The Dissent: The Business Perspective on the Effects of Another Mandate on Employers

A Response to the Working Families Task Force Report

Authors

Chicagoland Chamber of Commerce | Illinois Retail Merchants Association
INTRODUCTION

The Chicagoland Chamber of Commerce ("the Chicagoland Chamber") and the Illinois Retail Merchants Association ("IRMA") served on Mayor Rahm Emanuel’s “Working Families Working Group.” As representatives of our members and the business community, our organizations respectfully and diligently provided thoughtful and practical reasons why City-only mandated labor policies would be harmful to our fragile local economic climate.

Though we were very vocal that the issue of paid sick leave cannot be viewed in a policy vacuum, the working group decided to move forward with a recommendation for a local mandate. Employers in Chicago are faced with federal, county, and City mandates. All of these varying regulations are costly to administer and maintain in an economic environment where resources are scarce. The cumulative impact of the mandates that have been forced upon the employer community by government in the past two years has taken a toll. There have been significant unintended consequences for employers and employees, especially for employees at the lowest skill levels. Both the federal Affordable Care Act and the recent implementation of Chicago’s starting wage mandate have had a demonstrable impact on the number of hours available for an employee to work, which has negatively affected an employee’s take-home pay. In the end, after hearing from both employers and employees, we have seen that mandating well-intentioned labor policies will likely harm the very employees such policies are intended to help.

For the reasons outlined below, the Chicagoland Chamber and IRMA are opposed to the policy recommendations set forth in the working group report regarding paid sick leave. In addition, while we are in agreement with the conclusion that there be no recommendation for an ordinance regulating scheduling practices, we have strong concerns with some of the ideas and statements expressed in that section of the report.

We appreciate having had the opportunity to sit at the table and add to the discussion, but we respectfully submit a dissenting opinion on the working group recommendations.

“You cannot ask the very employers who provide the jobs, pay the wages, and invest the capital in our City to pay for past fiscal and budget indiscretions and at the same time impose significant and on-going operating cost increases on them and expect continued economic development in the neighborhoods.”

— Chicagoland Chamber and IRMA
Background

Chicago continues to face massive fiscal and economic challenges. These challenges are decades in the making and will not be solved overnight. The City’s employer community- from the central business district to the neighborhoods in every community - has a vested interest in being a partner in getting our City back on track. However, we cannot be supportive of policies that only make it more difficult to expand and grow Chicago’s economic lifeline and vital business community.

Policies such as paid sick leave (and, the starting wage before it) are immediate reactions to a lack of economic growth and development. Irresponsible City fiscal policy, economic policy and budgeting tactics along with costly mandates directly targeting business have made Chicago a difficult place to do business and has contributed to the rise of the Central Business District at the expense of the neighborhoods. You cannot ask the very employers who provide the jobs, pay the wages, and invest the capital in our City to pay for past fiscal and budget indiscretions and at the same time impose significant and on-going operating cost increases on them and expect continued economic development in the neighborhoods. Chicago is at a crossroads in more ways than one. It’s time to get real about policies that provide actual help to the community and separate the facts from emotion.

In the past 14 months, Chicago’s employers have experienced significant tax increases and regulations due to government mandates.

City of Chicago-only starting wage ordinance, which increased labor costs for employers to $13 per hour for each employee by 2019.

City of Chicago-only plastic bag “ban” ordinance. The ban took effect in August 2015 and has been a significant cost to retailers.

City of Chicago $588 million-plus property tax increase that disproportionately burdens the business community. Employers will not receive assistance or tax breaks. In fact, the Mayor is seeking to advance legislation in Springfield to exempt many homeowners from the increase which would place even more of the burden on the employer community. Chicago is at a crossroads in more ways than one.

City of Chicago ban on the sale of flavored tobacco products (including menthol) within 500 ft. of a school resulting in lost sales with no measureable benefit.

The Affordable Care Act, which ramps up and expands each January, continues to impact employers hiring and labor decisions. Employers have had to cut hours and make administrative changes in order to meet the stringent requirements.

