

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Docket Nos. 57 – 64 WAP 2017 Consolidated

BUILDING OWNERS AND MANAGERS ASSOCIATION OF PITTSBURGH,
Appellees,

v.

CITY OF PITTSBURGH, COUNCIL OF THE CITY OF PITTSBURGH,
WILLIAM PEDUTO, AND SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 32BJ, Appellants.

PENNSYLVANIA RESTAURANT & LODGING ASSOCIATION, *et al.*,
Appellees,

v.

CITY OF PITTSBURGH and SERVICE
EMPLOYEES INTERNATIONAL UNION LOCAL 32BJ, Appellants.

**BRIEF FOR *AMICI CURIAE* FIFTY-ONE ORGANIZATIONS
COMMITTED TO WOMEN’S HEALTH AND SAFETY,
IN SUPPORT OF APPELLANTS AND FOR REVERSAL**

Benjamin Beach, CA I.D. No. 226383
Miya Saika Chen, CA I.D. No. 268226
PARTNERSHIP FOR WORKING
FAMILIES
1939 Harrison Street, Suite 150
Oakland, CA 94612
(510) 925-4013
Email:
ben@forworkingfamilies.org
miya@forworkingfamilies.org

Susan Frietsche, PA I.D. No. 65240*
Christine Castro, NY I.D. No. 5543905
WOMEN’S LAW PROJECT
428 Forbes Avenue Suite 1710
Pittsburgh, PA 15219
(412) 281-2892
Email:
sfrietsche@womenslawproject.org
ccastro@womenslawproject.org

**Counsel of Record for Amici Curiae*

TABLE OF CONTENTS

I. Table of Authorities.....ii

II. Statement of Interest of the *Amici Curiae*.....1

III. Summary of Argument.....2

IV. Argument.....4

 A. The Paid Sick Days Ordinance Protects the Public Health4

 B. The Lack of Paid Sick Days Protection Disproportionately Harms Women and People of Color.....14

 C. The Paid Sick Days Ordinance Is a Public Health Enactment Well Within Pittsburgh’s Home Rule Authority 21

 1. The Pennsylvania Constitution and Home Rule Law Confer Broad Authority on Home Rule Municipalities to Protect Public Health 21

 2. The Disease Prevention and Control Law and Second Class City Law Expressly Permit Municipalities Such as Pittsburgh to Enact Public Health Measures..... 24

 D. The Safe and Secure Building Act Is Expressly Authorized by State Law..... 29

V. CONCLUSION.....30

CERTIFICATE OF WORD COUNT COMPLIANCE.....31

APPENDIX: INDIVIDUAL STATEMENTS OF INTEREST..... 1A

TABLE OF AUTHORITIES

Constitution

PA CONST., Art. IX, § 2.....21

Cases

Adams v. New Kensington, 55 A.2d 392 (Pa. 1957) 22

Building Owners and Managers Association v. City of Pittsburgh
(“BOMA 2009”), 985 A.2d 711 (Pa. 2009)..... 26,27,28

Hartman v. City of Allentown,
880 A.2d 737 (Pa. Commw. Ct. 2005)22,27

Holt’s Cigar Co. v. City of Philadelphia,
10 A.3d 902 (Pa. 2011)21

Smaller Manufacturers Council v. Council of Pittsburgh,
485 A.2d 73 (Pa. Commw. Ct. 1984)26,27

Taylor v. Harmony Township Bd. of Comm’rs,
851 A.2d 1020 (Pa. Commw. Ct. 2004)21

Western Pennsylvania Restaurant Association v. City of Pittsburgh,
77 A.2d 616 (Pa. 1951)22

Ziegler v. City of Reading, 142 A.3d 119 (Pa. Commw. Ct. 2016)22

Statutes, Ordinances, and Rules

Pittsburgh Ordinance No. 22-2015 (2015) (Safe and Secure Building Act)....2,4,29

Pittsburgh Ordinance No. 27-2015 (2015) (paid sick days ordinance) *passim*

Emergency Management Services Code, 35 Pa. C.S. § 7501	29
Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2961.....	<i>passim</i>
53 Pa. C.S. § 2962(c)(4).....	3,23,29
53 Pa. C.S. § 2962(f).....	24,26,27,28
Pa. R. App. P. 531	1
35 P.S. § 521 (Disease Prevention and Control Law of 1955).....	<i>passim</i>
53 P.S. § 23145 (Second Class City Law)	<i>passim</i>
53 P.S. § 23146.....	26
53 P.S. § 23158.....	26

Other Authorities

Allegheny County Health Dep’t website (“Clinics/Office Locations”), <i>available at</i> http://www.achd.net/clinics.html	26
Am. Pub. Health Ass’n, <i>Support for Paid Sick Leave and Family Leave Policies</i> , (Nov. 5, 2013), <i>available at</i> https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/16/11/05/support-for-paid-sick-leave-and-family-leave-policies	5,9
Abay Asfaw et al., <i>Paid Sick Leave and Nonfatal Occupational Injuries</i> , 102 Am. J. Pub. Health e59 (Sept. 2012), <i>available at</i> https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3482022/pdf/AJPH.2011.300482.pdf	12
Soumitra S. Bhuyan, <i>Paid Sick Leave Associated with Fewer ED Visits Among U.S. Private Sector Working Adults</i> , 34 Am. J. Emergency Med. 784 (2016), <i>available at</i> http://www.ajemjournal.com/article/S0735-6757(16)00007-3/pdf	13

Bloomberg, “The Flu is Killing Up to 4,000 Americans a Week,” *Fortune Magazine* (Feb. 10, 2018), available at <http://fortune.com/2018/02/10/american-flu-deaths/>.....10

Grace C. Nguyen Bond, *Does Home Rule Really Mean More Authority for Chartered Municipalities? An Analysis of Building Owners & Managers Ass’n v. City of Pittsburgh*, 20 *Widener L.J.* 579 (2011)28

Center for Research & Public Policy, *The Mind of the Food Worker: Behaviors and Perceptions that Impact Safety and Operations*, at 15, available at http://cdn2.hubspot.net/hubfs/403157/Mind_of_the_Food_Worker_Report.pdf?submissionGuid=7e8f33aa-26e6-40d2-addc-712fb28bda3a7

W.K. Cook et al., *A Health Impact Assessment of the Healthy Families Act of 2009* (June 11, 2009), available at http://www.nationalpartnership.org/site/DocServer/WF_PSD_HFA_HealthImpact_Assessment_HIA_090611.pdf?docID=5101.....8

Kenneth Dominguez & Ana Penman-Aguilar, *Vital Signs: Leading Causes of Death, Prevalence of Diseases and Risk Factors, and Use of Health Services Among Hispanics in the United States — 2009–2013*, *Morbidity and Mortality Weekly Report* (2015), available at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6417a5.htm?s_cid=mm6417a5_w 18

Families USA, *African American Health Disparities Compared to Non-Hispanic Whites* (2014), available at <http://familiesusa.org/product/africanamerican-health-disparities-compared-to-non-hispanic-whites>18

Sarah J. Glynn & Jane Farrell, “Latinos Least Likely to Have Paid Leave or Workplace Flexibility,” *Center for American Progress* (2012), available at <https://cdn.americanprogress.org/wp-content/uploads/2012/11/GlynnLatinosPaidLeave1.pdf>.....16

Aron J. Hall et al., *Vital Signs: Foodborne Norovirus Outbreaks – United States 2009-2012*, 63 *Morbidity and Mortality Weekly Report* 491 (June 6, 2014), available at <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6322a3.htm>8

Institute for Women’s Policy Research, *Access to Paid Sick Time in Pittsburgh, Pennsylvania* (2015), available at http://pghneedssickdays.org/wp-content/uploads/sites/3/2015/07/PGH_PaidSick_NEED_Report.pdf14

Heidi Janssens et al., *The Relation Between Presenteeism and Different Types of Future Sickness Absence*, 55 *J. Occupational Health* 132 (2013), available at <https://www.ncbi.nlm.nih.gov/pubmed/23485571>.....11

Mika Kivimaki et al., *Working While Ill As a Risk Factor for Serious Coronary Events: The Whitehall II Study*, 95 *Am. J. Pub. Health* 98 (Jan. 2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449859/pdf/0950098.pdf>. ..11-12

Supriya Kumar et al., *Policies to Reduce Influenza in the Workplace: Impact Assessments Using an Agent-Based Model*, 103 *Am. J. Pub. Health* 8 (2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3893051/> 9-10

Supriya Kumar et al., *The Impact of Workplace Policies and Other Social Factors on Self-Reported Influenza-Like Illness Incidence During the 2009 H1N1 Pandemic*, 102 *Am. J. Pub. Health* 134 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3490553/pdf/AJPH.2011.300307.pdf>9

Kevin Miller et al., *Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits*, Institute for Women’s Policy Research (Nov. 2011), available at <https://iwpr.org/publications/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits/> 12-13

National Cancer Institute, *NCI launches largest-ever study of breast cancer genetics in black women* (Jul. 6, 2016), available at <https://www.cancer.gov/news-events/press-releases/2016/breast-cancer-genetics-black-women> 19

National Partnership for Women & Families, *America’s Women and the Wage Gap* (Apr. 2017), available at <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/americas-women-and-the-wage-gap.pdf>17

National Partnership for Women & Families, *Working Women Need Paid Sick Days* (Apr. 2013) available at <http://www.nationalpartnership.org/research-library/work-family/psd/working-women-need-paid-sick-days.pdf> 16-17

Lucy Peipins & Ashwini Soman, *The Lack of Paid Sick Leave As a Barrier to Cancer Screening and Medical Care-seeking: Results from the National Health Interview Survey*, 12 BMC Public Health 520 (2012), available at <http://www.biomedcentral.com/content/pdf/1471-2458-12-520.pdf>10-11, 18

Pennsylvania’s Beginning of Quarter Employment: Counts by Worker Race and NAICS Sectors, 2016 Q3, QWI Explorer application, U.S. Census Bureau, <https://qwiexplorer.ces.census.gov/exp-r/100edc.html>20

Pennsylvania’s Beginning of Quarter Employment: Counts by Worker Sex and NAICS Sectors, 2017 Q1, QWI Explorer application, U.S. Census Bureau, <https://qwiexplorer.ces.census.gov/static/explore.html?s=100f8f&v=line&t=ac0&fc=true&st=PA#x=0&g=0>.19

Pennsylvania’s Full Quarter Employment (Stable): Average Monthly Earnings by Worker Ethnicity and NAICS Sectors, 2016 Q3, QWI Explorer application, U.S. Census Bureau, <https://qwiexplorer.ces.census.gov/static/explore.html?s=100fa9&v=bar&t=&fc=fa&lse&st=PA#x=0&g=0> 15-16

