Austin Court of Appeals Stays Effective Date for City's Paid Sick Leave Ordinance

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The Austin Court of Appeals has temporarily blocked implementation of an Austin city ordinance that would require employers to provide paid sick leave to employees. The ordinance was set to take effect on October 1, 2018.

The City of Austin passed the paid sick leave ordinance in February of 2018. The State of Texas immediately filed suit to challenge the ordinance claiming that it was preempted by the Texas Minimum Wage Act. Business groups also joined the challenge on equal protection grounds because the ordinance exempts unionized employees. In June, a state district court in Austin denied the challengers' request for a temporary injunction to halt implementation of the ordinance.

The challengers then appealed that decision to the Austin Court of Appeals. On appeal, the challengers moved to stay the effective date of the ordinance while the appellate court considered the denial of the temporary injunction. On August 17, 2018, the Austin Court of Appeals entered an order staying the effective date of the ordinance during the pendency of the appeal. The next round of briefing is due on September 6, 2018.

Although enforcement of the ordinance is temporarily blocked, neither court has indicated how it may ultimately rule. Tempering expectations, the Austin Court of Appeals emphasized that the standard for staying enforcement during the appeal is "a different animal" from how it will ultimately review the trial court's ruling. Nevertheless, because there are some overlapping factors in both analyses, the order temporarily staying enforcement is a significant win for challengers of the ordinance.

The Austin paid sick leave ordinance will require employers with more than 15 employees to provide workers with up to eight paid sick days per year. Employers with 15 or fewer employees must provide up to six paid sick days annually. Paid sick leave would be accrued at one hour for every 30 hours worked and would roll over from year to year up to a certain amount. The ordinance only mandates paid sick leave for those employees working within Austin city limits.

Because the stay of the ordinance could be lifted at any time, depending on the outcome of the appeal, covered employers should remain ready to implement a compliant paid sick leave policy.

Austin is not the only city in Texas to mandate paid sick leave. On August 16, 2018, San Antonio passed a similar paid sick leave ordinance. Other Texas cities may soon follow. And members of the Texas Legislature have announced plans to introduce new bills to block municipal efforts to expand paid sick leave during the 2019 legislative session. The fight over paid sick leave in Texas is far from over.

If you have any questions about compliance with any of the new paid sick leave ordinances, please contact one of the labor and employment attorneys listed below.

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