Cook County sales tax. The sales tax just took effect January 1, 2016 and increases the sales tax rate from .75 percent to 1.75 percent. This increases Chicago’s total sales tax from 9.25 percent to 10.25 percent (and higher in the McPier District), earning Chicago the title of the highest sales tax rate in the Country.
Finally, unequivocally, the ability of an employer to pay for and provide paid sick leave cannot be the barometer by which we view how an employer values their employee. Every employer faces different challenges, and in the current economic climate there are many. Many factors affect employers’ fiscal capabilities, including but not limited to, location, product being sold, competitive markets, slim profit margins, and other benefits already being provided to employees.

Happy employees are productive employees, and there are many tools that employers use to keep their workforces motivated. Not all employers have the same financial capacity to provide benefits in accordance to a mandated uniform standard. We must not demonize or inhibit employers who are unable to provide paid sick leave. **We should not forget that the overwhelming majority of employers in Chicago are working families too.**

**Chicago’s Fiscal and Economic Challenges: A Snapshot**

In January 2016, Mayor Emanuel requested, and the City Council approved, a $2.45 billion¹ borrowing plan. This is in addition to a $1.1 billion² borrowing plan approved in 2015. Various credit ratings agencies have downgraded the credit ratings for the City³, Chicago Public Schools (CPS)⁴, and Chicago Park District, making this borrowing more expensive.

Chicago Public Schools (CPS) passed a severely out-of-balance budget with an over $500 million deficit. The City of Chicago recently passed a massive $588 million-plus property tax increase on its citizens that will impact the employer community. For example, the 42nd Ward, where much of the Central Business District is located, will pay 1/4 of the property tax increase.⁵ In addition, a future property tax increase has not been ruled out by the City.

Additionally, Cook County’s (“the County”) decision to pass a nearly $500 million sales tax increase to generate revenue for the County further burdens residents and employers by removing purchasing power from citizens and into government coffers. Similar to the City, the County has not ruled out the need for more revenue next year, even after the late addition of an increased hotel tax to round out its budget.

The Mayor and City Council have yet to guide Chicago out of its legacy fiscal challenges, but continue to make it harder to do business in Chicago while demanding more from the employer community every year. Further, the City has not been transparent on the next steps that will be taken to stabilize Chicago’s finances.

**The employer community, above all else, craves certainty.** A potential second City property tax and a desire to further shift more of the first round of the property tax burden onto businesses and renters through a doubling

---

of the homeowners’ exemption\(^6\) creates great uncertainty as employers decide how to invest continually dwindling resources and capital. \textit{Businesses, unlike government, can’t endlessly pass the costs to someone else or use borrowing gimmicks.}

\subsection*{Policy Challenges: A Patchwork Approach}

Continuing to compound Chicago’s economic stability, the City has mandated a Chicago-only increase in starting wage to $13.00 per hour by 2019 and indexed to inflation thereafter. An attempt at a City plastic bag ban has added thicker plastic bags to the waste stream and cost employers tens of thousands of dollars on the low end and several million dollars for large businesses. These are resources that could have been otherwise invested in Chicago through more hiring, more benefits, and/or store expansion. But the need to rush through questionable and short-sighted environmental policy resulted in wasted, valuable resources.

On January 19\(^{th}\) the Chicagoland Chamber and the Loyola Quinlan School of Business released the 2016 Chicagoland Small Business Outlook Survey. The survey was conducted in the fall of 2015. Small businesses are defined as companies with fewer than 500 employees. The results were revealing as 44 percent of business owners feel negatively impacted by local taxation, 26 percent by health policy, 22 percent by minimum wage policy, and 17 percent by changes in local ordinances. With a whopping 85 percent of businesses’ concerned with economic conditions and 80 percent concerned with taxes. Notably, there was a significant drop in confidence in the economy as only 28 percent believe the economy will strengthen in Chicago in the next year down from 42 percent last year.\(^7\)

Chicago continues to create and encourage a patchwork of government mandates as it pursues a Chicago-only paid sick leave mandate, further suppressing job creation and economic growth and opportunity. Continuing to limit employers’ ability to operate and put people back to work has the greatest effect on residents working at entry-level, low-skilled jobs. While other cities and states have mandated paid sick leave ordinances, the economic reality of Chicago is vastly different from most of these cities.

\textit{And, data has failed to show that mandated paid sick leave has actually created the benefits that supporters claim such policies will produce.}

\subsection*{Impact on Local Economic Development: Cumulative Impact}

The Chicagoland Chamber and IRMA have met with many members of the City Council and a recurring theme is the desire to spur local economic development.

