STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

Judge Mel I. Dickstein

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.

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR A TEMPORARY INJUNCTION AND CONSOLIDATION WITH A HEARING ON THE MERITS

Court File No. 27-CV-16-15051

The above-entitled matter came on for hearing before the Honorable Mel I. Dickstein, Judge of District Court, on December 8, 2016 pursuant to Plaintiffs' Motion for Temporary Injunction and Consolidation with a Hearing on the Merits. Christopher Larus, Esq., George Ashenmacher, Esq., and Anne Lockner, Esq., appeared on behalf of Plaintiffs, 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 (collectively, "Plaintiffs"). Susan Segal, Esq., Sara Lathrop, Esq., and Sarah McLaren, Esq., appeared on behalf of Defendant City of Minneapolis (the "City").

Now, therefore, based upon all the files, records, and proceedings herein, the Court makes the following:

ORDER

1. Plaintiffs' Motion for a Temporary Injunction is **GRANTED IN PART AND DENIED IN PART** as follows:

a. Plaintiffs' Motion to enjoin the City of Minneapolis from enforcing the Minneapolis Ordinance on the grounds that the Ordinance is impliedly preempted by state law is **DENIED**;

b. Plaintiffs' Motion to enjoin the City of Minneapolis from enforcing the Minneapolis Ordinance on the grounds that the Ordinance is in conflict with state law is **DENIED**;

c. Plaintiffs' Motion to enjoin the City of Minneapolis from enforcing the Minneapolis Ordinance on the grounds that the Ordinance has extraterritorial reach is **GRANTED**, as follows:

i. The City is hereby enjoined from enforcing the Minneapolis Ordinance against any employer resident outside the geographic boundaries of the City of Minneapolis until after the hearing on the merits of this case, or further order of the Court;

2. Plaintiffs' Motion to consolidate the temporary injunction with a hearing on the merits is **DENIED**;

3. The parties shall be available for a telephone scheduling conference on **Wednesday, February 1, 2017 at 2:00 p.m.**, or such other date as may be mutually agreeable;

4. The attached memorandum is incorporated herein by this reference.

IT IS SO ORDERED.

BY THE COURT:

Dickstein, Mel (Judge) 2017.01.19 15:04:44 -06'00'

Dated:

Mel I. Dickstein
Judge of District Court

MEMORANDUM

I. BACKGROUND

On May 31, 2016, the Minneapolis City Council invoked its police powers to pass Ordinance No. 2016-040, the Minneapolis Sick and Safe Time Ordinance (the "Ordinance"). Compl. ¶ 1; Minneapolis, Minn., Code § 40.30 (2016). In relevant part, the stated purpose of the Ordinance is "to ensure that workers employed in the City [of Minneapolis] can address their own health needs and the health needs of their families by requiring employers to provide a minimum level of paid sick days including time for family care." *Id.* at § 40.30(a). To this end, the Ordinance requires that employers provide employees with a minimum of one hour of sick and safe time leave for every thirty (30) hours worked, up to a maximum of forty-eight (48) hours in a calendar or fiscal year. *Id.* at § 40.210(a). For employers with five or fewer employees, the sick and safe leave need not be paid, but for employers with six or more employees, the Ordinance mandates paid leave. *Id.* at § 40.220(g)-(h). Under the Ordinance, an "employer" includes individuals, corporations, partnerships, associations, nonprofit organizations, or groups of persons that employ one or more employees, but excludes various governmental entities. *Id.* at § 40.40. An "employee" is "any individual employed by an employer, including temporary employees and part-time employees, who perform work within the geographic boundaries of the City [of Minneapolis] for at least eighty (80) hours in a year . . .." *Id.*

The current lawsuit was filed against the City of Minneapolis (the "City") on October 13, 2016, by the 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 (collectively, "Plaintiffs"). Plaintiffs comprise nonprofit corporations, small business associations, and Minneapolis-based

corporations and companies. Compl. ¶¶ 8-19. In bringing this action, Plaintiffs seek a declaration by the Court that the Minneapolis Ordinance is invalid because it is preempted by state law and impermissibly extends its reach beyond the City of Minneapolis' borders. Compl. ¶¶ 1, 27-31.

The Ordinance is scheduled to go into effect on July 1, 2017. Minneapolis, Minn., Code § 40.90(a). In advance of that date, Plaintiffs brought the present Motion, requesting both a temporary injunction to enjoin the City from enforcing the Ordinance, as well as a consolidation of the temporary injunction with a hearing on the merits.

The Court heard oral argument on Plaintiffs' Motion on December 8, 2016. Following that hearing, the Court ordered additional briefing from the parties to address the extent to which the Ordinance may permissibly extend its reach beyond the geographic boundaries of the City of Minneapolis. On December 23, 2016, upon receipt of the final submission on that issue, the Court took the matter under advisement.

II. LEGAL STANDARD

A temporary injunction is an extraordinary equitable remedy, the purpose of which is to preserve the status quo until adjudication of the case on its merits. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). "Not every change in circumstances merits such relief, however. Because a temporary injunction is granted prior to a complete trial on the merits, it should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held." *Id.* Consequently, a party seeking an injunction must establish that there is no adequate legal remedy available, and that the injunction is necessary to prevent irreparable harm. *Cherne Indus., Inc. v. Grounds & Assoc., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979).

The decision to grant or deny a temporary injunction requires consideration of five factors (the "*Dahlberg* factors"): (1) the nature and background of the relationship between the parties

preexisting the dispute giving rise to the request for relief; (2) the harm to be suffered by the plaintiff if the temporary restraint is denied as compared to that inflicted on the defendant if the injunction issues pending trial; (3) the likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedent fixing the limits of equitable relief; (4) the aspects of the fact situation, if any, which permit or require consideration of public policy expressed in statutes, State and Federal; and (5) the administrative burdens involved in judicial supervision and enforcement of the temporary decree. *Dahlberg Bros., Inc v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965).

