

San Antonio City Council Adopts Paid Sick Leave Ordinance the Day before Texas Court of Appeals Temporarily Stays the Austin Paid Sick Leave Ordinance

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On August, 16, 2018, the San Antonio City Council adopted a mandatory paid sick leave ordinance that, with the exception of the effective date of August 1, 2019, is substantially similar to the Paid Sick Leave Ordinance adopted by the Austin City Council in February 2018. This made San Antonio the second Texas city to pass a mandatory paid sick leave ordinance ([click here for the full text of the San Antonio ordinance](#)). The next day, August 17, 2018, Austin's Third Court of Appeals issued an order temporarily blocking implementation of the Austin Ordinance which was set to take effect (for employers with 15 or more employees) on October 1, 2018. The stay was part of a lawsuit (filed by the State of Texas and various business groups) challenging the Austin Ordinance based, in part, on arguments that the ordinance violates the Texas Constitution and is pre-empted by the Texas Minimum Wage Act. The stay was originally denied in June by a Austin state district court. Lawsuits have already been drafted to challenge the San Antonio Ordinance.

Significantly, although enforcement of the Austin Ordinance is temporarily stayed while the appeal is pending, the Third Court of Appeals has not indicated how it may ultimately rule on the underlying arguments. Various legal experts have predicted that the Texas Supreme Court will invalidate the Austin Ordinance and, if it does not, several state representatives have pledged to immediately introduce a bill outlawing such ordinances when the legislative session begins in January 2019. Because stay of the Austin Ordinance could be lifted at any time, depending on the outcome of the appeal, covered employers should remain ready to implement sick leave policies that comply with the Austin Ordinance.

Other cities in Texas, including Dallas and Houston, are seeing campaigns by labor groups such as Texas Organizing Project and Working Texans for Paid Sick Time to pressure local city councils to adopt mandatory sick leave policies. In addition, a push for local "predictive scheduling" laws is already underway in Austin and will soon be felt in other major Texas cities. Primarily affecting the retail and food service industries, these scheduling laws have already hit both coasts, including San Francisco, Seattle, and New York City. The ordinances are designed to assist and protect workers historically subject to "unpredictable" schedules who arguably cannot, for example, plan for child care. The San Francisco ordinance requires that employers provide employee schedules at least 2 weeks in advance and make no changes to the employee schedule with less than 7 days' notice without paying the employee penalty hours.

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