

One Minute Memo®



If Pain, Yes Gain—Part 58: Potential Cure Coming for Local Paid Sick Leave in Texas

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Seyfarth Synopsis: On November 16, 2018, the Texas Court of Appeals for the Third District dealt a major blow to the paid sick leave wave in Austin by reversing a lower court’s decision to deny a temporary injunction of the Austin paid sick leave ordinance. In assessing the temporary injunction, the Third District notably found that the paid sick leave ordinance violates the Texas Constitution because it is preempted by the Texas Minimum Wage Act.

In February 2018, Austin became the [first city in Texas to mandate paid sick leave](#). Shortly thereafter, a lawsuit was filed challenging the validity of Austin’s mandatory paid sick leave ordinance (the “Austin PSL Ordinance”). In August 2018, the Texas Court of Appeals for the Third District (the “Third District”) [granted a request to enjoin](#) the Austin PSL Ordinance’s October 1, 2018 effective date. This ruling provided a short reprieve for covered employers, at least until the Third District could review the lower court’s previous denial of an application for temporary injunction of the Austin PSL Ordinance.

On November 16, the Third District reached its conclusion and reversed the lower court’s ruling.¹ As part of this decision, the Third District notably found that the Austin PSL Ordinance violates the Texas Constitution because it is preempted by the Texas Minimum Wage Act (“TMWA”). In particular, the Third District noted that because the Austin PSL Ordinance increases the pay of employees using paid sick leave, it establishes a TMWA-defined wage. As such, the Third District held that the TMWA preempts the Austin PSL Ordinance as a matter of law, thereby making it unconstitutional.

The Third District’s ruling remanded the case to the lower court to issue the temporary injunction. At a glance, this simply will prevent the Austin PSL Ordinance from taking effect during the course of the litigation. However, given that the Third District’s temporary injunction decision involved an assessment of whether the TMWA preempts the Austin PSL Ordinance, it is likely that the lower court will follow the Third District’s analysis when deciding the case on its merits.

Moreover, outside the judicial arena, Texas State Legislators have developed a potential paid sick leave cure of their own. On November 12, 2018, State Rep. Matt Krause (R) filed [H.B. No. 222](#)—“An Act relating to prohibiting a municipality from requiring an employer to provide paid sick leave.” If passed, as is expected, the preemption law would take effect on September 1, 2019 and would impact the Austin PSL Ordinance, as well as [the San Antonio paid sick leave ordinance, which was enacted earlier this year](#).

¹ *Tex. Ass’n of Bus. v. City of Austin*, No. 03-18-00445-CV, 2018 Tex. App. LEXIS 9365 (App. Nov. 16, 2018).

² As of now, the San Antonio paid sick leave ordinance is scheduled to go into effect for most employers on August 1, 2019. However, as we previously noted, the fate of the Austin PSL Ordinance very likely will dictate what happens with the San Antonio ordinance.

In light of the above developments, an antidote to local paid sick leave in Texas looks increasingly likely. We will continue to monitor and provide updates on Texas paid sick leave.

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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