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October 5, 2016

Honorable Bridget Gainer
Commissioner – 10th District
Cook County Board of Commissioners
118 North Clark Street, Room 567
Chicago, Illinois 60602

CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION

In Re: Countywide Paid Leave Mandate

Dear Commissioner Gainer:

We received your request for advice with regard to the County's home rule authority to institute a countywide paid leave ordinance.

ISSUE PRESENTED

Does the County have the ability to implement a paid sick leave mandate?

CONCLUSION

We have conducted a search of past advice memoranda on this issue and located the attached memorandum from Daniel Gallagher to you dated August 7, 2015, which we believe answers the question above.

We also understand your question to ask whether, if sued with respect to the ordinance, the County would have any defenses. In the event the paid sick leave ordinance were to be challenged in court, the County has two arguments that it could assert in defense of the ordinance. First, the County could assert that the Supreme Court has prohibited home rule entities from undercutting State labor protections but has not precluded home rule units from providing worker protections greater than those mandated by the State. Second, the County could argue that the proposed ordinance is a proper exercise of the County's authority to regulate in the field of public health.

DISCUSSION

In the event the Board adopts the paid sick leave ordinance and it becomes the subject of a legal

challenge, the County could assert the following two arguments in defense of its authority to adopt the ordinance.

A. An Alternative Interpretation of Bernardi

The City of Chicago has passed an ordinance that will raise the minimum wage for Chicago workers to $13 per hour ("Minimum Wage Ordinance") as well as its own paid sick leave ordinance, which suggests a different interpretation of *Bernardi*. It is clear from our discussions with the City that prior to the enactment of the Minimum Wage Ordinance, the City considered the Supreme Court's ruling in *Bernardi*. Still, in the preamble to its Minimum Wage Ordinance, the City of Chicago cites its home rule authority pursuant to section 6(a) of the 1970 Illinois Constitution. Therefore, we must conclude that the City has interpreted *Bernardi* in such a way to preserve its home rule power to enact ordinances within the scope of labor regulation.

We presume that the City relied on an alternative interpretation of *Bernardi* that is premised on the idea that the State's vital interest in labor regulations does not foreclose a home rule unit from enacting similar ordinances in all cases. This argument relies heavily on a belief that the *Bernardi* court expressly held that the State's interest is to set minimum standards with regards to labor regulations. *See, Bernardi,* 121 Ill. 2d at 5 at 14 (discussing "[e]stablishing ***minimum requirements*** to . . . improve working conditions has traditionally been a matter of State concern, outside the power of local officials to contradict, and it remains so today." (emphasis added)). Proponents of this interpretation cite to a myriad of cases where Illinois courts have routinely upheld local laws that provide greater protection than state laws. *See, Crawford v. City of Chicago,* 304 Ill. App. 3d 818, 828 (1st Dist. 1999) (City of Chicago's policy of extending benefits to same sex domestic partners upheld); *see also*, *Village of Bolingbrook v. Citizens Utils. Co.,* 158 Ill. 2d 133, 134-143 (1994) *(*environmental ordinances that regulate sewage discharge more restrictively than state law); *Kalodimos,* 103 Ill. 2d 483 (gun safety ordinance that regulated hand guns more restrictively than state law).

Adopting this rationale, it could be argued that the City's Minimum Wage Ordinance, and likewise, similar labor regulation such as the proposed paid leave mandate, would not interfere with the protection of the state's interests as long as such an ordinance provides more protections to workers than state law requires.

B. The County's Regulation of Public Health

The Illinois Appellate Court upheld the City of Chicago's ordinance that extended employee benefits to the same-sex domestic partners of City employees in *Crawford v. City of Chicago*, 304 Ill. App. 3d 818, 828 (1st Dist. 1999). The Appellate Court affirmed the trial court's rejection of a home rule challenge, invoking the City's home rule authority to protect the health of its employees and their domestic partners. *Id.* at 825. The court noted that the State did not specifically preempt the City in the area of its employee benefits and found the plaintiffs' reliance upon *Bernardi* misplaced to the extent that *Bernardi* involved conduct by Highland Park--reducing the prevailing wage law-- that had an impact beyond its own borders. *Id.* at 828.

Here, the County could argue that the proposed Countywide sick leave ordinance is premised by its very terms upon the County's regulation of public health, a subject that pertains to its government and affairs. We are aware of no express preemption of the County's ability to regulate in the interest of the public health. The County could argue further that the ordinance by its terms applies only to employers located within Cook County and therefore would not impact employers beyond the border of Cook County. Accordingly, if challenged the County could claim that the analysis of *Bernardi* should not apply to invalidate the ordinance.

We hope the above discussion has been helpful to you. If this Office can be of further assistance to you in this matter, please contact us.

Sincerely,

ANITA ALVAREZ
STATE'S ATTORNEY OF COOK COUNTY

Donald J. Pechous
Deputy State's Attorney
Chief, Civil Actions Bureau