

Litigation Update

Right now in the United States, eight (8) states, 29 cities, two (2) counties and Washington, D.C., all have paid sick leave laws on their books. These laws allow people who predominantly work for employers within the jurisdiction of the particular state or local government, to accrue and use paid sick time for various health concerns for both themselves and their family.

Two (2) of these laws are California's Healthy Workplaces, Healthy Families Act of 2014 (California Act) and the Massachusetts Earned Sick Time Law of 2014 (Massachusetts Law). Both of these laws went into effect in 2015. The Massachusetts Law is very similar to the California Act.

In 2014, several interstate rail carriers sued the state of Massachusetts in the Federal District Court for the District of Massachusetts over the application of the Massachusetts Law to them. On June 23, 2017, the First Circuit Court of Appeals held that the Railroad Unemployment Insurance Act (RUIA) preempted the part of the Massachusetts Law that required that employees accrue and use paid sick leave for their own illnesses, and, therefore that part of the Massachusetts law does not apply to employees of interstate rail carriers. However, the court also stated that questions remain as to whether the parts of the Massachusetts Law that require employees to accrue and have access to paid sick leave to care for family members or deal with issues of domestic violence may also be preempted by RUIA or other federal laws. The case is pending to determine those issues.

During this same period, several interstate rail carriers also sued the state of California claiming that the California Act should not apply to railroad employees because, they claimed, RUIA preempts the application to railroad employees. As explained further below, on October 10, 2017, the U.S. District Court for the Eastern District of California agreed in part.

Much like the First Circuit, the California District Court found that the RUIA preempted the provisions of the state law that requires paid leave for an employee's **own** illness. This means that the state law that requires an employee to be able to accrue and have access to a certain amount of paid sick leave would not apply to railroad employees, instead, their collective bargaining agreements control. However, unlike the First Circuit, the California District Court went on to hold that RUIA does not preempt the state law requirements for paid sick leave for time spent caring for a sick family member or due to domestic violence. While this might mean that railroad employees would be entitled to such paid leave, the carriers have also claimed that those provisions are preempted by the Railway Labor Act and ERISA. The California District Court did not reach those issues yet. The court's decision is further explained below.

Basically, the court's determination revolved around the "preemption provision" contained in RUIA. This provision expressly provides that "[n]o employee shall have or assert any right to unemployment benefits under an unemployment compensation law of any State with respect to unemployment . . . or to sickness benefits under a sickness law of any State with respect to sickness periods occurring after June 30, 1947, based upon employment (as defined in this chapter)." 45 U.S.C. § 363(b).

The court held that the California Act was not entirely preempted by RUIA's "preemption provision" because Congress' goal in enacting RUIA was to create a national short-term railroad worker disability insurance program that expressly preempted state laws which already provided such benefits. As such, the purpose of the preemption clause was not to supersede all state laws that compensate railroad employees for taking a day off for any tangentially health-related reason, but rather to create a uniform standard for "sickness benefits" that displaces similar state laws.

Accordingly, the court then held that if a state law offers what RUIA defines as a "sickness benefit," then RUIA preempts it. As defined by the court, "sickness benefits" under RUIA are wage-replacement payments for covered employees who are unable to work because they are injured, ill, sick, or have an issue related to pregnancy or child birth; the state law benefits need not be identical or duplicative of RUIA to trigger preemption, they need only meet RUIA's general definition as determined by the court.

Having defined the scope of RUIA preemption in this manner, the court then assessed which California Act provisions it possibly reached. Basically, the California Act offers covered employees an hour of paid sick leave for every 30 hours worked or a minimum of 24 hours of paid sick leave per year. Cal. Lab. Code § 246(b)(1), (4). Section 246.5(a) then provides:

- (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:
 - (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, *an employee or* an employee's family member.
 - (2) For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in subdivision (c) of Section 230 and subdivision (a) of Section 230.1.

(Emphasis added)

Accordingly, the court determined that the issue concerned the three (3) emphasized words in section 246.5(a)(1) – "*an employee or*" – which allow railroad employees to use paid sick leave on days they cannot work because of their own sickness, injury or pregnancy/childbirth reasons. As such, the court held that RUIA preempts those provisions in section 246.5(a)(1) that allow railroad employees to use accumulated paid leave on days when they cannot work because of their own sickness or injury. However, the court went on to hold that RUIA does not preempt the provisions in sections 246.5(a)(1) and (a)(2) that allow railroad employees to use their paid sick leave on days spent caring for family members or seeking protection from domestic violence, sexual assault or stalking as RUIA does not so much as mention these other, substantively different benefits. While the carriers argued that these provisions were preempted by the Railway Labor Act and ERISA, the court did not reach those issues.

At this point, we are uncertain as to what the ultimate outcome will be in the case. The court gave the parties 30 days from the court's October 10, 2017, ruling to either file a stipulation as to entry of final judgment or a proposed schedule for litigation of the remaining counts which would include whether or not the provisions on paid sick leave for caring for family members or seeking protection from domestic violence might be preempted by the Railway Labor Act or ERISA.

What does seem clear, however, after the Massachusetts and California cases, is that state laws that require railroad employers to pay railroad employees a certain amount of paid sick leave for their **own** illness or injury are preempted by the RUIA and therefore unenforceable. We will monitor the case dockets to see how the district courts resolve the rest of the issues.