

DALLAS EMPLOYERS SHOULD PREPARE FOR PAID SICK TIME ORDINANCE BY AUGUST 1

Dallas recently became the third city in Texas (following Austin and San Antonio) to require private employers operating in the city to provide paid sick leave to employees. The ordinance takes effect on August 1, 2019. Proposed legislation that would have blocked cities from adopting ordinances like these was introduced, but stalled, during the most recent Texas legislative session. And while a Texas Court of Appeals has declared the Austin ordinance unconstitutional, no legal actions have been filed to date challenging the Dallas or San Antonio ordinances. So, barring a last-minute legal challenge, employers with employees in the City of Dallas need to comply with the ordinance by August 1.

Who is covered? As a practical matter, all private employers are covered. Employees who perform at least 80 hours of work within Dallas are eligible for paid sick time. The ordinance does not cover independent contractors or unpaid interns. It does cover employees who perform work through a temporary or employment agency.

How much paid sick time is required? Employees accrue one hour of paid sick time for every 30 hours worked in Dallas. Accrual is capped depending on the employer's size: 64 hours yearly for employers with 16 or more employees in Dallas, or 48 hours yearly for employers with 15 or fewer employees in Dallas.

What can this paid time be used for? Paid sick leave can be used for the following reasons: (1) an employee's physical or mental illness, physical injury, or preventative care; (2) the employee's need to care for a family member's physical or mental illness, physical injury, or preventative care; or (3) the employee's or their family member's need to seek medical attention, seek relocation, obtain services of a victim services organization, or participate in legal action related to being a victim of domestic abuse, sexual assault, or stalking. A "family member" means a spouse, child, parent, any other individual related by blood, or any individual whose close association to an employee is the equivalent of a family relationship.

When can employers ask for verification substantiating the need for sick leave? Employers can adopt "reasonable verification procedures" to substantiate the employee's need for qualifying sick leave under the ordinance, but only if the employee requests to use paid sick time for more than three consecutive work days. Even where verification is allowed, employers cannot require the employee to explain the nature of the illness, injury, domestic abuse, sexual assault, or stalking.

How and when is sick time accrued? Sick time accrues in one-hour increments unless the employer has a written policy establishing that the accrual is in partial-hour increments. Accrual must

start when employment begins or August 1, 2019, whichever is later. Leave must accrue on a calendar-year basis unless the employer provides written notice that a different 12-month period will be used. Generally, paid sick time can be used by employees as soon as it is accrued.

Can accrued time be forfeited if not used or must it be carried over to the next year?

Accrued but unused sick time, up to the applicable cap, must be carried over into the following year. Employers have the option to avoid the carryover requirement, however, if they disregard the “accrual” method and instead grant at least the applicable annual hourly cap to employees at the beginning of the year.

Can employees take sick time in increments? What is the maximum usage allowed? As discussed above, paid leave can be used as soon as it is accrued. However, the ordinance also states that employers are not required to allow employees to use earned paid sick time on more than 8 days in a year. While it is unclear exactly what the City Council intended, the ordinance implies that even if an employee uses paid sick leave in less than full-day increments, the employer can restrict his or her use of such paid leave to no more than 8 days per year.

Does the ordinance require that accrued but unused sick time be paid out on termination of employment? The Dallas ordinance implies that payment of accrued, unused sick leave upon separation is not mandatory, as it requires that an employee’s accrued, unused leave must be reinstated if he or she is rehired within six months of separation.

How will this ordinance affect my current paid leave policy? Are there notice requirements? Employers, of course, may have more generous leave policies than required by the ordinance. And as long as an employer’s current paid leave policy affords paid leave that complies with the ordinance’s accrual, annual cap, and usage provisions, no additional paid leave is required. That means, for example, that if the employer’s leave policy is compliant with the ordinance but also allows that leave to be used for other reasons (such as a PTO policy) and the employee has used all of his or her time for those other reasons (such as vacation), the employer need not give the employee additional paid sick time to use for purposes approved under the ordinance. Employers, however, need to check their current paid leave policies to conform them to the accrual, annual cap, and usage provisions of the ordinance, at least for leave up to the yearly cap. And even for Dallas employers whose existing paid time off policies are more generous than the new law, the employers must provide monthly statements to employees showing the amount of available leave, and conspicuously display any poster created by the City describing the new law’s requirements. Finally, if an employer maintains an employee handbook, the handbook must also include a notice of employee rights and remedies under the ordinance.

What prohibitions does the ordinance address? What remedies are available? Dallas employers cannot require employees to find replacement workers to cover the hours they use as leave. Additionally, they cannot retaliate against an employee because that employee: (1) requests or uses leave; (2) reports or attempts to report a violation of the ordinance; or (3) otherwise exercises any rights afforded by the law. The ordinance does not appear to provide employees a private right of action, but a civil

penalty of up to \$500 per violation may be assessed, subject to appeal by the employer. No penalties will be assessed until April 1, 2020, except for violations of the anti-retaliation provision.

Questions? If you have any questions about the new Dallas sick time ordinance, or whether your current paid time off policies will be compliant, we have the experience and expertise to help. Please contact the Thompson & Knight attorney with whom you regularly work or one of the attorneys listed below.

TK EMPLOYMENT CONTACTS:

Anthony J. Campiti

214.969.1565

Anthony.Campiti@tklaw.com

Katy A. Mathews

214.969.1156

Katy.Mathews@tklaw.com

Charles W. Shewmake

214.969.2122

Charles.Shewmake@tklaw.com

Bennett W. Cervin

214.969.1124

Bennett.Cervin@tklaw.com

Bryan P. Neal

214.969.1762

Bryan.Neal@tklaw.com

Lauren Timmons

214.969.2538

Lauren.Timmons@tklaw.com

Stephen F. Fink

214.969.1120

Stephen.Fink@tklaw.com

Meghan Nylin

214.969.1172

Meghan.Nylin@tklaw.com

Jasmine S. Wynton

214.969.2102

Jasmine.Wynton@tklaw.com

Barbara-Ellen Gaffney

214.969.1232

Barbara-Ellen.Gaffney@tklaw.com

Micah R. Prude

214.969.1698

Micah.Prude@tklaw.com

Sarah Yousuf

214.969.2115

Sarah.Yousuf@tklaw.com

Marc H. Klein

214.969.1795

Marc.Klein@tklaw.com

Elizabeth A. Schartz

214.969.1737

Elizabeth.Schartz@tklaw.com

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