S. Pichler & N.R. Ziebarth, *The Pros and Cons of Sick Pay Schemes: Testing for Contagious Presenteeism and Noncontagious Absenteeism Behavior*, NBER (Aug. 2016), available at http://research.upjohn.org/cgi/viewcontent.cgi?article=1257&context=up_working_papers10

Pittsburgh, PA’s Full Quarter Employment (Stable): Average Monthly Earnings by Worker Race and NAICS 3-digit Subsectors, 2016 Q3, QWI Explorer application,

U.S. Census Bureau,
<https://qwiexplorer.ces.census.gov/static/explore.html?s=100c0b&v=bar&t=&fc=false&st=PA#>20

Pittsburgh, PA's Full Quarter Employment (Stable): Average Monthly Earnings by Worker Sex and NAICS 3-digit Subsectors, 2016 Q3, QWI Explorer application, U.S. Census Bureau,
<https://qwiexplorer.ces.census.gov/static/explore.html?s=100c0b&v=bar&t=&fc=false&st=PA#x=0&g=0>20

Restaurant Opportunities Centers United, *Serving While Sick: High Risk and Low Benefits for the Nation's Restaurant Workforce, and Their Impact on the Consumer*, available at <http://rocunited.org/roc-serving-while-sick/>7

Alina Salganicoff et al., “Women and Health Care in the Early Years of the ACA: Key Findings from the 2013 Kaiser Women’s Health Survey” (Oakland, CA: Henry J. Kaiser Family Foundation, 2014), available at <https://www.kff.org/womens-health-policy/report/women-and-health-care-in-the-early-years-of-the-aca-key-findings-from-the-2013-kaiser-womens-health-survey/>.....11

T. Smith & J. Kim, *Paid Sick Days: Attitudes and Experiences*, National Opinion Research Center (June 2010), at 6, available at <https://www.issuelab.org/resource/paid-sick-days-attitudes-and-experiences.html>.....6,15

Steven Sumner et al., *Factors Associated with Food Workers Working While Experiencing Vomiting or Diarrhea*, 74 J. Food Protection 215 (2010), available at <https://www.ncbi.nlm.nih.gov/pubmed/21333140>7

P. Susser & N.R. Ziebarth, *Profiling the U.S. Sick Leave Landscape: Presenteeism Among Females*, 51 Health Serv. Res. 2309 (Dec. 2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5134145/>.....6

U.S. Bureau of Labor Statistics Mid-Atlantic Information Office, “Minimum Wage Workers in Pennsylvania—2016,” available at https://www.bls.gov/regions/mid-atlantic/news-release/minimumwageworkers_pennsylvania.htm15

U.S. Bureau of Labor Statistics, <i>Employed and unemployed full- and part-time workers by age, sex, race, and Hispanic or Latino ethnicity</i> (2018), available at https://www.bls.gov/cps/cpsaat08.htm	16
U.S. Census Bureau, <i>Poverty Status in the Last 12 Months of Families, 2016 American Community Survey 1-Year Estimates</i> , available at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_S1702&prodType=table	17
U.S. Dep’t of Labor, Bureau of Labor Statistics, <i>Employee Benefits Survey: Tbl. 32 (Leave benefits: Access, private industry workers, National Compensation Survey March 2015)</i> , available at https://www.bls.gov/ncs/ebs/benefits/2015/ebbl0057.pdf	14
U.S. GAO, <i>Progress Made, but Women Remain Overrepresented among Low-Wage Workers</i> (Oct. 2011), available at https://www.gao.gov/products/GAO-12-10	15
Eric Widera et al., <i>Presenteeism: A Public Health Hazard</i> , 11 J. Gen. Intern. Med. 1244 (Nov. 25, 2010), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2947637/	5
Claudia Williams et al., <i>44 Million U.S. Workers Lacked Paid Sick Days in 2010: 77 Percent of Food Service Workers Lacked Access</i> , Institute for Women’s Policy Research (Jan. 2011), available at https://iwpr.org/publications/44-million-u-s-workers-lacked-paid-sick-days-in-2010-77-percent-of-food-service-workers-lacked-access/	6
Heidi Williamson et al., <i>The State of Black Women & Reproductive Justice</i> (2017), available at http://blackrj.org/wp-content/uploads/2017/06/FINAL-InOurVoices_Report_final.pdf	17

II. STATEMENT OF INTEREST OF THE *AMICI CURIAE*¹

Amici curiae are women's advocates, health care providers, labor unions, religious leaders, community groups, medical associations, and public health organizations that share a longstanding commitment to improving the health and wellbeing of Pennsylvania working women and their families. *Amici* have expertise in Pennsylvania law and policy affecting women's health, including the public health benefits of permitting employees to accrue and use a limited amount of paid sick time to attend to their own or their family members' health needs or recover from illness or injury. *Amici* are familiar with the painful choices facing the roughly 40% of private employees in Pittsburgh who have not a single day of paid sick leave and must neglect their own health to protect their employment, or put their livelihood at risk to stay home and care for a sick child. *Amici* also understand well the importance of employee training on matters related to safety and security in protecting Pittsburgh's buildings and their occupants.

Pursuant to Pa. R. App. P. 531, *amici* submit this brief to assist the Court by illuminating the relationship between paid sick leave and public health, and the particular impact paid sick leave has on the health and wellbeing of women and

¹ No person or entity other than the *amici curiae*, their members, or counsel paid in whole or in part for the preparation of this brief or authored it in whole or in part.

their families. *Amici* also write in support of Appellants with respect to the validity of Pittsburgh’s Safe and Secure Building Act, which provides for workplace emergency preparedness training and, like the paid sick days ordinance, is intended to protect the health and safety of Pittsburgh residents.²

The individual statements of interest of the *amici curiae* are contained in the appendix to this brief.

III. SUMMARY OF ARGUMENT

The purpose of the Pittsburgh paid sick days ordinance (“PSDA” or “ordinance”) is “to improve the public health” of Pittsburgh residents. *See* Paid Sick Days Act, Pittsburgh Ordinance 27-2015 (RR 5a-11a).³ The ordinance is well suited to this purpose. As medical and social science research attests, paid sick leave protects the public health in numerous ways. It permits sick people to recover faster. It helps isolate the sick person and avoid workplace transmission of pathogens, which is of particular importance in the food service, childcare, education, and health care industries. It permits working parents to stay home to care for their sick children, thus helping the child recover faster while preventing

² While this brief focuses principally on Pittsburgh’s paid sick days ordinance, *amici* note that many of the same legal and policy considerations support reversal in the consolidated appeal involving the Safe and Secure Building Act, Ordinance 22-2015 (2015) (RR 1a-4a).

³ References to the Reproduced Record are designated herein as “RR”.

transmission of contagious diseases in day care and school settings. It correlates with fewer on-the-job accidents. It minimizes emergency room visits for non-emergent medical needs. It facilitates timely health screenings and preventive care. In the event of a public health emergency, the ordinance will help ensure that employers are aware of their obligation to permit workers to comply with emergency public health measures.

The lack of paid sick days protection inflicts severe distress on low-wage workers who cannot afford to lose even a single day's pay. These workers are, disproportionately, women and people of color. In particular, low-wage women workers, who continue to bear a disproportionate share of the caregiving responsibilities for children and other family members, suffer the stress of competing demands from job and family. For families confronted with a cancer diagnosis, a sudden disabling condition, or the onset of an addiction, where caregiving responsibilities are immediate and a matter of life or death, paid sick leave is a compelling necessity.

Pittsburgh has ample authority as a home rule municipality to enact local ordinances like the PSDA. Section 2962(c)(4) of the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2961 et seq., and the Second Class City Law, 53 P.S. § 23145, affirmatively authorize the PSDA and similar public health and

safety measures, including the Safe and Secure Building Act. In addition to these statutes, the Pennsylvania Disease Prevention and Control Law of 1955 explicitly grants municipalities such as Pittsburgh the authority to “enact ordinances . . . relating to disease prevention and control,” as long as these local ordinances are no less strict than coordinate state provisions. 35 P.S. § 521.16. Pittsburgh’s PSDA is a textbook example of a public health ordinance addressing disease prevention and control.

For these reasons, the Court should reverse the Commonwealth Court’s rulings of May 17, 2017, and enter judgment for Appellants.

IV. ARGUMENT

A. The Paid Sick Days Ordinance Protects the Public Health.

The purpose of Pittsburgh’s PSDA is “to enhance the public health.” Ordinance 27-2015 (RR 5a). The ordinance serves this purpose by permitting employees to accrue a modest amount of paid sick time to be used to respond to their own or a family member’s medical needs. Paid sick leave protects public health by speeding employees’ recovery, preventing the transmission of communicable illnesses, and facilitating timely preventive health care.

The effectiveness of paid sick leave as a public health strategy is amply supported by a compelling body of research. The American Public Health

Association (APHA), the nation’s preeminent public health association, notes that “[l]ack of paid sick leave can have substantial adverse consequences for public health, including the spread of infectious disease.” Am. Pub. Health Ass’n, *Support for Paid Sick Leave and Family Leave Policies* (Nov. 5, 2013), available at <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/16/11/05/support-for-paid-sick-leave-and-family-leave-policies> (last visited Feb. 11, 2018). The APHA describes the double-bind workers face when paid sick leave is unavailable:

Individuals without paid sick leave are forced to make a choice every time they are ill: stay home to recover or go to work because they cannot afford a smaller paycheck. Given this choice, many U.S. workers decide to work while they are sick. As a result, they compromise their health as well as the wellness of those they encounter at work, on transportation systems, and elsewhere in their community.

Id. Indeed, “presenteeism,” or the practice of coming to work while sick or injured, is a common occurrence among workers without paid sick leave. See Eric Widera et al., *Presenteeism: A Public Health Hazard*, 11 J. Gen. Intern. Med. 1244 (Nov. 25, 2010) (discussing role of presenteeism in outbreak of viral gastroenteritis in longterm care facility), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2947637/> (last visited Feb. 11,

2018). An estimated 3 million workers a week in the U.S. go to work sick. P. Susser & N.R. Ziebarth, *Profiling the U.S. Sick Leave Landscape: Presenteeism Among Females*, 51 Health Serv. Res. 2309 (Dec. 2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5134145/>. Adults without paid sick leave are 18% more likely to report going to work with a contagious disease than workers with access to paid leave. See T. Smith & J. Kim, *Paid Sick Days: Attitudes and Experiences*, National Opinion Research Center (June 2010), at 6, available at <https://www.issuelab.org/resource/paid-sick-days-attitudes-and-experiences.html>.

