

NEXT STEPS:

LOCAL PAID SICK LEAVE MANDATES

In our last installment, we discussed the status of action by the Texas Legislature to block local paid sick leave ordinances that have passed in Austin, San Antonio, and Dallas. This preemptive legislation did not pass in the Texas House and therefore was not signed into law. That means that local paid sick leave ordinances in San Antonio and Dallas will come into effect starting August 1, 2019, unless some other action is taken. The latter part of this article will describe the ordinance in detail, but let's start with who is affected and who is not.

Who is not affected?

The ordinance does not require providing paid sick leave in the following circumstances:

- ❖ **Terminated employment:** The ordinance does not address terminated employment (whether the employee quit or was fired) and so will not require employers to pay terminated employees for their unused paid sick leave.
- ❖ **Employers who have a PTO policy in place** that exceeds the requirements of this ordinance, whether or not the PTO is classified as “sick leave”: This means that employers who currently offer PTO at or above the cap and in accordance with the usage requirements do not need to make adjustments to their policies.
- ❖ **Independent contractors**
- ❖ **Unpaid interns**
- ❖ **Government agencies** (government workers, state agencies)

Important:

If your policies already match or exceed all provisions of these ordinances, you should have no further need for action. Due to the complexity, we advise you have a third party review your policy. We'd be happy to do that for you if you don't already have HR representation.

Who is affected?

The ordinances require employers in San Antonio and Dallas to provide paid sick leave to their employees. The City of Dallas has not yet posted their full ordinance, but the City of

San Antonio does have theirs available on their website, which is accessible via the following link:
<https://www.sanantonio.gov/Portals/0/Files/Atty/Regulatory/PaidSickLeave/Ordinance2018-08-16-0620.pdf>

For this reason, we will focus on the particulars of the San Antonio ordinance throughout the remainder of this article.

The San Antonio ordinance defines “employee” as “an individual who performs at least 80 hours of work for pay within the City of San Antonio, Texas in a year for an employer including work performed through the services of a temporary or employment agency. Employee does not mean an individual who is an independent contractor....” **Part-timers and temporary employees are eligible.**

If an employee is rehired within 6 months of their termination, they should retain the paid sick leave balance they had prior to termination.

In addition, the San Antonio ordinance also applies to transfers “to a different facility, location, division or job position with the same employer.” This portion of the ordinance is somewhat vague and may include out-of-city transfers, though that terminology is not specifically included.

What should employers do?

Employers with staff in San Antonio and Dallas should be aware of these ordinances and be ready to be in compliance when they come into effect. Because there is still time for a challenge to occur, **the best thing for employers may be to make a plan but wait to implement it until the ordinances come into effect:**

- ❖ August 1, 2019: Implementation/enforcement begins for medium and large employers (per the San Antonio ordinance, “an employer with more than 15 employees at any time in the preceding 12 months, excluding family members”).
- ❖ August 1, 2021: Implementation/enforcement begins for small employers (per the San Antonio ordinance, “any employer that is not a medium or large employer,” as defined above).

What are the requirements?

The San Antonio ordinance states that employees should accrue 1 hour of paid sick leave per 30 hours worked, with the following caps:

Category	Cap
Small Employers <i>15 or fewer employees</i>	48 hours
Medium/Large Employers <i>More than 15 employees at any time during the prior 12 months</i>	64 hours

The paid sick leave can be used to care for a family member or someone who is like a family member to the employee. The ordinance requires that employees carry unused time to the next year as long as they do not surpass the cap; however, if the employer provides the paid time off in a lump sum at the beginning of the year, they do not need to include any carryover because the employee will have the full amount of paid leave.

In addition to providing paid sick leave, the ordinance requires employers to

- ✿ Provide a **monthly statement** to each employee with their paid sick leave balance
- ✿ **Post a notice** in all appropriate languages (if the San Antonio Metropolitan Health District makes one available)
- ✿ Update their **employee handbooks** to include the paid sick leave policy and a statement on employee rights (applicable to all employers that provide an employee handbook)

Some restrictions may apply to the employer and the employee, which are illustrated in the following table:

Employer Restrictions	Employee Restrictions
<ul style="list-style-type: none"> ✿ Retaliation: Employers are not permitted to retaliate against an employee who uses or requests paid sick leave. ✿ Replacements: Employers cannot require that the employee find a replacement to work their shift... ✿ Incentives: But employers can incentivize employees to trade shifts in order to get the shift covered. ✿ Verification: Employers may adopt reasonable verification procedures <u>only</u> for requests to use sick time for more than 3 consecutive work days; however, “an employer may not adopt verification procedures that would require an employee to explain the nature of the domestic abuse, sexual assault, stalking, illness, injury, health condition or other health need when making a request for earned paid sick time...” 	<ul style="list-style-type: none"> ✿ Probationary Period: With some caveats, an employer can set up their policy so that the employee cannot use paid sick leave in their first 60 days of employment. ✿ Doctor’s Notes: As part of an employer’s “reasonable verification procedures,” employees can be required to provide a doctor’s note. ✿ Timely Requests: The employee must make “timely requests for the use of earned paid sick time before their scheduled work time” with the exception of unforeseen emergencies. For example, an employer may have a requirement for an employee to call in at least 2 hours prior to the start of a shift to allow for adequate time for the employer to find a replacement to work that shift.

