

## How To Navigate The Dallas And San Antonio Paid Sick Leave Ordinances

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Dallas and San Antonio recently passed city laws mandating paid sick leave. The status of these municipal ordinances remains unclear. That is because the Texas Supreme Court is currently considering whether municipal paid sick leave ordinances violate Texas law, and the Court has stayed enforcement of a similar Austin sick leave ordinance while it considers whether to strike down the ordinance. Most employers assumed the Court's ruling would be an interesting after-thought because the expectation was that the Texas legislature would ban this type of municipal ordinance. But the legislative session ended without passing the required legislation. Therefore, the Supreme Court will decide the question without the benefit of the promised legislation. The bad news is that the Supreme Court likely will not issue a ruling until after the effective date of the Dallas and San Antonio ordinances. The good news is that a ruling likely will be issued before either city imposes penalties under the ordinance.

While the Dallas and San Antonio laws could still be challenged in court (apart from the Austin appeal), the short timeframe before the laws go into effect suggests that there may not be enough time to block the new laws before their August 1, 2019, effective date. Therefore, employers should begin planning for compliance.

### When do the laws go into effect?

The ordinances will take effect for all employers with more than five employees on August 1, 2019. For employers with five or fewer employees, the law takes effect August 1, 2021.



### What are the penalties for not complying, and when do they take effect?

Employers are subject to fines up to \$500 for failing to comply with the ordinance, but those penalties generally will not go into effect until April 1, 2020. Penalties for violations of the retaliation provisions, however, can be assessed immediately. So, some employers may take the risk of delaying changes until after the Texas Supreme Court's ruling.

Even where a violation is found, employers will be given the opportunity to comply voluntarily with the ordinance before a penalty is collected. Only if the employer fails to achieve compliance within 10 business days after receipt of written notice of non-compliance will the employer be liable for the penalty.

### **What are the basic requirements of the ordinances?**

The Dallas and San Antonio ordinances are mostly identical in substance. The ordinances apply to all employers, including private employers, other than the United States, Texas, and city governments.

The Dallas and San Antonio ordinances require that employers with more than 15 employees provide employees with up to 64 hours (8 days) of paid sick leave per year, which must accrue at a rate of 1 hour per every 30 hours worked in the respective city (Dallas or San Antonio). Both ordinances provide for yearly caps of 64 hours for employers with 15 or more employees. For employers with 15 or fewer employees, the yearly cap is 48 hours.

Leave will accrue at the commencement of employment or the effective date of the ordinances, whichever is later.

### **Who is eligible for paid sick leave?**

Employees are eligible for paid sick leave if they work 80 or more hours per year within the respective cities. This means that the ordinance applies to part-time and full-time, exempt and non-exempt employees. The ordinances also apply to employees who perform services through a temporary or employment agency, but not to individuals who are independent contractors or unpaid interns.

### **For what reasons can an employee use paid sick leave?**

Employees in both Dallas and San Antonio can use paid sick leave for many purposes, including the employee's own or their family member's physical or mental illness, physical injury, preventive medical or health care, or health condition. Paid sick leave may also be used for the employee's or their 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 involving the employee or the employee's family member. A family member includes an employee's spouse, child, parent, or any other individual related by blood. It also includes "any other individual whose close association to an employee is the equivalent of a family relationship."

Employers must allow an employee to use sick leave as soon as it is accrued. One exception is that you can prohibit an employee from using paid sick leave during his or her first 60 days of employment only if that employee has a term of employment lasting at least one year. Because most employees in Texas work on an at-will basis, this exception will rarely apply.



### **What are the requirements for requesting leave?**

Both the Dallas and San Antonio ordinances require that an employee must make a "timely" request to use earned paid sick time before his or her scheduled work time. However, employers may not prevent an employee from

using earned paid sick time for an unforeseen qualified absence that meets the requirements of the laws. You cannot require employees to find replacements to cover their absences under either ordinance.

Both ordinances allow you to adopt a reasonable verification procedure for any employee requests for paid sick time longer than three consecutive days. However, even when verification is allowed, you may not adopt verification procedures that would require an employee to explain the nature of the domestic abuse, sexual assault, or stalking.

### **Does paid sick leave carry over from one year to the next?**

Generally, yes. Both ordinances require you to allow all available earned but unused paid sick time to be carried over to the following year, subject to the yearly caps. However, employers are given the option to avoid this requirement by “front-loading” paid sick time. If you make all 64 hours (8 days) of paid sick leave available to your employees at the beginning of the year (rather than accruing 1 hour per 30 hours worked), then you do not need to allow employees to carry any unused leave over into the next year.

### **What if an employer already provides paid time off benefits?**

The Dallas and San Antonio ordinances both state that they do not require an employer who already makes paid time off available to an employer under conditions that meet the purpose, accrual, yearly cap, and usage requirements of the laws to provide additional earned paid sick time. In other words, if your company’s policy already provides at least 64 hours (8 days) of paid time off (or 48 hours if you have less than 15 employees) that employees can use for medical purposes, you do not have to give them additional time under the sick leave laws.

### **How should employers notify their employees of the new paid sick leave requirements?**

If you have an employee handbook, the ordinances require you to include an explanation of the paid sick leave ordinance in that document. Since the ordinances are going into effect in the middle of the year when you may not be updating handbooks, you may want to consider issuing a handbook addendum to distribute to your employees.

Additionally, you are required to provide employees with a monthly statement showing the amount of available earned paid sick time. You are also required to post a sign in a conspicuous place (such as a break room bulletin board) explaining the requirements of the new ordinances.



### **What else should employers know?**

You are prohibited from retaliating against employees who request or use earned paid sick time, report a violation of the ordinances, or participate in any investigation or proceeding relating to the ordinances.

Both the Dallas and San Antonio ordinances allow leave for mental illness. However, unlike San Antonio, the Dallas ordinance does not specifically allow leave for mental injuries. This means that where an employee or family member suffers a mental injury without suffering a mental illness (such as a concussion), that leave may be covered in San Antonio but not in Dallas.

If you have additional questions about the new ordinances, please contact Carrington Coleman [Employment](#) attorneys [Mike Birrer](#), mbirrer@ccsb.com, 214.855.3113 or [Maria Garrett](#), mgarrett@ccsb.com, 214.855.3020.