

Management Alert



If Pain, Yes Gain—Part 64: Dallas Passes Paid Sick Leave Ordinance Despite Potential Legislative and Judicial Antidotes

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Seyfarth Synopsis: On April 24, the Dallas City Council passed a paid sick leave ordinance making Dallas the latest Texas municipality to become infected by the nation's sick leave epidemic. Dallas joins Austin and San Antonio as the state's sick leave epicenters despite the continued development of potential legislative and judicial sick leave cures.

On April 24, 2019, the Dallas City Council passed the Earned Paid Sick Time ordinance (the "Dallas Ordinance"). Dallas is the third municipality in Texas to pass a paid sick leave ordinance. The Dallas Ordinance, which closely resembles the [Austin](#) and [San Antonio](#) paid sick leave ordinances,¹ is scheduled to go into effect on August 1, 2019 for employers with more than five employees at any time in the preceding 12 months and on August 1, 2021 for all other employers.

Whether the Dallas, San Antonio, and Austin ordinances will ever go into effect is currently unclear as multiple pieces of legislation that would preempt all three ordinances make their way through the Texas state legislature. In addition to a potential legislative remedy, judicial cures to the local paid sick leave spread remain a possibility. Austin paid sick leave was scheduled to go into effect on October 1, 2018; however, nearly seven months later the city's ordinance is still not in effect and remains trapped in judicial limbo.

Specifically, and as [previously reported](#), in November 2018 the Texas Court of Appeals for the Third District (the "Third District") granted a request to enjoin the Austin paid sick leave ordinance's effective date. The Third District determined that the Austin Ordinance violated the Texas Constitution because it is preempted by the Texas Minimum Wage Act. A petition for review of the Third District's decision by the Texas Supreme Court was filed on March 29, 2019.

In an attempt to rid the state of these local laws, on April 11, 2019, the Texas Senate passed [Senate Bill 2485](#) ("SB 2485"), which would prohibit Texas political subdivisions from adopting or enforcing any ordinance, order, rule, regulation, or policy mandating a private employer's terms of employment relating to employment benefits. Under SB 2485, the enacted paid sick leave ordinances in Austin, San Antonio and Dallas would be void and unenforceable. SB 2485 was referred to the Texas House of Representatives and is currently pending in the House State Affairs Committee, which held a public hearing on May 1, 2019 to discuss, among other topics, SB 2485.

The House of Representatives' own preemption bill, House Bill 222 ("HB 222"), is also pending with the House State Affairs Committee. However, it currently is unclear if and when further action will take place in connection with HB 222. Complicating matters further, the 2019 Texas legislative session is set to close on May 27, 2019.

¹ Amid challenges to the Austin paid sick leave ordinance, in August 2018, [San Antonio City Council passed a paid sick leave ordinance](#) which is currently scheduled to go in effect in August 2019.

Despite the potential for statewide preemption of local paid sick leave mandates and the judicial ruling that has at least temporarily cured Austin paid sick leave, the Dallas City Council opted to proceed with its own paid sick leave ordinance.

Here are some highlights of the Dallas Ordinance:

- **Definition of Employee:** The Dallas Ordinance defines employee as an individual who performs at least 80 hours of work for pay in Dallas in a year for an employer, including work performed through the services of a temporary employment agency. The Dallas Ordinance, however, excludes independent contractors, as defined by the Texas Administrative Code, and unpaid interns from the definition of employee.
- **Definition of Employer:** The Dallas Ordinance defines employer broadly, to include any person, company, corporation, firm, partnership labor organization, non-profit organization, or association that pays an employee to perform work for an employer and exercises control over the employee's wages, hours, and working conditions. The Dallas Ordinance only excludes from coverage the United States, State of Texas, and City of Dallas governments and any agency that cannot be regulated by city ordinance.
- **Accrual Rate and Cap:** Under the Dallas Ordinance, employees accrue one hour of earned paid sick time for every 30 hours worked for the employer in the City of Dallas, up to 64 hours of earned paid sick time per year for medium or large employees (defined as an employer with more than 15 employees at any time in the preceding 12 months, excluding the employer's family members) and 48 hours per year for all other employers.
- **Carryover:** Employers must permit employees to carry over all available earned paid sick time up to the applicable yearly cap. Employers who frontload 64 or 48 hours of earned paid sick time, whichever is applicable, to employees at the beginning of the year, however, are not required to permit year-end carryover of unused time.
- **Usage Cap:** The Dallas Ordinance allows employees to use up to eight days of earned paid sick time per year.
- **Reasons for Use:** An employee may use available earned paid sick time for the following reasons: **(1)** the employee's physical or mental illness, physical injury, preventive medical or health care, or health condition; **(2)** the employee's need to care for their family member's physical or mental illness, physical injury, preventative medical or health care, or health condition;² and **(3)** certain safe time reasons relating to the employee's or their family members' status as a victim of domestic abuse, sexual assault, or stalking.

While an antidote to local paid sick leave in Texas could arrive in the coming weeks, employers with operations in San Antonio and Dallas should consider taking the following actions:

- Monitor judicial and potential legislative developments involving the Austin, San Antonio, and Dallas paid sick leave ordinances.
- Review existing sick leave policies and either implement new policies or revise existing policies to satisfy the San Antonio and Dallas ordinances.
- Review policies on attendance, call-in procedures, anti-retaliation, and discipline for compliance with the San Antonio and Dallas ordinances.
- Develop a new paid sick leave policy that complies with the San Antonio and Dallas ordinances for any employees who are not covered under existing paid sick leave or PTO policies.

To stay up-to-date on Paid Sick Leave developments, [click here](#) to sign up for Seyfarth's Paid Sick Leave mailing list. Companies interested in Seyfarth's paid sick leave laws survey should reach out to sickleave@seyfarth.com.

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² Under the Dallas Ordinance, "family member" is defined to include a (1) spouse, (2) child, (3) parent, and (4) any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

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