

Management Alert



If Pain, Yes Gain—Part 69: Despite a New Effort to Zap the Local Texas Sick Leave Bug, Dallas and San Antonio Take Steps to Enforce Looming Ordinances

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Seyfarth Synopsis: On Monday, a lawsuit seeking an injunction of the San Antonio Paid Sick Leave Ordinance's August 1, 2019 effective date was filed in a Bexar County District Court. The lawsuit was filed on the same constitutional grounds that caused the Texas Court of Appeals for the Third District to indefinitely suspend the Austin sick leave ordinance's October 2018 effective date pending further litigation. A temporary injunction hearing involving the San Antonio ordinance is scheduled for July 24.

Despite this lawsuit and the appeal of the Austin ruling pending before the Texas Supreme Court, San Antonio and Dallas enforcement agencies appear ready to proceed with their respective ordinances as of August 1, 2019, as both have released model posters and administrative guidance as recently as this week.

As summer temperatures soar, the battle in Texas between local paid sick leave ("PSL") enforcement and preemption continues to heat up. [After state legislative efforts to preempt municipal Texas PSL ordinances failed](#) at the close of the session in May 2019, employers were left bracing for the impact of the San Antonio and Dallas PSL ordinances' respective August 1, 2019 effective dates (for most businesses).¹ Lacking a legislative cure to the San Antonio and Dallas PSL ordinances, PSL preemption efforts are changing course to the courthouse -- at least in San Antonio for now.

In particular, on July 15, 2019, several businesses and associations filed a lawsuit seeking an injunction of the San Antonio ordinance's August 1 effective date. A temporary injunction hearing is scheduled for July 24, 2019. As of now, a similar lawsuit involving the Dallas paid sick leave ordinance has not been filed.

Arguments against the San Antonio ordinance focus on the same constitutional grounds that delivered a blow to the Austin paid sick leave ordinance last year and has since held it in abeyance. As a reminder, in November 2018, the Texas Court of Appeals for the Third District ("Third District") ordered a temporary injunction of the Austin ordinance after finding it to be in conflict with the Texas Minimum Wage Act ("TMWA").² The City of Austin filed a petition for review of the Third District's decision with the Texas Supreme Court, which is currently pending.³

¹ For more information on Texas paid sick leave see our prior alerts [here](#), [here](#), [here](#), and [here](#).

² Tex. Ass'n of Bus. v. City of Austin, 565 S.W.3d 425 (Tx. App. 2018).

³ The docket for the appeal pending before the state Supreme Court is available [here](#).

Efforts to immunize Texas localities from PSL mandates has not slowed down Dallas and San Antonio's PSL activity. Over the last month, both cities have launched PSL websites. The websites include, among other things, the following resources and administrative guidance:⁴

- *San Antonio PSL FAQs*: San Antonio released its most recent set of [PSL FAQs](#) on July 1, 2019. Although extensive, a key highlight includes clarity that "[e]mployer size is determined based on the number of employees that perform 80 hours of work for an employer within the City of San Antonio in a year."⁵
- *Dallas and San Antonio Posters*: Both the Dallas and San Antonio ordinances require that posters be displayed in conspicuous places where notices to employees are posted in English and other languages made available by the applicable enforcement agency. For compliance with these mandates, Dallas recently released both [English](#) and [Spanish](#) versions of its PSL poster, and on the same date that the lawsuit against the San Antonio ordinance was filed, San Antonio released an [English version of its PSL poster](#).
- *Employee Handbook Notice*: It is currently unclear whether these model PSL posters are sufficient to satisfy each ordinance's requirement that employers who provide an employee handbook to their workers include a notice of employee rights and remedies under the applicable ordinance in the handbook.

Employer Takeaway

As of now, and despite a new lawsuit that threatens to delay at least the San Antonio PSL ordinance, Dallas and San Antonio appear prepared to proceed with their respective PSL ordinances on August 1, 2019. We will continue to monitor PSL developments in Texas. In the meantime, here are some steps for Dallas and San Antonio employers to consider:

- Review existing sick leave policies and either implement new policies or revise existing policies to satisfy the Dallas and San Antonio ordinances.
- Review policies on attendance, anti-retaliation, conduct, and discipline for compliance with the Dallas and San Antonio ordinances.
- Be on the lookout for further information on both ordinances including release of regulations, further model notices, and other administrative guidance.
- Monitor judicial developments involving the Dallas, San Antonio, and Austin PSL ordinances. With the paid sick leave landscape continuing to expand and grow in complexity, companies should reach out to their Seyfarth contact for solutions and recommendations on addressing compliance with this law and sick leave requirements generally.

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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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⁴ Links to the Dallas and San Antonio PSL websites respectively are provided [here](#) and [here](#).

⁵ See City of San Antonio PSL Ordinance FAQ No. 17. As a reminder, the ordinance is **not** scheduled to take effect for employers with fewer than six employees in the preceding 12 months until August 1, 2021. Employer size also comes into play when determining an employer's accrual cap and year-end carryover cap obligations. Specifically, "medium or large employers," which are defined as employers with more than 15 employees at any time in the preceding 12 months, are subject to 64-hour accrual and carryover caps, while smaller employers are subject to 48 hour accrual and carryover caps. Although the Dallas ordinance contains the same "employer size" provisions as the San Antonio ordinance, employers are reminded that the FAQ clarification cited above is specific to San Antonio.

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