



To: City of Tucson Government and Stakeholder Committee(s)

RE: **Mandatory Employer Paid Sick Leave**

My name is Garrett Kowalewski, and I am the founder and CEO of Staff Matters, Tucson owned and operated. I am also the 2014 Past President of the Society for Human Resources Management of Greater Tucson with over 400 members. My company was recognized in 2015 by Inc. 5000 as the **fastest growing private firm in all of Southern Arizona over a 3 year period**. We are the success story that Tucson needs to see more of and we employ roughly 150 – 175 people at any given time.

I am writing with deep concern over the legislation that is being considered to require mandatory employer-paid sick leave and stifle absentee management practices. I ask you to please **VOTE NO one this legislation if it comes to a vote**. Below I have itemized all of the serious problems this would introduce to all of our employers, our economy and our competitiveness as a place to do business.

I have been in the HR/employment in the recruiting and staffing industry in Tucson for over 16 years, much of it with an emphasis on our high-tech sector. Only 1/3 of our jobs are temporary. The rest of our jobs are regular, full-time jobs with our clients. In about half of those the people we recruit do work for us for 3 – 8 months before they become an employee of our clients (called a contract-to-hire).

My industry helps people get to work faster and help companies fill jobs sooner, generating more income for people and more tax revenue faster for our government, and helping businesses be successful in Tucson.

When the federal government considered the ACA, they took the time to gather input from all stakeholders. I'm shocked that Councilwoman Regina Romero tried to slide this through to a vote without any dialogue! Below I also offer important input from the Staffing Industry as a whole. Data estimates that across the country between 1.5% – 4% of ALL JOBS are with a staffing firm, most of which are fully expected to lead to a "permanent" job. If even 1.5% is true in Tucson, that puts our industry in the same class as Raytheon in terms of employment. We warrant your careful consideration of our concerns.

**Among all of my problems, perhaps the most egregious thing this would do is give immunity from discipline or termination to an employee that is 15 minutes late OVER 150 TIMES in a year!** Think about that, but let me itemize the problems that this bill will create:

1. **Worse for Employees Too: Back into the Shadows** – Employers have evolved away from separate sick and vacation time over the years. Employers primarily offer combined sick and vacation time, called personal time off (PTO) that is universally seen as better by both employees and employers. However, employers cannot legally allow PTO to be taken in less than full-day increments for salaried professionals, so to allow for one hour or less at a time will FORCE employers to create these two separate buckets to treat them both differently. And they'll pull day for day from PTO to give to sick time. This legislation requires that sick time is able to be taken in the smallest increment provided for by a company's payroll practices, which for everyone is 15 minutes or less. There is already a conflict in government regulations that will force employers to un-combine sick and vacation time and take a major step backwards. Instead of offering 15 days of PTO, you would have to say 7 sick days and 8 vacation days. The problem is that rarely does anybody need 7 purely sick days in a year – it's excessive! And at the end of the year when they've only used 1-2 sick days, they're not going to want to forfeit the rest so they will revert to calling in sick just to take advantage of those days – employers and employees don't want that!! The recourse that this give employers – to require and pay for doctor's notes – is misguided because to request a note damages relationships and mutual trust. And it may be invoked and good employees may be terminated if they are caught lying. But who can blame them for

not wanting to lose PTO? If I wanted them to have 15 days I wanted them to have it. If an employer wants to offer paid time away from the office they don't want to push employees back into the shadows. And sick time will all be unplanned, last-minute time off and will take a serious toll on business operations!

