

# UPDATE:

## SAN ANTONIO & DALLAS PAID SICK LEAVE MANDATES ARE EFFECTIVE AUGUST 1

While a court injunction still blocks the paid sick leave (PSL) ordinance in Austin, the San Antonio and Dallas ordinances are on track to become effective on August 1, 2019 for employers with more than 5 employees working within city limits. The ordinance doesn't require that an employer is based in San Antonio or Dallas, simply that an employee spends time working on behalf of the employer within those cities. Do you have any employees who work 80 hours per year within Dallas or San Antonio?

### Employer Size & Implementation Dates

Implementation dates and requirements vary based on the size of the employer. Applicable employers are expected to comply on the implementation date, though penalties—with the exception of penalties for retaliation—will not be enforced until April 1, 2020.

<b>Count of Employees who work in San Antonio or Dallas</b>	<b>Implementation Date</b>	<b>Penalties in Effect*</b>
5 or fewer employees	8/1/2021	8/1/2021
15 or fewer employees <b>at any time during the prior 12 months</b>	8/1/2019	4/1/2020
<b>More than 15 employees at any time during the prior 12 months</b>	8/1/2019	4/1/2020

*\*with the exception of penalties for retaliation, which go into effect on August 1, 2019.*

### Recommendations for August: San Antonio

While the ordinance will be in place, the City of San Antonio has repeatedly stated that they are still working through the interpretation and application of the provisions. Therefore, it's not practical to move forward with a final implementation plan. Here's why.

We've been researching this ordinance and attending city meetings on this topic, which will continue until at least the end of the month. There, we've learned there are a lot of unanswered questions and many provisions that require guidance from the city's attorneys. In addition, a commission appointed by the city will be recommending changes in the upcoming weeks, which will need to be adopted by city council. We are awaiting this guidance.

We recommend staging implementation while final regulations are clarified and published. Below is a list of recommendations for August. As mentioned above, we expect some additional news in the upcoming weeks and will follow-up with you once those updates are available.

Waiting to make changes may help you to avoid taking early steps only to find you can or need to make adjustments, thereby potentially creating a negative effect on your company or a negative impression with your employees.

The following recommendations apply to all San Antonio employees who may not have been eligible for PTO or PSL under your current policy.

- Fines for retaliation can be assessed starting August 1. For that reason, it will be crucial for you to take no action that could be seen as retaliation. If an employee calls in and says they are sick, grant them time off. Do not require that they provide a doctor’s note unless they have been absent for three or more consecutive days.
- Do not introduce a new Employee Handbook or reprogram your payroll/timekeeping system until after the final regulations are published.
- If you’d like to try to comply before the grace period expires, we recommend not frontloading and instead using the following accrual formula, which equates to 1 hour of PSL per 30 hours worked.

**Accrual Formula (hourly)**

*(1/30) hours accrued X hours worked = PSL hours*

The following table illustrates the amount of time that will be earned each week based on employee hours worked. For the sake of simplicity, only full weeks contain a calculation, which is based on hours worked.

	Start date	End date	# Days	40 hours	30 hours	20 hours	10 hours
Week 1 (partial week)	8/1/2019	8/2/2019	2				
Week 2	8/5/2019	8/9/2019	5	1.3333	1	0.6667	0.3333
Week 3	8/12/2019	8/16/2019	5	1.3333	1	0.6667	0.3333
Week 4	8/19/2019	8/23/2019	5	1.3333	1	0.6667	0.3333
Week 5	8/26/2019	8/30/2019	5	1.3333	1	0.6667	0.3333
<b>Total PSL Hours</b>				<b>5.3333</b>	<b>4</b>	<b>2.667</b>	<b>1.333</b>

**Ordinance Basics**

The Dallas and San Antonio Ordinances include several provisions that will probably require changes to most employers’ PTO policies. For example, PSL must be provided to part-time employees under these ordinances.

One other consideration is that the employer does not need to be based in Dallas or San Antonio; the employer only needs to have employees who work 80 hours per year within the Dallas or San Antonio city limits. For typical work schedules, that amounts to only two weeks of work in either city.

A high-level description of the requirements is in the table below. To review the complete ordinances, please see the following links:

🌿 **Dallas’s Ordinance:**

[http://library.amlegal.com/nxt/gateway.dll/Texas/dallas/cityofdallastexascodeofordinances/volumei/chapter20/earnedpaysicksicktime?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:dallas\\_tx\\$sanc=JD\\_Ch.20](http://library.amlegal.com/nxt/gateway.dll/Texas/dallas/cityofdallastexascodeofordinances/volumei/chapter20/earnedpaysicksicktime?f=templates$fn=default.htm$3.0$vid=amlegal:dallas_tx$sanc=JD_Ch.20)

🌿 **San Antonio’s Ordinance:**

<https://www.sanantonio.gov/Portals/0/Files/Atty/Regulatory/PaidSickLeave/Ordinance2018-08-16-0620.pdf>