Penalties

The San Antonio ordinance will be enforced by the city’s health department, the San Antonio Metropolitan Health District. Complaints can be filed by or on behalf of the affected employees up to two years after a violation.

Violations will result in a civil penalty, which will not exceed \$500 per violation; however, per San Antonio's ordinance, "Each violation of a particular section or subsection of this Article constitutes a separate offense."

Most penalties will not be in effect until April 1, 2020, with the exception of penalties for retaliation, which will be in effect starting August 1, 2019. In both cases, businesses will have 10 days to establish "voluntary compliance" with the Ordinance before a penalty is collected.

There is a window of time from August 2019 through the end of March 2020 when businesses may receive a notice that "that a civil penalty may be assessed for a violation that occurs on or after April 1, 2020." The rules remain unclear as to whether or not penalties will be assessed for violations occurring during this window from August 2019 through the end of March 2020 if the employer does not achieve compliance within 10 days of the written violation notice.

Investigations

Per the San Antonio ordinance, employers are required to "provide relevant information and testimony when requested by the [San Antonio Metropolitan Health District] for the purposes of determining compliance with this Article." From here, the ordinance is vague and states, "Relevant information and testimony includes, and is limited to, only the information necessary to determine whether a violation of this Article has occurred."

The San Antonio Metropolitan Health District may inform other employees that an investigation into an alleged violation is occurring.

What is the status of each of these ordinances?

- ❖ The **Austin** City Council was the first to pass their paid sick leave ordinance in February of 2018. Its ordinance was set to go into effect in October of 2018 for medium and large employers and in October of 2020 for small employers (with no more than 5 employees). However, a lawsuit brought in August 2018 resulted in an injunction blocking the implementation of the ordinance. In November 2018, an Appeals Court found it was unconstitutional and preempted by Texas's minimum wage law. That court remanded the case back to district court for further proceedings, and Austin may appeal that decision.
- ❖ The **San Antonio** City Council next passed their paid sick leave ordinance in August of 2018. San Antonio's ordinance is based upon Austin's with the exception that it was scheduled to come into effect much later, on August 1, 2019, after the completion of Texas's Legislative Session. There have been no legal challenges yet to the San Antonio ordinance.
- ❖ The **Dallas** City Council passed their paid sick leave ordinance in April of 2019. Again their ordinance is based upon Austin's and has the same implementation date as San Antonio's: August 1, 2019. Their ordinance has not been challenged in court.

Could these ordinances be blocked?

Nothing currently blocks the San Antonio and Dallas ordinances from coming into effect on August 1, 2019; however, further legislative or legal action could prevent them from taking effect:

- ❖ **Legislative Challenge:** While Texas's Legislative Session ended on May 27, Governor Abbott may call a special session to meet specifically on this issue.
- ❖ **Legal Challenge:** Like the Austin ordinance, the San Antonio and Dallas ordinances could be challenged in court if a suit is filed. In addition, because these ordinances are so similar to Austin's ordinance, the litigation over the Austin ordinance may affect the San Antonio and Dallas ordinances.

Without either of the challenges above, the San Antonio and Dallas ordinances will go into effect on August 1.

For More Information

BFG will continue to monitor the situation and will provide updates. For more information or assistance, please contact our Human Resources team at **210-775-6082**, toll-free at **1-888-757-2104**, or **HRManagement@BFGonline.com**.



BusinessFinancialGroup.com

210-495-8474 / 1-888-757-2104

Business Financial Group provides corporate services, including human resources consulting, compliance and administration support, payroll and employee benefit program development and maintenance. We also provide group retirement and personal financial planning services.

Securities and advisory services offered through Commonwealth Financial Network®, Member FINRA/SIPC, a Registered Investment Adviser. Human resources services and consulting, payroll processing services, employee program development and maintenance services, fixed insurance products and services offered by Business Financial Group are separate and unrelated to Commonwealth. Business Financial Group is located at 500 North Loop 1604 East, Suite 250, San Antonio, Texas 78232.