STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Minnesota Chamber of Commerce, TwinWest Chamber of Commerce, Minnesota Recruiting & Staffing Association, and Graco Inc.,

Plaintiff,

v.

City of Minneapolis,

Defendant.

Case Type: Civil Other
Judge Susan N. Burke

ORDER DENYING TEMPORARY INJUNCTION

Court File No. 27-CV-17-17198

This matter came before the Honorable Susan N. Burke on December 1, 2017, on Plaintiffs' motion for a temporary injunction. Christopher Larus, Esq., Katherine Barrett Wiik, Esq., and George Ashenmacher, Esq., appeared for Plaintiffs. Minneapolis City Attorney Susan Segal and Assistant Minneapolis City Attorneys Sarah McLaren and Sara Lathrop appeared for the City of Minneapolis. At the hearing, the Court heard oral arguments on Plaintiffs' motion for a temporary injunction, and subsequently took this matter under advisement.

INTRODUCTION

On June 30, 2017, the Minneapolis City Council passed the Municipal Minimum Wage Ordinance (hereinafter the "Ordinance"), raising the minimum wage to $10.00/hour for large businesses for work performed in Minneapolis, starting January 1, 2018. Beginning July 1, 2018, the minimum wage will increase to $11.00/hour for large businesses and to $10.25/hour for small businesses. The minimum wage requirement for large and small businesses will continue to increase on July 1 of each year until the minimum wage reaches $15.00 per hour. Plaintiffs brought this lawsuit for a temporary injunction and to invalidate the Ordinance.

This is an important decision to employers and employees, as well as to the citizens and the City of Minneapolis. The decision is driven by the law, which requires the Court to weigh identified factors to determine whether to issue a temporary injunction. The law provides that injunctive relief should only be awarded in clear cases that are reasonably free from doubt and that courts should be wary to interfere in the management of municipal affairs.

This decision illustrates the difference between the role of courts and the role of the City Council. This decision does not reflect how this judge might have voted as a member of the City Council, nor does it express an opinion on whether the Minneapolis Minimum Wage Ordinance is good or bad. Instead, the Court focuses on the legal issue of whether the Ordinance is preempted by state law.

Because the Minnesota legislature has not clearly demonstrated an intent to prohibit local regulation of minimum wages, the Ordinance does not conflict with state law and minimum wage is not solely a matter of state concern. Thus, Plaintiffs are unlikely to prevail at trial. Moreover, if an injunction issues, the public and the City will suffer substantial harm that outweighs the potential harm the Plaintiffs are likely to suffer if an injunction is denied. After carefully weighing all the relevant factors under the law, the Court finds the request for a temporary injunction should be denied.

BACKGROUND

On June 30, 2017, the Minneapolis City Council passed Ordinance No. 2017-030, the Municipal Minimum Wage Ordinance (hereinafter the "Ordinance"), which ultimately sets higher minimum wages for employees working within the Minneapolis city limits. Minneapolis, Minn. Code §§ 40.320-40.450. The Ordinance directly promotes and maintains the health,

safety, welfare, efficiency, and general well-being of those who work within the City's borders, and sustains purchasing power, by increasing the minimum wage. *Id.* § 40.320(b)-(c).

In implementing the Ordinance, the Legislature differentiated between large and small businesses. Large businesses include "all employers that employ more than one hundred (100) employees" and small businesses include "all employers that employ one hundred (100) or fewer employees." *Id.* § 40.330. An "employer" includes individuals, partnerships, associations, corporations, business trusts, or groups of people that act in the interest of an employer, but excludes various governmental entities and providers covered by subminimum wage certificates. *Id.* An "employee" includes individuals employed by employers, but excludes extended employment program workers and independent contractors. *Id.*

Beginning on January 1, 2018, large businesses are required to pay their employees a wage of no less than $10.00 per hour. *Id.* § 40.390(b)(1). On July 1, 2018, large businesses will be required to pay their employees at least $11.25 per hour, and small businesses will be required to pay their employees at least $10.25 per hour. *Id.* §§ 40.390(b)(2), (c)(1). The minimum wage requirement for large and small businesses will continue to increase on July 1 of each year until the minimum wage reaches $15.00 per hour. *Id.* §§ 40.390(b)(1)-(c)(7).

In addition to the increased minimum wages, employers are required to conspicuously post notices in their workplaces which inform employees of their rights under the Ordinance and the current minimum wage rates. *Id.* §§ 40.420(a)-(b). Employers are also required to create and maintain records which document the hours worked by each employee within the City of Minneapolis and the wages paid to such employees. *Id.* § 40.430(a). These records are to be retained for a period of at least three years. *Id.*

The Ordinance applies to all time worked by an employee, of at least two hours per week, within the geographic boundaries of Minneapolis. *Id.* §§ 40.370(a), (b). However, the Ordinance does not cover "[t]ime spent in the city solely for the purpose of travelling through the city from a point of origin outside the city to a destination outside the city, with no employment-related or commercial stops in the city, except for refueling or the employee's personal meals or errands." *Id.* § 40.370(c).

