

The Austin Chapter of the Associated General Contractors (AGC) does not support a City Council ordinance that would require local businesses to provide a paid sick leave benefit for employees. The Austin AGC is a trade association of commercial builders working in Austin and throughout Central Texas. Our company membership totals 250 firms, including general contractors, specialty contractors, suppliers and service providers who employ over 10,000 people in Central Texas.

The Austin AGC believes that the decision whether to offer paid sick leave is best left up to employers as part of their efforts to recruit a workforce. Given that some form of a paid sick leave policy appears likely to be approved by the City Council in 2018, the AGC would like to share the following concerns of the commercial construction industry for consideration:

Who will be subject to this new requirement? Will it only apply to construction companies based in Austin, or will it apply to any construction worker on an Austin jobsite? The construction workforce is nomadic, moving regularly from jobsite to jobsite as needed on a daily, weekly or longer basis. This creates challenging and time-consuming HR oversight for employers trying to account for accrued sick-time. In this regard, construction is much different than other industries where employees stay in the same location throughout the work period. Further, if Austin-based companies are required to provide sick leave even for workers on jobs outside the city, they will be at a competitive disadvantage when bidding against other firms not required to provide sick leave.

Many companies offer paid time off (PTO) that is available to employees for any reason. Will these firms be forced to switch to a sick leave policy? Many firms already offer a paid leave benefit that can be used for a variety of personal reasons, not just for illness. Will workers at those firms lose this benefit and subsequently have to feign "illness" to take a personal day? Consideration should be given to companies that offer PTO, and they should be exempted from offering sick leave.

Will prime contractors be liable for subcontractor violations? Determining whether a subcontractor is abiding by this sick leave policy is impossible for prime and upper-tier contractors. A prime contractor has no available means to determine whether or not a subcontractor happens to be working for that prime contractor at the time of the sick leave request. Under carryover provisions of a sick leave policy, subcontractor violations can occur years after the relationship between subcontractor and prime contractor has ended. There needs to be a 'safe harbor' for prime contractors to protect them from any wrongdoing on the part of a subcontractor.

Will companies working under a collective bargaining agreement be exempt? Some construction workers are covered under collective bargaining agreements (CBAs) and have the ability to negotiate these sick leave benefits if they choose. Some may opt not to include paid sick time in lieu of higher wages. If the City decides not to exempt CBA's, they will be interfering with these workers right to negotiate and could adversely affect the outcome of those negotiations.

Will different cities around Texas begin offering varying forms of sick leave? Currently 17 states have laws that prohibit cities from developing these types labor laws. The reason behind these restrictions is because these states understand that asking businesses to comply with different laws in each city adds a significant administrative burden. These increased costs limit the company's ability to invest in expansion, new technologies or raise wages. Adding another regulatory burden for Austin employers encourages economic growth elsewhere.

Who will monitor/enforce this new policy? Will the City hire professional staff to monitor and enforce this new policy? Or, will the City hand off this power to an outside 3rd party, either a private consultant or a non-governmental organization?

What about the benefit of overtime pay? While hourly construction workers may not typically have the benefit of paid sick leave, they do enjoy the benefit of overtime (at a rate of one-and-a-half time their hourly rate) and also double time pay. Meanwhile, salaried employees do not have this benefit. This is an important consideration when attempting to level a playing field between hourly and salaried employee benefits.

In what increments can sick time be used? Due to the scheduling needs of construction work and the number of people required on a crew, allowing the use of sick time in small increments is challenging. Construction companies should be given flexibility to determine the increments as feasible for their work.

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