As more mandated regulations are enacted, Chicago’s economic future weakens. Uncertainty looms for employers as these mandated policies are only making it more difficult for young entrepreneurs to start and grow their business. Employers will respond to a Chicago-only paid sick leave mandate by increasing prices,

\begin{flushright}
\footnotesize
\end{flushright}
decreasing employee benefits and hours, limiting expansion, possible cuts to labor, more extensive use of
technology and, as a result, likely reductions in employee headcounts over time.

For example, recently Buffalo Wild Wings CEO Sally Smith, in an interview with the Wall Street Journal,
expressed that higher labor costs will have an impact on expansion sites. In particular, when asked how
minimum wage increases are affecting the way she makes business decisions; she responded that “you look at
where you can afford to open restaurants. We have one restaurant in Seattle, and we probably won’t be
expanding there. That’s true of San Francisco and Los Angeles, too. One of the unintended consequences of
rising minimum wage is youth unemployment.” Further, when asked if she is turning to automation to reduce
labor costs, she said they will eventually have tablets where guests can place their own order from the table and
pay for it. On top of all of this, Buffalo Wild Wings increased prices by 2.1 percent in November 2015. Smith
said that with continued wage pressure, Buffalo Wild Wings will have to continue to look at how much to

While some labor intensive Chicago businesses have closed stores, conducted layoffs, and cut
employee hours, the government continues to find ways to demand more from them. Adding
a Chicago-only paid sick leave mandate, which increases the cost of labor, is a fiscally and
economically irresponsible recommendation.

These labor mandates affect large and small businesses alike. Larger businesses are often economic
anchors for further local development, which attracts more businesses and jobs. Other stores locate around
these anchors because customers will shop and spend their money at these “destination” businesses.
Communities already suffering from a lack of development will see their challenges increase as labor
mandates continue. Finally, businesses on the City borders face very real competition from neighboring
jurisdictions that offer lower taxes, higher incentives, and no costly labor mandates.

**Costs to the Employer and Employee: Unintended Consequences**

The claims that paid sick leave will save businesses money, lower costs, particularly costs from turnover, and
prevent the spread of disease, are weak at best. In looking at recent news and the current minimal research
and studies that tackle the impacts of paid sick leave, readers must be wary. In the fall of 2015, 80 Boston
College students fell ill with norovirus after eating at a Chipotle\footnote{Freyer, Felice J. “Norovirus eyed as cause of 80 BC student’s illness.” Boston Globe. 08 Jan. 2015. Web.
inspection/n75qe4W5No9dvKPU44xbgP/story.html>}, where a sick employee had come into work.
**However, Massachusetts has a paid sick leave policy**\footnote{Massachusetts Court System. Massachusetts Law about Employment Leave. Web. http://www.mass.gov/courts/case-legal-
res/law-lib/laws-by-subj/about/employmentleave.html#Sick Leave}, posing the question as to whether paid sick leave
effectively prevents a sick employee from coming into work.

The Working Group’s employee focus groups included numerous personal stories of employees who have
lost hours, and even jobs, because of the City-only mandated starting wage increase. For those employees
with lost hours, they are now making the same amount of money, but working fewer hours. In certain sectors,
in jobs at the lowest skill levels, those lost hours are going to teens who are employed at the lower teen wage.
The adult, single working parent who is the targeted beneficiary of these government mandates, has not seen any real benefits and, most likely, will not.

Additionally, the Institute for Women’s Policy Research (IWPR) study on San Francisco shows that 14.2 percent of all the employers surveyed reported that the paid sick leave mandate negatively impacted their profitability. Compare this to the 0.6 percent that reported that their profitability had improved. Further due to the ordinance, 12.8 percent decreased worker’s vacation time, converted vacation time to paid sick days and/or reduced raises/bonuses. While 32.2 percent of workers reported layoffs or reduced hours, reduction in bonuses and benefits, and/or increased work demands. These numbers, when put into context, demonstrate that costs were not lowered and money was not saved.

The consequences of higher labor costs will adversely impact employers, employees, and all consumers. Therefore, two working group organizations representing the breadth and depth of the business community, the Chicagoland Chamber and IRMA respectfully but strongly oppose the recommendation to move forward with a local paid sick leave mandate.

