

One Minute Memo®



If Pain, Yes Gain—Part 66: Texas Legislative Session Ends Without Statewide Sick Leave Preemption; San Antonio and Dallas Mandates on Horizon

By Ryan B. Schneider, Joshua D. Seidman, and Tracy M. Billows

Seyfarth Synopsis: Despite gubernatorial support, passing through the state Senate, and being reported favorably out of Committee in the House, multiple bills that likely would have preempted local sick leave ordinances in Texas if passed, did not make the deadline for consideration on the House floor. Thus, the state's 2019 legislative session closed earlier this week without the legislature sending a sick leave preemption bill to the Governor. With this development, as of now, the Dallas and San Antonio paid sick leave ordinances are scheduled to go into effect for most employers on August 1, 2019.

The nation's paid sick leave ("PSL") bug's journey south has been anything but smooth since the beginning of last year.¹ In February 2018, Austin became the first city in Texas – and the first Southern jurisdiction – to enact a mandatory paid sick leave law. Shortly thereafter, a number of businesses and associations filed suit seeking an injunction of the Austin ordinance's effective date on constitutional grounds. In November 2018, the Texas Court of Appeals for the Third District ("Third District") ordered a temporary injunction after finding the ordinance to be in conflict with the Texas Minimum Wage Act. The City of Austin filed a petition for review of the Third District's decision with the Texas Supreme Court, which is currently pending.

During the Austin PSL lawsuit, both San Antonio and Dallas enacted their own PSL ordinances that are substantially similar to the Austin ordinance and scheduled to begin for most employers on August 1, 2019. In addition, the Texas legislature introduced multiple bills aimed at preempting municipal PSL ordinances. While the preemption bills appeared poised for passage, the state legislature was unable to finalize them by May 27 – the close of the state's 2019 legislative session. San Antonio and Dallas employers are now left with two months to prepare for the looming sick leave mandates.

Although the PSL bug has remained resilient in Texas thus far, the long-term fate of local Texas PSL ordinances, including those in Austin, San Antonio and Dallas, remains unclear. Specifically, future legislative developments, successful lawsuits under the same theory that has at least temporarily cured the Austin ordinance, or Texas Supreme Court rulings all could zap the local PSL bug. We will report on developments as they occur.

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

In the meantime, Dallas and San Antonio employers should consider taking steps to comply with their respective mandates by August 1. At a high level, both laws allow eligible employees to accrue up to 64 hours of PSL (48 for small employers) per year at a one hour of PSL for every 30 hours worked rate, or receive a lump grant of the full amount of PSL at the start of each year. Eligible employees who accrue PSL can carry over up to the annual maximum to the following year, but regardless, eligible employees of all sized employers are limited to using a maximum of eight days of PSL per year. Like many other existing sick leave mandates, PSL can be used for “sick” and “safe” time reasons.

We will continue to monitor PSL developments in Texas. In light of the current state of affairs, here are some measures 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, 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.

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.

If you would like further information, please contact Ryan B. Schneider at rschneider@seyfarth.com, [Joshua D. Seidman](mailto:Joshua.D.Seidman@seyfarth.com) at jseidman@seyfarth.com, or [Tracy M. Billows](mailto:Tracy.M.Billows@seyfarth.com) at tbillows@seyfarth.com.

www.seyfarth.com

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