III. LEGAL ANALYSIS

a. Motion for a Temporary Injunction—the *Dahlberg* Factors

On the present Motion, the Court addresses each of the *Dahlberg* factors, beginning with the two most significant factors to this case—the threshold issue of irreparable harm, and the likelihood that Plaintiffs will succeed on the merits of their claims.

i. Irreparable Harm

For a court to grant injunctive relief, the moving party must show that it faces irreparable harm, while the nonmoving party need only demonstrate substantial harm in order to bar the injunction. *Pac. Equip. & Irr., Inc. v. Toro Co.*, 519 N.W.2d 911, 915 (Minn. Ct. App. 1994). To constitute "irreparable harm," the injury, though not always susceptible to precise proof, must not be of such a nature that money damages alone could provide adequate relief. *Haley v. Forcelle*, 669 N.W.2d 48, 56 (Minn. Ct. App. 2003). "[T]he temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury." *Miller v. Foley*, 317 N.W.2d at 713 (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)). The failure to establish irreparable harm is a sufficient basis, standing alone, for a court to deny a preliminary injunction. *Morse v. City of*

Waterville, 458 N.W.2d 728, 729 (Minn. Ct. App. 1990). If, however, the Court finds that irreparable harm exists, the Court must then weigh the harm to be suffered by the moving party if the injunction is denied against the harm to be suffered by the party to be restrained.

Here, the City maintains Plaintiffs cannot establish the requisite irreparable harm because the harm—if any—is hypothetical and could be satisfied exclusively by monetary damages.

The Court, however, finds that although the Minneapolis Ordinance will not go into effect until July 1, 2017, the potential harm to Plaintiffs is not hypothetical. To the contrary, Plaintiffs have provided adequate support for the proposition that numerous Plaintiffs (and their member organizations)[1] will have to expend substantial time and resources in advance of the Ordinance's effective date in order to comply with its mandates. *See, e.g.*, McLaughlin Decl. ¶ 3; Farr Decl. ¶¶ 8, 12; Hickey Decl. ¶¶ 6, 8, 10. While much of this potential harm could likely be compensated through monetary damages, Plaintiffs credibly maintain that should they prevail, and the Ordinance is declared invalid, the City will likely shield itself from any asserted damages on the grounds of statutory immunity, official immunity, vicarious official immunity, and/or legislative immunity—each of which the City pled as an affirmative defense in its Answer. Def.'s Answer, Affirmative Defenses ¶¶ 4-5.

If decided in the City's favor, an immunity defense compels the conclusion that irreparable harm is likely to exit. *See DiMa Corp. v. City of Albert Lea*, 2013 WL 1500873, at *6 (Minn. Ct. App. Apr. 15, 2013) (noting that the city pled immunity as an affirmative defense, and concluding that "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."); *cf. Earl C. Hill*

[1] The Minnesota Supreme Court has recognized the validity of "associational standing," in which "an organization may sue to redress injuries to itself or injuries to its members." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 497–98 (Minn. 1996).

Bloomington Post 550 v. City of Bloomington, 2006 WL 389835, at *2 (Minn. Ct. App. Feb. 21, 2006) (the mere availability of an immunity defense did not render claimant devoid of adequate legal remedy where appellants failed to cite authority for triggering immunity). At this juncture, the Court does not decide the merits of any potential immunity defense because the parties have provided limited support for each of their positions. The Court finds only that the City has raised an immunity defense, and will vigorously argue its immunity defense if the Ordinance were declared invalid, a factor which weighs in favor of granting the temporary injunction.

In balancing Plaintiffs' risk of irreparable harm against the harm to the City if the injunction issues, the Court may also consider potential harm to the public. *See Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 224-25 (Minn. Ct. App. 2002). Here, the City argues that any injunction restricting its ability to regulate health in Minneapolis would cause serious harm to the City as well as to the health of its residents. But while the City raises legitimate public health concerns, the Court notes that during the first twelve months following the effective date of the Ordinance, enforcement of the Ordinance is limited to mediating disputes and issuing warnings and notices to correct. Minneapolis, Minn., Code § 40.90(b). Accordingly—because the Ordinance itself does not permit rigorous enforcement until one year following its effective date—any temporary injunction enjoining the City from enforcing the Ordinance until after the case is adjudicated on its merits is unlikely to substantially harm the City or its residents.

On balance, the Court concludes that the potential irreparable harm to Plaintiffs outweighs the prospective harm to the City or the public should a temporary injunction issue. This factor weighs in favor of granting a temporary injunction.

ii. Likelihood of Success on the Merits

The most important of the *Dahlberg* factors to the present case requires the Court to assess the likelihood that Plaintiffs will succeed on the merits of their claims. The burden of proof for establishing the merits of any claim rests with the moving party. *North Central Pub. Serv. Co. v. Village of Circle Pines*, 224 N.W.2d 741, 746 (Minn. 1974). Injunctive relief is appropriate "only in clear cases, reasonably free from doubt." *Id.*

Here, Plaintiffs seek a declaratory judgment from the Court that the Minneapolis Ordinance is invalid, asserting that it is preempted by state law under the doctrines of field preemption and conflict preemption. Plaintiffs also maintain that the Ordinance has an impermissible extraterritorial reach.

For the following reasons, the Court concludes that Plaintiffs are unlikely to succeed on either of their preemption claims, but that Plaintiffs are likely to prevail on their claim that the Ordinance exceeds the permissible reach of the City's authority.