This problem is particularly widespread in the restaurant and food industries, where over three-quarters of food service workers have no paid sick leave. See Claudia Williams et al., *44 Million U.S. Workers Lacked Paid Sick Days in 2010: 77 Percent of Food Service Workers Lacked Access*, Institute for Women's Policy Research (Jan. 2011), available at <https://iwpr.org/publications/44-million-u-s-workers-lacked-paid-sick-days-in-2010-77-percent-of-food-service-workers-lacked-access/> (last visited Feb. 12, 2018). Service workers have frequent contact with the public. If they go to work sick with a contagious disease, not only do they recover more slowly, but they are also likely to spread their disease to coworkers and the public.

In a national survey of more than 4,300 restaurant workers, 88% of those surveyed reported not having paid sick leave, and 63% stated that they cooked and served food to customers while sick. *See* Restaurant Opportunities Centers United, *Serving While Sick: High Risk and Low Benefits for the Nation’s Restaurant Workforce, and Their Impact on the Consumer*, available at <http://rocunited.org/publications/roc-serving-while-sick/> (last visited Feb. 11, 2018); *see also* Steven Sumner et al., *Factors Associated with Food Workers Working While Experiencing Vomiting or Diarrhea*, 74 J. Food Protection 215, 220 (2010) (finding that 12% of interviewed restaurant workers reported working while experiencing diarrhea or vomiting on two or more occasions in previous year), available at <https://www.ncbi.nlm.nih.gov/pubmed/21333140>. One study found that over 50% of surveyed food workers indicated that they “always” (18.5%) or “frequently” (32.3%) go to work when they are sick. *See* Center for Research and Public Policy, *The Mind of the Food Worker: Behaviors and Perceptions that Impact Safety and Operations*, at 15, available at http://cdn2.hubspot.net/hubfs/403157/Mind_of_the_Food_Worker_Report.pdf?sub_missionGuid=7e8f33aa-26e6-40d2-addc-712fb28bda3a. Almost half of those who worked while sick reported that they did so because they “can’t afford to lose pay.” *Id.* In one study drawing on data from the CDC, where factors contributing to food

contamination were reported, contagious food workers were implicated as the source of contamination in 70% of the cases. See Aron J. Hall, et al., *Vital Signs: Foodborne Norovirus Outbreaks – United States 2009-2012*, 63 *Morbidity and Mortality Weekly Report* 491, 493 (June 6, 2014), available at <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6322a3.htm>. Providing even a modest amount of paid sick time to these workers would mitigate the spread of infectious diseases.

The social distancing that the availability of paid sick time facilitates is especially critical for employees who come into regular close contact with vulnerable populations: teachers, health care workers, elder care workers, and childcare providers. An assessment of the health impact of proposed federal legislation to provide up to 56 hours of earned paid sick leave to employers with 15 or more employees found that this measure would reduce transmission of influenza in the community, foodborne disease in restaurants, and gastrointestinal infections in health care facilities. See W.K. Cook et al., *A Health Impact Assessment of the Healthy Families Act of 2009* (June 11, 2009), available at http://www.nationalpartnership.org/site/DocServer/WF_PSD_HFA_HealthImpact_Assessment_HIA_090611.pdf?docID=5101.

The 2009-2010 H1N1 pandemic dramatically illustrated the harm presenteeism can pose to public health. The American Public Health Association reports, based on data from the CDC and research by the Institute for Women's Policy Research, that infected employees who reported to work caused the infection of an additional 7 million people and 1,500 deaths. *See* Am. Pub. Health Ass'n, *Support for Paid Sick Leave and Family Leave Policies*, available at <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/16/11/05/support-for-paid-sick-leave-and-family-leave-policies> (last visited Feb. 14, 2018). Subsequent studies estimate that 5 million additional cases of influenza were attributable to a lack of paid sick leave. *See* Supriya Kumar et al., *The Impact of Workplace Policies and Other Social Factors on Self-Reported Influenza-Like Illness Incidence During the 2009 H1N1 Pandemic*, 102 Am. J. Pub. Health 134, 139 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3490553/pdf/AJPH.2011.300307.pdf>. Research from the University of Pittsburgh Medical Center confirms that access to paid sick leave in Pittsburgh could decrease transmission rates for influenza. *See* Supriya Kumar et al., *Policies to Reduce Influenza in the Workplace: Impact Assessments Using an Agent-Based Model*, 103 Am. J. Pub. Health 8 (2013), available at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3893051/> (last visited Feb. 12, 2018). Analysis of the effects of recent legislation in seven major cities indicates that paid sick leave laws have resulted in the prevention of 100 cases of flu-like contagious diseases per week and per 100,000 population. *See* S. Pichler & N.R. Ziebarth, *The Pros and Cons of Sick Pay Schemes: Testing for Contagious Presenteeism and Noncontagious Absenteeism Behavior*, at 4, 33 (NBER Aug. 2016) (finding that “[w]hen U.S. employees gain access to paid sick leave, the general flu rate in the population decreases significantly.”), *available at* http://research.upjohn.org/cgi/viewcontent.cgi?article=1257&context=up_working_papers (last visited Feb. 13, 2018). Today, as a flu outbreak claims up to 4,000 lives per week, Pittsburgh’s inability to implement this proven disease control strategy courts tragedy. *See* Bloomberg, “The Flu is Killing Up to 4,000 Americans a Week,” *Fortune Magazine* (Feb. 10, 2018) (predicting that deaths from the current influenza outbreak will “likely far outstrip those of the 2009-2010 [swine flu] season”), *available at* <http://fortune.com/2018/02/10/american-flu-deaths/>.

Not only does lack of paid sick leave lead to the spread of communicable disease in the workplace, it also interferes with employees’ ability to get recommended health screenings and preventive care. Workers without paid sick time are less likely to get preventive screenings. *See* Lucy Peipins et al., *The Lack*

of Paid Sick Leave As a Barrier to Cancer Screening and Medical Care-seeking: Results from the National Health Interview Survey, 12 BMC Public Health 520 (2012) (finding that lack of paid sick leave constituted a barrier to cancer screening tests including colonoscopies, Pap tests, and mammograms), *available at* <http://www.biomedcentral.com/content/pdf/1471-2458-12-520.pdf>. According to one study, roughly one in four women— 23 percent—stated they could not obtain medical care because they did not have time; one in five—19 percent—delayed accessing medical care because they did not have paid leave from their job. Alina Salganicoff et al., “Women and Health Care in the Early Years of the ACA: Key Findings from the 2013 Kaiser Women’s Health Survey” (Oakland, CA: Henry J. Kaiser Family Foundation, 2014), *available at* <https://www.kff.org/womens-health-policy/report/women-and-health-care-in-the-early-years-of-the-aca-key-findings-from-the-2013-kaiser-womens-health-survey/>.

Working while sick increases the likelihood that a worker will have a higher rate of absenteeism in the future. *See* Heidi Janssens et al., *The Relation Between Presenteeism and Different Types of Future Sickness Absence*, 55 J. Occupational Health 132-41 (2013) (finding that when employees work through illness, they have a higher likelihood of subsequent absenteeism), *available at* <https://www.ncbi.nlm.nih.gov/pubmed/23485571>. Working while sick has even

been identified as a risk factor for repeat heart attacks. See Mika Kivimaki et al., *Working While Ill As a Risk Factor for Serious Coronary Events: The Whitehall II Study*, 95 Am. J. Pub. Health 98-102 (Jan. 2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449859/pdf/0950098.pdf>.

Moreover, working while sick increases the likelihood of workplace accidents and injuries. Researchers from the National Institute for Occupational Safety and Health at the CDC found that workers with paid sick days were 28% less likely to be injured on the job than workers without paid sick days. Abay Asfaw et al., *Paid Sick Leave and Nonfatal Occupational Injuries*, 102 Am. J. Pub. Health e59, e62 (Sept. 2012), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3482022/pdf/AJPH.2011.300482.pdf>.

A study of paid sick days and hospital emergency department utilization found that access to paid sick days is associated with reduced reliance on expensive emergency room care, and concluded that paid sick days could prevent 1.3 million emergency room visits every year. See Kevin Miller et al., *Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits*, Institute for Women's Policy Research (Nov. 2011) (using data from National Health Interview Survey conducted by CDC's National Center for Health

Statistics), available at <https://iwpr.org/publications/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits/>; see also Soumitra S. Bhuyan, *Paid Sick Leave Associated with Fewer ED Visits Among U.S. Private Sector Working Adults*, 34 Am. J. Emergency Med. 784-789 (2016), available at [http://www.ajemjournal.com/article/S0735-6757\(16\)00007-3/pdf](http://www.ajemjournal.com/article/S0735-6757(16)00007-3/pdf). The paid sick days ordinance advances the public health by facilitating more efficient and appropriate use of Pittsburgh's emergency medical resources.

The ordinance also allows employees to use accrued sick time when there is a public health emergency:

The sick time accrued by an employee may be used for . . . [c]losure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease, whether or not the family member has actually contracted the communicable disease.

Ordinance 27-2015, § 4(A)(3). This provision protects public health and safety by clarifying employers' responsibility to cooperate with public health authorities in the event of a catastrophic public health emergency.

As this research confirms, the ordinance is a reasonable and necessary public health measure responsive to the needs of Pittsburgh. Not only will the PSDA allow workers to recover from their illnesses, but it will also protect the public health by preventing the spread of contagious diseases, facilitating timely health screenings and preventive care, and allowing workers to comply with public health measures in the event of a public health emergency. Giving workers a moderate amount of paid sick time also inures to the employer's benefit by maintaining a healthier, safer, and more productive workforce and averting workplace injuries.

B. The Lack of Paid Sick Leave Protection Disproportionately Harms Women and People of Color.

Approximately 40 percent of Pittsburgh's private sector workers do not have access to paid sick time; low-wage, part-time workers are even less likely to be covered than full-time employees. *See* Institute for Women's Policy Research, *Access to Paid Sick Time in Pittsburgh, Pennsylvania* 1 (2015)

<http://pghneedssickdays.org/wp->

[content/uploads/sites/3/2015/07/PGH_PaidSick_NEED_Report.pdf](http://pghneedssickdays.org/wp-content/uploads/sites/3/2015/07/PGH_PaidSick_NEED_Report.pdf).⁴ The

estimated 49,000 Pittsburgh workers who lack paid sick leave face an impossible

⁴ *See also* U.S. Dep't of Labor, Bureau of Labor Statistics, *Employee Benefits Survey*: Tbl. 32 (Leave benefits: Access, private industry workers, National Compensation Survey March 2015), available at <https://www.bls.gov/ncs/ebs/benefits/2015/ebbl0057.pdf> (showing part-time workers among least likely to have access to paid sick leave).

choice between bringing home a paycheck for their families or taking time to recover from an illness. They face agonizing choices when their children fall ill: compared to parents with access to paid sick days, parents without paid sick days are more than twice as likely to report taking a sick child to school or daycare. *See* T. Smith & J. Kim, *supra*, at 6.