The Minnesota Chamber of Commerce, the TwinWest Chamber of Commerce, the Minnesota Recruiting and Staffing Association, and Graco, Inc. (hereinafter the "Plaintiffs") brought this lawsuit against the City of Minneapolis (hereinafter the "City") seeking a declaration by the Court that the Municipal Minimum Wage Ordinance is invalid because it is preempted by state law. Compl. ¶¶ 1, 2, 4, 29-67. Plaintiffs brought the current motion requesting a temporary injunction enjoining the City from implementing the Ordinance, and consolidation of the hearing for a temporary injunction with a hearing on the merits. *Id.* at ¶¶ 1, 4, 68-74; Pl.'s Mem at 1-50.

ANALYSIS[1]

I. Plaintiffs Are Not Entitled to a Temporary Injunction

Injunctive relief should only be awarded in clear cases that are reasonably free from doubt. *AMF Pinspotters Inc. v. Harkins Bowling, Inc.*, 110 N.W.2d 348, 351 (Minn. 1961). Courts must exercise "great caution," "deliberation" and "restraint" when considering injunctions, which are "extraordinary" remedies and should be issued only in "clear cases."

[1] At the outset, the City argues Plaintiffs do not have standing. However, Graco has shown an injury-in fact. *See* Hatling Aff; *see* Kittridge Aff. Moreover, the other Plaintiffs have shown that they are entitled to organizational standing by alleging facts sufficient to show that their members will suffer an injury-in-fact. *See* Loon Aff; *see* Harrell-Latham Aff; *see* McMillan Aff. *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 913 (Minn. App. 2003).

Allstate Sales and Leasing Co., Inc. v. Geis, 412 N.W.2d 30, 32-33 (Minn. App. 1987); *General Minn. Util. Co. v. Carlton County Co-op. Power Ass'n*, 22 N.W.2d 673, 679 (Minn. 1946). Such restraint is especially important when a court is asked to enjoin local government authority. *See White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982) ("The court's authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked."); *Queen City Const., Inc. v. City of Rochester*, 604 N.W.2d 368, 379 (Minn. App. 1999) ("The decision how to exercise its power to award contracts is entrusted to the city's discretion, and a court should be wary to interfere."); *Minnesota Pollution Control Agency v. Hatfield*, 200 N.W.2d 572, 575 (Minn. 1972) ("Preservation of the public health and the suppression of disease involve a governmental function. Indeed, it is probably one of the most important functions of government.").

When determining whether to issue a temporary injunction, Minnesota courts consider the five factors established by the Minnesota Supreme Court in *Dahlberg Bros., Inc. v. Ford Motor Co.*:

> (1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.
> (2)The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.
> (3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.
> (4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.
> (5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

137 N.W.2d 314, 321-22 (Minn. 1965); *see also M.G.M. Liquor Warehouse Int'l, Inc. v. Forsland*, 371 N.W.2d 75, 77 (Minn. App. 1985). The Court has considered the five *Dahlberg*

factors as they relate to the facts of this case and determined that a temporary injunction is not appropriate.

A. Plaintiffs' Likelihood of Success on the Merits Weighs Against a Temporary Injunction

Plaintiffs argue the Ordinance is invalid under the doctrines of conflict preemption and field preemption and because it has an impermissible extraterritorial reach. For the foregoing reasons, Plaintiffs are unlikely to succeed on these claims.

1. Conflict Preemption Does Not Apply

Conflict preemption requires a specific conflict between a local ordinance and a state law. *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 348 (Minn. App. 2002). When a conflict arises between a state law and a local ordinance, the ordinance will be held invalid only if "both the ordinance and the statute contain express or implied terms that are irreconcilable with each other." *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 816 (Minn. 1966). Two regulations are not irreconcilable if "the ordinance does not permit, authorize, or encourage violation of the statute." *Id.* at 819. A conflict exists where an ordinance "permits what the statute forbids" or when the ordinance "forbids what the statute expressly permits." *Id.* A state law conflicts with a federal law when it is impossible for a private party to comply with both state and federal requirements." *Sanchez v. Dahlke Trailer Sales, Inc.*, 897 N.W.2d 267, 276 (Minn. 2017); *see Minnesota Chamber of Commerce v. City of Minneapolis*, No. A17-0131, 2017 WL 4105201, at *3 (Minn. App. 2017) (no conflict where private party can comply with state law and local ordinance).