1. Preemption

The doctrine of preemption governs the division of power between states and their cities. *State v. Kuhlman*, 722 N.W.2d 1, 3 (Minn. Ct. App. 2006). In general, municipalities have no inherent power; rather, municipalities possess only such powers "as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred." *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 820 (Minn. 1966). A city such as Minneapolis, that is granted broad governance authority through a home rule charter, "enjoys 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). Ultimately, "[t]he power conferred upon cities to frame and adopt home rule charters is

limited by the provisions that such charter shall always be in harmony with and subject to the constitution and laws of the state." *Id.* (quoting *State ex rel. Town of Lowell v. City of Crookston,* 91 N.W.2d 81, 83 (Minn.1958)).

Under Minnesota law, preemption of local ordinances can occur in three ways: (1) express preemption, when a state statute explicitly defines the extent to which its enactments preempt local regulation; (2) field preemption, when a city ordinance attempts to regulate conduct in a field that the state legislature intended for state law to exclusively occupy; and (3) conflict preemption, when a city ordinance permits what a state statute forbids or forbids what a state statute permits. *Kuhlman*, 722 N.W.2d at 4. In the present case, Plaintiffs challenge the Minneapolis Ordinance on the grounds of field preemption and conflict preemption.

a. Field Preemption

The doctrine of field preemption, or 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,* 641 N.W.2d at 348. When field preemption occurs, a local law that governs, regulates or controls any aspect of the preempted field will be void, regardless of whether the local law actually conflicts with the state law. *Id.*

Minnesota courts consider four factors when determining whether field preemption exists: (1) the subject matter being regulated; (2) whether the subject matter is so fully covered by state law that it has become solely a matter of state concern; (3) whether any partial legislation on the subject matter evinces an intent to treat the subject matter as being solely of state concern; and (4) whether the nature of the subject matter is such that local regulation will have an unreasonably adverse effect on the general populace of the state. *Mangold Midwest Co.,* 143 N.W.2d at 820.

In weighing the four field preemption factors, as explained in detail below, the Court concludes that Plaintiffs are unlikely to prevail on their claim that the Minneapolis Ordinance is impliedly preempted by state law.

i. Factor I: The Subject Matter Being Regulated

The Court cannot determine whether the Minnesota Legislature has occupied the field of the Minneapolis Ordinance without first deciding its applicable subject matter, upon which the parties disagree. Plaintiffs argue the subject matter of the Ordinance is the contractual relationship between private employers and employees, while the City asserts the Ordinance regulates public health. Though the Court recognizes there is a basis for arguing both parties' positions, ultimately it rejects both assertions, finding each proposed characterization to be overly broad. Instead, the Court concludes that the regulated subject matter of the Minneapolis Ordinance is private-employer provided sick and safe leave.

Minnesota Courts provide little guidance on how to define the appropriate subject matter for purposes of a field preemption analysis. A thorough reading of the case law, however, suggests that the subject matter can be neither overly broad nor exceedingly narrow, and must be construed on a case-by-case basis. *Compare State v. Gonzales*, 483 N.W.2d 736, 738 (Minn. Ct. App. 1992) (finding the appropriate subject matter of an ordinance to be "the forfeiture of property used in, or associated with, criminal offenses," instead of "forfeitures arising from prostitution convictions," while noting that "[t]he subject matter involved cannot be defined so selectively that it is impossible for the state to fully regulate the field."), *with Canadian Connection v. New Prairie Twp.*, 581 N.W.2d 391, 394 (Minn. Ct. App. 1998) (rejecting the claim that a local ordinance broadly regulates "pollution" and affirming the District Court's conclusion that the ordinance addresses local concerns over minimizing odor through zoning setback requirements).

In the present case, the Court declines to conclude, as Plaintiffs urge, that the proper subject matter of the Minneapolis Ordinance is the contractual relationship between employers and employees. To so conclude, the Court would need to find that statutes governing wage payment (Minn. Stat. §§ 181.01-.27), employment contracts (Minn. Stat. §§ 181.55-.57), costs of medical exams (Minn. Stat. §§ 181.60-.62), worker recruitment (Minn. Stat. §§ 181.635-.65), benefits (Minn. Stat. §§ 181.73-.74, 181.82), drug and alcohol testing (Minn. Stat. §§ 181.950-.957), equal pay requirements (Minn. Stat. §§ 181.66-.71), and workplace communications (Minn. Stat. § 181.985) collectively evince an intent by the Minnesota Legislature to make the contractual relationships between employers and employees solely a matter of state concern. While each of these statutes may involve an underlying contractual relationship between employers and employees, taking Plaintiffs' argument to its logical extreme would compel a finding that local governments are wholly prohibited from enacting regulations that impact such relationships, no matter how dissimilar from state statutes the substance of the regulations may be. The Court declines to adopt a subject matter for the Minneapolis Ordinance that could lead to such a result.

The Court is similarly unpersuaded by the City's assertion that the subject matter of the Ordinance is, generally, public health, an area traditionally governed by municipal authority and regulation. The City notes that in 1976 the Minnesota Legislature passed the Community Health Services Act, which established a Community Health Board system that allows cities, such as Minneapolis, to adopt and enforce ordinances and standards for essential public health services. Musicant Decl. ¶ 7; *see also* Minn. Stat. Ch. 145A.04 (entitled "Powers and duties of community health board"). Accordingly, the City argues, the State has encouraged—not preempted—local regulation of public health concerns. However, as the Minnesota Court of Appeals has noted, the health concerns underlying an ordinance's enactment do not, by themselves, insulate an ordinance

from preemption. *See Bd. of Sup'rs of Crooks Twp., Renville Cty. 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."). The City cannot shield itself from preemption by designating the subject matter of the Ordinance so broadly. Insofar as public health concerns are at issue, the Minneapolis Ordinance regulates but one facet of those concerns—the provision of sick and safe time leave by private employers.

