Beginning July 1, 2012, certain employers within the city of Philadelphia will be required to provide up to 56 hours of paid sick leave for their regular full-time employees each year. The sick leave ordinance, which amends Chapter 17-1300 of the Philadelphia Code, is the city’s answer to an earlier unsuccessful attempt to enact a broader paid sick leave requirement (Bill No. 080474-AA), which would have applied to virtually all Philadelphia employers. The ordinance requires covered employers to provide “at least the number of earned sick leave days that the Employer would have been required to provide to such Employees if the provisions of Bill No. 080474-AA … had been enacted into law.”

The sick pay ordinance applies only to the following employers:

- the city of Philadelphia, including all of its agencies, department, and offices;
- for-profit service contractors that receive or are subcontractors on contract(s) from the city of $10,000 or more in a 12-month period, and have annual gross receipts of more than $1 million;
- nonprofit service contractors that receive or are subcontractors on contract(s) from the city of more than $100,000 in a 12-month period;
- recipients of city leases, concessions, or franchises or subcontractors thereof, that employ more than 25 employees;
- city financial aid recipients; and
- public agencies that receive contract(s) from the city of $10,000 or more in a 12-month period.

Chapter 17-1300 of the Philadelphia Code, titled the “Philadelphia 21st Century Minimum Wage and Benefits Standard,” provides complex definitions for “City financial aid recipients” and “service contractor.” Employers should consult with counsel to determine whether they are covered under the ordinance. It is clear, however, that employers with less than five employees are not required to provide paid sick leave.

Any employer covered by the ordinance that has more than 11 employees will be required to provide one hour of sick leave to covered employees for every 40 hours worked in Philadelphia, up to an annual maximum of 56 hours. Covered employers with between five and 11 employees must provide a maximum of 32 hours of paid sick leave per year.

The paid leave requirement applies only to full-time, non-temporary, non-seasonal employees who perform work arising directly out of a service contract; city financial aid; the grant of a city lease, concession or franchise; or a funding agreement with a public agency. Paid sick leave will begin to accrue immediately upon commencement of employment, and covered employees may begin using their sick leave after 90 calendar days of employment.

Philadelphia’s 21st Century Minimum Wage and Benefits Standard contains provisions under which a covered employer can seek a waiver from the city’s Office of Labor Standards, which would excuse the employer from compliance with the paid sick leave requirement. The requirements of the ordinance may also be waived by the terms of a bona fide collective bargaining agreement.
Covered employers should familiarize themselves with the requirements of the ordinance, and educate managers and supervisors about its requirements to ensure proper compliance. Those with sick leave policies already in place should review and update them to the extent necessary to provide at least the amount of paid sick leave required under the ordinance.

Noncompliance carries stiff penalties, including the right of employees to back pay, compensatory and punitive damages, and attorneys’ fees and costs. Further, an employer found to have violated the sick pay ordinance may — after notice and a hearing — be suspended from receiving financial assistance from the city, or from bidding or participating in city contracts for up to three years.

Unfortunately, the ordinance leaves many questions unanswered. For example, it does not make clear whether part-time, temporary, or seasonal employees will be counted toward the number of employees an employer has for purposes of determining whether the employer must provide up to 32 or 56 hours of annual leave. It is also unclear whether only those employees working within Philadelphia are counted toward the employee thresholds, and whether Bill No. 080474-AA’s notice and recordkeeping requirements were intended to be grafted into the ordinance. We will continue to monitor the ordinance and provide additional information as it becomes available.

To discuss any questions you may have regarding the issues discussed in this alert, or how they may apply to your particular circumstances, please contact Emily S. Miller at 215.665.2142 or esmiller@cozen.com.