A conflict does not exist where the ordinance, "though different, is merely additional and complementary to or in aid and furtherance of the statute." *Mangold*, 143 N.W.2d at 817; s*ee State v. Crabtree*, 15 N.W.2d 98, 100 (Minn. 1944) (no conflict between state statute regulating

sale of cigarettes and local ordinance imposing additional requirements on vendors of cigarettes); *see State v. City of Duluth*, 159 N.W. 792, 793 (Minn. 1916) (no conflict between state statute regulating licensing of liquor stores and local ordinance that banned liquor completely); *see Markley v. City of St. Paul*, 172 N.W.2d 215, 216 (Minn. 1919) (no conflict between state statute establishing a workers' compensation system and local fund for injured firefighters).

Moreover, there is no conflict when the local regulation prohibits conduct a state law implicitly permits. *See Canadian Connection v. New Prairie Tp.*, 581 N.W.2d 391, 395 (Minn. App. 1998) (no conflict where local ordinance prohibited construction of a facility that state law implicitly permitted); *see State v. Dailey*, 169 N.W.2d 746, 747-48 (Minn. 1969) (no conflict where local ordinance criminalized prostitution beyond what was criminalized under state law); s*ee G.E.M. of St. Louis, Inc. v. City of Bloomington*, 144 N.W.2d 552, 554-55 (Minn. 1966) (no conflict between state and local laws that both governed Sunday closings); *see State v. Clarke Plumbing & Heating, Inc.*, 56 N.W.2d 667, 672-73 (Minn. 1952) (no conflict between state law and local ordinance that concerned a similar topic, where the local ordinance was more detailed than the statute).

The Minnesota Fair Labor Standards Act ("MFLSA"), sets a floor, but not a ceiling for minimum wages in the State. The MFLSA contains one section that requires employers, dependent upon size, to pay "each employee wages at a rate of *at least*" the amounts set pursuant to the statute. Minn. Stat. § 177.24, subd. 1 (emphasis added). "The basic purpose of the [minimum wage laws] is to provide a decent standard of living for persons of ordinary capacity." *Haaland v. Pomush*, 117 N.W.2d 194, 201 (Minn. 1962). The stated purposes of the MFLSA are to:

> (1) to establish minimum wage and overtime compensation standards that maintain workers' health, efficiency, and general well-being;

> (2) to safeguard existing minimum wage and overtime compensation standards that maintain workers' health, efficiency, and general well-being against the unfair competition of wage and hour standards that do not; and
> (3) to sustain purchasing power and increase employment opportunities.

Minn. Stat. § 177.22. No provision in the MFSLA preempts local officials from imposing a higher minimum wage. No provision establishes a uniform wage above which employers cannot be required to pay. The MFSLA does not expressly or impliedly provide that employers cannot be required to pay a minimum wage higher than the state minimum wage.

In fact, the Minnesota legislature recently tried to pass a bill that would have provided a uniform minimum wage and would have preempted local regulation of minimum wages. On May 25, 2017, the Minnesota legislature passed a bill that would "*provide[] uniformity for employment mandates on private employers.*" S.F. 3, 90th Leg., 1st Spec. Sess. (Minn. 2017) (emphasis added). Specifically, the bill *expressly preempted any "ordinance, local resolution, or local policy requiring an employer to pay an employee a wage higher than the applicable state minimum wage rate provided in section 177.24.*" S.F. 3, Ch. 2, Art. 22, sec. 1, subd. 2 (vetoed) (emphasis added). However, on May 30, 2017, Governor Mark Dayton vetoed Chapter 2, Senate File 3, stating:

> *The role of state government is to set minimum standards for workplace protections, wages, and benefits, not maximums. Should local officials, who were elected by their constituents in their communities, approve higher wage and benefit levels to meet the needs of their residents, they ought to retain the right to do so.*

(Lathrop Decl., Ex. 16.) (emphasis added).

Moreover, as recently as 2015, the Minnesota legislature explicitly acknowledged the potential for a local minimum wage in the statutory chapter related to vocational rehabilitation programs. Minn. Stat. § 268A.01, subd. 15. The applicable section of that subdivision provides:

> "Noncompetitive employment" means paid work: (1) that is performed on a full-time or part-time basis, including self-employment, for which the person is compensated at a rate that is less than the higher rate specified in the Fair Labor

> Standards Act . . . or the rate specified in the applicable state *or local minimum wage law.*

Id. (emphasis added).

Additionally, there are not irreconcilable terms in the MFLSA and the Ordinance. The MFLSA permits employees to be paid higher wages than those provided for in the statute. *See* Minn. Stat. § 177.24, subd. 1 (providing that an employer must pay *at least* the amount prescribed by statute). Private parties can comply with both laws. *Minnesota Chamber of Commerce*, No. A17-0131, 2017 WL 4105201, at *3. The MSFLA sets a floor, not a ceiling for minimum wages rates.