Accordingly, the Court holds that the appropriate subject matter of the Minneapolis Ordinance is private-employer provided sick and safe leave, a definition that is neither so broad as to encourage preemption, nor so selective as to inevitably preclude preemption.

ii. Factors II & III: Whether the Field is Solely a Matter of State Concern

Having determined that the applicable subject matter of the Minneapolis Ordinance is private-employer provided sick and safe leave, the Court must next determine, under the second and third *Mangold* factors, whether the field is solely a matter of state concern. The Court concludes it is not.

Minnesota cases holding local ordinances invalid due to field preemption involve a spectrum of statutory schemes, ranging from those demonstrating a clear legislative intent to occupy a specific field, to those where a finding of preemption requires a more nuanced analysis. On one end of the spectrum are cases involving broad statutory schemes that clearly identify the legislature's intent to occupy a field and prevent ad-hoc municipal regulations. For example, in *Bd. of Sup'rs of Crooks Twp., Renville Cty. v. ValAdCo*, the Minnesota Court of Appeals held a local ordinance invalid after finding that the very subject of the ordinance—the control of pollution

from manure produced in animal feedlots—was already covered by a comprehensive statutory scheme that "provides for local input but retains ultimate control in the state." 504 N.W.2d at 269.

Similarly, in *Nordmarken v. City of Richfield*, the Court of Appeals held that the state's Municipal Planning Act ("MPA") and Metropolitan Land Planning Act ("MLPA") collectively preempted a provision in the City of Richfield's home rule charter that would allow for local regulation of land use planning and zoning. 641 N.W.2d at 348–49. The *Nordmarken* Court's holding was based, in part, on its determination that the Minnesota Legislature had created a "single body of law, reflected in the MPA and MLPA, [that] sets out a detailed and elaborate structure of procedural authority and processes for comprehensive land use planning and for ensuring reasonable compatibility with land use plans of other municipalities." *Id.* at 349.

On the other end of the spectrum are cases where the local ordinances at issue do not clearly encroach on a field of state regulation. In *State v. Gonzales*, for example, the Minnesota Supreme Court concluded that a state forfeiture statute (Minn. Stat. § 609.531) requiring motor vehicle forfeitures for some offenses—but not all—nonetheless preempted a St. Paul ordinance that provided for the forfeiture of motor vehicles driven by customers of prostitutes. 483 N.W.2d at 739. The *Gonzales* Court held, "[t]he legislature must have the power to exercise its judgment and exclude some offenses from the statute without leaving them open to municipal enactment." *Id.* In reaching this conclusion, the Court emphasized that allowing municipal regulation of motor vehicle forfeitures would have an unreasonably adverse effect upon the general population: "Under a municipal forfeiture system, motor vehicle owners could risk their vehicles for a different offense in each municipality." *Id.*

In the present case, the Court cannot conclude that the relevant state law comprises a comprehensive statutory scheme (as in *ValdAdCo* and *Nordmarken*), nor reflects an intentional

policy decision to promote compatibility among municipal regulations (as in *Gonzales* and *Nordmarken*). Minnesota laws addressing employer-provided sick and safe leave are limited. Minnesota has only two administrative rules that reference employer-provided sick leave, and each relates to a specific government program. The first administrative rule governs the state's Extended Employment Program (which provides for ongoing employment support services for severely disabled workers), under which eligible workers must receive a minimum of five days paid sick leave. Admin. R. 3300.2015, subp. 4(A). The second rule relates to Minnesota's Senior Companion Program (which facilitates part-time volunteer opportunities for low-income older persons), and provides that any personnel policies covering sick leave for senior companions shall be consistent with the sick leave policies of the sponsor organizations. Admin. R. 9555.0900, subp. 2. Thus, to the extent that each of these rules addresses sick leave, the leave benefits are limited to those individuals covered by the respective programs—a decidedly narrow cross section of the state's population.

In addition, state statutes addressing employer provided sick and safe leave are few in number, and those that do exist do not restrict, but expressly permit, granting greater sick leave benefits. For example, under Minn. Stat. § 181.9413, employees may use personal sick time for safe time leave or leave to care for certain family members. The statute, however, specifically states that it "does not prevent an employer from providing greater sick leave benefits than are provided for under this section." Minn. Stat. § 181.9413(g). Similarly, Minn. Stat. § 181.943(b), entitled "Relationship to Other Leave," provides that nothing in sections 181.940 to 181.943—which relate to pregnancy and parenting leave, school conference and activities leave, sick leave benefits for the care of relatives, and pregnancy accommodation—"prevents any employer from providing leave benefits in addition to those provided in sections 181.940 to 181.944 . . .." The

Court, therefore, concludes that the relevant statutes fail to evince a legislative intent to make sick and safe leave benefits a matter solely of state concern.

Even if the Court were to broaden its definition of the Ordinance's subject matter from employer-provided sick and safe leave to employer-provided leave more generally, the result would be the same. The statutes governing leave for bone marrow donations, organ donations, and leave for immediate family members of military personnel injured or killed in active service, each provide that nothing prevents an employer from offering leave benefits greater than those allowed under the respective sections. *See* Minn. Stat. § 181.945, subd. 4; Minn. Stat. § 181.9456, subd. 4; Minn. Stat. § 181.947, subd. 4.

Rather than reflecting a reasoned legislative resolve to occupy the field of sick and safe time leave (or leave more broadly), the clear language of these rules and statutes demonstrates the Minnesota Legislature's intent to create a floor, not a ceiling, with respect to employer-provided sick and safe leave. Accordingly, these factors weigh against a finding that the Minneapolis Ordinance encroaches on a field wholly occupied by state law.

iii. Factor IV: the Adverse Effect on the General Populace

The fourth and final *Mangold* factor for the Court to consider is the unreasonably adverse effect, if any, that the Minneapolis Ordinance will have on the state's general populace. Plaintiffs assert the term "general populace" refers to the state's private employers—the Court disagrees.