Women make up the majority of low-wage workers nationally, and in Pennsylvania, women comprise nearly 60 percent of the workers earning wages at or below the federal minimum. *See* U.S. GAO, *Progress Made, but Women Remain Overrepresented among Low-Wage Workers* (Oct. 2011), available at <https://www.gao.gov/products/GAO-12-10>; U.S. Bureau of Labor Statistics Mid-Atlantic Information Office, “Minimum Wage Workers in Pennsylvania—2016,” available at https://www.bls.gov/regions/mid-atlantic/news-release/minimumwageworkers_pennsylvania.htm. African-American and Latino workers are also overrepresented among low-wage workers in Pennsylvania. *Pennsylvania’s Full Quarter Employment (Stable): Average Monthly Earnings by Worker Race and NAICS Sectors*, 2016 Q3, QWI Explorer application, U.S. Census Bureau, <https://qwiexplorer.ces.census.gov/exp-r/100fc4.html>; *Pennsylvania’s Full Quarter Employment (Stable): Average Monthly Earnings by Worker Ethnicity and NAICS Sectors*, 2016 Q3, QWI Explorer application, U.S.

Census Bureau, <https://qwiexplorer.ces.census.gov/exp-r/100fc4.html>. Women, African-American and Latino workers are also overrepresented among part-time workers, who are less likely to have paid sick leave, and less likely to be able to afford to take leave without pay. *See* U.S. Bureau of Labor Statistics, *Employed and unemployed full- and part-time workers by age, sex, race, and Hispanic or Latino ethnicity* (2018), available at <https://www.bls.gov/cps/cpsaat08.htm>; *see also* Sarah Jane Glynn & Jane Farrell, “Latinos Least Likely to Have Paid Leave or Workplace Flexibility,” Center for American Progress (2012), available at <https://cdn.americanprogress.org/wp-content/uploads/2012/11/GlynnLatinosPaidLeave1.pdf>.

The lack of paid sick days harms low-wage working women and people of color with special cruelty. In particular, women, who still labor under a persistent gender wage gap,⁵ bear a disproportionate share of family caregiving responsibilities: two-thirds of all family caregivers are female. *See* National Partnership for Women & Families, *Working Women Need Paid Sick Days* (Apr.

⁵ The gender wage gap is even worse among women of color: full-time Black women workers get paid sixty-three cents for every dollar earned by white men, and Latinas earn fifty-four cents for every dollar earned by white men. *See* National Partnership for Women & Families, *America’s Women and the Wage Gap* (Apr. 2017), available at <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/americas-women-and-the-wage-gap.pdf>.

2013), available at <http://www.nationalpartnership.org/research-library/work-family/psd/working-women-need-paid-sick-days.pdf> (last visited Feb. 11, 2018); National Partnership for Women & Families, *America's Women and the Wage Gap* (Apr. 2017), available at <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/americas-women-and-the-wage-gap.pdf> (reporting women in the United States earn eighty cents for every dollar paid to men). In 29 percent of Black families with young children, the primary provider for the family is a Black woman, whose wages are essential for paying for rent and food. See Heidi Williamson et al., *The State of Black Women & Reproductive Justice* (2017), available at http://blackrj.org/wp-content/uploads/2017/06/FINAL-InOurVoices_Report_final.pdf. The inability to take paid sick days has disproportionately grave consequences for workers of color. In Pennsylvania, 25 percent of African-American families and 26 percent of Latino families live in poverty, compared with seven percent of White families. U.S. Census Bureau, *Poverty Status in the Last 12 Months of Families, 2016 American Community Survey 1-Year Estimates*, available at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_S1702&prodType=table. For poor families, having to miss work or even lose a job because of missed work can mean financial catastrophe.

Moreover, workers without paid sick days are less likely to go to the doctor or access preventive care. *See* Lucy A. Peipins & Ashwini Soman, *The Lack of Paid Sick Leave As a Barrier to Cancer Screening and Medical Care-Seeking: Results from the National Health Interview Survey*, 12 BMC Public Health 520 (2012), available at <http://www.biomedcentral.com/content/pdf/1471-2458-12-520.pdf> (last visited Feb. 12, 2018). A lack of preventive health care is disproportionately harmful to African Americans, who are 60 percent more likely to have diabetes than their White peers and who have substantially higher mortality rates from stroke, heart disease, and breast cancer. Similarly, Latinos have substantially higher mortality rates from diabetes, hypertension, and liver disease. *See* Families USA, *African American Health Disparities Compared to Non-Hispanic Whites* (2014), available at <http://familiesusa.org/product/africanamerican-health-disparities-compared-to-non-hispanic-whites> (last visited Feb. 12, 2018); Kenneth Dominguez & Ana Penman-Aguilar, *Vital Signs: Leading Causes of Death, Prevalence of Diseases and Risk Factors, and Use of Health Services Among Hispanics in the United States — 2009–2013*, Morbidity and Mortality Weekly Report (2015), available at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6417a5.htm?s_cid=mm6417a5_w (last visited Feb. 12, 2018). The lack of paid sick leave threatens grave harm to

the health and wellbeing of women of color. The barriers in accessing preventive care, often exacerbated by the inability to take even a few hours off for a medical appointment, leave women of color at greater risk of health complications or illness resulting in death. *See* National Cancer Institute, *NCI launches largest-ever study of breast cancer genetics in black women* (Jul. 6, 2016) (reporting that while survival rates for women diagnosed with breast cancer are steadily improving generally, Black women are more likely to be diagnosed with life-threatening subtypes of cancer and have a lower survival rate than white women), *available at* <https://www.cancer.gov/news-events/press-releases/2016/breast-cancer-genetics-black-women> (last viewed Feb. 14, 2018).

Disturbingly, the very workplaces most likely to deny workers paid sick leave are in low-wage sectors, where workers can least afford to forgo a day's pay *and* where disease is likeliest to spread widely. In Pennsylvania, more than 1.6 million women are employed in sectors in which they are at risk of regular close contact with contagious people: health care and social assistance; retail trade; accommodation and food service; and educational services. *See Pennsylvania's Beginning of Quarter Employment: Counts by Worker Sex and NAICS Sectors, 2017 Q1, QWI Explorer application*, U.S. Census Bureau, <https://qwiexplorer.ces.census.gov/static/explore.html?s=100f8f&v=line&t=ac0&f>

[c=true&st=PA#x=0&g=0](#). These four sectors account for nearly 60 percent of women's employment in the state; in fact, the health care and social assistance sector alone accounts for a full 28 percent. *Id.* The health care and social assistance, retail trade, accommodation and food service and educational services sectors also employ nearly half of all workers of color in the state, with 551,752 African-American, Asian and Latino workers employed in these sectors. *See Pennsylvania's Beginning of Quarter Employment: Counts by Worker Race and NAICS Sectors, 2016 Q3*, QWI Explorer application, U.S. Census Bureau, <https://qwiexplorer.ces.census.gov/exp-r/100edc.html>.

In Pittsburgh, women, African-American and Latino workers employed in these sectors earn on average significantly less than their male and white counterparts.⁶ *See Pittsburgh, PA's Full Quarter Employment (Stable): Average Monthly Earnings by Worker Race and NAICS 3-digit Subsectors, 2016 Q3*, QWI Explorer application, U.S. Census Bureau, <https://qwiexplorer.ces.census.gov/exp-r/100c0b.html>; *Pittsburgh, PA's Full Quarter Employment (Stable): Average Monthly Earnings by Worker Sex and NAICS 3-digit Subsectors, 2016 Q3*, QWI Explorer application, U.S. Census Bureau, <https://qwiexplorer.ces.census.gov/exp-r/100c0b.html>.

⁶ In Pittsburgh, almost twice as many women as men are employed in the educational services, ambulatory health care services, hospitals, nursing and residential care facilities, and food service and accommodation sectors. *Id.*

<r/100fcb.html>. This means they are at greater risk of not having paid sick days and will need to work while sick. Hence, the lack of paid sick days protection—and the public health consequences it visits on workers and the public they serve—presents the highest risk to our most vulnerable citizens.

C. The Paid Sick Days Ordinance Is a Public Health Enactment Well Within Pittsburgh’s Home Rule Authority.

1. The Pennsylvania Constitution and Home Rule Law Confer Broad Authority on Home Rule Municipalities to Protect Public Health.

Both the Pennsylvania Constitution and the Home Rule Charter and Optional Plans law (“Home Rule law”) confer broad legislative authority on home rule municipalities, which “may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.” PA CONST., Art. IX, § 2; 53 Pa. C.S. § 2961 (same). Furthermore, “[a]ll grants of municipal power to municipalities governed by a home rule charter . . . , whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality,” 53 Pa. C.S. § 2961, with ambiguities to be resolved in the municipality’s favor. *Holt’s Cigar Co. v. City of Philadelphia*, 10 A.3d 902, 906-07 (Pa. 2011).

The Pittsburgh paid sick days ordinance was enacted pursuant to Pittsburgh's police power, specifically its "fundamental authority to protect the health, safety and welfare of its citizens." See *Hartman v. City of Allentown*, 880 A.2d 737, 742-43 (Pa. Commw. Ct. 2005) (citing *Taylor v. Harmony Twp. Bd. of Comm'rs*, 851 A.2d 1020, 1024-25 (Pa. Commw. Ct. 2004)). As a home rule municipality, Pittsburgh has *broader* powers of self-government than non-home rule municipalities. See *Ziegler v. City of Reading*, 142 A.3d 119, 134 (Pa. Commw. Ct. 2016); *Hartman*, 880 A.2d at 742. Yet, even before Pittsburgh acquired the greater autonomy and flexibility that comes with home rule, the Pennsylvania Supreme Court upheld a Pittsburgh ordinance enacted pursuant to its police powers which extensively regulated the restaurant industry for the purpose of protecting public health. See *Western Pa. Restaurant Ass'n v. City of Pittsburgh*, 77 A.2d 616 (Pa. 1951).

In *Western Pennsylvania Restaurant Association*, the Pennsylvania Supreme Court rejected the restaurant association's preemption claim, stating, "a legislative body certainly may, in the exercise of the police power, impose reasonable limitations and regulations upon the conduct and operation of a business upon which the health of the people is so vitally dependent." *Id.* at 621; *cf. Adams v. New Kensington*, 55 A.2d 392 (Pa. 1957) (upholding third class city's jukebox

ordinance as valid exercise of municipality’s police powers as conferred by provision of Third Class City Code similar to parallel provision of Second Class City Code).

Here, Pittsburgh has exercised its police powers in order to protect the public health. *See* Ordinance 2015-1825. Indeed, as discussed *supra*, the ordinance protects the public health by preventing the spread of infectious diseases and providing workers a moderate amount of paid sick time to recover from their illnesses, or to care for their child or other family member.

