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Fitzgerald Vetoes Paid Sick Days Act Due to Incorrect Process for Passage
Requests Action by Health Department Pursuant to Local Health Administration Law

PITTSBURGH – In accordance with Article IV, Section 5h of the county’s Home Rule Charter, County Executive Rich Fitzgerald has vetoed Bill No. 11481-20 (Paid Sick Days Act) passed by County Council at its March 9 meeting. His written objections specifically referenced the process by which Council approved the legislation and the need to ensure that the law is followed to provide true protection for employees.

“This issue is too important to our community, and particularly to those workers who would have protection in the form of paid sick leave, for it to be done the wrong way,” the Fitzgerald letter reads. “It’s simply not fair to give employees in our county false hope that they’re protected when the process followed by Council jeopardizes that…. If we want to protect our residents, families, community and public health, we must do this in the right way to ensure that it withstands any legal challenge.”

In a confidential memo provided to County Council last Monday, County Solicitor Andy Szefi conveyed the Law Department’s concerns with the process being used for passage of this legislation. Rather than the process followed by Council, he noted that the regulation should have been put in place following the provisions of the Local Health Administration Law (LHAL).

The veto message also restates his support of a paid sick leave policy: “There are many reasons that such a policy makes sense. Quite simply, we don’t want people going to work who are contagious. Millions of people in this country, and thousands in our own community, do not have paid sick days to care for their own health. For many, particularly those earning the lowest wage, the decision to stay home or go to work when sick isn’t really a decision. In order to pay their bills, they must work — and so they go to work ill, including with contagious illnesses that threaten public health. When you look at how this impacts communities of color, the statistics are more staggering. According to the National Paid Sick Days Coalition, more than half (54%) of Latinx workers do not earn a single paid day and 38% of Black workers have no access to paid sick days.”

Fitzgerald also noted the administration had begun working on a paid sick days policy prior to the pandemic, but had to put that work aside to focus on COVID-19 response. Now that there is some breathing room with some stability of cases, and increased availability of vaccine in the community, he has asked Health Director Dr. Debra Bogen and Board of Health Chair Dr. Lee Harrison to begin the work to promulgate regulations following the process outlined in the LHAL.

The veto message, in its entirety, follows:

In accordance with Article IV, Section 5 h) of the Allegheny County Home Rule Charter, I hereby return, with my veto, County Council Bill No. 11481-20 (Paid Sick Days Act).

Before outlining my objections to the ordinance, let me start by saying that I fully support paid sick leave. There are many reasons that such a policy makes sense. Quite simply, we don’t want people going to work who are contagious. Millions of people in this country, and thousands in our own community, do not have paid sick days to care for their own health. For
many, particularly those earning the lowest wage, the decision to stay home or go to work when sick isn’t really a decision. In order to pay their bills, they must work – and so they go to work ill, including with contagious illnesses that threaten public health. When you look at how this impacts people of color, the statistics are more staggering. According to the National Paid Sick Days Coalition, more than half (54%) of Latinx workers do not earn a single paid day and 38% of Black workers have no access to paid sick days.

In the alternative, workers with paid sick days are more likely to pursue routine medical appointments and preventive care, because they have the luxury of using paid sick leave to care for themselves. Paid sick time helps workers stay healthy and productive, which benefits everyone.

Establishing a policy of paid sick leave for the county was being explored by my administration prior to the county’s first case of COVID. We had dozens of conversations with stakeholders to hear their input. As the coronavirus numbers increased locally, our attention and time had to turn to response. Fortunately, the Families First Coronavirus Response Act (FFCRA), addressed the need in the interim, providing paid sick leave and expanded family and medical leave. The federal measure allowed us to take a pause in our own efforts while we ramped up testing, preventative efforts, and began to look to distribution of vaccine.

Earlier this year, I asked some of those stakeholders to convene to discuss the ordinance which had been proposed by Council. With the onset of the pandemic locally a year ago, we have seen the vast importance of individuals having the ability to remain at home and care for themselves and their families. That working group indicated its support of a paid sick leave proposal and recognized that phased implementation and an appropriate timeline was necessary.

What wasn’t addressed, and what has led to my veto of this ordinance, was the appropriate process through which such policy should be established. County Solicitor Andy Szefi conveyed the Law Department’s concerns to you with the process being used for passage of this legislation. Rather than the process followed by Council, this regulation should have been put in place following the provisions of the Local Health Administration Law (LHAL). More specifically, Allegheny County’s authority to impose rules and regulations aimed at public health and safety is set forth in Sections 12010 and 12011 of the LHAL, which read in relevant part as follows:

(1) the county department of health… shall make and enforce such rules and regulations, subject to the approval of the county commissioners or, in the case of a joint-county department of health the joint-county health commission, and institute such programs not inconsistent with the law as may be necessary for the promotion and preservation of the public health. The board of health shall exercise the rule-making power conferred upon the county department of health by the formulation of rules and regulations for the prevention of disease, for the prevention and removal of conditions which constitute a menace to health, and for the promotion and preservation of the public health generally. Rules and regulations formulated by the board of health shall be submitted to the county commissioners… for approval or rejection. Within thirty (30) days after the receipt of the rules and regulations, the county commissioners… shall give written notice to the secretary of the board of their approval or rejection.

LHAL at Sections 12010(f) and 12011(c) (emphasis added).

This process needs to follow the promulgation of rules and regulations by the Allegheny County Health Department via the Board of Health. Should such rules and regulations be promulgated, they then proceed to County Council in the form of an ordinance as the role of “county commissioners” has been replaced by County Council and the County Executive under the home rule form of government.

As you are all aware, this process was not followed. I commend Council for their interest in enacting this policy and taking steps to protect the residents of this county. We have the same goal but are going about reaching it in different ways. This issue is too important to our community, and particularly to those workers who would have protection in the form of paid
sick leave, for it to be done the wrong way. It's simply not fair to give employees in our county false hope that they're protected when the process followed by Council jeopardizes that.

Following Council’s vote last week, I spoke directly with Dr. Debra Bogen, Director of the Allegheny County Health Department, to let her know that I would be requesting that the department begin the process to promulgate paid sick leave regulations following the provisions laid out in the LHAL. This morning, I sent a formal letter of request to Dr. Bogen and Dr. Lee Harrison, Chair of the Board of Health, doing exactly that. Even if Council votes to override the veto of the regulated crafted through the wrong process, we will have begun the process to do this the right way.

Following the LHAL means that it will be several more months before Allegheny County has its own paid sick leave regulations. If we want to protect our residents, families, community and public health, we must do this in the right way to ensure that it withstands any legal challenge. For the aforementioned reasons, I have vetoed County Council Bill No. 11481-20.

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