The Court concludes that in a field preemption analysis the proper focus should be on the adverse effects to be borne by the state's general population, not its private employers. In *Mangold*, for example, when determining the validity of a Sunday sales ordinance, the Minnesota Supreme Court focused on the adverse impact on the public at large, and not on the narrower group of business entities affected by the ordinance. 143 N.W.2d at 821. The Minnesota Supreme Court

echoed its *Mangold* analysis less than one month later when it ruled upon the validity of another Sunday sales ordinance in *G.E.M. of St. Louis, Inc. v. City of Bloomington*, 144 N.W.2d 552, 554–55 (Minn. 1966). The *G.E.M.* Court determined that the potential for the ordinance to adversely impact the business community was not dispositive:

> We recognize that variances between municipal regulations affecting commercial activity, particularly in a metropolitan area, create serious problems. The absence of preemption by the state legislature may lead in the end to the 'uninhibited commercial warfare, * * * disparate degrees of peace, repose and comfort in different communities and, in the metropolitan areas, * * * a checkerboard of conflicting regulations' envisioned by the trial judge. Nevertheless, for the reasons outlined in the Mangold case, we feel that the ordinance, if properly adopted, was within the corporate power of the city of Bloomington.

Id. Instead, the Court acknowledged that "[i]f the Minnesota Legislature determines that local regulation of commercial activity by ordinances of this type is creating economic confusion, the problem can be corrected by a clear expression of the legislative will that regulation of such commercial activity be uniform throughout the state." *Id.*

Since *Mangold* and *G.E.M* were decided, Minnesota courts have continued to concentrate their field preemption analyses on the impact municipal regulations have on the public at large rather than the business community. *See, e.g, City of Birchwood Vill. V. Simes*, 576 N.W.2d 458, 462 (Minn. Ct. App. 1998) (concluding that there would be an adverse effect on the public if municipalities were allowed to regulate the size of boats that may be moored to private docks, because, among other things, "a boat that is permitted at one dock may not be permitted at a dock across the lake."); *State v. Gonzales*, 483 N.W.2d at 738 (finding that local regulation of motor vehicle forfeitures would have an unreasonably adverse effect upon the state's general population because motor vehicle owners, being transient in nature, would "risk their vehicles for a different

offense in each municipality," leading to uncertainty and confusion.); *Canadian Connection,* 581 N.W.2d at 395 (finding no adverse impact on the general populace of the state).

Plaintiffs have directed the Court to only one case suggesting that the proper interpretation of the term "general populace" should encompass the state's business community. In *ValAdCo*, the Minnesota Court of Appeals addressed the validity of a local ordinance requiring permits for animal feedlots. 504 N.W.2d at 271; *see supra* p. 12. The Court held that "the nature of the matter regulated, together with the comprehensive statutory scheme, evidence the legislature's intent to preempt local regulation of pollution from animal feedlots." *Id.* at 272. In so ruling, the Court also focused on the burdensome effect a patchwork of different rules would have on the agricultural industry. While the regulation's adverse effect on the industry may have influenced the *ValAdCo* Court's analysis, this Court is not inclined to veer from the considerable weight of authority that stands for the opposite proposition.

Accordingly, the Court concludes that any adverse impact to be considered should be that which harms the general populace of the State of Minnesota. And in the present case, the sick and safe leave time afforded by the Minneapolis Ordinance is unlikely to have an unreasonably adverse impact on the general public of this state; to the contrary, it arguably serves to benefit those who fall within the Ordinance's authority.

iv. Conclusion: Field Preemption Analysis

In sum, the Court finds that the Minnesota Legislature has not evinced an intent to make the subject matter of the Minneapolis Ordinance (private-employer provided sick and safe leave) of sole state concern. Neither does the Court find that the Ordinance will have an unreasonably adverse effect on the general populace of this state. Accordingly, the Court concludes that

Plaintiffs are unlikely to prevail on their claim that the Ordinance is impliedly preempted by state law.

b. Conflict Preemption

Unlike field preemption, which wholly invalidates local regulations that encroach on an area occupied by state law, conflict preemption requires a specific conflict between a local regulation and state law. *See e.g., Nordmarken,* 641 N.W.2d at 348. As a general rule, a conflict between a state law and a municipal ordinance will render the ordinance invalid only where "both the ordinance and the statute contain express or implied terms that are irreconcilable with each other." *Mangold,* 143 N.W.2d at 816. "[A] conflict exists where the ordinance forbids what the statute Expressly [sic] permits." *Id.* Where the ordinance, "though different, is merely additional and complementary to or in aid and furtherance of the statute," a conflict does not exist. *Id.* at 817.

In this case, Plaintiffs argue that the Minneapolis Ordinance conflicts with state law because the Ordinance prevents private employers from freely structuring employee sick leave benefits to meet the individual needs of their workplaces. This freedom, Plaintiffs assert, is something state law permits—through the absence of employee sick leave regulation to the contrary—thereby creating a direct conflict that renders the Minneapolis Ordinance invalid.

The Court rejects Plaintiffs' argument, in principal part because it negates the requirement that a statute *expressly* permit what an ordinance forbids in order for a conflict to arise. Minnesota cases finding conflict preemption routinely involve irreconcilable tension between local regulations and explicit statutory grants of authority. For example, in *Nw. Residence, Inc. v. City of Brooklyn Ctr.*, 352 N.W.2d 764, 774 (Minn. Ct. App. 1984), the Minnesota Court of Appeals found that the City of Brooklyn Center's decision not to issue a special use permit for an eighteen-person residential facility for mentally ill adults to be in conflict with a state law that would "clearly

permit" the 18-person facility. *Id.* As the Court in *NW Residence* stated, "local regulation that forbids what the state expressly permits cannot stand." *Id.* Similarly, the Court in *ValAdCo* held a local ordinance in conflict with state law where the ordinance's setback requirements for new feedlots would prohibit construction of a facility that was already approved by the Minnesota Pollution Control Agency ("MPCA") following an extensive application review process. 504 N.W.2d at 272.