- a. To make the point more clearly, for those employees that already have access to at least 56 hours of paid time away from work, it offers NO benefit, but does offer some drawbacks to the very employees the bill is trying to help. Throughout this letter you will see how it harms their ability to use PTO instead of sick and vacation time; harm the economy on which they depend for jobs, increase commute times for those companies that decide to move outside of Tucson city limits (and pollution from those longer commutes which harms public health), cause layoffs or furloughs as their company's orders drop when their product is competitively higher price and their customers choose competitors without the increased 3.33% "tax" that this represents, etc.
2. **Paid time off AND essentially eliminating attendance management goes too far** – I don't support either (1) government mandated paid time off OR (2) the ban on employers applying attendance and performance management policies, but really this would essentially eliminate the ability of companies to manage attendance problems for everyone. That goes too far! There will be fear about addressing attendance issues that have a REAL impact on business operations. Businesses will suffer and have their hands tied when there are actual abusers of the system or highly unreliable people. Under the draft ordinance, somebody could literally show up 15 minutes late 160 times with impunity if they just utter the words "sick family member". That is a mind boggling restraint. And I know well over 150 local businesses very well. None of them just fire a good employee over a few instances where an employee had an illness to deal with. They work with them and talk to them. Only when it becomes excessive and dramatically impacts business operations do they make the decision to fire someone.
  3. **Cost of goods sold** – Why do jobs go to Mexico or China? The gap in labor costs has to be great enough to justify the increased shipping and management costs, etc. When you impose a cost on a business it has the effect of increasing the cost of their product or service. Consumers will see higher prices. Or, more alarmingly, we're giving more incentive to send or keep jobs outside of Tucson, or outside of the USA. Our loyal local companies also regularly compete with other companies outside of Tucson. This would give non-Tucson companies a competitive edge by forcing higher operating costs and costs of goods sold on our Tucson companies! At the very least, for those that don't have paid time off give the option for the employer to reschedule them or let them make up the hours rather than force a payout!
  4. **Absence control and being stuck with deadbeats** – Like it or not, there are always a percentage of people that are very bad employees. There are those with a horrible work ethic, those that party the night before and show up late or call in sick, and those with substance abuse problems that have bouts of absenteeism. Being late or having absentee issues is the #1 way that these people start to be revealed, yet this legislation would put up a magical shield for them! Employers that do have people that abuse the system will now face the backlash of yet one more wrongful termination lawsuit, even if it is groundless. We're not even allowed to address it despite the great detriment to our operations. Don't say that we can get a doctor's note either because 1) that's ANOTHER cost the government want to have an employer pay and 2) if they really are sick with the flu or a bad cold, making them go to the doctor's is kind of mean. It would give this magical shield to deadbeats who are the most likely to abuse it and try to threaten lawsuits. And employers will be forced to be afraid of even addressing attendance until AFTER the 7 days are used, which means they have to arguably wait for 10, 12 or more days before they can start taking action to even address the problem much less terminate an employee.
    - a. I have seen abuses under the Family and Medical Leave Act where some employees would just regularly walk in 5, 10 or 15 minutes late and just say "FMLA" with immunity. Even our federal government got the message and reformed it to be less prone to abuse allowing employers to force full-days of *unpaid* time off so as to seriously curtail tardiness abuses.
    - b. An employee can be 15 minutes late over 200 times before the limit is reached where I can address their attendance – that is absurd and just a total protection for abusers and deadbeats.

- c. One person with a bad work ethic who puts out their team with chronic tardiness and absentee issues can ruin the culture of an entire small business or a department. It also has the tendency to drag down the bar of performance on others because they see someone getting away with abuses. This legislation would force companies to just suffer those problems, and believe me they have a horrible, profound effect on operations, attitudes, co-worker satisfaction, and culture.
5. **A big solution with no significant problem** – Aside from the mountain of regulation already imposed on businesses, this one is not just an inappropriate – and hopefully illegal – use of government authority, it is a solution without a problem. The majority of all businesses already offer some amount of paid time away from the office. I already outlined how this is extremely disruptive for policies that already work as well or better than this legislation, and how this could be worse for employees. For those businesses that don't offer any paid sick time or paid time off in general, the free enterprise system makes them a less desirable employer. They are already paying a price in their hiring and their turnover. Many of those companies don't just do it because they're mean. They simply run on very low gross profit margins and if they raise prices they lose business. Really a 3.33% tax on labor will push some over the edge. It will kill some jobs. (1 hour for every 30 worked is  $1/30 = 3.33\%$ )
6. **A reason not to choose Tucson to open or grow a business** - I know a few hundred of our employers and our economy intimately well. I have seen over 35 companies decide to move Tucson jobs elsewhere or relocate their companies away from Tucson altogether, and many of them were high-tech. Then there are those companies that we hope to attract. Tucson already loses WAY too many opportunities for companies to choose to stay, relocate or start here. We lose to Phoenix very often, and other cities in the Southwest that do a much better job of attracting and retaining companies than we do. This bill will only exacerbate our problem by making us that much less appealing. To the extent that this is not a national requirement, or a statewide requirement, we're making ourselves stick out like a sore thumb. Please do not let this happen!
7. **Poorly written** – part-time or intermittent full-time employees are hurting for paid sick time? Really? Why not allow the employers reschedule their shifts, or make up the time? Don't just throw money at them for missing work. Also if someone accrues paid sick leave and has gaps in employment, why should they retain this accrued sick leave? How can I take total attendance into consideration and address serious attendance problems without getting sued? Why the different tiers (employers with <10 employees vs. >10), that dis-incentivizes people to work for small businesses. Can employees let you know they were sick even *after* they missed the start of their shift (unless they're unconscious/hospitalized)? It just says as soon as practicable. Go live on July 1<sup>st</sup> of this year – radical new legislation with less than a 2 year window to prepare, study, asses and implement shows unbelievably poor judgment. And it requires written notice be given to employees – why not allow it to be on the state labor law posters? If they show up an hour late and say they were sick, can I send them home so as not to get others sick? If they don't want to use 7 hours of sick time but I force them to go home, can I NOT pay for the 7 hours? They cannot use more than 7 days in a year – is that a calendar year or a rolling 12 months? Let's assume you fix the glaring problem of applying this to ALL workers and limit it to just those that work 40 hours a week or more. You will quickly find a lot more part-time jobs in Tucson if the cost is just too high for companies to stay competitive.
8. **Administrative Burden (in addition to cost)** – in order to manage attendance and reliability issues I have to track all the time covered by the magical shield of immunity, wait until it's done, and then manage further absences in a different manner. Just tracking sick time for 150+ employees is an administrative burden. Then to manage when I can and can't address issues, when I can request a doctor's note, etc. is just more stifling government regulation.
9. **More extreme than California!** – California's own version of this law, one of only 2 states that I believe have such a law – allows for the accumulation of up to **3 days per year**. **7 days is ridiculous**. I've never been sick 7 days in a year. Only a fraction of people I have ever worked with might have hit that number. Back to my earlier argument, it's going to be awfully enticing for an employee to not want to lose those days and be sure they use them. It's creating circumstances that foster bad behavior, move