It is true that the MFLSA and the Ordinance define small and large businesses differently and there are a number of provisions of state law, specifically: Minn. Stat. § 177.24, subd. 1(c) (permitting youth workers to receive a sub-minimum wage for up to 90 days); Minn. Stat. § 204B.19, subd. 6 (permitting high school student trainee election judges to receive a sub-minimum wage); Minn. Stat. § 177.24, subd. 1(a) (defining large and small employers by annual volume of sales); and other state statutes that reference the state minimum wage. However, these provisions would only be in conflict with the Ordinance if the MFLSA set a ceiling for the minimum wage. Because, MFLSA does not set an upper limit on the minimum wage, there is no conflict between the Ordinance and these provisions of state law. Moreover, the record-keeping and notice-posting requirements under the state law and the Ordinance are also not irreconcilable. Employers are capable of complying with both laws.

Cases relied on by Plaintiffs are distinguishable because local regulation was either expressly prohibited or private parties could not comply with state law and local regulation. *See N.W. Residence, Inc. v. Brooklyn Ctr.*, 352 N.W.2d 764, 774 (Minn. App. 1984) (conflict where there was a statutory grant of "exclusive" authority to the Commissioner of Public Health to

establish licensing standard); *see Bd. of Supervisors v. ValAdCo*, 504 N.W.2d 267, 277 (Minn. App. 1993) (conflict where the state pollution control agency and the county approved construction of a facility, the building of which would be prohibited under the local ordinance); *see State v. Apple Valley Redi-Mix, Inc.*, 379 N.W.2d 136, 139 (Minn. App. 1985) (conflict where the state statute expressly prohibits local regulation on air quality standards that are more stringent than state requirements).

Plaintiffs also rely on *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 307 (Minn. 2017), to argue that the Ordinance conflicts with the MFLSA because it adds a requirement that is absent from the statute. Plaintiffs' reliance on *Bicking* is improper because the court's decision involved more than just conflict preemption—the court found express preemption and an irreconcilable conflict with the state statute; neither of which are present in our case. *See id.* at 314-25 (finding a conflict between a city's charter amendment that required police officers to carry their own liability insurance and a state statute that required local governments to indemnify and defend its police officers, but also finding express preemption because the state statute contained a provision expressly preempting the local regulation). For these reasons, conflict preemption does not apply.

2. Plaintiffs Are Unlikely to Succeed on Their Field Preemption Claim

Field preemption "is premised on the right of the State to so extensively and intensively occupy a particular field or subject with state laws that there is no reason for municipal regulation." *Id.* (quoting *Mangold*, 143 N.W.2d at 819). Field preemption occurs when state legislation fully occupies a particular field of law and "leaves no room for local regulation." *Altenburg v. Bd. of Sup'rs of Pleasant Mound Twp.*, 615 N.W.2d 874, 880 (Minn. App. 2000). Thus, when there is field preemption, "a local law purporting to govern, regulate, or control an

aspect of the preempted field will be void, even if the local law is not in conflict with the state law." *Id.*

In determining whether field preemption exists, Minnesota courts consider four factors: (1) the subject matter to be regulated; (2) whether the subject matter has been so fully covered by state law that it has become solely a matter of state concern; (3) whether any partial legislation regulating the subject matter indicated that it is a matter solely of state concern; and (4) whether the subject matter itself is of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the State. *Mangold*, 143 N.W.2d at 820. Under the first *Mangold* factor, the parties agree the subject matter to be regulated is minimum wages for workers.

a. Minimum Wage is Not Solely a Matter of State Concern

Under the second and third *Mangold* factors, the Court determines whether state law so fully covers the field of minimum wage that it has become solely a matter of state concern, and whether state law shows a clear intent to treat the matter of minimum wage as one solely of state concern. *Mangold*, 143 N.W.2d at 820.

Even in areas with extensive state regulation, courts are reluctant to invalidate municipal ordinances in the absence of clear legislative intent to preempt a field. *See id.* at 821 (local ordinance on Sunday sales was not preempted by state statute on Sunday sales); *see G.E.M.*, 144 N.W.2d at 554-55 (same); *see Canadian Connection*, 581 N.W.2d at 395 (local ordinance establishing a setback requirement for feedlots was not preempted by extensive state-level pollution control regulations governing feedlots); *see Dailey*, 169 N.W.2d at 748 (local ordinance criminalizing prostitution was not preempted by a state criminal statute also criminalizing prostitution).

In *Dailey*, the Court upheld the local ordinance making prostitution a misdemeanor, even though under state law prostitution was a gross misdemeanor. *Dailey,* 169 N.W.2d at 748. The Court upheld the local ordinance where local government was addressing conditions which diminished the quality of urban life in a metropolitan area and there was no clear legislative intent to preempt, stating:

> [The] legislature has . . . moved on several fronts to assist, but not to replace, local government in meeting the extraordinary needs of the metropolitan area, such as the *elimination of conditions which diminish the quality of urban life*. We are averse, in these circumstances, to hold that the legislature contemplates its own regulation to exclude municipal regulation, without most clear manifestation of such intent. It is imperative, if we are to give faithful effect to legislative intent, that the *legislature should manifest its preemptive intent in the clearest terms*. We can be spared the sometimes elusive search for such intent if it is declared by express terms in the statute. And where that is not done in the enactments of future legislatures, *we shall be increasingly constrained to hold that statutes and ordinances on the same subject are intended to be coexistent*.