In other cases Plaintiffs rely upon to support their argument, a statutory scheme existed that expressly limited the scope of local regulation. In *Duffy v. Martin*, 121 N.W.2d 343, 345-46 (Minn. 1963), for example, the Minnesota Supreme Court found that a local traffic ordinance conflicted with state law, where the state legislature specifically "prohibited the enactment of [traffic] ordinances by municipalities in conflict with state statutes . . .." Similarly, in *State v. Apple Valley Redi -Mix, Inc.*, 379 N.W.2d 136, 138 (Minn. Ct. App. 1985), involving a municipal pollution regulation that was stricter than the corresponding state regulation, the Minnesota Pollution Act ("MPA") expressly provided that "[n]o local government unit shall set standards of air quality which are more stringent than those set by the pollution control agency." *Id.*

Here, Plaintiffs fail to direct the Court to any state law that expressly authorizes employers to structure their sick leave policies as they deem fit, or conversely, to any state law that specifically limits municipal regulation of sick leave. To the contrary, to the extent that Minnesota law specifically addresses employer provided sick and safe leave, the Minneapolis Ordinance is compatible, not irreconcilable, with state law.

As explained above, Minnesota laws that address employer provided sick and/or safe leave expressly permit employees to be granted greater leave benefits than those provided for by statute. *See supra* pp. 14-15; *see also* Minn. Stat. § 181.9413(g); Minn. Stat. § 181.943(b); Admin. R.

3300.2015, subp. 4(A). Thus, rather than forbidding what state law expressly permits, the Minneapolis Ordinance permits what state law also allows. Similarly, the Rule governing the Senior Companion Program requires that the personnel policies for a senior companion's sick leave "shall be consistent with those of the sponsor and be developed in consultation with the project advisory council." Admin. R. 9555.0900, Subp. 2. This Rule does not create an irreconcilable conflict with the Minneapolis Ordinance.

As a result, the Court rejects Plaintiffs' argument that the absence of a statutory sick and safe leave mandate equates to the Minnesota Legislature's express permission for private employers to structure their sick leave policies as they deem fit. Unlike the facts in *Duffy* and *Apple Valley*, state law does not explicitly limit local regulation of employer-provided sick and safe leave. Accordingly, the Court finds that Plaintiffs are unlikely to prevail on their claim that conflict preemption renders the Minneapolis Ordinance invalid.

c. Extraterritoriality

In their final challenge to the Minneapolis Ordinance, Plaintiffs argue the Ordinance is invalid because it improperly extends its reach beyond the geographic borders of the City. Compl. ¶¶ 27-31. The City maintains that it is premature for the Court to address the potential extraterritorial reach of the Ordinance because until it goes into effect on July 1, 2017, the issue is not justiciable. But even if the issue is justiciable, the City argues, the ordinance does not exceed the City's territorial authority.

The Court first concludes the issue of the Ordinance's territorial reach is justiciable. Under Minn. Stat. § 555.01, "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Minnesota courts "have long held that a declaratory judgment action is proper to test the validity

of a municipal ordinance, regardless of whether another remedy exists." *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011).

The real question, then, is whether an actual controversy exists, because courts may not issue advisory opinions that address injuries that are merely possible or hypothetical; a justiciable controversy requires a claim that is capable of specific resolution. *Id.* at 336-38. The Minnesota Supreme Court has addressed the applicable standard:

> Jurisdiction exists to declare the rights, status, and other legal relations of the parties if the complainant is possessed of a judicially protectable [sic] right or status which is placed in jeopardy by the ripe or ripening seeds of an actual controversy with an adversary party, and such jurisdiction exists although the *status quo* between the parties has not yet been destroyed or impaired and even though no relief is or can be claimed or afforded beyond that of merely declaring the complainant's rights so as to relieve him from a present uncertainty and insecurity.

Id. at 339 (quoting *Minneapolis Fed'n of Men Teachers, Local 238, A.F.L. v. Bd. Of Ed. Of City of Minneapolis*, 56 N.W.2d 203, 205 (Minn. 1952) (emphasis in original)).

In the present case, the Court concludes that Plaintiffs' rights are in jeopardy from the "ripening seeds" of an actual controversy—a dispute with the City over the extraterritorial reach of the Minneapolis Ordinance. The impact of the Minneapolis Ordinance is not merely hypothetical. Plaintiffs include organizations (and member organizations) with employees who travel to Minneapolis, for more than 80 hours in a calendar year, from as far away as China. *See, e.g.*, McLaughlin Decl. ¶ 8 ("I am aware of several of our key managers from China who visit [Graco's] Minneapolis headquarters 4 to 5 times a year for at least a week at a time."). Come July 1, 2017, Plaintiffs and their member organizations will be required to provide sick and safe leave benefits in accordance with the Minneapolis Ordinance.

The City nonetheless maintains it has the exclusive authority to enforce the Ordinance, an argument suggesting that Plaintiffs' concerns over application of the Ordinance against employers

from geographically-distant locations may never come to pass. But the City's current position, however sincere, neither alters the plain language of the Ordinance, nor compels a finding that Plaintiffs are not at risk of being harmed by the Ordinance as presently written. Accordingly, the Court finds that the extraterritorial reach of the Minneapolis Ordinance poses a justiciable controversy, the merits of which the Court must now analyze.

