

Publications

Labor and Employment Alert: Dallas, Texas, Paid Sick Time Leave Law Takes Effect August 1

Related Professionals

Monica A. Fitzgerald

Michael C. Griffaton

Related Services

Labor and Employment

CLIENT ALERT | 7.24.2019

Austin and San Antonio (in 2018) and Dallas (in 2019) all enacted substantially identical paid sick leave ordinances. In November 2018, an appeals court held that the Austin paid sick leave law was unconstitutional, preventing it from taking effect. Austin has appealed this decision, which is pending before the Texas Supreme Court.

Both the Dallas and San Antonio laws were set to become effective on August 1, 2019. However, a lawsuit was recently filed to enjoin the San Antonio law and the city has agreed to delay implementation of the paid sick leave law until December 1, 2019. Therefore, employers in Austin and San Antonio do not have to comply with the cities' paid sick leave laws. Most employers in Dallas, however, should prepare to provide their employees with paid sick time beginning on August 1, 2019.

Eligibility

Employees who work at least 80 hours in Dallas in a year are entitled to paid sick time. An employee may use sick time as soon as it is accrued. However, an employer may restrict an employee from using sick time during his or her first 60 days of employment if the employer establishes that the employee's term of employment is at least one year.

Amount of Paid Sick Time

Employees earn 1 hour of paid sick time for every 30 hours worked. The maximum accrual and carryover depends on the employer's size:

Employer Size

5 or fewer employees

15 or fewer employees

16 or more employees

Minimum Accrual Limit

48 hours

48 hours

64 hours

Minimum Carryover

48 hours

48 hours

64 hours

Effective Date

August 1, 2021

August 1, 2019

August 1, 2019

As an alternative to accrual and carryover of sick time, an employer may frontload the full amount sick time at the beginning of each year. If an employer uses any 12-month period other than a calendar year (such as a fiscal year), it must provide employees with written notice of that policy by August 1, 2019, or the first day of employment, whichever is later.

An employer does not have to allow an employee to use more than 8 days (64 hours) of sick time in a year. An employee who is rehired by an employer within six months following separation may use any earned sick time available at the time of the separation.

Using Paid Sick Leave

An employee may request to use paid sick time for an absence caused by:

- The employee's physical or mental illness, physical injury, preventative medical or health care, or health condition; or
- The employee's need to care for a family member's physical or mental illness, physical injury, preventative medical or health care, or health condition; or
- The employee's or family member's need to seek medical attention, seek relocation, obtain services of a victim services organization, or participate in legal or court ordered action related to an incident of victimization from domestic abuse, sexual assault, or stalking.

A “family member” is a spouse, child, parent, any other individual related by blood, or any other individual whose close association to an employee is the equivalent of a family relationship.

Employers may adopt reasonable verification procedures to establish that a request for sick time meets one of these requirements if an employee requests to use sick time for more than three consecutive work days. An employee is not required to explain the nature of the domestic abuse, sexual assault, stalking, illness, injury, health condition, or other health need.

Employees must make a “timely request” to use sick time before their scheduled work time. However, an employer may not prevent an employee from using sick time for an unforeseen qualified absence.

Employee Protections

Employers must provide at least a monthly statement showing the amount of the employee’s available earned paid sick leave. Additionally, any employee handbook must provide notice of an employee’s rights and remedies under the ordinance. Employers must also post a prescribed sign describing the paid sick time law’s requirements. Employees are protected from retaliation for requesting or using paid sick time or enforcing their rights under the law.

Enforcement

There is no private right of action. Instead, employees may complain of violations to the Dallas Office of Fair Housing and Human Rights. The city has said that, except for penalties for retaliation, employers will not be fined for noncompliance with the ordinance until April 1, 2020. Instead, the city will seek voluntary compliance with the ordinance before seeking payment of a fine. The maximum fine is \$500, but an employer has 10 business days to voluntarily comply before the fine is actually assessed.

Conclusion

Employers in Dallas face a compliance dilemma – they can review existing leave policies to ensure they comply with the law’s requirements or they can adopt a wait-and-see approach until the Texas Supreme Court has ruled on the issue. Contact your Vorys lawyer to discuss these options or if you have questions about implementing a paid sick leave policy.