As set forth in detail in the Brief for Appellants, the ordinance is likewise authorized by section 2962(c)(4) of the Home Rule law, which confers on municipalities authority “to enact and enforce ordinances relating to building codes or any other safety, sanitation or health regulations pertaining thereto.”⁷ Surely, a measure that is proven to prevent the spread of communicable diseases in the close, sealed environment of a modern high-rise office building can be fairly regarded as a “safety, sanitation or health regulation[.]” pertaining to the municipality and the buildings within it.

⁷ A similar analysis leads to the conclusion that the SSBA, aimed at protecting the safety of Pittsburgh workers and the general public, is likewise authorized by these same provisions. *See* Br. for Appellants at VII(A).

2. The Disease Prevention and Control Law and Second Class City Law Expressly Permit Municipalities Such as Pittsburgh to Enact Public Health Measures.

The Commonwealth Court’s determination that the paid sick days ordinance is *ultra vires* depends on a cramped reading of a portion of a single provision of the Home Rule law, which states:

Regulation of business and employment: A municipality which adopts a home rule charter shall not determine duties, responsibilities or requirements placed upon businesses, occupations and employers, including the duty to withhold, remit or report taxes or penalties levied or imposed upon them or upon persons in their employment, **except as expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities.**

53 Pa. C.S. § 2962(f) (emphasis added). This provision permits home rule municipalities to enact laws affecting businesses, *if expressly provided by statute.*

To the extent Pittsburgh’s ordinance can be said to “determine duties, responsibilities or requirements placed upon businesses, occupations, and employers,” state statutes expressly provide for it.

The Disease Prevention and Control Law of 1955 creates a system of shared responsibility for disease prevention and control between local and state government:

- (a) Local boards and departments of health shall be primarily responsible for the prevention and control of communicable and non-communicable disease, including disease control in public and private schools, in accordance with the regulations of the board and subject to the supervision and guidance of the department.
- (b) The department shall be responsible for the prevention and control of communicable and non-communicable disease in any municipality which is not served by a local board or department of health, including disease control in public and private schools.

35 P.S. § 521.3. Under this system, local government is “primarily responsible” for disease prevention and control, subject to supervision and guidance by the state Department of Health. *Id.* Only where a municipality is “not served by a local board or department of health” does the state assume primary responsibility for disease prevention and control in a municipality. *See id.* The Disease Prevention and Control Law goes on to explicitly grant municipalities which have such local health departments the authority to enact disease prevention and control ordinances:

Municipalities which have boards or departments of health or *county departments of health* may enact ordinances or issue rules and regulations relating to disease prevention and control, which are not less strict than the provisions of this act or the rules and regulations issued thereunder by the board. Local ordinances, rules or regulations relating to disease prevention and control,

which are in effect on the effective date of this act, shall not be deemed to be repealed, unless they are less strict than the provisions of this act or the rules and regulations issued thereunder by the board.

35 P.S. § 521.16(c).

Here, Pittsburgh has a county department of health, which is located in Pittsburgh and serves Pittsburgh residents. *See* Allegheny County Health Dep't website ("Clinics/Office Locations"), available at <http://www.achd.net/clinics.html> (last visited Feb. 12, 2018). Moreover, the paid sick days ordinance is not less strict than, or in any conflict with, the Disease Prevention and Control Law or its rules and regulations. Thus, the ordinance is expressly authorized by this statute.

The ordinance is also expressly authorized by the Second Class City Law, which permits Pittsburgh, the only Second Class city in Pennsylvania, "to make regulations to secure the general health of the inhabitants." *See* 53 P.S. § 23145; *see also* 53 P.S. § 23146 (powers of quarantine); 53 P.S. § 23158 (authority to enact all necessary ordinances). The ordinance is undeniably a regulation to secure the general health of the inhabitants of Pittsburgh.

Consequently, the ordinance may be distinguished from the ordinances in *Smaller Manufacturers Council v. Council of Pittsburgh*, 485 A.2d 73, 77 (Pa. Commw. Ct. 1984) ("*Smaller*"), and *Building Owners and Managers Association*

v. City of Pittsburgh, 985 A.2d 711 (Pa. 2009) (“*BOMA 2009*”), which were determined to be *ultra vires* under Section 2962(f). Unlike the ordinances in the *Smaller* and *BOMA 2009* cases, the PSDA is a public health measure, expressly authorized by the Disease Prevention and Control Law and Second Class City Law. Because the power to legislate in the area of disease prevention and control is expressly shared with municipalities, and because the ordinance does not conflict with or undermine state-level disease prevention and control schemes, the ordinance is a valid exercise of Pittsburgh’s home rule powers.

Other aspects of the ordinance distinguish it from the *Smaller* and *BOMA 2009* ordinances and align it more closely with the valid anti-discrimination ordinance upheld in *Hartman*. Section 2962(f) has been read narrowly to preempt only affirmative obligations placed on employers. *See Hartman*, 880 A.2d at 746-47 (upholding Allentown’s LGBT rights ordinance); *but cf. BOMA 2009*, 985 A.2d at 719 (Todd, J., dissenting) (criticizing the affirmative duty distinction as “illusory”). The *Hartman* court concluded that Allentown’s anti-discrimination ordinance did not offend Section 2962(f) because, in prohibiting discrimination against LGBT people, it did not “go to the heart of business management and usurp the role of business management.” *Hartman*, 880 A.2d at 746. In prohibiting employers from firing, disciplining, or docking the pay of sick workers who briefly

miss work to recover from illness at home, Pittsburgh's PSDA is likewise chiefly an anti-retaliation and anti-discrimination measure rather than a usurpation of the "affirmative duties of business management." *Id.* The ordinance does indeed contain recordkeeping and employee notice provisions, but these provisions are ancillary and minimally burdensome, and defer to the employer's preferred practices.

As Justice Todd points out in her dissent in *BOMA 2009*, reading Section 2962(f) broadly to prohibit home rule municipalities from imposing virtually any affirmative duties, responsibilities or requirements on business leads to unreasonable or absurd results: non-home rule municipalities would have greater power than home rule municipalities; the public interest in promoting the people's health would be subordinated to private interests; and, if this approach were taken to its logical conclusion, Section 2962(f) could be invoked to strike down ordinances related to licensure and public order. *BOMA 2009*, 985 A.2d at 718; *see also*, Grace Carroll Nguyen Bond, *Does Home Rule Really Mean More Authority for Chartered Municipalities? An Analysis of Building Owners & Managers Ass'n v. City of Pittsburgh*, 20 Widener L.J. 579 (2011). Such a reading would conflict with the very concept of home rule and frustrate the public health partnership

between state and municipal governments envisioned by the Disease Prevention and Control Law and Second Class City Law.

D. The Safe and Secure Building Act Is Expressly Authorized by State Law.

As set forth in detail in the Brief for Appellants, section 2962(c)(4) of the Home Rule law and the Second Class City law also invest Pittsburgh with the authority to enact the Safe and Secure Building Act. This Act protects public health and safety by training security personnel in large office buildings to detect and respond appropriately to a range of threats and emergencies. In addition to the Home Rule law and Second Class City law, the Emergency Management Services Code, 35 Pa. C.S. § 7501 et seq., gives Pittsburgh even clearer authority to protect the safety of its residents and visitors by developing and implementing an emergency management plan, of which training is a necessary component. Training building service workers on topics such as responding optimally to an active shooter, identifying potential bomb threats or biohazards, and coordinating appropriately with first responders is essential to Pittsburghers' safety and health and firmly within the City's home rule powers.

V. CONCLUSION

For these reasons, as well as those set forth in the Briefs for Appellants, the Court should reverse the Commonwealth Court's rulings of May 17, 2017, and enter judgment for Appellants.

Date: February 15, 2018

Respectfully Submitted,

/s/ Susan Frietsche

Susan Frietsche

Pa I.D. No. 65240

WOMEN'S LAW PROJECT

428 Forbes Avenue Suite 1710

Pittsburgh, PA 15219

Phone: (412) 281-2892

sfrietsche@womenslawproject.org

Attorney for *Amici Curiae*

CERTIFICATE OF WORD COUNT COMPLIANCE

Pursuant to Pa. R. App. P. 2135, the text of this *amicus curiae* brief consists of 5,936 words as determined by the Microsoft Word word-processing program used to generate this document.

Dated: February 15, 2018

/s/ Susan Frietsche
Susan Frietsche
Pa I.D. No. 65240
WOMEN'S LAW PROJECT
428 Forbes Avenue Suite 1710
Pittsburgh, PA 15219
Phone: (412) 281-2892
sfrietsche@womenslawproject.org

Attorney for *Amici Curiae*

APPENDIX

INDIVIDUAL STATEMENTS OF INTEREST OF THE *AMICI CURIAE*

ACCESSMATTERS

AccessMatters is a 501(c)(3) nonprofit public health organization based in Philadelphia that serves organizations and individuals across Pennsylvania and nationwide. Founded in 1972, AccessMatters innovates, empowers, and works to equalize access to sexual and reproductive health care for individuals in need. Through research, training, delivery of evidenced-based programs, community engagement and advocacy, AccessMatters leads the way in transforming access. AccessMatters recognizes the intimate connection between employee and family wellness and paid sick days. Many times caregivers are required to take unpaid leave to care for themselves or a family member and even sometimes forego seeking care for themselves out of fear of jeopardizing their job. AccessMatters believes the Pittsburgh paid sick days ordinance is critical to supporting individuals and families by allowing employees to take time off of work to care for a family member or for the employee themselves to recover from sickness.

ADAGIO HEALTH

Adagio Health has been a health care provider in western Pennsylvania since 1971. It operates medical offices and partners with more than 20 other health care services to provide health care at more than 55 sites in 23 counties of western Pennsylvania. Adagio Health serves more than 150,000 women and families each year, providing services such as obstetrics and gynecology, breast and cervical cancer screening, STI testing and treatment, nutrition counseling, teen pregnancy prevention, HIV prevention, sexuality education for teens, community education, parent education and professional training. Adagio Health support the Paid Sick Leave Ordinance because many women and families are not able to receive the health care that they need to stay healthy without access to paid medical leave.

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN – PENNSYLVANIA

In 1881, the American Association of University Women (AAUW) was founded by like-minded women who had defied society's conventions by earning 27 college degrees. Since then, it has worked to increase women's access to higher education through research, advocacy, and philanthropy. Today, AAUW-Pennsylvania has more than 5,000 members and supporters, 36 branches, and 50 college and university partners statewide. AAUW-Pennsylvania plays a major role in mobilizing advocates statewide on its priority issues and offers programming designed to increase financial security for women. In adherence with its member-adopted Public Policy Priorities, AAUW-Pennsylvania is a staunch advocate for measures that improve the economic self-sufficiency of all women including creating family-friendly workplace environments with flexible workplace policies and paid leave for personal and family illness.