Id. (emphasis added).

As a home rule charter city, Minneapolis has the same regulatory authority within its boundaries as the State, unless state law has limited or otherwise withheld that power. *See* MINN. CONST., art XII, § 4; *see also* Minn. Stat. § 410.07; *see also Dean v. City of Winona*, 843 N.W.2d 249, 256 (Minn. App. 2014), *appeal dismissed*, 868 N.W.2d 1 (Minn. 2015) ("In matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld.") (quotation marks omitted). The City's charter contains a broad claim of plenary powers, granting the City "any power that a municipal corporation can lawfully exercise at common law." (Lathrop Decl., Ex. 15.) (City of Minneapolis Charter, § 1.4(a)).

Regarding minimum wage, the City, as an urban metropolitan center, has needs that are different than other areas of the State. The City has one of the highest costs of living in the State,

but almost half of its workers earn less than a living wage. *See* Minneapolis, Minn. Code §§ 40.320(g), (i), (j). In addition, there are racial and income disparities that the City faces. *See id.* § 40.320(k). Through the Ordinance, the City seeks the elimination of conditions which diminish the quality of urban life. *See Dailey*, 169 N.W.2d at 748.

Moreover, there is no clear intent on the part of the legislature to preempt the field. As previously discussed, there are no provisions in the MFLSA prohibiting municipalities from setting minimum wage requirements that exceed these state requirements. There is no provision stating an intent to make minimum wage laws uniform across the state.

When the Legislature attempted to pass a bill that would have established a uniform set of minimum wage laws to be applied across the state, Governor Dayton vetoed the bill. Governor Dayton vetoed the bill explaining that "the role of state government is to set *minimum* standards for workplace protections, wages, and benefits, not *maximums.*" (Lathrop Decl., Ex 16.) (emphasis added). Governor Dayton clearly stated that local officials retained the right to require a higher minimum wage in order to meet the needs of their residents. *Id.*

Furthermore, as recently as 2015, the Legislature specifically recognized that municipalities could regulate minimum wages. In a statute related to vocational rehabilitation programs, the Legislature defined "noncompetitive employment" as work "for which the person is compensated at a rate specified in the applicable state *or local minimum wage law*. Minn. Stat. § 268A.01, subd. 15. (emphasis added).

Plaintiffs mistakenly rely on cases for which the legislature either stated a desire for a uniform set of state laws or expressly limited the scope of local regulations on the subject. *See Northwest Residence, Inc.*, 352 N.W.2d at 773 (finding that the state legislature expressly limited the scope of conditions that local ordinances could require of facilities for the mentally ill); *see*

Nordmarken, 641 N.W.2d at 348-49 (finding that the legislature expressed its intent that municipalities be provided with "a single body of law" to be used for municipal planning); *see Lilly v. City of Minneapolis*, 527 N.W.2d 107, 111 (Minn. App. 1995) (finding that the state legislature intended for employer-provided healthcare benefits only to be extended to certain classes of eligible people, not to those the city sought to be covered); *see Haumant v. Griffin*, 699 N.W.2d 774, 778 (Minn. App. 2005) (finding an ordinance pertaining to the possession and distribution of marijuana was preempted by state law, in large part, because the state expressly prohibited the possession and distribution of marijuana).

In this case, the Court cannot conclude that state law pertaining to minimum wage encompasses an extensive statutory framework that mandates exclusive control by the state legislature. Unlike *Northwest Residence*, there is no provision that the Commissioner of Labor and Industry has the exclusive authority to establish minimum wage standards. *See* Minn. Stat. §§ 177.27-177.28. Rather, MFLSA holds that the Commissioner may adopt rules to safeguard the minimum wage. Minn. Stat. § 177.28. In addition, this case is unlike *Nordmarken* or *ValAdCo*, in that the state legislature expressed no intention of creating a single, governing body of minimum wage law to be used by local governments. For these reasons, minimum wage is not solely a matter of state concern.

b. It is Unlikely Plaintiffs Will Show the Ordinance Will Have an Unreasonably Adverse Effect on the General Populace of the State

Under the fourth *Mangold* factor, the Court must determine whether the local regulation will have an "unreasonably adverse effect on the general populace of the state." *Mangold*, 143 N.W.2d at 820. For this factor, the proper focus should be on the adverse impact of the public at large, rather than on a narrower group, such as business entities effected by the statute. *Id.* at 821.