CHICAGO’S CITY COUNCIL SHOULD REFRAIN FROM PASSING ADDITIONAL LABOR MANDATES INCLUDING A PAID SICK LEAVE ORDINANCE

As of January 2016, four states, 20 local jurisdictions, and Washington, DC have mandated that private employers provide paid sick days for qualifying employees. While proposals, similar to other policies implemented across the county, have been introduced, including bills in the Illinois General Assembly and the Chicago City Council, none have passed. People get sick no matter where they live. There is nothing unique to Chicago, or any other jurisdiction, that would support a patchwork of legislation on this issue.

The recommendation for a Chicago-only paid sick leave ordinance draws largely from the laws that are already in effect in other parts of the United States, but with two major caveats: an employer can choose to offer paid time off (PTO) instead of paid sick leave and employees could choose to carry over some of the accrued time to use alongside time taken under the Family and Medical Leave Act (FMLA). The PTO provision is a critical concession for employers who have already streamlined their benefits packages to allow employees to simply accrue paid time off. In both cases, the same rules for accrual and coverage apply.

Advocates supportive of mandated paid sick leave suggest that reduction of disease and illness, reduced turnover, and increased workforce productivity are results of a mandate. But there are many employers in the retail and restaurant industries in Chicago that have offered paid sick leave or some other PTO benefit for years and these employers have not seen a change in their workforces or productivity as a result of providing the benefits. For the past year, the Chicagoland Chamber and IRMA have been having in-depth discussions with members regarding the types of benefits they offer and what changes they’ve seen in their workforce as a result

of offering certain benefits. We found that, for example, in the grocery category, turnover is around 50 percent, although for some grocers, the turnover is higher, especially at the lowest-skilled positions. This is the case even for grocers that offer vacation, paid sick leave, short-term disability and/or some other forms of PTO. Simply put, most of the non-skilled jobs have high turnover due to the flexible nature of the job. These jobs tend to be jobs that people choose as their entry into the workforce to gain skills, a way to earn extra cash while they are in school pursuing a different career, a way to supplement income from another full-time job or a means to supplement retirement income. Some are looking to move into retail or restaurant management and possibly even looking to rise to a corporate position within retail, or to use their experience to open and/or own a restaurant. There are countless stories of entry-level associates that stayed with the company and moved through management to corporate positions and others that moved from line cook to restaurant owner. The bottom line is that paid sick leave, or any other benefit, doesn’t reduce turnover for a job that the overwhelming majority of employees are not looking to turn into a permanent career.

In addition, we should further explore what the advocates have touted as minimal impact to business as a result of paid sick leave laws enacted in other jurisdictions. The claims have been that adding paid sick leave has not caused businesses to leave those cities and that the mandate has produced minimal cost increases. As with most government unfunded mandates on business, it is rare that one singular mandate causes a business to close its doors. In San Francisco the data is telling. The number of business openings per year increased from 3,956 in 1992 to 17,754 in 2011 or an increase of 348.8 percent. During the same time, business closings and location changes increased from 1,298 in 1992 to 12,767 in 2011, an increase of 883.6 percent, according to an October 2014 report by the City’s Budget and Legislative Analyst. Between 2009 to 2011 the rate of business closures and location changes was 71.9 percent. The Budget Analyst found that if conditions remain the same the rate of business closing or changing locations will continue to grow, projecting that in 2019 this will total 15,061 business.12

Assuming factors not related to government interference are stable, businesses have to account for the cost of government mandates when forecasting profitability. In Chicago, businesses must account for the aforementioned: Affordable Care Act mandates (federal), new overtime regulations (federal), lost sales due to increased sales tax (Cook County), lost sales due to increased cigarette tax and other tobacco taxes and regulations (state, Cook County and Chicago), plastic bag “ban” cost increases (Chicago), significant commercial and industrial property tax increases with more to come (Chicago), starting wage increases (Chicago), and license/permit fee increases (Chicago). All of these government mandates have either taken effect in the past two years or are slated to affect business owners this year and in upcoming years. Should it pass, a Chicago-only paid sick leave mandate will also be added to this list. All of these mandates have a cumulative impact that can be debilitating and costly to businesses trying to maintain profitability while the government continuously demands more. The Chicagoland Chamber and IRMA disagree with the notion that paid sick leave has a minimal impact. Everything has a cost, and the cost of a Chicago-only paid sick leave mandate will be added onto all of the other recent costs that several layers of government have claimed would all be minimal.