BUCKS COUNTY WOMEN'S ADVOCACY COALITION

The Bucks County Women's Advocacy Coalition (BCWAC) is a non-partisan coalition of Bucks County individuals and non-profit organizations that serve women and girls. BCWAC educates and advocates on behalf of women to promote systemic change to achieve gender equity and economic security for all. Organized in 2008 as an advocacy and education project of the Bucks County Women's Fund, BCWAC was designated a 501(c)(3) charitable organization in 2015. Currently there are more than 200 individual partners and 41 organizational partners working to *speak with one voice* about the systemic public and private reforms needed to foster economic security of Bucks County women and their families.

BCWAC is persuaded by experience that long-term system changes matter, and possess a core conviction that all women and their families deserve access to services that help them achieve permanent economic self-sufficiency regardless of age, race, gender, sexual orientation, ethnicity, religious belief, economic condition, or medial and behavioral health status. The BCWAC comes together to support key principles and related specific components and strategies to achieve those ends through awareness, advocacy and action.

CASA SAN JOSE

Casa San Jose is a community resource center that advocates for and empowers Latinos by promoting integration and self-sufficiency. Casa San Jose provides assistance to Latino immigrants with access to services, including transportation, interpretation, and case management. More than half of Latina workers do not earn paid sick days through their employment. Pittsburgh's paid sick days ordinance would ensure that these workers are able to take time off to recover from illness or care for a sick family member.

COMMUNITY LEGAL SERVICES, INC. OF PHILADELPHIA

Community Legal Services (CLS) represents low-income Philadelphians in civil legal matters that would otherwise keep their families living in poverty. CLS also represents the interests of low wage Pennsylvania workers on a variety of policy issues that affect their ability to achieve financial security. Paid sick days ordinances such as Pittsburgh's are a key element of ensuring that workers are not unduly penalized and at risk of sinking into poverty for merely asking for a day off to care for themselves or a family member.

DELAWARE COUNTY WOMEN'S CENTER

Delaware County Women's Center (DCWC) is a state licensed private doctor's office that has a professional medical team specializing in medication abortion services up to 10 weeks of pregnancy. We provide compassionate abortion care and reproductive health services, inspired by our belief in the autonomy of the individual, and our commitment to strengthening communities and building a better future. DCWC believes that access to paid sick days will benefit the health and financial stability of our community members by ensuring that no one needs to choose between taking time off to care for themselves or their families and maintaining their income.

FOX CHAPEL AREA BRANCH OF AAUW

Founded in 1958, the Fox Chapel Area Branch of AAUW (American Association of University Women) is one of forty branches in Pennsylvania. AAUW is a national nonprofit organization founded in 1881 open to all graduates

who hold an associate or equivalent, baccalaureate or higher degree from a qualified college or university. AAUW advances equity for women and girls through advocacy, education and research.

The purpose of the Fox Chapel Area Branch is to align its priorities and actions to engage and attract members through programs, community service, interest groups and communications; make a positive difference in the community through outreach, issue advocacy, recognition and philanthropy; and focus on public education excellence and educational equity for girls and young women, emphasizing STEM. The Fox Chapel Area Branch of AAUW supports the Pittsburgh paid sick days ordinance because it protects public health and removes barriers to women's achievement in education and in the workplace.

GROUP AGAINST SMOG AND POLLUTION, INC.

Group Against Smog and Pollution (GASP) is a non-profit citizens' group in Southwestern Pennsylvania working for a healthy, sustainable environment. Founded in 1969, GASP has been a diligent watchdog, educator, litigator, and policy-maker on many environmental issues, with a focus on air quality in the Pittsburgh region. GASP is acutely aware of the health effects of having poor air-quality. There are many medical conditions that can be aggravated by poor air-quality, and paid sick days are important for people suffering from these medical conditions so that they can take time off work to go see a medical professional, or stay home to manage their condition on days with poor air quality.

GWEN'S GIRLS, INC.

Gwen's Girls Incorporated (GG) is a 501(c)(3) nonprofit organization that was established in 2002 to provide prevention and intervention services to young women and girls living in neighborhoods inundated with poverty, drugs, and violence in the Pittsburgh, Allegheny County region. GG's mission is to empower girls and young women to have productive lives through holistic, gender-specific programs, education and experiences. This includes job-readiness programming to equip them with skills to obtain and maintain employment to be self-sufficient. Many young women become the primary caregiver of their family, often with little support. It is unfortunate that in 2018, their employment, and even their health is at risk when they or their loved one becomes ill and they simply cannot afford to take

time off of work. Requiring employers to provide paid sick time is an equitable solution that will alleviate some of the burden that women endure to take care of their families.

JEWISH SOCIAL POLICY ACTION NETWORK

The Jewish Social Policy Action Network (JSPAN) is an activist group representing progressive Jewish voices. JSPAN conducts research, educates, and advocates for equality and opportunity for everyone. It works to protect constitutional liberties and civil rights of minority groups throughout American culture and works to restore justice to Jews and other minorities in the world. JSPAN supports the paid sick day ordinance because paid sick time is vital to the health and wellbeing of Jewish and minority families in Pittsburgh and beyond.

JUST HARVEST EDUCATION FUND

Just Harvest Education Fund is a 501(c)(3) anti-hunger nonprofit based in Pittsburgh. Thousands of low-income workers in Pittsburgh are faced with tough choices when they or a family member become ill: do they take an unpaid day of work when they are already struggling to pay bills and feed their family, or do they take care of their family's immediate medical situation? If they choose to work, sick kids may be left home unattended or they may be spreading illnesses to their co-workers and the general public. If they stay home, they will lose pay and have to cut back spending – and food is often the first necessity that financially struggling families cut back. Pittsburgh's paid sick days ordinance helps low-wage workers keep their full pay and food budget, while being able to responsibly handle an illness in the family.

KEYSTONE PROGRESS

Keystone Progress is a progressive organization that seeks to create a Pennsylvania that works for everybody. It works to build power, change the relationship of power and make tangible improvements in people's lives. Keystone Progress supports the paid sick days ordinance because it is a critically important public health measure that will help marginalized and less powerful citizens of Pennsylvania stay healthy and employed.

MATERNITY CARE COALITION

Since 1980, Maternity Care Coalition (MCC) has assisted more than 100,000 families throughout Southeastern Pennsylvania, focusing particularly on neighborhoods with high rates of poverty, infant mortality, health disparities, and changing immigration patterns. Maternity Care Coalition knows that a family's needs change as they go through pregnancy and their child's first years, and we offer a range of services and programs for every step along the way. The working women of MCC's staff and client community face enormous challenges balancing family caregiving and work. Often, women must choose between caring for a disabled or ill family member and receiving a paycheck or being forced by significant hurdles to stop working and receive public benefits. Home rule municipalities should be able to make ordinances that directly impact public health and the wellbeing of women and families by ensuring that women are not penalized when taking time off to recover from an illness or to care for a sick family member.

MEDIA MOBILIZING PROJECT

Media Mobilizing Project (MMP) is a 501(c)(3) nonprofit community organization based in Philadelphia, dedicated to storytelling to promote human rights and dignity of all people. MMP is a member of the broad coalition that worked to create Philadelphia's paid sick days policy. MMP had the opportunity to document the stories of individuals who have gone without access to paid leave and the improvements the newly implemented policy has made on the Philadelphia community. It is with this firsthand experience MMP supports paid sick days as a sound policy decision for every community in the Commonwealth.

MON VALLEY UNEMPLOYED COMMITTEE

The Mon Valley Unemployed Committee is a non-profit organization dedicated to helping unemployed and dislocated workers gain access to the tools they need to remake their lives, in addition to targeting issue campaigns around affected people for social justice and economic change. It works to pass progressive legislation to create positive changes for unemployed people. The Mon Valley Unemployed Committee supports the paid sick leave ordinance because

many workers have lost their jobs after taking much needed time off to care for their own medical needs or the needs of a family member.

NATIONAL ASSOCIATION OF LETTER CARRIERS, BRANCH 84

National Association of Letter Carriers (NALC), Branch 84, is the second largest letter carriers' union in the Commonwealth of Pennsylvania. Over 1,600 active carriers along with about 1,000 retired letter carriers are represented by Branch 84. Letter carriers deliver mail and enjoy the highest approval rating of all government agencies (92%). Nationally, NALC has negotiated paid sick leave long ago. Branch 84 believes that every worker should have this benefit, and supports Pittsburgh's paid sick days ordinance because it will help workers remain safe and healthy.

NATIONAL COUNCIL OF JEWISH WOMEN – PA

The National Council of Jewish Women—PA is a grassroots organization of volunteers and advocates who turn progressive ideals into action, with more than 2,000 members across the Commonwealth. NCJW strives for social justice by improving the quality of life for women, children, and families. NCJW was there when the federal Family and Medical Leave Act was signed into law providing workers with unpaid leave to care for themselves or a close family member without losing their job. NCJW knew that working families needed more then, and 25 years later, they still need more. NCJW therefore strongly supports Pittsburgh's paid sick days ordinance.

NEW VOICES FOR REPRODUCTIVE JUSTICE

New Voices for Reproductive Justice (New Voices) is a human rights advocacy organization dedicated to the health and wellbeing of Black women and girls and women of color in Pennsylvania and Ohio. Founded in Pittsburgh in 2004, New Voices has served over 50,000 women of color through leadership development, policy advocacy, community organizing and culture change. New Voices' vision for reproductive justice includes the human right to live, work and raise children in healthy equitable environments that are free from discrimination, violence, and oppression. Black women and women of color who disproportionately work low-wage jobs continue to be unjustly harmed by barriers

to paid sick days. The Pittsburgh paid sick days ordinance is critical to advancing and protecting overall health, wellbeing and economic security of working women in the city of Pittsburgh as well as their children and families.

ONE PENNSYLVANIA

One Pennsylvania unites low income and working class activists with the support of a broad coalition of community, labor, faith, and students' organizations. It works on a variety of issues to shift the balance of power into the hands of working people. One Pennsylvania has worked on campaigns to raise the minimum wage, create educational opportunities for students from all backgrounds and abilities, ensure that safe, affordable water is provided to all residents of Pittsburgh, pass a fair state budget, and restore a fair workweek to low-wage workers.

One Pennsylvania supports the paid sick days ordinance because it will benefit low-income families, many of whom do not have access to paid-sick time and cannot afford to go a day without pay when they get sick or need to care for a sick family member.

PA RELIGIOUS COALITION FOR REPRODUCTIVE JUSTICE, INC.

