CLIENT ALERTS & INSIGHTS

Dallas Becomes Latest City to Require Paid Sick Leave

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On April 24, 2019, the Dallas, Texas City Council voted to enact a mandatory paid sick leave ordinance, joining a growing number of cities nationwide requiring employers to provide paid sick leave benefits. The law is currently slated to take effect August 1, 2019. Dallas is the third city in Texas to enact a sick leave ordinance, and joins San Antonio (August 2019), Westchester, NY (April 2019), and the state of Michigan (March 2019) as locations whose paid sick leave laws take effect this year.

The Dallas ordinance applies to all private and public employers other than the United States, Texas, and Dallas City governments. All employees who perform 80 or more hours of work for pay within the City of Dallas are eligible for paid sick leave benefits. The ordinance does not apply to independent contractors.

Under the ordinance, employees can earn one hour of paid sick leave for every 30 hours worked, and employers can limit accrual to whole-hour increments. Employers of 15 or more employees can cap the annual accrual of paid sick leave at 64 hours per employee, while smaller employers can cap annual accrual at 48 hours per employee. Employees begin accruing paid sick leave at the commencement of employment or the effective date of the ordinance, whichever is earlier. Employees may also carry over all accrued, unused sick leave from year to year, subject to the annual caps.

As with most other paid sick leave ordinances, the Dallas ordinance permits employers to frontload the maximum annual amount of paid sick leave in lieu of the accrual method. Employers that choose to frontload need not track accrual or allow carryover of unused leave each year.

Likewise, the Dallas ordinance follows most other paid sick leave laws in allowing employees to use their paid sick time for absences cause by: (i) the employee's own physical or mental illness, injury, preventative medical care or health condition; (ii) the employee's need to care for a family member's physical or mental illness, injury, preventative medical care or health condition; or (iii) the employee's or their family member's need to seek medical attention, relocation, victim's services, or participate in legal proceedings related to an incident of victimization from domestic abuse, sexual assault, or stalking.

Unlike most other sick leave ordinances, the Dallas ordinance permits employees to begin using any available sick leave immediately upon accrual in most circumstances. The only exception provided allows employers to prohibit employees from using paid sick leave during the first 60 days of employment if the employer establishes that the employee's term of employment is at least one year. Employers may also prohibit employees from using paid sick leave on more than eight separate days in a given year.

The Dallas ordinance contains other provisions similar to most existing paid sick leave laws nationwide, including: an exception for employers whose existing paid leave policies already satisfy the requirements of the sick leave ordinance; a prohibition against retaliation directed at an employee for exercising his or her rights under the ordinance; and standard notice, posting, and recordkeeping requirements. However, the Dallas ordinance departs from many of its counterparts on a handful of provisions. Dallas joins a small contingent of locations, including California and Arizona, which require employers to provide regular notice of each employee's available paid sick leave. The Dallas ordinance requires employers to provide this notice at least monthly. The Dallas ordinance is also unique in that in joins Philadelphia, Austin and San Antonio as the only locations to require employers that maintain handbooks to include a notice of employee rights and remedies under the ordinance in the handbook.

Finally, the Dallas ordinance is silent on a few administrative issues typical of paid sick leave, including the minimum increment of time an employee may use on a given occasion. As of yet unpublished administrative guidelines and/or regulations are likely to address these areas of ambiguity.

Despite the growing trend nationwide in favor of mandatory paid sick leave, the future of the Dallas ordinance remains unclear. As previously noted, Dallas is the third city in Texas to pass a paid sick leave ordinance (Austin was first, followed by San Antonio). However, Austin's ordinance already faces a legal challenge claiming that it is preempted by the state's minimum wage law, and a Texas appeals court temporarily blocked the ordinance from taking effect. More recently, state lawmakers introduced a bill that would ban this type of local ordinance. These legal headwinds leave the future of the Dallas ordinance uncertain.

Conversely, on April 29, 2019, a Minnesota appeals court just rejected a similar challenge to the Minneapolis paid sick leave ordinance, first enacted in 2016. Thus, while the Dallas ordinance faces uncertainty in Texas, it remains clear that the national trend toward mandatory paid sick leave continues to grow, and employers should consider strategies for implementing policies that comply with this growing patchwork of laws.

For more information on this topic, please contact a member of the firm's Labor & Employment Practice Group.

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