

Engage PEO Client Alert:

Texas - Paid Sick Leave Local Ordinances

The following is general HR guidance to assist employers in Texas that may be impacted by local ordinances regarding paid sick leave for employees.

Texas Paid Sick Leave - Overview

Texas state law does not require private employers to provide paid sick leave to employees. However, **private employers with employees in three major cities—Austin, Dallas, and San Antonio—may be required to provide paid sick leave to employees in the wake of recent local ordinances**. The Texas legislature introduced multiple bills aimed at prohibiting these ordinances; however, the state legislature did not finalize the bills prior to the close of the state's 2019 legislative session. While the Austin ordinance was declared unconstitutional as further explained below, the San Antonio and Dallas employers are now left with two months to prepare for the sick leave mandates. The long-term fate of the local ordinances remains unclear.

Austin

In February 2018, Austin became the first city in Texas to enact a mandatory paid sick leave law. The Texas Court of Appeals for the Third District ordered a temporary injunction of the ordinance and declared it unconstitutional. The City of Austin filed a petition for review of the decision with the Texas Supreme Court, which is still pending. Currently, Austin employers do not have to make any changes to their existing sick leave policy or create a new policy. However, employers must wait until the Texas Supreme Court rules on whether the ordinance is unconstitutional.

Dallas and San Antonio

Dallas and San Antonio enacted their own paid sick leave ordinances that are substantially similar to the Austin ordinance and scheduled to begin for most employers on August 1, 2019. The effective date for employers with five or fewer employees is August 1, 2021. Here are a few key issues for Dallas and San Antonio employers:

Eligible Employees: All employees who performed at least 80 hours of work for pay within the city in a year, including work performed through a temporary or employment agency, are eligible for paid sick leave. Independent contractors are not eligible for paid sick leave.

Location: Employers do not have to have a physical location within the city limits of Dallas or San Antonio. Employers who have employees who worked at least 80 hours in the city limits of Dallas or San Antonio must provide paid sick leave for eligible employees.

Accrual: For employers with 15 or more employees, eligible employees can accrue up to 64 hours of paid sick leave per year at one hour for every 30 hours worked. Alternatively, eligible employees can receive a lump grant of the full amount of paid sick leave at the start of each year. Smaller employers (less than 15 employees) must allow eligible employees to accrue up to 48 hours of paid sick leave per year.

Carryover: Eligible employees who accrue paid sick leave can carry over up to the annual maximum to the following year. However, eligible employees are limited to using a maximum of eight days of paid sick leave per year.

Purpose: The paid sick leave time can be used for the employee's own physical or mental illness, physical injury, or preventative health care. It can also be used for the employee's need to care for a family member's physical or mental illness, physical injury, or preventative health care. "Family member" means an employee's spouse, child, parent or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

Notice: Employers must provide eligible employees at least a monthly statement showing the amount of their available earned paid sick time. The employee handbook must provide notice of employees' rights and remedies under the ordinance.

Penalties: There is no private right to sue for employees, but employees may make a complaint to the designated director for each city. A civil penalty up to \$500 may be assessed for each violation. Employers will be allotted 10 business days to voluntarily comply before any civil penalty is assessed, except in cases of retaliation. Penalties for violations will not be assessed until April 1, 2020, except violations of the anti-retaliation provisions.

Next Steps

Austin employers may "wait and see" the outcome of the pending appeal since the City of Austin's paid sick leave ordinance has been deemed unconstitutional by the Third District Court of Appeals and is pending review by the Texas Supreme Court.

For Dallas and San Antonio employers, the "wait and see" approach is more complicated, and the following practices are viable options:

- If an employer already has a paid sick leave policy that is the same as (or more generous than) the ordinances, those employers may wait and see the outcome of the pending appeal to the Texas Supreme Court for the paid sick leave ordinance.
- If an employer does not have a paid sick leave policy at all or has a policy that does not comply with the local ordinances, the employer should review its existing sick leave policy and consider revising or implementing a new policy to comply with the local ordinances. Keep in mind, however, that once the paid sick leave time is granted to eligible employees, it may be more difficult to remove this benefit even if the ordinances are prohibited later by court or legislative actions.
- Alternatively, employers could opt to "wait and see" the outcome of the Texas Supreme Court ruling since the employers must be given an opportunity to cure before any civil fines can be assessed. However, a "wait and see" approach could cause morale issues with eligible employees who want this paid sick leave.
- Review policies on attendance, anti-retaliation, conduct, and discipline for compliance with the Dallas and San Antonio ordinances.

As always, if you have any questions please contact your Engage HR Consultant.