In evaluating the merits of this issue, the Court concludes that the Ordinance runs afoul of the City's territorial reach. When determining the extraterritorial reach of an ordinance, Minnesota courts focus on whether the harm to be prevented occurs within a municipality's borders. For example, in *City of Plymouth v. Simonson*, 404 N.W.2d 907, 909 (Minn. Ct. App. 1987), the Minnesota Court of Appeals held that a city ordinance prohibiting harassment was not extraterritorial where the defendant mailed harassing letters from outside Plymouth city limits to a resident living within Plymouth's borders. In reaching this conclusion, the *Simonson* Court emphasized that the harm to be prevented occurred within the Plymouth city limits. *Id.* The Court determined that it was not where the communication was sent from, but where it was received, that was the dispositive factor. *Id.* Thus, in *Simonson,* the conduct prohibited by the ordinance was directly connected to preventing an identifiable harm within the city limits.

Similarly, in *State v. Nelson*, 68 N.W. 1066, 1068 (Minn. 1896), the Minnesota Supreme Court found no extraterritorial operation of a Minneapolis ordinance that regulated the sale of milk within the city while also providing for the inspection of milk dairies and dairy herds, regardless of where the dairies were located. The *Nelson* Court concluded that the ordinance was not extraterritorial because "the only subject upon which it operates is the sale of milk within the city." *Id.* As the Court stated, "[a]ny police regulations that did not provide means for insuring the wholesomeness of milk thus brought into the city for sale and consumption would furnish very

inadequate protection to the lives and health of the citizens." *Id.* Once again, the Court's analysis centered on an identifiable harm that the ordinance was created to specifically protect against—the sale of impure milk within the city limits.

Finally, in *City of Duluth v. Orr*, 132 N.W. 265, 265 (Minn. 1911), the Minnesota Supreme Court addressed the validity of a municipal ordinance that regulated the storage of gunpowder and other combustibles "within the city, or within one (1) mile from the limits thereof." *Id.* In holding the ordinance invalid insofar as it operated beyond the city limits, the *Orr* Court recognized that "[t]he 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." *Id.* The possibility that an explosion outside city limits could potentially impact people and property within city boundaries was insufficient to justify the extraterritorial reach of the Duluth ordinance.

Each of the cited cases are relevant to the Court's disposition of the current issue. The Minneapolis Ordinance is quite unlike those in both *Simonson* and *Nelson.* As regards those companies located outside Minneapolis' borders, the Ordinance does not create a sufficient nexus between its reach beyond the City's borders and the harm it is intending to prevent—employees who, for lack of available leave time, feel compelled to go to work within the City of Minneapolis even when ill. If there was a hypothetical outbreak of tuberculosis, or Spanish flu, or the H1N1 virus, for example, it is possible that the City could impose certain requirements on employers outside Minneapolis who might wish to send their employees into Minneapolis to perform work. As evidenced by *Simonson* and *Nelson*, our courts have permitted cities to regulate conduct directly connected to a harm occurring within a city's boundaries.

The Minneapolis Ordinance, however, attempts to regulate sick and safe leave not only for those who potentially come into Minneapolis ill, but also for those who are unlikely (or may never)

enter the city while sick. The Ordinance also assumes that someone who is ill will use the available leave benefits to help protect against potential harm. Unlike the ordinances at issue in *Simonson* and *Nelson*, the Minneapolis Ordnance is too attenuated to be given effect on an extraterritorial basis. The Ordinance is not narrowly crafted to prevent an identifiable harm to Minneapolis residents.

Instead, the Court concludes the Minneapolis Ordinance is closer to the ordinance rejected in *Orr*, which attempted unsuccessfully to control an activity outside city limits which could, potentially, impact citizens within city limits. The Minneapolis Ordinance imposes specific requirements, extraterritorially, on companies, wherever in the world they may be located, for an employee's presence in Minneapolis that may be de minimus. Moreover, the Ordinance does not attempt to regulate only those companies whose employees work in Minneapolis full time, or substantially full time, or two-thirds time, or half time, or even on a regular part-time basis. Rather, the Ordinance seeks to impose its requirements on companies, wherever located in the world, whose employees work in Minneapolis for as little as one and a half hours per week (eighty hours per year).

Ultimately, there is an absence of authority to justify the extraordinary reach of the Minneapolis Ordinance.[2] The public policy supporting the Minneapolis Ordinance may be a good

[2] The City also directs the Court to various workers' compensation cases for the proposition that Minnesota laws frequently apply to employers located outside of its borders. These cases, however, involve injuries that occurred within the state of Minnesota, and consequently they are of little relevance here. *See Stolpa v. Swanson Heavy Moving Co.*, 315 N.W.2d 615, 616 (Minn. 1982) and *Cahalan v. Rohan*, 423 F.3d 815, 816 (8th Cir. 2005). It should come as no surprise that when a company sends employees into Minnesota, the company becomes subject to Minnesota's tort laws and statutory framework for compensation in the event that an employee is injured within the state. The workers' compensation cases are not helpful to resolution of the present issue.

one, and the City is free to impose it on companies resident within its borders. But the City is not free to impose its public policy initiative on companies beyond its territorial jurisdiction.[3]

As did the courts in *Simonson*, *Nelson*, and *Orr*, courts of this state must find the balance, on a case by case basis, regarding the permissible bounds of a statute that has an extraterritorial impact. In this case, the Court concludes the Minneapolis Ordinance exceeds its territorial authority, and as a result, Plaintiffs are likely to prevail on their challenge to the extraterritorial reach of the sick leave Ordinance.

This conclusion, however, does not render the Ordinance entirely invalid, even if Plaintiffs prevail on their extraterritorial claim. Under the doctrine of severability, that portion of the Ordinance that impermissibly exceeds the City's territorial authority can be severed. *See* Minn. Stat. § 645.20 ("Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable."); *Krmpotich v. City of Duluth*, 474 N.W.2d 392, 397 (Minn. Ct. App. 1991), *rev'd on other grounds*, 483 N.W.2d 55 (Minn. 1992) (applying severability under Minn. Stat. § 645.20 to a municipal ordinance); *see also Canadian Connection*, 581 N.W.2d at 394 ("Further, we note that to the extent the township intruded into pollution control issues, the district court properly determined a provision of the ordinance dealing with water pollution was preempted."). Neither party has argued that invalidating the extraterritorial reach of the Ordinance invalidates the Ordinance as a whole, and the Court is unaware of any reason why the City should be prevented from exercising its police power over those companies resident within its borders.

