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Antony Dugdale
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Dear Mr. Dugdale,

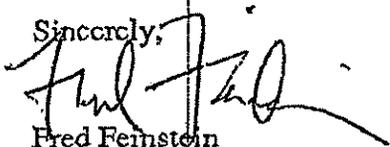
Recently you wrote requesting my opinion regarding proposed language for a bill to be introduced in the Connecticut legislature that would "limit an employer's ability to force an employee to listen to political or religious tirades". Specifically you asked if the preemption doctrine in federal labor law would limit Connecticut's ability to establish the minimum labor standard described in the proposed legislation.

During my nearly six year tenure as General Counsel of the National Labor Relations Board I often had occasion to consider whether state actions were preempted by the National Labor Relations Act. In my opinion a strong case can be made that the proposed legislation is not preempted by the NLRA, and that a court called upon to rule on this question would reach a similar conclusion.

The doctrine of federal preemption does not "touch[] upon interests so deeply rooted in local feeling and responsibility that, in the absence of compelling Congressional direction, it could not be inferred that Congress intended to deprive the state of the power to act". San Diego Building Trades v. Garmon, 359 U.S. 236, 239 (1959). The proposed legislation extends certain privacy protections to the workplace and state laws establishing workplace privacy rights have withstood preemption challenges in the past.

In my view, if the Connecticut legislature believes the proposed legislation has merit, concerns about federal preemption should not deter the legislature from acting.

Sincerely,



Fred Feinstein

Senior Fellow, Visiting Professor

Fact Sheet

IWPR #B250

February 2006

Paid Sick Days Improve Public Health by Reducing the Spread of Disease

Paid sick days can reduce the spread of disease at work and in child-care settings, creating significant public health benefits and a more productive workforce.¹ That's why the Centers for Disease Control and Prevention recommend that workers with the flu stay home.² Yet many workers cannot do so without losing income or their job.

Nearly Half of all Workers Lack Paid Sick Days

Barely half of all workers (51 percent) have paid sick days, and only one in three (30 percent) have sick days to care for sick children.³ As a result, many employees cannot afford to stay home until they are well, and others lose their jobs if they miss work. Indeed, many workers who are covered by formal paid sick days policies are penalized for using that time.⁴ Low-wage workers are the least likely to have paid sick days—including many who deal directly with the public.⁵ (For instance, only four percent of restaurant workers have paid sick days.⁶)

Sick Workers Infect Co-workers and Customers, Increasing Work Absence and Health-Care Spending

- ▶ Paid sick days minimize the spread of the flu, a highly contagious ailment that accounts for 10 to 12 percent of all illness-related work absence.⁷ A sick worker can pass the virus on for up to seven days after symptoms appear⁸ and is likely to infect 1.8 of every 10 co-workers.⁹ Forty percent of workers report having contracted the flu from a colleague.¹⁰
- ▶ Other viruses can rapidly infect workers and customers in the hospitality and food service industries through contaminated food or beverages. A Nevada jury found that a viral outbreak that sickened hundreds at a Las Vegas hotel was caused by the lack of an adequate paid sick days policy, awarding \$25 million in damages to victims of the disease.¹¹
- ▶ Workers with the flu miss an average of two days of work and work a half day at half of normal productivity (while receiving full pay), for a total work loss of 2.25 days.¹² Nearly half (45 percent) will visit the doctor, at an average cost of \$122 for provider fees and prescriptions.¹³

Sick Children Miss Out When Their Parents Don't Have Paid Sick Days

- ▶ Pre-school-age children are the first to signal that the flu season has arrived.¹⁴ Child-care center rules require sick children to remain home, but in practice, when parents cannot get off work to stay home with them, many sick children do end up in care.¹⁵ This sets up an efficient process of contagion: from child to playmate, to playmates' parents, and to parents' co-workers.
- ▶ Children recover faster when their parents care for them,¹⁶ reducing health-care expenditures. Parents with paid time off are more than five times as likely as other parents to stay home with their sick children,¹⁷ yet only 41 percent of working mothers have paid sick days consistently.¹⁸ Nearly half (49 percent) lose pay when they stay home with a sick child.¹⁹

Until workplace policies and norms change so that all workers have paid sick days and are encouraged to use them when appropriate, many will continue to go to work when they have a virus. Workers may feel they are helping their employers and co-workers by dragging themselves to work, but this "presenteeism" hurts employers' profitability²⁰ and has significant negative public health implications that spread far beyond a single worksite.