

# ROBIN'S REVIEW OF EMPLOYMENT NEWS

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## **DALLAS PAID SICK LEAVE ORDINANCE EFFECTIVE ON AUGUST 1, 2019: ARE YOU READY?**

Neither federal nor Texas law require private employers to provide paid sick leave to their employees. However, Dallas recently joined San Antonio and Austin in passing a local ordinance mandating paid sick leave for eligible employees. An Austin Court of Appeals declared the Austin city ordinance unconstitutional and enjoined it from taking effect. There is no such ruling with respect to San Antonio or Dallas, and those ordinances are scheduled to become effective on August 1, 2019. It was thought that the Texas legislature would pass legislation prohibiting such local ordinances; however, the legislative session has ended without any legislation passed.

This Article focuses on the Dallas ordinance, which differs slightly from the San Antonio and Austin ordinances. For now, employers located in Dallas County (for-profit and non-profit) who have 15 employees, or who have had 15 or more employees at any time during the preceding 12-month period (excluding family members), should take steps to comply with the Dallas ordinance. Employers with 5 or less employees have until August 1, 2021 to comply with the ordinance.

### **1. What are the Employer's Obligations under the Dallas Paid Sick Leave Ordinance?**

For every 30 hours worked, an employer must give 1 hour of paid sick leave, up to a maximum of 64 hours in any given year. Employees can ordinarily carry over unused time to the next calendar year. Employers with 5 or less employees will be required to provide up to 48 hours of leave per year beginning on August 1, 2021. The Dallas ordinance further requires that employers provide monthly statements to employees stating the amount of sick leave available to each employee. Employers that have Employee Handbooks must include a notice of employee rights under this law.

### **2. Which Employees are Eligible for Paid Sick Leave?**

Employees who have worked at least 80 hours in any one-year period may qualify for paid sick leave. This applies to part-time and temporary employees, as well as those employees obtained from employment staffing agencies. Employees re-hired within 6 months of their termination from employment retain any unused leave remaining from their previous employment with the company. Although independent contractors are not eligible for paid sick leave, employers should confirm that such workers are properly designated as independent contractors. Individuals misclassified as independent contractors when an employee designation is appropriate may be eligible for sick leave.

### **3. What Constitutes Permissible Use of Paid Sick Leave?**

Leave may be taken for the physical or mental illness, injury or health condition of the employee or a close family member, defined as a spouse, child, parent, other individual related by blood or another individual whose close association is equivalent of a family relationship. Permissible reasons for sick

leave also include preventative care, the need to seek relocation, obtain victim services or participate in a court ordered action related to domestic violence, assault or stalking. In addition, employees may donate their hours to another employee or trade shifts to avoid the need to use available sick leave.

#### **4. Leave Requests and Verification of Reason for Sick Leave.**

Employees must make a timely request for sick leave unless the circumstances are unforeseen. Employers may request verification of the reason for sick leave only after an employee has been out of work for three (3) consecutive days. Employers may not, however, inquire about the nature of the illness, domestic abuse, sexual assault or stalking.

#### **5. How are Violations of the Ordinance Reported?**

There is no private legal action contained in the ordinance, which means that employees cannot file a lawsuit against their employer. Instead, employees must complain to the agency director appointed, who has the authority to investigate and issue penalties for violations. Civil penalties of up to \$500.00 per violation are permitted, but will not be issued until April 1, 2020, unless the violation is connected with the Anti-Retaliation Provision of the law, explained below.

#### **6. How is the Anti-Retaliation Provision Applied?**

The Dallas ordinance further prohibits retaliation against an employee who: requests leave; reports or attempts to report a violation of the law; participates or attempts to participate in an investigation or proceeding under the law; or, otherwise exercises his or her rights afforded by the law.

#### **7. Tips for Compliance.**

Employers should assess their current sick leave or PTO policies, which may already be compliant with the new Dallas law, or need slight modifications only to become compliant. Employers who use an employment staffing agency should consider obtaining a written agreement as to who will be responsible for providing sick leave to employees obtained from those employment staffing agencies.

*The information contained in this article is not designed to address specific situations, and does not include rules or regulations that apply to all states or cities. If you have questions concerning this topic, you should consult with legal counsel of your choice to obtain advice on various fact specific matters.*



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