[3] Only two instances have been brought to the Court's attention in which a court ruled upon the validity of a similar municipal ordinance—one from New Jersey and one from Pennsylvania. Neither of these cases, however, provides persuasive authority for this Court.

2. Conclusion—Likelihood of Success on the Merits

The Court concludes that Plaintiffs are unlikely to succeed on their claims that the Minneapolis Ordinance is either impliedly preempted by state law or in conflict with state law. Conversely, the Court finds that Plaintiffs are likely to prevail on their claim that the Ordinance impermissibly extends its reach beyond the City's regulatory authority.

iii. Nature of the Relationship

The next *Dahlberg* factor the Court must consider is the nature of the relationship between the parties. The objective of a temporary restraining order is to "maintain the status quo pending a decision on the merits" of the case. *Metro. Sports Facilities Comm'n*, 638 N.W.2d at 221. Here, Plaintiffs represent a cross section of nonprofit corporations, small business associations, and Minneapolis-based businesses who are suing the City of Minneapolis to enjoin an Ordinance that, though enacted in May of 2016, will not go into effect until July 1, 2017.

At present, Plaintiffs are operating within a legal framework that allows them certain flexibility in whether they provide, and how they structure, employee sick leave benefits. However, with the enactment of the Minneapolis Ordinance, this legal framework is set to change on July 1, 2017.

The City, meanwhile, is a home rule charter city afforded with broad police powers to enact regulations that further public health and welfare. *See, e.g.*, *Dean v. City of Winona*, 843 N.W.2d 249, 257 (Minn. Ct. App. 2014) ("In the exercise of its police powers a state is not confined to matters relating strictly to the public health, morals, and peace, but, as has been said, there may be interference whenever the public interests demand it.") (internal citations omitted). In addition, through its establishment as a local Community Health Board, the City also has the responsibility "for development and maintenance of a system of community health services under local

administration and within a system of state guidelines and standards." Minn. Stat. § 145A.04, subd. 1.

The parties in this case are therefore in the midst of a transition that will not be complete until July 1, 2017 when the Ordinance officially goes into effect. Because the Court will order a hearing on the merits of this case to be held prior to the July 1, 2017 effective date of the Ordinance, the Court concludes that the status quo of the parties' relationship will not be significantly jeopardized by either granting or denying the injunction. This factor is therefore neutral, weighing in neither party's favor.

iv. Public Policy Considerations

The fourth *Dahlberg* factor involves weighing any relevant policy considerations. The Court finds there is a strong public policy towards permitting the City to govern in ways that it believes best promote the public health of its residents. The Court recognizes that its "authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked." *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982). The Court also acknowledges that the City has the authority to "adopt ordinances for all or a part of its jurisdiction to regulate actual or potential threats to the public health . . .." Minn. Stat. § 145A.05, subd. 1.

But at the same time, the City's authority is not boundless. It may only enact ordinances that control matters within its territorial authority, and are not preempted by state law, in conflict with state law, nor less restrictive than state standards. Minn. Stat. § 145A.05, subd. 1. Thus, there is a countervailing public policy towards ensuring that the City does not exceed its authority, and that the City's constituents, such as the Plaintiffs in this case, are not unlawfully burdened.

Any concerns over the Ordinance's validity, however, should be resolved in advance of its effective date.

On balance, the Court concludes the relevant public policy considerations weigh in favor of the City and against the grant of a temporary injunction.

v. Administrative Burdens

Finally, the Court must consider whether it will face administrative burdens, in the form of judicial supervision and enforcement, should the temporary injunction issue. *Dahlberg Bros.*, 137 N.W.2d at 322. The Court concludes that any administrative burdens it would face would be negligible. This factor is therefore neutral.

vi. Conclusion—the *Dahlberg* Factors

The Court concludes that isofar as the Minneapolis Ordinance mandates actions by employers outside of the City boundaries, the Motion for a Temporary Injunction is granted. However, pursuant to Minn. Stat. § 645.20, the remainder of the Ordinance shall remain in effect ("Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable."). *See also Krmpotich v. City of Duluth*, 474 N.W.2d 392, 397 (Minn. Ct. App. 1991), *rev'd on other grounds*, 483 N.W.2d 55 (Minn. 1992) (modifying a trial court judgment by severing a clause from a city ordinance where the ordinance was otherwise valid.)

b. Motion for Consolidation with a Hearing on the Merits

The Court finds that resolution of Plaintiffs' claims at a trial on the merits will likely necessitate further discovery. Consequently, the Court declines to grant Plaintiffs' request to consolidate its present motion for a temporary injunction with the ultimate hearing on the merits.

IV. CONCLUSION

The Court grants in part and denies in part Plaintiffs' present Motion. Although Plaintiffs may face irreparable harm if an injunction issues, the Court concludes, after weighing all five *Dahlberg* factors, that because Plaintiffs are unlikely to prevail on their claims of field and conflict preemption, a temporary injunction is not warranted as to those claims. However, because the Court also concludes that Plaintiffs are likely to succeed on their extraterritorial challenge to the Minneapolis Ordinance, a temporary injunction should issue with respect to that limited claim. Accordingly, the City of Minneapolis is hereby enjoined from enforcing the Minneapolis Ordinance against any employer resident outside the geographic boundaries of the City of Minneapolis until after adjudication of the case on its merits, or further order of the Court.

M.I.D.