Plaintiffs did not present evidence that the Ordinance would have an adverse effect on the general populace of the State. Instead, Plaintiffs argued that the Ordinance will create a patchwork of regulations. However, if such a patchwork is created, the Court should defer to the state legislature to correct the inconsistencies. *See G.E.M.*, 144 N.W.2d at 554-55 (explaining that many different municipal regulations affecting commercial activity can create serious problems, but those problems should be corrected by the state legislature's clear expression requiring one uniform regulation throughout the state); *see Mangold*, 143 N.W.2d at 821 (upholding a local business regulation even though permitting local regulation could favor businesses in surrounding municipalities); c.*f. ValAdCo*, 504 N.W.2d at 269, 271 (explaining that pollution by its very nature is hard to confine to a particular area; thus, if each municipality created a regulation there would be a "patchwork" of regulation for which it would be difficult to comply).

Plaintiffs also argue that the Ordinance will have an adverse effect on employers who employ individuals within the City of Minneapolis. However, this is not the standard. *See Mangold*, 143 NW.2d at 820 (explaining that the court must look to whether there are "unreasonably adverse effects on the general populace of the state"); *see State v. Gonzales*, 483 N.W.2d 736, 738 (Minn. App. 1992) (determining the adverse effect on the general population); *see City of Birchwood Vill. V. Simes*, 576 N.W.2d 458, 462 (Minn. App. 1998) (looking at the adverse effect on the public). But even if the Court was to look at the adverse effect on employers, Plaintiffs have not shown that there are unreasonably adverse effects. For example, businesses that operate within the City routinely face a variety of municipal regulations that vary city-by-city, including differing trade license requirements, fuel regulations, and restrictions on the sale of tobacco. *See* Wilson Decl. Accordingly, Plaintiffs are not likely to succeed in

showing that the Ordinance will have an unreasonably adverse effect on the general populace of the state.

3. It is Unlikely Plaintiffs Will Show the Ordinance Has an Impermissible Extraterritorial Reach

Plaintiffs argue that the Ordinance has an impermissible extraterritorial reach.[2] A court must focus on whether the harm to be prevented occurs within a municipality's borders, when determining the extraterritorial reach of an ordinance. *See City of Plymouth v. Simonson*, 404 N.W.2d 907, 909 (Minn. App. 1987); *see also State v. Nelson*, 68 N.W. 1066, 1068 (Minn. 1896); *see also City of Duluth v. Orr*, 132 N.W.2d 265, 265 (Minn. 1911). "The general rule, applicable to municipalities as well as to states, is that the power and jurisdiction of the city are confined to its own limits and to its own internal concerns." *Orr*, 123 N.W.2d at 265. A municipality has no authority "to legislate as to matters outside the municipality in the guise of municipal concern." *Almquist v. City of Biwabik*, 28 N.W.2d 744, 746 (Minn. 1947).

For example, in *Nelson*, the court upheld a municipal ordinance allowing a city to inspect herds of dairy cows that produce milk for sale within the city limits regardless of the herds' location. 68 N.W. at 1068. The ordinance had "no extraterritorial operation" because the "manifest purpose of the statute" was to prevent the retail of tainted milk within the city. *Id.* Such a purpose could not be accomplished without inspections beyond the city's borders. *Id.* The ordinance's subject of regulation was the sale of milk within the city. *Id.*

Likewise, in *Simonson*, the court upheld a city ordinance that prohibited the delivery of harassing materials within the city limits even if the letters were sent from outside the city. 404

[2] Plaintiffs include only one sentence in the introduction of their Argument section and one footnote under their field preemption section.

N.W.2d at 909. The court found that the harm to be prevented occurred within the city limits, regardless of whether it was sent from inside or outside the city. *Id.*

In *Orr*, however, the court invalidated a municipal ordinance because it attempted to regulate the storage of gunpowder within its city limits and up to one mile outside its city limits. 132 N.W.2d at 265. The court noted that the city had the authority to regulate conduct within the city limits, but not beyond its borders. *Id*. (finding the mere possibility of an explosion outside the city limits impacting the citizens within a city not enough to justify reach of statute).

The Ordinance focuses on preventing harms occurring within the City of Minneapolis. The purpose of the Ordinance is to address sub-standard living conditions and poverty existing within the Minneapolis city limits; to address racial and income disparities existing among Minneapolis workers, and to ensure a livable wage for people working in the City of Minneapolis. The Ordinance only applies to work actually performed within the city limits of Minneapolis. It is unlikely Plaintiffs will be able to show that the Ordinance has an impermissible extraterritorial reach.[3]

4. Conclusion—Plaintiffs are Unlikely to Succeed on the Merits

Because the Minnesota legislature has not demonstrated an intent to prohibit local regulation of minimum wages, conflict preemption does not apply, and the regulation of minimum wages is not solely a matter of state concern. Since Plaintiffs have not shown the Ordinance will have an unreasonably adverse effect on the general populace of the state, they are