The Pennsylvania Religious Coalition for Reproductive Justice, Inc. (PRCPJ) is a 501(c)(3) nonprofit organization. PRCRJ advocates for reproductive justice by responding to legislation in a timely manner, and by collaborating with partner organizations. PRCRJ supports this brief because reproductive justice includes the human right to parent the children we have in safe and sustainable communities.

PARTNERSHIP FOR WORKING FAMILIES

The Partnership for Working Families (PWF) is a national network of eighteen regional affiliate organizations that support innovative solutions to the nation's economic and environmental problems. PWF provides original research, advocacy, legal support, and strategic communications to its affiliates and allies, who advance policies at the city, state, and federal level that improve lives and create quality jobs and healthy, sustainable, and democratic communities.

PATHWAYS PA

PathWays PA is a 501(c)(3) nonprofit located in the Greater Philadelphia Region. PathWays PA's mission is to help women, teens, children and families achieve economic independence and family wellbeing. In addition to direct services, PathWays PA is committed to advocacy at the local, state, and federal level, and has a long history of working on paid sick days and paid family leave. Pittsburgh's paid sick days ordinance gives workers an opportunity to keep their jobs and reach or maintain self-sufficiency, even in the face of illness or domestic violence.

PENNSYLVANIA ASSOCIATION OF CERTIFIED PROFESSIONAL MIDWIVES

The Pennsylvania Association of Certified Professional Midwives (PACPM) seeks to promote the health and wellbeing of mothers and babies by preserving the art of midwifery, providing support and resources for professional members, advocating for licensure of CPMs in the Commonwealth of Pennsylvania and influencing maternal health policy. Paid sick leave is an issue affecting the health and wellbeing of families because working women should not have to choose between getting a paycheck and caring for their own or their family's health. Pittsburgh's paid sick days ordinance advances women's equality by ensuring that women are not penalized when they must take time off of work to recover from illness or care for a sick family member.

PENNSYLVANIA CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS

The Pennsylvania Chapter of the American Academy of Pediatrics (AAP) is a state level organization of approximately 2,200 pediatricians who are dedicated to promoting the health and wellbeing of children. The Pennsylvania Chapter of AAP accomplishes its mission through advocacy, education, quality improvement and practice support. In carrying out this mission, it collaborates with any entities that touch the lives of children, including families, communities, media, public officials, insurers and other advocacy groups. The Pennsylvania Chapter of AAP is in favor of any initiative that supports families of working women.

PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE

Pennsylvania Coalition Against Domestic Violence (PCADV) is a private nonprofit organization working at the state and national levels to eliminate domestic violence, secure justice for victims, enhance safety for families and communities, and create lasting systems and social change. PCADV was established in 1976 as the nation's first domestic violence coalition, now comprising 60 funded community-based domestic violence programs across Pennsylvania. Coalition members provide a range of life-saving services, including shelters, hotlines, counseling programs, safe home networks, medical advocacy projects, transitional housing and civil legal representation services for victims of abuse and their children. PCADV works to promote economic self-sufficiency through counseling, education, and innovative collaborative programs. Beginning with the passage of the Protection from Abuse Act, PCADV has contributed to the development of many key legislative protections for survivors of domestic violence. PCADV's creation was inspired by partnerships between grassroots advocates, legal aid lawyers and supportive legislators and we continue to have a vested interest in good government and constitutional legislative process. Paid sick leave is important to survivors of domestic violence and their children. Domestic violence survivors of Pittsburgh will benefit from an ordinance that allows them to utilize paid sick leave, which will minimize the impact domestic violence has on their ability to work and take care of their children. The upholding of this ordinance will also establish precedent for other Pennsylvania municipalities to enact similar ordinances benefitting their workforce.

PENNSYLVANIA HEALTH ACCESS NETWORK

As the state's leading consumer driven organization, Pennsylvania Health Access Network (PHAN) is focused on making our health care system more affordable and accessible for all Pennsylvanians. PHAN works to expand access to and improve the quality of the Commonwealth's health coverage options. Since 2007, PHAN has brought consumer voices into discussions of health equity, reaching vulnerable populations in rural and underserved communities. Pittsburgh's paid sick day ordinance allows individuals and their families to get the care they need when the need it, in order to stay healthy and keep working. No one

should be penalized for taking time off of work to recover or care for a sick family member.

PENNSYLVANIA IMMIGRATION AND CITIZENSHIP COALITION

The Pennsylvania Immigration and Citizenship Coalition (PICC) is a 501(c)(3) nonprofit statewide coalition of over 50 member organizations across the state. PICC has offices in Pittsburgh and Philadelphia. PICC leads and supports campaigns to advance immigrant rights at the local, state, and federal levels; builds immigrant electoral power through voter registration and education; supports grassroots community-led organizations through training and capacity building; and helps increase access to immigration services through the PA is Ready! Project. PICC recognizes that immigrant women are some of the most vulnerable workers, and is committed to advocating for policies that provide protection and support for this group.

PENNSYLVANIA NATIONAL ORGANIZATION FOR WOMEN

The National Organization for Women has been fighting for equal rights for women since it was founded in 1966. As the grassroots arm of the women's movement, the National Organization for Women takes action on multiple fronts to promote feminist ideals, lead societal change, eliminate discrimination, and achieve and protect the equal rights of all women and girls. Pittsburgh's paid sick days ordinance would advance women's equality by ensuring that women are not forced to choose between earning a paycheck and taking care of their medical needs, and the medical needs of their family.

PENNSYLVANIA STATE NURSES ASSOCIATION

The Pennsylvania State Nurses Association (PSNA) is the leading professional nursing association in the Commonwealth. Currently, five states – California, New Jersey, New York, Rhode Island, and Washington – as well as the District of Columbia have enacted laws offering paid family leave. Two of these states are neighbor states to Pennsylvania. The time has come to enact similar legislation throughout Pennsylvania. PSNA fully supports the Pittsburgh initiative.

PHILADELPHIA AREA JOBS WITH JUSTICE

Philadelphia Area Jobs With Justice is a 501(c)(3) nonprofit organization dedicated to advocating for the rights of working people in Philadelphia, across the state of Pennsylvania, and nationally. Many workers regularly face an impossible choice between their health and their ability to support their families. A paid sick days ordinance can give working families the option to do what is best for their health without risking their financial stability. Working people in Pittsburgh deserve the chance to take time off work to heal themselves or their loved ones.

PHILADELPHIA UNEMPLOYMENT PROJECT

The Philadelphia Unemployment Project (PUP) is a membership organization of unemployed and low-income people. PUP has worked for many years to provide protections to low-wage workers and the unemployed. Many of its members and clients are forced to accept jobs that do not offer paid sick time. PUP believes that paid sick leave should be guaranteed by law, as people do not try to get sick and should not be forced to work when ill or do without much needed pay checks. For these reasons, PUP strongly supports the Pittsburgh paid sick days ordinance.

PHILADELPHIA WOMEN'S CENTER

Philadelphia Women's Center (PWC) has been continually meeting the needs of women and families by providing professional, confidential and compassionate abortion care since 1972. PWC provides compassionate abortion care and reproductive health services, inspired by a belief in the autonomy of the individual, and a commitment to strengthening communities and building a better future. Access to paid sick days will enable community members to maintain their health and financial stability, by removing a barrier to caring for themselves and their families.

PITTSBURGH ACTION AGAINST RAPE

Pittsburgh Action Against Rape (PAAR) was founded in 1972 and was the first victim service agency in Allegheny County. Its mission is to respond, educate, and advocate to end sexual violence. It provides a sexual assault hotline, medical

and legal advocacy, and counseling services to victims of sexual assault. Victims of sexual assault may require a wide range of medical care, and should not have to fear for their jobs or sacrifice pay in order to take care of these needs. PAAR believes that the paid sick days ordinance would give victims the ability to take care of themselves when these medical needs arise.

PITTSBURGHERS FOR PUBLIC TRANSIT

Pittsburghers for Public Transit is a grassroots organization of transit riders, workers, and residents who defend and expand public transit. It keeps the public in public transit by mobilizing communities to advocate for equitable, affordable, and sustainable transportation systems. As part of the mission of the organization, Pittsburghers for Public Transit aims to connect the struggles for a strong public transit system to other struggles in the community, including fair housing, clean air and water, workers' and riders' rights, racial justice, economic justice, and environmental justice. As this issue concerns the rights of workers, including workers that ride public transit, we believe this decision will have a great impact on the health of our constituents. Paid sick days will ensure fewer of our constituents will need to use public transportation on days that they are sick, therefore preventing the spread of disease.

PLANNED PARENTHOOD OF WESTERN PENNSYLVANIA

Planned Parenthood of Western Pennsylvania (PPWP) is a non-profit Pennsylvania corporation with headquarters at 933 Liberty Avenue, Pittsburgh. PPWP's mission is to provide comprehensive and complementary health care to those in need of services; disseminate information about human sexuality and the need for family planning and responsible parenthood; and advocate public policies which guarantee these rights and ensure access to such services. PPWP provides a broad range of health care services at six locations in Pennsylvania: downtown Pittsburgh (2), Bridgeville, Greensburg, Johnstown, Moon Township, and Somerset. In 2013, PPWP provided over 25,000 patient visits to women and men. Of those clients served, 80% received services either free or at a reduced cost. In addition, PPWP's education department provides educational programs for youth, parents and professionals in a twelve-county area. As a health care provider, PPWP strongly supports the Pittsburgh paid sick days ordinance because it will improve the health of Pittsburgh employees and their families.

PLANNED PARENTHOOD PENNSYLVANIA ADVOCATES

In partnership with the three Planned Parenthood affiliates in Pennsylvania, Planned Parenthood Pennsylvania Advocates (PPPA), the state public affairs office in Harrisburg, works to achieve maximum public, governmental and media support for reproductive healthcare – including family planning – by developing, implementing and facilitating a statewide strategy. PPPA is proud to support policies like Pittsburgh’s paid sick leave ordinance that advance women’s equality by ensuring no woman has to choose between her employment and the health of her family.

RESTAURANT OPPORTUNITIES CENTER OF PENNSYLVANIA

Restaurant Opportunities Center of Pennsylvania (ROC) is the statewide chapter of the national nonprofit Restaurant Opportunities Center United. Its mission is to improve the wages and working conditions of the nation’s 10 million restaurant workers. ROC United has nearly 20,000 restaurant worker members and nearly 200 restaurant owner members. One of ROC United’s most important program areas is working for paid sick leave.

Since its founding, ROC United has won more than a dozen workplace justice campaigns, winning more than \$10 million in misappropriated tips and wages and discrimination payments for low-wage workers, and significant policy changes in high-profile restaurant companies covering thousands of workers. Paid sick leave is extremely important to ROC’s restaurant worker members, whose health directly affects the health of the dining public. For this reason, ROC strongly supports Pittsburgh’s paid sick days ordinance.

