

Dallas, Texas, Jumps on the Paid Sick Time Train

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By [Susan Gross Sholinsky](#), [Greta Ravitsky](#), and [Nancy Gunzenhauser Popper](#)

On April 24, 2019, Dallas became the latest and third Texas city to pass an [Ordinance](#) (“Law”) requiring private employers to provide paid sick leave to their employees. The Law is scheduled to take effect on August 1, 2019, for employers with more than five employees, and on August 1, 2021, for employers with five or fewer employees in the previous 12-month period.

The Law closely mirrors the Austin Earned Sick Time Ordinance (previously scheduled to take effect on October 1, 2018, but currently enjoined) and the San Antonio Paid Sick and Safe Leave Ordinance (also scheduled to take effect on August 1, 2019). In addition to the pending court challenge to the Austin ordinance, a bill that would prohibit the enforcement of local laws such as these cities’ ordinances passed the state Senate on April 11, 2019. However, the latest reports from the legislature indicate that the measure is unlikely to be approved by the Texas House of Representatives this session.

Notwithstanding this uncertainty, affected employers should be prepared to comply with the Law.

Covered Employers and Employees

The Law applies to all private employers, for-profit and nonprofit, that have employees working within the city of Dallas at least 80 hours a year. Independent contractors and unpaid interns are not covered by the Law. However, the Law applies to employees covered by a collective bargaining agreement (“CBA”), although employers that are parties to a CBA may modify the mandated yearly cap requirement (discussed below) for employees covered by the CBA if the modification is expressly stated in the CBA.

Covered Uses of Paid Sick Leave

A covered employee may use paid sick time for an absence from work when:

- the employee suffers a mental or physical illness, injury, or health condition, or needs preventive care;

- the employee needs to care for a family member who suffers a mental or physical illness, injury, or health condition, or needs preventive care; or
- the employee or the employee's family member is a victim of stalking, sexual assault, abuse or domestic violence, and needs to seek medical attention, to relocate, to obtain services from a victim services organization, or to participate in legal proceedings.

Covered family members include a child, parent, spouse, or any other individual related to the employee by blood or whose close association with the employee is equivalent to a family relationship.

Accrual and Carryover of Earned Sick Time

Under the Law, employees accrue one hour of sick time for every 30 hours worked.¹ The cap on accrual depends on the employer's size, as follows:

- 64 hours of paid sick leave per year for employers with more than 15 employees, and
- 48 hours of paid sick leave per year for employers with 15 or fewer employees.

Accrual begins at the commencement of employment or when the Law goes into effect, whichever is later. However, an employer may require a new employee to wait 60 days prior to using his or her accrued sick time "if the employer establishes that the employee's term of employment is at least one year." Hopefully, the city will provide employers with guidance on this provision.

Employees will be able to carry over unused earned sick time to the following year; however, an employer may limit an employee's annual use of earned sick leave to the maximum allowed by the Law, i.e., either 64 hours or 48 hours per year, depending on the size of the employer.

To avoid the carryover mandate, employers can "frontload" the yearly cap of sick time, that is, make the full amount of paid sick time available at the beginning of the year for employees' immediate use, as needed. Employers that choose to frontload need not carry over earned sick time as long as they ensure that employees are still permitted to use the time for the purposes, and in the manner, mandated by the Law.

Under either the carryover or frontloading system, an employer need not allow an employee to use paid sick leave on more than eight days in a year.

Employers should also be aware that an employee who is rehired within six months following separation from employment may use any earned paid sick time that was available to the employee at the time of the separation.

¹ Under the Law, earned paid sick time accrues in one-hour unit increments, unless an employer's written policies permit accrual "in fraction of an hour increments."

With respect to payment for sick leave, employers must compensate employees for earned sick time at the same hourly rate that they normally earn, but no less than the state minimum wage.