Category	Requirements
<b>Purpose</b>	<p>The ordinances require that an employers’ policy allows employees to accrue and use earned paid sick time when they need to be absent from work because the employee or the employee’s family member (or someone who is like a family member) suffers from the following or otherwise requires medical or health care, including preventative care and mental health care:</p> <ul style="list-style-type: none"> <li>🌿 Illness</li> <li>🌿 Injury</li> <li>🌿 Stalking</li> <li>🌿 Domestic abuse</li> <li>🌿 Sexual assault</li> </ul>
<b>Employee Notification</b>	<p>The ordinances require employers to</p> <ul style="list-style-type: none"> <li>🌿 Provide a <b>monthly statement</b> to each employee with their PSL balance. It is acceptable if the employees have access to an electronic portal that provides the balance or if employee paystubs include the balance</li> <li>🌿 <b>Post a notice</b> in all appropriate languages (the Cities of Dallas and San Antonio will be making the signage available)</li> <li>🌿 Update their <b>employee handbooks</b> to include the paid sick leave policy and a statement on employee rights (applicable to all employers that provide an employee handbook). The handbook may include the full printed or PDF ordinance or if it is provided electronically, may include a hyperlink to the ordinance hosted on the city’s website.</li> </ul>
<b>PTO vs. PSL</b>	<p>Employers do not need to classify the paid time off (PTO) as “sick leave” or provide separate balances of PTO and PSL. 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.</p>
<b>Eligibility</b>	<p>PSL must be provided to</p> <ul style="list-style-type: none"> <li>🌿 Full-time Employees</li> <li>🌿 Part-time Employees</li> <li>🌿 Paid Interns</li> <li>🌿 Employees of all ages</li> <li>🌿 Rehired Employees (only if rehired within 6 months of their termination, and if so, they should retain the PSL balance they had prior to termination)</li> </ul> <p>PSL does not need to be provided to</p> <ul style="list-style-type: none"> <li>🌿 Terminated Employees (that is, you do not need to pay out sick leave upon termination)</li> <li>🌿 Independent Contractors</li> <li>🌿 Unpaid Interns</li> </ul>

Category	Requirements
<b>Accrual</b>	<p>At minimum, employees must accrue PSL at a rate of 1 hour of PSL for 30 hours worked until they reach the following annual caps:</p> <ul style="list-style-type: none"> <li>✿ 15 or fewer employees: 48 hours</li> <li>✿ 16 or more employees: 64 hours</li> </ul> <p><i>Please note: Employer size is based on the number of employees working in Dallas or San Antonio.</i></p> <p>An employer’s policy can be more generous than the ordinance. Rather than the accrual formula, employers may grant their employees the annual cap of PSL hours in a lump sum at the beginning of the year.</p>
<b>Probationary Period</b>	<p>Employees should begin to accrue PSL as soon as they begin work; however, an employer may set up their policy so that the employee cannot use paid sick leave in their first 60 days of employment as long as the employee’s term of employment is at least 1 year.</p>
<b>Pay Rate</b>	<p>The PSL pay rate does not need to include overtime, tips, or commissions; however, service industry workers making less than minimum wage to accommodate for tips will need to be paid at least minimum wage for PSL.</p>
<b>Carryover</b>	<p>The ordinances require 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.</p>
<b>Verification</b>	<p>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....”</p> <p>For absences greater than 3 days</p> <ul style="list-style-type: none"> <li>✿ For Illness/Medical Treatment: As part of an employer’s “reasonable verification procedures,” employees can be required to provide a doctor’s note.</li> <li>✿ If the Employee has not seen a Doctor: “An employee could provide a written statement that PSL was used for a reason covered by the ordinance. 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 PSL.” (Source: San Antonio’s PSL FAQ document, revised 7/1/2019)</li> </ul>
<b>Misrepresentation</b>	<p>If an employer can prove that an employee lied to the employer about the reason for the absence and did not use the PSL/PTO in accordance with company policy, the employer may handle that situation per their established policy (that is, as they would handle any situation wherein an employee lied to the employer).</p>
<b>Replacements &amp; Incentives</b>	<p>Employers cannot require that the employee find a replacement to work their shift, but employers can incentivize employees to trade shifts in order to get the shift covered.</p>

Category	Requirements
<b>Retaliation</b>	Employers are not permitted to retaliate against an employee who uses or requests paid sick leave. Penalties for retaliation will begin August 1, 2019.
<b>Investigations</b>	<p>Complaints may be submitted within 2 years of the alleged violation.</p> <p>Investigations in San Antonio will be conducted by the San Antonio Metropolitan Health District.</p> <p>Investigations in Dallas will be conducted by the Office of Fair Housing and Human Rights.</p> <p>In general, investigations will look at</p> <ul style="list-style-type: none"> <li>• Is a PSL policy in place?</li> <li>• Is the employer reporting the PSL/PTO balance to employees?</li> <li>• Is the employer allowing employees to use PSL/PTO in accordance with their written policy/the ordinance?</li> </ul>
<b>Penalties</b>	<p>Violations of the ordinances will result in a civil penalty, which will not exceed \$500 per violation; however, per the ordinances, “Each violation of a particular section or subsection...constitutes a separate offense.”</p> <p>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.</p>

## 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**.



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