GOVERNMENT INTERFERENCE IN SCHEDULING IS AN UNNECESSARY OVERREACH AS SCHEDULING PRACTICES EVOLVE

As government continues to further expand its reach into business operations, attempts at regulation have shifted from wage and hour mandates, to benefits mandates, and now, into how managers develop employee

---

schedules. After discussing this issue for several months, the Working Families Working Group decided against making a recommendation for scheduling legislation. IRMA and the Chicagoland Chamber agree with this position.

How employees are scheduled is a complicated matter. Scheduling takes into account a number of factors including:

1. How store events, holidays, specials and promotions will affect store/restaurant traffic;
2. Timing of product/food deliveries;
3. City events (Taste of Chicago, Grateful Dead concert, neighborhood festivals, etc.);
4. Weather;
5. Employee availability (time off requests, school schedule changes, changes at a primary job, etc.);
6. Meals and breaks;
7. Shift lengths; and
8. Day of rest.

Many of these factors are constant moving targets. As a result, advanced notice of schedules varies greatly by company, industry, and size. Through our discussions with employers large and small and through the Working Group focus groups, we learned that schedules are generally issued anywhere from 3 to 14 days in advance. This variance, even at the smaller end, occurs regardless of whether the workforce is unionized. It is simply reflective of the constantly evolving nature of retail and restaurant traffic and variances reflected in other industries.

The advocates’ claim that hours, when posted, are often changed and therefore overall schedules are unpredictable. It is true that there are changes to hours after posting, and these changes occur at the hands of both employers and employees. For example, an employee could have been scheduled to unload delivery trucks and stock and inventory the new products. If the truck does not arrive due to factors outside of everyone’s control, that employee may have their schedule changed. If a restaurant is expecting a busy Saturday brunch, but due to heavy downpours customers decided not to eat out, then servers and other employees may be sent home. Likewise, due to a traffic accident, an employee may not be able to make it through traffic and into work. The employer will need to replace the employee without much notice. An employee may have a complication occur at a primary job and he or she has to call off unexpectedly. Whether it’s the employer or the employee, both find themselves scrambling at times to adjust to outside forces that affect a work schedule.

Accounting for the inconsistencies in scheduling that occur at the hands of both employers and employees, scheduling practices are changing as businesses test out new models and make use of new technologies. While new technology has helped the process become more efficient, it has not come without its own set of challenges. While there were complaints in the focus groups about how technology at times caused last-minute changes in schedules, employees also presented information about how technology is being used by employers...
to give employees more autonomy and flexibility in creating their schedules. The modernization of the scheduling process is constantly evolving and will ultimately provide the flexibility that both employers and employees seek in store-level and restaurant jobs.

In the past year, great strides have been made by companies, on their own accord, to make the flexibility of part-time schedules work for everyone and we will continue to see that progress without the need for government mandates. The Chicagoland Chamber and IRMA appreciate further opportunities to discuss the rapidly changing process of scheduling and how that process is handled by employers of all sizes. It should be noted that the City has organized a small business task force. Neither the Chicagoland Chamber nor IRMA were invited to participate on this task force. It was suggested that the task force address scheduling issues. The Chicagoland Chamber and IRMA reflect a diverse and large number of small businesses as part of our membership. We object to any discussion of scheduling as a part of this task force if the two associations that represent the widest range of business types and sizes are not involved.

Government involvement by regulating one-size-fits-all models for scheduling further frustrates an already complicated issue. Best practices are not only being identified, but they are being incorporated by businesses in all sectors to allow flexibility that works for both employers and employees.

FMLA: ADDITIONS TO FEDERAL LAW SHOULD BE ADDRESSED BY THE FEDERAL GOVERNMENT

As part of the policy recommendations for a Chicago-only paid sick leave mandate, the advocates addressed paid FMLA. The recommendation suggests that 20 hours of accrued paid sick leave in a given year can be rolled over to the following year to be used for FMLA purposes for employees working for employers that must comply with FMLA. According to the recommendation, employees must maintain a bank not in excess of 40 hours of accrued paid sick leave at any given time. The Chicagoland Chamber and IRMA expressed concerns during these discussions of potential complications and confusion this rollover will create in adhering to current FMLA requirements. Further, in order to accomplish its goal, the City should refrain from any attempt to create its own FMLA law in the process. Compliance with FMLA is complicated and time-consuming, especially for small businesses. The City should not further complicate this process and unduly burden business owners with a separate FMLA law with separate reporting requirements.