[3] In *Minnesota Chamber of Commerce, et al. v. City of Minneapolis*, No. 27-CV-16-15051, the Minneapolis sick and safe time ordinance case, the City attempted to require employers to pay benefits on hours worked outside of the city limits when employees worked in Minneapolis for at least 80 hours in a year. *See Minnesota Chamber of Commerce*, No. A17-0131, 2017 WL 4105201, at *5. In our case, the City requires its minimum wage be paid only on hours actually worked within the city limits. Moreover, the Court of Appeals panel appeared to imply that it was doubtful Petitioners would win that stronger case for extraterritorial reach. *Id.* at *7.

unlikely to show that field preemption applies. Because the Ordinance addresses issues within the Minneapolis city limits and applies only to work performed within the city limits, it is unlikely Plaintiffs will be able to show the Ordinance has an impermissible extraterritorial effect. For these reasons, Plaintiffs are not likely to succeed on the merits. This is the most important *Dahlberg* factor in this case. It weighs against a temporary injunction.

B. The Balance of Harms Weighs Against a Temporary Injunction

The second *Dahlberg* factor requires the Court to balance the potential harm to be suffered by Plaintiffs if their motion for a temporary injunction is denied, with the potential harm to be suffered by the City if the motion is granted. *Dahlberg*, 137 N.W.2d at 321. In addition to balancing the risk of harm to the parties, the Court may also consider the potential harm to the public in determining whether to grant a temporary injunction. *Metro. Sports Facilities Comm'n v. Minnesota Twins Partnership*, 638 N.W.2d 214, 223-25 (Minn. App. 2002). The party seeking a temporary injunction is required to show irreparable harm if the injunction is not issued, while the party opposing issuance need only show substantial harm to bar an injunction. *Pac. Equip. & Irr., Inc. v. Toro Co.*, 519 N.W.2d 911, 915 (Minn. App. 1994). Irreparable harm may exist when money damages are not recoverable due to an immunity defense. *DiMa Corp. v. City of Albert Lea*, 2013 WL 1500873, at *6 (Minn. App. Apr. 15, 2013).

If a temporary injunction is not issued, Plaintiffs claim they will incur significant costs configuring and purchasing tracking systems and record-keeping systems to comply with the Ordinance, and they will have to pay a minimum wage higher than the state minimum wage starting January 1, 2018. Plaintiffs' evidence of the extent of these costs was sparse. The evidence of tracking costs was a single vague claim that members of MRSA "could" face a wide range of costs from $5,000.00 to $100,000.00. There was no stated basis for the claim.

More importantly, Plaintiffs will have to incur tracking costs whether the Court grants a temporary injunction or does not. A temporary injunction will not protect Plaintiffs from incurring these costs. Even if the Court were to grant a temporary injunction, the Plaintiffs would need to incur tracking costs to know how much to pay employees if the Ordinance is not invalidated. It does not make sense to grant an injunction based on tracking costs that Plaintiffs will have to incur with or without an injunction.

Plaintiffs' evidence on the extent of increased wages was equally sparse. Plaintiffs resorted to making calculations based on combined statistics from the Minneapolis-St. Paul Metropolitan area without information about the number of employees who worked in Minneapolis or St. Paul, and without knowing if they worked for large or small businesses. Only large businesses will be affected before July 1, 2018. This case will be completed well before that date.

Moreover, all but one group of the employees referenced in Plaintiffs' exhibits were already being paid more than the Ordinance will require, and those employees made more than the state minimum wage. When Plaintiffs argued that all the employees were paid less than the Ordinance would require, they mistakenly looked to what the Ordinance would require in years to come. However, before July 1, 2018, the Ordinance will only require large businesses to pay $10.00 per hour. Again, there will be a final decision on the merits of the case before that date. Furthermore, employers can recover wages by offsetting overpaid wages from future wage payments. Moreover, Plaintiffs' exhibits show that some businesses will pass on costs to customers. *See* Kittridge Aff.

Plaintiffs could have avoided the risk of unrecoverable costs by bringing the lawsuit in July 2017. Plaintiffs claim that they waited until November 2017, to avoid a justiciability issue,

which the City had raised in the sick and safe time case. *See Minnesota Chamber of Commerce*, No. A17-0131, 2017 WL 4105201. However, the sick and safe time case was filed in May 2016, more than one year before the sick and safe time ordinance became effective in July 2017, and Plaintiffs prevailed in that case in January 2017. Plaintiffs would not have had justiciability concerns in July 2017.

Conversely, the public will suffer substantial harm if an injunction issues. Many people who are paid minimum wage live in poverty. Although the wage increase is modest, under these conditions the absence of even a small amount of money can result in great harm to a person's health, safety and ability to provide for basic needs. The City will also suffer harm. The City is responsible for regulating health and welfare in Minneapolis, it has identified a critical public health and welfare issue, and it would be enjoined from addressing this public health concern.