Notably, the Law expressly allows employers that already provide paid sick leave benefits that meet or exceed the requirements of the Law to continue their current programs, as long as those programs comply with all of the Law's mandates, e.g., purpose, accrual, yearly cap, and usage requirements.

Notice, Documentation, and Recordkeeping Requirements

An employer must provide an employee with earned sick time upon the employee's request, provided that the employee has available earned paid sick time and the request is "timely," i.e., made *before* the employee's scheduled work time.

Employers are somewhat limited in their ability to verify employees' leave requests. They can seek verification that the leave is for a covered purpose only when the employee requests or uses sick leave for more than three consecutive workdays. Moreover, employers may not seek documentation that requires an employee to explain the nature of any domestic abuse, sexual assault, stalking, illness, injury, or health condition.

The Law also contains the following notice requirements for employers:

- An employer must provide, on a monthly basis, an electronic or written statement to each employee outlining the amount of the employee's available earned paid sick time.
- Employers that have employee handbooks must include in their handbook the contents of the Law, including employees' rights and remedies.
- An employer that, as a matter of company policy, uses a 12-consecutive-month period other than a calendar year for the purpose of determining an employee's eligibility for, and accrual of, earned paid sick time must provide its employees with written notice of such policy at the commencement of employment or by the effective date of the Law, whichever is later.
- Employers must display a poster to be created by the city outlining the Law's requirements in English and any other language mandated by the city.

Employers also must maintain records establishing the amount of earned paid sick time accrued by, used by, and available to each employee. The length of time for which such records must be maintained currently is unclear.

Prohibited and Permissible Practices

An employer may not, as a condition of using earned paid sick time, require an employee to find a replacement to cover the hours the employee will be absent from work on paid sick leave. However, the Law instructs that employers may:

- permit employees voluntarily to exchange hours or trade shifts with another employee,
- establish incentives for employees to voluntarily exchange hours or trade shifts,
- grant earned paid sick time to an employee prior to accrual by the employee, and
- allow an employee to donate available earned paid sick time to another employee.

Anti-Retaliation Provision

Employers are prohibited from transferring, demoting, discharging, suspending, or directly threatening to take adverse action against an employee, or reducing his or her hours, because such employee (i) requests or uses paid sick leave, (ii) reports or attempts to report a violation of the Law, (iii) participates or attempts to participate in an investigation or proceeding under the Law, or (iv) exercises any other rights provided by the Law.

Penalties for Violations of the Law

While the Law does not appear to provide employees with a private right of action, an employee may file a complaint within two years of an alleged violation with the director of the department designated by the city to enforce the Law. Each violation of the Law's mandates is punishable by a civil penalty of up to \$500, which can be appealed. However, no penalties will be assessed until April 1, 2020, although employers will receive notification if a violation is found before that date.

What Texas Employers Should Do Now

- Affected employers, particularly larger employers in Dallas and San Antonio, should closely monitor developments in the courts and state legislature. Epstein Becker Green will continue to provide updates on the pending legislation and judicial proceedings.
- Despite that uncertainty, employers in Dallas and San Antonio should be prepared to comply with applicable law, as the August 1 effective date for larger employers in both cities is quickly approaching. Smaller Dallas employers may wish to wait to see how the Law develops over the coming months, since their compliance deadline is more than two years off.
- As discussed, employers that already provide paid sick leave benefits that meet or exceed the requirements of the Law may continue implementing those policies and practices. Employers with paid sick leave policies that do not meet all of the Law's requirements may wish to bring those programs into compliance, rather than starting over under the Law's structure. Employers that currently do not provide paid sick time benefits may opt to establish a program as outlined in the Law or develop different, but compliant, paid sick leave policies.

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For more information about this Advisory, please contact:

Susan Gross Sholinsky

New York
212-351-4789
sgross@ebglaw.com

Greta Ravitsky

Houston
713-300-3215
gravitsky@ebglaw.com

Nancy Gunzenhauser Popper

New York
212-351-3758
npopper@ebglaw.com

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