Current FMLA entitles eligible employees of covered employers to take unpaid leave for 12 work weeks in a 12 month period for specified family and medical reasons. However, certain conditions apply in accordance with FMLA requirements. FMLA applies to private sector employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year, and it applies to public agencies, including local, State, and Federal employers, and local education agencies. In order to be eligible to take FMLA leave, an employee must work for a covered employer, have worked 1250 hours during the 12 months prior to the start of leave, work at a location where the employer has 50 or more employees within 75 miles, and have worked for the employer for 12 months.

While FMLA, as it currently stands, only requires unpaid leave, the law permits an employee to elect, or the employer to require, the employee to use accrued paid vacation leave, paid sick or family leave for some or all of the FMLA leave period. Further, an employer may require that leave taken for a serious health condition is supported by a certification issued by a health care provider and obtained within 15 calendar days. An employer may require an employee absent on FMLA leave to submit a certification from a health care provider that the employee is able to resume work. If an employee fails to timely submit a requested medical certification, FMLA
protection may be delayed or denied. If certification is never provided then the leave is not FMLA leave, and the employee may be denied reinstatement.\footnote{US Department of Labor. Wage and Hour Division. Web. \url{http://www.dol.gov/whd/fmla/fmla-faqs.htm.}}

If paid sick days are to be categorized as FMLA, which the current FMLA policy already allows for, all requirements of FMLA must be met.

**SUPPORTS FOR BUSINESSES SHOULD PRODUCE TANGIBLE, IDENTIFIABLE BENEFITS**

The Working Group discussed only token potential “supports” that could be provided to businesses. However, no significant recommendations are reflected in the report. The Chicagoland Chamber and IRMA are generally supportive of supports to business that produce tangible benefits, but not in the context that would implicitly or explicitly appear as a trade-off for the adoption of a misguided Chicago-only paid sick leave policy or any other costly mandate.

The Chicagoland Chamber and IRMA recommend that the needs of the business community are heard and that real supports are discussed and implemented. A seemingly simple initiative that would improve the communication and efficiency between the various City Departments who serve the same business owners and entrepreneurs through various stages of starting their business would be a good start. In addition, supports that bring tangible, financial benefits and help with navigating the complicated legal and human resources process for complying with various levels of government regulations are welcome.
The business community has never faced government-imposed challenges of this magnitude by local governments. The economic landscape we endure today is vastly different than in years past, coming out of the Great Recession. Employers are suffering from a variety of costly economic and policy challenges, including the recent $588 million property tax increase, a $477 million Cook County sales tax increase, and a starting wage increase to $13 per hour by 2019. The cumulative impact of these policies, with the promise of more to come as Chicago and Springfield will look to employers to bail them out of their fiscal challenges, is daunting for the employer community and often has unintended consequences on the very employees these policies are designed to lift up and support.

One of the most effective ways supported by the Chicagoland Chamber and IRMA to increase employee wages and benefits and assist the unemployed is a focus on workforce development and employee skills training. Instead of setting the floor with ill-conceived labor policies, focusing and investing in training workers and the unemployed to compete for the higher paying jobs of today and the future is the single best way to achieve the goals of this task force. In fact, many of our larger corporate members already invest tens of millions of dollars in such programs because of the clear return on investment not only for their individual company, but also for the benefit of the larger health of the economy. In addition, it is important to focus on reforming our public education system so that entry-level employees in low-skilled jobs are better prepared with the basic math, reading and communication skills that are needed in order to have a chance at success.

The issue of paid sick leave must not be viewed in a policy vacuum. If a mandate passes, it will be another in a long list of costly mandates, fees and taxes forced upon the business community in the past two years.

The Chicagoland Chamber and IRMA remain opposed to a recommendation for a mandated local paid sick leave ordinance. A paid sick leave policy should be discussed at the federal level, as has been done in 20 developed countries around the world who have implemented such policies.