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EMPLOYERS WITH DALLAS OR SAN ANTONIO EMPLOYEES BEWARE – MANDATORY PAID SICK LEAVE IS COMING!

by Ruth Ann Daniels and Marcus Fettingner

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UPDATE:

On July 10, we attended a presentation on the Dallas Paid Sick Leave Ordinance at City Hall where representatives from the City Attorney's Office and the Office of Equity and Human Rights both spoke. The City is scrambling to prepare for the enactment of the Ordinance passed by the Dallas City Council in April. While the Ordinance officially takes effect on August 1, the City made clear that it intends to work with employers to implement proper policies and will not be issuing any fines or penalties until at least April 2020. As they made clear, "the City does not intend to use this effective date or Ordinance as a hammer to hurt businesses."

Further, the City has promised to provide sample policies, required handbook language and city regulations in the coming days. The City clearly realizes that they are behind the ball, and do not intend to punish employers for their delay. At this point, we recommend that all employers do not publish any new policies or procedures until the city promulgates its ordinance requirements. During that time, we can review policies and procedures to ensure compliance, but we intend to hold off on publishing final revised policies and handbooks until we receive all of the promised information from the City.

Absent a special session or court challenge, which are now unlikely, employers with Dallas or San Antonio employees are about to face an entirely new framework for handling sick leave beginning on **August 1, 2019**. This alert sets forth the new law that employers will be facing **in less than six weeks**, as well as immediate action items.

The Dallas and San Antonio Ordinances in a Nutshell

The Dallas and San Antonio ordinances each stand alone but are extremely similar and include the following:

- A covered employer is defined as having more than five employees in either city.
- Employees of a covered employer, whether full-time or part-time, who have worked at least 80 hours in a year, are eligible for paid sick leave.
- These employees may use sick leave for:
 - An employee's own illness, injury or preventative care;
 - The illness, injury or preventative care of a relative; or
 - Seeking medical care, relocating or attending legal proceedings if the employee or a relative is a victim of domestic abuse.
- Covered employers must provide one hour of paid leave for every 30 hours worked.
- Covered employers may cap the amount of paid sick leave each year as follows:
 - 64 hours if an employer has more than 15 employees; and
 - 48 hours if an employer has 15 or fewer employees.
- Covered employers that provide paid time off (PTO) to employees that meets or exceeds accrual, yearly caps and usage requirements of these ordinances do not have to provide additional sick leave.

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- Employees accrue paid sick leave in a minimum of one-hour increments and can roll over unused paid sick leave from year-to-year subject to the caps set forth above.
- Covered employers must include a notice of employees' rights and remedies under these ordinance in their employee handbook (if the employer has one) and must post a notice describing employees' rights under these ordinances in a conspicuous workplace location.
- Covered employers must provide each employee with a statement (at least once a month) showing the amount of accrued paid sick time available.
- Employees who use paid sick leave may not be retaliated against.

Immediate Action Items for Employers

With less than six week until the paid sick leave ordinances take effect, covered employers should immediately do the following:

- Revise employee handbooks to include the ordinances' provisions;
- Post the required notice in a conspicuous location (once the city provides the official notice);
- Determine whether current PTO policies meet the accrual, yearly cap and usage requirements of this ordinance;
- Educate all managers and human resources staff about the requirements of the ordinances; and
- Generate monthly statements outlining employees' accrued paid leave.

Chances for Relief at this Point Are Extremely Limited

Despite efforts by business groups and certain lawmakers, including Governor Abbott, the Texas House of Representatives was unable to pass a bill in the 86th Legislative Session that would have prohibited any city from enacting a paid sick leave ordinance. Employers now have less than six weeks to prepare for these laws to become effective. However, hope is not lost for Texas employers. There are two scenarios that could block the Dallas and San Antonio paid sick leave ordinances from ever taking effect:

- The Dallas or San Antonio ordinance could be challenged in Court (like the Austin ordinance, which was held unconstitutional by the Austin Court of Appeals but is currently on appeal to the Texas Supreme Court). Given the short window until the ordinances take effect, businesses may not have time to secure such a ruling from a court.
- Governor Abbott could call a special session requiring lawmakers to consider a bill that would preempt all municipal paid sick leave ordinances, although such a session is unlikely. If passed, this would block the Dallas and San Antonio laws from becoming effective.

ABOUT THE AUTHORS



Ruth Ann Daniels - Partner, Gray Reed - rdaniels@grayreed.com

Ruth Ann chairs the firm's Labor & Employment Law Section. With more than 30 years of experience as both a trial lawyer and legal advisor for employers in Texas and across the country, she has handled every adversarial and operational matter that can arise in the employer-employee relationship. Her experience includes trying cases in state and federal courts, resolving disputes through arbitrations, conducting investigations and audits, providing workplace training and addressing day-to-day workplace problems. Her clients range from Fortune 500 companies to mid-size businesses across several industries, including automotive, retail, oil and gas, restaurants and many more.



Marcus Fettinger - Associate, Gray Reed - mfettinger@grayreed.com

Marcus is a management-side employment lawyer focused on using creative strategies to achieve his clients' goals. Whether they need immediate injunctive relief to protect their valuable trade secrets or long-term strategies to minimize potential liabilities down the road, Marcus is passionate about collaborating with his clients to develop custom solutions that get the best results possible. He also immerses himself in client relationships in a fun yet professional manner so he can understand each client's individual culture and plans for the future.