

PAID SICK LEAVE IN TEXAS? WHAT EMPLOYERS NEED TO KNOW

The concept of paid sick leave has been discussed extensively at the federal level, but legislation has not been implemented. Consequently, states and municipalities have taken the initiative.

TEXAS MUNICIPALITIES TAKE THE LEAD: Texas state law does not require private employers to provide paid sick leave to employees. However, three Texas municipalities do require paid sick leave – Austin, San Antonio and now Dallas. Austin was the first to pass an ordinance requiring employers to provide paid leave to employees under certain circumstances. On August 17, 2018, the Austin Court Appeals filed an injunction to halt the ordinance from going into effect. Currently, the ordinance is stalled in litigation. On August 16, 2018, San Antonio passed its “Earned Paid Sick Leave Time” ordinance. On March 28, 2019, the City of Dallas passed its own “Earned Paid Sick Time Ordinance,” which goes into effect August 1, 2019.

HIGHLIGHTS OF THE DALLAS ORDINANCE: An employee who performs at least 80 hours of work for pay within the City in a year is eligible. Interestingly, the ordinance applies to employers whose employees work “within the City of Dallas,” regardless if the employer has a location there.

Qualified employees are entitled to one hour of earned paid sick time for every 30 hours the employee works in Dallas. There is a yearly cap of 64 hours per employee per year for employers of more than 15 employees, and 48 hours or more for employees working for employers with 15 or fewer employees. Any unused, earned paid sick time must be carried over to the following year, unless the employer makes the yearly cap of earned paid sick time available to an employee at the beginning of each year. If the applicable term is more than 12 months, then the accrued hours go away.

PERMISSIBLE USES OF THE LEAVE: The employee’s own physical or mental illness; injury resulting from domestic abuse or assault; or the need to care for a family member’s physical or mental illness, are all acceptable reasons for leave. The employer can obtain verification of qualification for these conditions, except in the cases of assault or domestic abuse.

ANTI-RETALIATION: As with most other employment laws, the employer cannot retaliate against an employee who avails themselves of the benefits under this ordinance, which includes requesting time off under the ordinance or for having previously obtained time off.

NOTICE: The employer must provide employees a monthly statement showing the amount of the employee’s available earned paid sick time. And, the employee handbook must provide notice to employees of their rights under this ordinance.

PENALTIES FOR VIOLATION: There is no private right of action for violation of this ordinance; however, an employee can file a complaint with the City regarding violations. Employers will be assessed a \$500 fine for each violation.

WHAT TO DO? For Dallas and San Antonio employers, our recommendation is to include this language in your sick leave policy because there is little likelihood the Texas Supreme Court will rule on the Austin ordinance by August 1, 2019. However, if your organization already has paid sick leave that is at least as generous as the ordinance, no action is necessary.

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