

GET READY, TEXAS: PAID SICK LEAVE MAY SOON BE ON ITS WAY

Insights

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Employers in Dallas and San Antonio are on the verge of having to provide your workers with paid sick leave – and these new city ordinances are set to go into effect in the next few weeks. When the legislative session came to a close on May 27, the state legislature had failed to pass a bill that would have banned municipal paid sick leave ordinances such as the ones passed in Austin, Dallas, and San Antonio in 2018 despite Texas employers' high hopes.

There are only two possible ways the Dallas and San Antonio laws could get sidetracked before the August 1, 2019, effective date. Texas lawmakers could call a special legislative session, which would allow them the opportunity to address the sick leave preemption issue before the next scheduled session begins in January 2021. Or the Dallas and San Antonio laws could be challenged in court, like the Austin ordinance (which has been held up by a legal dispute). However, given the short timeframe before the laws go into effect, there may not be enough time for a court to block the new laws before August 1 even if similar lawsuits are filed against the Dallas and San Antonio measures.

This means that over 600,000 workers in these cities will soon be entitled to paid sick leave. Texas employers with employees performing work in either city should start thinking about the steps you need to

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take in order to comply with these new rules by August 1. As you prepare, here are some things you may want to consider in order to meet your compliance needs.

WHAT ARE THE BASIC REQUIREMENTS OF THE NEW PAID SICK LEAVE ORDINANCES?

The Dallas and San Antonio ordinances apply to all employers, including private employers, other than United States, Texas, and city governments. All employees who perform 80 or more hours of work for pay within the cities of Dallas or San Antonio are eligible for paid sick leave benefits. The ordinances will take effect for all employers with more than five employees on August 1; those employers with five or fewer employees have until August 1, 2021, to comply.

The Dallas and San Antonio ordinances require that employers with more than 15 employees provide employees with up to 64 hours of paid sick leave per year, which must accrue at a rate of one hour per every 30 hours worked in either Dallas or San Antonio. Employers with 15 or fewer employees must provide 48 hours of paid sick leave per year.

WHO IS ELIGIBLE FOR PAID SICK LEAVE?

Employees are eligible for paid sick leave if they work 80 or more hours per year within the cities of Dallas or San Antonio. This means that the ordinance applies to part-time and full-time employees. While you are not required to provide paid sick leave to independent contractors, you should make sure that your workers are properly classified as employees or independent contractors before you exempt your workers from coverage.

WHEN CAN AN EMPLOYEE USE PAID SICK LEAVE?

Employees in both Dallas and San Antonio can use paid sick leave for many purposes, including the employee's own or their family member's physical or mental illness,

physical injury, preventive medical or health care, or health condition. Paid sick leave may also be used for the employee's or their family member's need to seek medical attention, seek relocation, obtain services of a victim services organization, or participate in legal or court ordered action related to an incident of victimization from domestic abuse, sexual assault, or stalking involving the employee or the employee's family member. A family member includes an employee's spouse, child, parent, or any other individual related by blood. It also includes "any other individual whose close association to an employee is the equivalent of a family relationship."

Importantly, the ordinances require that you allow an employee to use sick leave as soon as it is accrued. One exception is that you can prohibit an employee from using paid sick leave during their first 60 days of employment *only if* that employee has a term of employment lasting at least one year. Since most employees in Texas work on an at-will basis, this exception will rarely apply.

ARE THERE ARE ANY REQUIREMENTS FOR REQUESTING LEAVE?

Both the Dallas and San Antonio ordinances require that an employee must make a "timely" request to use earned paid sick time before their scheduled work time. However, they also state that you may not prevent an employee from using earned paid sick time for an unforeseen qualified absence that meets the requirements of the laws. You cannot require employees to find replacements to cover their absences under either ordinance, but the ordinances do not prohibit you from establishing incentives for employees to voluntarily exchange hours or trade shifts. Nor do the ordinances prohibit you from permitting employees to donate available earned paid sick time to other employees.

Under the San Antonio ordinance, you may adopt reasonable verification procedure for any employee requests for paid sick time longer than three

consecutive days. However, even when verification is allowed, you may not adopt verification procedures that would require an employee to explain the nature of the domestic abuse, sexual assault, or stalking.

DOES PAID SICK LEAVE CARRY OVER FROM ONE YEAR TO THE NEXT?

Both ordinances require you to allow all available earned but unused paid sick time to be carried over to the following year. However, Dallas and San Antonio employers are given the option to avoid this requirement by “front loading” paid sick time. If you make all 64 hours of paid sick leave available to your employees at the beginning of the year (rather than accruing 1 hour per 30 hours worked), then you do not need to allow employees to carry it over into the next year.

HOW SHOULD EMPLOYERS NOTIFY EMPLOYEES OF THE NEW PAID SICK LEAVE REQUIREMENTS?

If you have an employee handbook, you are required to include an explanation of the paid sick leave ordinance in that document. Since the ordinances are going into effect in the middle of the year when you may not be updating handbooks, you may want to consider issuing a handbook addendum to distribute to your employees on or before August 1.

Additionally, you are required to provide employees with a monthly statement showing the amount of available earned paid sick time. You are also required to post a sign in a conspicuous place (such as a break room bulletin board) explaining the requirements of the new ordinances. As of the date of this alert, neither Dallas nor San Antonio have provided any requirements for this sign, such as size, content, or languages.

Generally, the ordinances require sick leave to be accrued over a consecutive 12--month period as determined by you. However, the Dallas ordinance assumes that most employers will use the calendar year, starting January 1, at which point accrual will

begin. If you choose to use a time period other than the calendar year, you must provide employees with written notice of the 12-month period you will use to calculate the accrual of paid sick leave. This notice should be provided on August 1, 2019, for current employees, and at the commencement of employment for employees who start work after that date.

WHAT ELSE SHOULD EMPLOYERS KNOW ABOUT THE ORDINANCES?

You are prohibited from retaliating against employees who request or use earned paid sick time, report a violation of the ordinances, or participate in any investigation or proceeding relating to the ordinances. Employers are subject to fines up to \$500 for failing to comply with the ordinance, but those penalties generally will not go into effect until April 1, 2020. Penalties for violations of the retaliation provisions, however, can be assessed immediately.

Both the Dallas and San Antonio ordinances allow leave for mental illness. Notably, unlike San Antonio, the Dallas ordinance does not specifically allow leave for mental injuries. This means that where an employee or family member suffers a mental injury without suffering a mental illness (such as a concussion), that leave may be covered in San Antonio but not in Dallas.

FINAL THOUGHTS

Employers in Dallas and San Antonio should consider assessing their leave policies and procedures in light of the new requirements outlined above. With the August 1, 2019 deadline approaching quickly, you will want to give yourself ample time not only to bring your organization into compliance with the new laws, but also to educate your employees on their new leave rights. Doing so will mean that there will be minimal disruption to your businesses and staffing needs when the laws go into effect.

We will continue to monitor further developments and provide updates on this and other labor and

employment issues affecting Texas employers, so make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our [Dallas](#) or [Houston](#) offices.

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