When balancing these harms, the Court finds the harm to the public and to the City if the temporary injunction issues outweighs the harm to Plaintiffs if a temporary injunction is denied. This is the second most important *Dahlberg* factor in this case. It weighs against a temporary injunction.

C. The Relationship of the Parties Weighs in Favor of a Temporary Injunction

The first *Dahlberg* factor is 'the nature and background of the relationship of the parties preexisting the dispute giving rise to the request for relief." 137 N.W.2d at 321-22. The nature and background of the relationship between the parties is relevant to determining whether a temporary injunction is proper because it affects the parties' reasonable expectations, *id.* at 322, and because the primary purpose of a temporary injunction is to preserve the status quo until adjudication of the case on the merits. *Pac. Equip. & Irr., Inc.*, 519 N.W.2d at 915 (citing *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982)).

In this case, a temporary injunction would preserve the status quo in that it would allow employers to pay the minimum wages set forth in the MFLSA. Before the enactment of the Ordinance, employers with workers in the City of Minneapolis were not required to pay wages above the minimum wage set forth in MFLSA. Thus, the status quo before the lawsuit was that employers paid minimum wage pursuant to the MFLSA. Because the purpose of a temporary injunction is to maintain the status quo, this *Dahlberg* factor weighs in favor of granting a temporary injunction.

D. Public Policy Considerations Weigh Against a Temporary Injunction

The fourth *Dahlberg* factor requires the Court to weigh public policy considerations that are expressed in state or federal statutes in determining whether to issue a temporary injunction. *Dahlberg*, 137 N.W.2d at 321.

Plaintiffs argue that public policy weighs in favor of granting a temporary injunction because a temporary injunction would ensure that only valid ordinances are to be enforced and delaying the Ordinance's effective date is not contrary to public policy. The City, on the other hand, argues that public policy weighs against granting a temporary injunction because there would be great harm to the health, safety, and welfare of the public if the Ordinance is not implemented and because courts should not interfere with the management and legislation of the City's affairs.

Courts have recognized public policy interest in allowing the government to regulate the health, safety, and welfare of the public. *See Hatfield*, 200 N.W.2d at 575 (explaining that the "[p]reservation of the public health and the suppression of disease involve a governmental function."); *see* Minn. Stat. § 145A.05, subd. 9 (city government may adopt legislation related to public health).

Courts have further recognized a public policy interest in courts deferring to a city's legislature concerning the governance of the municipality's affairs. *See White Bear*, 324 N.W.2d at 175 (explaining that the court's "authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked."); *see also Queen City Const., Inc.*, 604 N.W.2d at 379 (explaining that "[t]he decision how to exercise its power to award contracts is entrusted to the city's discretion, and a court should be wary to interfere."); *see also Minnesota Chamber of Commerce*, No. A17-0131, 2017 WL 4105201 at *4 (explaining that there was a public policy consideration in giving "deference to the city in matters of municipal governance."). Thus, public policy considerations weigh against a temporary injunction.

E. The Lack of Administrative Burden Does Not Weigh For or Against a Temporary Injunction

The fifth *Dahlberg* factor requires the Court to consider whether it would face administrative burdens involved in judicial supervision or enforcement of a temporary injunction. *Dahlberg*, 137 N.W.2d at 322. This case does not involve any significant administrative burdens. This *Dahlberg* factor does not weigh for or against a temporary injunction.

F. Conclusion—Plaintiffs Are Not Entitled to a Temporary Injunction

In sum, three factors— the likelihood of success on the merits, the balance of harms, and public policy—weigh against issuing an injunction. One factor—the relationship of the parties—weighs in favor of issuing an injunction. One factor—lack of administrative burden—is a neutral factor that weighs neither for nor against issuing an injunction. The factors of likelihood of success on the merits and balance of harms carry more weight, while the relationship of the parties, public policy, and lack of administrative burden carry less weight in balancing the five *Dalhberg* factors. Plaintiffs' failure to show a likelihood of success on the

merits and their failure to show that they are likely to suffer more harm if an injunction is denied than the public and the City will suffer if an injunction is granted, strongly outweighs the fact that the status quo is that employers are not paying the increased minimum wage. Weighing all five *Dahlberg* factors together, the Court finds that Plaintiffs' motion for a temporary injunction should be denied.

III. Consolidation Is Not Appropriate

Plaintiffs request consolidation of the temporary injunction hearing with a hearing on the merits pursuant to Minnesota Rule of Civil Procedure 65.02(c), but their request is denied to allow further development of the record.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiffs' motion for a temporary injunction is **DENIED**.

2. Plaintiffs' request for consolidation is **DENIED** at this time.

BY THE COURT:

Dated: December 10, 2017

SUSAN N. BURKE
District Court Judge