriate in this case. The injunction will preserve the status quo with no harm to the City until this matter can be adjudicated on the merits. Accordingly, Plaintiffs respectfully request that this Court:

(1) consolidate this motion for a temporary injunction with a hearing on the merits of Plaintiffs' preemption arguments to invalidate the Ordinance under Rule 65.02(c); and (2) enjoin the City from enforcing the Minneapolis Ordinance.

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
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