SIERRA CLUB

Sierra Club is a national organization with 67 chapters and more than 825,000 members, roughly 32,600 of whom live in Pennsylvania. About 6,600 Sierra Club members live in Pittsburgh. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club and its

Pennsylvania Chapter have a long history of solidarity with the labor movement, partnering with working families and labor unions to fight for economic and racial justice and for a worker-friendly clean energy economy that works for all.

THOMAS MERTON CENTER

Founded in 1972, the Thomas Merton Center (TMC) is a central hub of peace and justice activity in the greater Pittsburgh area, with an extensive network of committed friends, members, and cornerstone sustainers, who have chosen to work together to create a more peaceful and just world. TMC's membership includes many local social justice leaders, religious communities, students, neighborhood residents, and diverse ideological organizations that have chosen to partner together to accomplish shared goals. TMC has four focus areas: Environmental Justice, Peace and Nonviolence, Human Rights, and Economic Justice. TMC works to build a consciousness of values and to raise the moral questions involved in the issues of war, poverty, racism, classism, economic justice, human rights, and environmental justice. TMC strongly supports Pittsburgh's paid sick days ordinance because it is a critically important public health measure that will help low-income people of color stay healthy and employed.

TransYOUning

TransYOUning is a Pittsburgh based organization that advocates for transgender equality. It provides educational opportunities for trans people and allies, as well as offering housing support, work and education placement, and most importantly a safe space for trans people. TransYOUning recognizes that paid sick time is important for all people, including transgender people, if they are going to lead a healthy lifestyle and avoid potentially infecting others.

UFCW LOCAL 23

UFCW Local 23 is a progressive, modern organization affiliated with the United Food and Commercial Workers International Union. Local 23 represents over 13,000 members in the western half of Pennsylvania, northern West Virginia, eastern Ohio and extreme western New York. Local 23 is one of the largest local unions in Pennsylvania.

Local 23 members work in retail grocery stores, nursing homes, the gaming industry, liquor stores, food processing, health care, warehousing, truck driving, manufacturing and other retail outlets. Local 23 negotiates and enforces over 170 collective bargaining agreements. These negotiated contracts include provisions for fair conditions, job security and a grievance procedure. Local 23 supports Pittsburgh's paid sick days ordinance because it will help workers achieve healthier and more secure working conditions.

UNITARIAN UNIVERSALIST PENNSYLVANIA LEGISLATIVE ADVOCACY NETWORK

The Unitarian Universalists Pennsylvania Legislative Advocacy Network (UUPLAN) is a nonprofit organization that educates and communicates with Unitarian congregations and partners to inspire action. Pennsylvania Unitarian Universalists are aware of justice issues and are called to speak and take action that leads to a better Commonwealth. Among its legislative priorities are economic justice, environmental justice, gun violence prevention, anti-mass incarceration, immigration justice, LGBTQ justice and reproductive justice. In order to protect the dignity and respect of all, the Unitarian Universalists are called to ensure that all Pennsylvanians have the basic means of survival, access to living wage work, and the right to organize for justice and dignity on the job. This includes the right to paid sick days so that every worker is able to take the time they need to care for themselves and their family members.

UNITED ELECTRICAL, RADIO, AND MACHINE WORKERS OF AMERICA

Founded in 1936, the United Electrical, Radio, and Machine Workers of America (UE) is an independent democratic rank-and-file labor union representing workers in both the private and public sectors across the United States. UE members work as plastic injection molders, tool and die makers, sheet metal workers, truck drivers, warehouse workers, and custodians. They build locomotives, repair aircraft engines, assemble circuit boards, manufacture metal cabinets, produce industrial scales and make machine tools. UE members are also teachers, speech pathologists and nurses; clerical workers, graduate instructors, graduate researchers, scientists, librarians, and day care workers. UE members

maintain county roads, drive school buses, conduct research in university laboratories, counsel AIDS victims, treat waste water and engage in hundreds of other occupations. The national headquarters are in Pittsburgh, PA.

UNITED STEELWORKERS LOCAL UNION 3657

United Steelworkers Local 3657 are the technicians, auditors, and administrative assistants who service the 1.2 million active and retired members of the United Steelworkers (USW) all across the United States, Canada, and the Caribbean. Members of USW Local 3657 are located all throughout the country in district offices and at the USW International headquarters in Pittsburgh, Pa. members of Local 3657 recognize that specific labor issues disproportionately affect working women, such as lack of paid sick leave. Working women should not have to choose between getting a paycheck and caring for their own or their family's health. Pittsburgh's paid sick days ordinance advances equity for women by ensuring that they are not penalized when they must take time off work to recover from illness or care for a sick family member.

URBANKIND INSTITUTE

The UrbanKind Institute (UKI) is a social science research consultancy serving community-based organizations in and around Allegheny County. Our organization seeks to advance policies, practices, and programs that are kind to urban people and environments. UKI recognizes and experiences the challenges to small businesses to provide paid sick days, but also values the greater good for our employees and community when workers are not forced to choose between providing self-care or care for a family member when the need arises. The current flu outbreak should remind us of the importance of being home and away from others when ill. Pittsburgh's paid sick days ordinance advances health equity and worker dignity.

VETERANS FOR PEACE OF WESTERN PENNSYLVANIA, CHAPTER 47

Veterans for Peace of Western PA, Chapter 47 (Veterans for Peace) is in full support of the Pittsburgh paid sick days ordinance. One of the main goals of the organization is to seek justice for veterans and victims of war. The actions of the Pennsylvania Restaurant and Lodging Association represent a denial of such

justice. As veterans who have undergone tremendous mental and physical taxation and trauma, Veterans for Peace know that the after-effects of such experiences often require dutiful self-care to ensure a high level of efficiency in the civilian realm. Basic health necessities such as trips to the VA clinic and mental health days to process previously experienced trauma should not be penalized financially; to do so undermines worker short-term and long-term wellness and productivity. In addition, Veterans for Peace believe that in many families and communities, civilian workers (and particularly women) experience similarly traumatic or physically taxing challenges regularly, and should be accorded the same rights to self-care without penalty. Furthermore, the denial of an ordinance passed through proper civic channels represents a denial of justice to women, veterans, and civilians alike, as well as an attempt to undermine the very democratic process that military veterans swore to uphold.

WOMEN AGAINST ABUSE, INC.

Women Against Abuse is a nonprofit agency based in Philadelphia that specializes in advocating for and providing services to victims of domestic violence. The organization operates safe havens and transitional housing for domestic violence victims who are trying to get away from their abusers. It also operates a legal center that is among the first in the nation dedicated to victims of domestic violence.

Women Against Abuse supports the paid sick days ordinance because victims of domestic violence often need medical care to deal with the aftermath of abuse. Many are supporting children or other family members and cannot afford to take time off work if it means losing out on pay for that day. They also need financial stability to support themselves so that they don't have to return to an abusive situation.

WOMEN AND GIRLS FOUNDATION OF SOUTHWESTERN PA

The Women and Girls Foundation (WGF) is a non-profit organization with expertise in the economic security of women and vulnerable families. For over a dozen years, WGF has been involved in publishing research on the status of women in Pennsylvania. WGF is especially focused on working with community leaders to create informed policies which can help strengthen the health and

economic security of vulnerable families. WGF's most recent "Status of Women in PA" report (commissioned by WGF and written by the Institute for Women's Policy Research) confirmed that nearly 75% of households living in poverty in the Pittsburgh Metro area are single female-headed households with school age children. These households are the exact households this Ordinance can help protect. Without paid sick leave, single parents are forced to leave sick minor children home alone and also too often are forced to go to work ill themselves, creating a public health concern in addition to the job instability of this single parent.

WOMEN'S LAW PROJECT

Amicus Women's Law Project (WLP) is a 501(c)(3) Pennsylvania-based nonprofit women's legal advocacy organization founded in 1974. WLP engages in high-impact litigation as well as legislative and administrative advocacy to advance the legal, economic, and social status of women and girls. One of WLP's primary program areas is women's health. WLP brought litigation that secured comprehensive health care coverage for tens of thousands of Pennsylvania women. *See Planned Parenthood Southeastern Pennsylvania v. Mackereth*, No. 2:15-cv-00135 (E.D. Pa. 2015) (federal Medicaid action transferring nearly 75,000 Pennsylvania women from limited health coverage to comprehensive Medicaid or Marketplace coverage). In 2012, WLP published *Through the Lens of Equality: Eliminating Sex Bias to Improve the Health of Pennsylvania Women*, examining the relationship between sex bias and women's health. *See Terry L. Fromson et al., Through the Lens of Equality: Eliminating Sex Bias to Improve the Health of Pennsylvania Women* (2012), available at http://www.womenslawproject.org/wp-content/uploads/2016/05/Through_the_Lens_FINAL3.pdf. WLP regularly provides legal representation and advocacy for working women facing the serious health consequences of gender-based employment discrimination, including pregnancy discrimination, sexual harassment, and failure to accommodate nursing mothers under the Fair Labor Standards Act. WLP strongly supports the paid sick days ordinance. WLP also supports the Safe and Secure Building Act and is acquainted with the need for training for security and building service workers who may be called upon to respond effectively to incidents of domestic violence in the workplace or extremist attacks on health care providers.

WOMEN'S MEDICAL FUND

The Women's Medical Fund protects and expands abortion access for low-income people through direct service and advocacy. It provides support for people living in poverty who need access to abortion by providing counseling and emergency financial assistance. The Women's Medical Fund supports the paid sick days ordinance because it is a necessity for low-income individuals to have access to paid leave to take care of their medical health and to take care of their families.

CERTIFICATE OF SERVICE

I hereby certify on this 15th day of February, 2018, I caused to be served two copies of the foregoing *Brief Amici Curiae in Support of Appellants and for Reversal* via first-class mail, postage prepaid, as well as an electronic version via email, upon the following:

John F. Doherty
Associate City Solicitor
Lourdes Sanchez Ridge
City Solicitor
City of Pittsburgh Law Department
313 City-County Building
414 Grant Street
Pittsburgh PA 15219
John.doherty@pittsburghpa.gov

Stephen J. Del Sole
Patrick K. Cavanaugh
William S. Stickman, IV
Del Sole Cavanaugh Stroyd LLC
200 1st Avenue, Suite 300
Pittsburgh, PA 15222
sdelsole@dscslaw.com

Michael J. Healey
Healey & Hornack, PC
247 Fort Pitt Boulevard, 4th Floor
Pittsburgh PA 15222
mike@unionlawyers.net

Gregory Evashavik
Evashavik, DiLucente & Tetlow
310 Grant Street, Suite 1801
Pittsburgh, PA 15219
greg@edtlegal.com

/s/ Susan Frietsche
Susan Frietsche