people towards more unplanned sick time off (bigger disruption to operations than planned time off) rather than PTO, and unduly burden businesses.

10. **Timeframe unreasonably short** – Paid sick leave would become mandatory after 90 days. Many of the bad employees can manage themselves for the first 90 – 180 days during the “honeymoon”. Common probation periods for companies are regularly in the 6 month range for that reason. Even if I supported this legislation, which I do NOT, a *one year period* (like the *Family and Medical Leave Act* (FMLA) provides) is far more reasonable. By then an employee has proven themselves beyond doubt. Even the federal government came up with a more reasonable timeline for protections for employees.
11. **On the heels of the Affordable Care Act (ACA)** – Employers just got hit with the ACA (which I actually support) last year and this year. This would be throwing something unnecessary – and in my opinion inappropriate for government to regulate – on all of your businesses now???
12. **The special interest of the Staffing Industry and Seasonal Employers**
  - a. **Another “tax” on top of the ACA** - We just got done incorporating and passing on the cost of the ACA. This new legislation would amount to a 2.7% – 3.3% tax to our service, and that will harm our industry – a critical industry in Tucson. Remember, we lubricate the economy and empower people to find work faster, and get off of unemployment, and pay income taxes, and get on employer paid healthcare. Companies compete better because we enable them to staff appropriately quickly. We are a force for good. This legislation will have a deleterious effect on our entire industry. Between this and the ACA we’re looking at 6% or more in increased taxes to labor from our industry.
  - b. **Legal Issues** – say we do have a temporary job for 4 months and then afterwards we have a contract-to-hire (i.e. they work for us but it is fully expected that they’ll be a permanent employee for our client) with another client. The 2<sup>nd</sup> client will be the one that bears the cost. The employee has just started from their point of view, but on day one they have the magical shield of immunity and the air of doubt/suspicion that it will raise when invoked. Let’s even assume that they have some legitimate and faked sick days. Our clients are evaluating their reliability from a clean slate, so they will feel entitled to judge against their own absence control policies for a new employee. If that leads to a termination decision, that puts us all at risk.
  - c. **Cost Issues** – 7 days of paid time off would result in a cost to an average staffing firm of **11.47% of the entire gross profit margin that they take in**. That is a MASSIVE amount, not a small amount. It’s not “just 7 days”. That is far more than actually turns into net profit before tax. Think about that, in all the decades of my industry we’ve not been able to eek out a profit margin , meaning that we cannot absorb the cost. This will effectively be a new tax and it will have to be passed on to Tucson businesses.
13. **Unintended Side Effects** – one of the speakers at the stakeholders meeting on January 21<sup>st</sup> pointed out that most businesses in Tucson lease their space and many of them will simply move outside of Tucson city limits. He also pointed out that this will have the effect of decreasing property values, harm those that own commercial and industrial real estate, and remove property tax dollars from the coffers of the city.

For all of these reasons, times the thousands of voices of business owners and leaders in Tucson that may not articulate the arguments in this detail, I ask you to VOTE NO on the Earned Sick Time ordinance.

Thank you.

Sincerely,

Garrett Kowalewski, President & CEO

**Staff Matters**—Recognized in 2015 by Inc. 5000 as the *fastest growing firm in Southern Arizona* over 3 years

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