

What Employers Need to Know About the Revised San Antonio Paid Sick Leave Ordinance

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The December 1, 2019 effective date of the San Antonio paid sick and safe leave ordinance is around the corner. But the version of the ordinance that will go into effect on that day will be different than what employers expected.

On October 3, 2019, the San Antonio City Council voted to approve revisions to its paid sick leave ordinance. The San Antonio ordinance currently faces a legal challenge like the one that stopped the Austin paid sick leave ordinance. The revisions to the San Antonio ordinance appear intended to distinguish the San Antonio ordinance from the previously enjoined Austin paid sick leave ordinance. It seems that the revisions are geared towards preventing the San Antonio ordinance from meeting the same fate as the Austin ordinance.

While it is encouraging that the Austin Court of Appeals struck down the Austin paid sick leave ordinance, the San Antonio district court is not bound by the Austin court's decision. The San Antonio district court could decide to uphold the San Antonio ordinance, especially considering the revisions to the ordinance. This is not so farfetched considering that an Austin district court upheld the Austin ordinance before being overturned by the Austin Court of Appeals.

Employers need to have their sick and safe leave policies ready for the San Antonio ordinance's December 1, 2019 effective date.

Because the San Antonio ordinance has changed, employers need to revisit any policies they created in preparation for the August 1, 2019 effective date of the old ordinance. And employers with employees in Dallas and San Antonio need to decide whether a single policy covering employees in both cities still makes sense. The Dallas and San Antonio paid sick leave ordinances were nearly identical prior to the San Antonio ordinance revisions. This is no longer the case.

The changes to the San Antonio paid sick and safe leave ordinance are significant. Some of the major revisions to the ordinance include:

- **Ordinance Title.** The revised ordinance changes the name of the ordinance from "Earned Sick Time" to "Paid Sick and Safe Leave Benefits." This revision does not change the substance of the ordinance but reflects that employees may use sick time for certain reasons related to domestic abuse, sexual assault, or stalking.
- **Covered Employees.** The revised ordinance modifies the scope of covered employees to include: (1) those employees who are typically based within San Antonio regardless of hours worked; and (2) those employees who are typically based outside of San Antonio (defined as employees performing work outside the geographical boundaries of San Antonio for more than 50% of work hours per year) and perform more than 240 hours of work within San Antonio in a year.

- **Interns.** The revised ordinance expands the exclusion of unpaid interns from the scope of covered employees to both paid interns and unpaid interns taking part in an employer's or educational institution's established internship program.
- **Family Members.** The revised ordinance changes the term "family member" to include: (1) an employee's spouse, domestic partner, and both same-sex and different-sex significant others; (2) any other family member of the employee within the second degree of consanguinity or affinity; or (3) a member of the employee's household. The revised ordinance also provides (presumably for consanguinity and affinity purposes) that the concept of parenthood is construed liberally and without limitation as encompassing legal parents, foster parents, same-sex parents, those serving in loco parentis, and other persons operating in caretaker roles.
- **Employer Size.** The revised ordinance does not distinguish between employers based on size. This means that the ordinance is effective for small employers on December 1, 2019.
- **Sick and Safe Leave Amount.** The revised ordinance moves the baseline of annual accrual of sick and safe leave to 56 hours per year (subject to the 1 hour per 30 hours worked accrual rate) for all employers, regardless of employer size.
- **90-Day Restriction on Use of Sick and Safe Leave.** The revised ordinance allows employers to restrict use of sick and safe leave for the first 90 days of employment. But sick and safe leave must continue to accrue beginning at the commencement of employment.
- **Verification Procedures.** The revised ordinance establishes what it considers reasonable verification procedures for employees requesting to use sick and safe leave for more than three consecutive days of work. The employer may address an employee's noncompliance with the reasonable verification procedures consistent with the employer's established disciplinary policies and procedures. The employer must treat any health or medical information and any information related to domestic abuse, sexual assault, or stalking the employer receives as confidential
- **No Reinstatement of Paid Out Sick and Safe Leave.** The revised ordinance clarifies that if an employer pays out paid sick and safe leave to an employee upon separation from employment, the employer is not required to reinstate the paid out sick leave if the employer rehires the employee within six months of separation.
- **Complaint Procedures.** The revised ordinance creates a one-year limitations period for employees to make a complaint to the City. The revised ordinance also establishes procedural requirements related to complaints, allows an employee to withdraw a complaint, and provides a mechanism for employers to voluntarily resolve complaints prior to and after an investigation by the City.

Although revisions to the San Antonio paid sick and safe leave ordinance require employers to revisit policies, the silver lining is that the new ordinance does provide some relief for employers in certain respects. For example, employers may now restrict use of sick and safe leave during the first 90 days of employment. And, employers may narrow the scope of covered employees with

respect to employees based outside of San Antonio. Additionally, large employers may lower the amount of offered sick and safe leave to 56 hours annually.

Employers must be prepared to implement new policies on December 1, 2019 when the updated San Antonio sick and safe leave ordinance goes into effect. Stay tuned for updates on legal challenges that may impact the effective date.