UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

The University of Texas School of Law
2020 Labor and Employment Law Conference

May 7-8, 2020
Webcast

RIDING THE PAID SICK LEAVE WAVE:
An Update on Texas Paid Sick Leave Ordinances

Luke C. MacDowall

Author Contact Information:
Luke C. MacDowall
Littler Mendelson, P.C.
Houston, Texas
1301 McKinney Street, Suite 1900
lmacdowall@littler.com
713.951.9400

RIDING THE PAID SICK LEAVE WAVE:
An Update on Texas Paid Sick Leave Ordinances

Paid sick leave ("PSL") laws generally refer to those laws that provide mandatory paid leave benefits for employees who face certain kinds of health and safety concerns. These laws generally apply irrespective of employee-status as part-time, temporary, or fulltime, and they usually prohibit retaliation against employees who take advantage of leave benefits.

Over the last decade, the concept of government-mandated PSL in private employment has completely transformed from a relatively small section of disability law in a few select cities into a regular topic of debate on the national news cycle. PSL laws have passed across the country, percolating from the municipal level to the state level and eventually to the federal level. Some form of mandatory PSL benefit is currently required in private employment in 18 states by way of municipal ordinance(s) or statewide legislation. With the passage of the Families First Coronavirus Response Act ("FFCRA") in March 2020, employers with fewer than 500 employees as well as some public sector employers must also provide PSL for employees who are ill, quarantined, or seeking treatment because of COVID-19, among other reasons. The point is simple: PSL is a burgeoning area of the labor and employment law practice.

This short paper will provide the reader with an overview of the PSL ordinances adopted by three major Texas cities (Austin, Dallas, and San Antonio) as part of this wave of PSL laws that swept the country during the last decade. The paper is broken into two sections. The first section gives an overview of the enactment and enjoinment of the PSL ordinances in Texas and the status of the surrounding litigation. The second section gives an FAQ-style reference guide, addressing the most commonly asked questions about the ordinances' coverage, the type of leave required, and pertinent information about compliance and enforcement.

I. The Enactment and Litigation Surrounding the Texas PSL Ordinances

Employers and employees in Texas began contending with PSL issues in earnest on February 16, 2018, when Austin became the first city in Texas to adopt a PSL ordinance. San Antonio soon followed suit, adopting a virtually identical ordinance on August 16, 2018. Dallas then joined the fray, adopting its own ordinance on April 24, 2019.

Each of these laws came under fierce attack from employer organizations and even the State Attorney General's Office. In April 2018, the Texas Public Policy Foundation, which represents the Texas Association of Business, among others, filed a lawsuit to challenge the legality and constitutionality of the Austin ordinance. After the state district court judge denied the challengers' request for a temporary injunction to prevent the ordinance from taking effect, an appeal was filed with the Third Court of Appeals. The appellate court reversed on November 16, 2018, and an injunction has been in place ever since, though the litigation is currently stayed while on appeal to the Texas Supreme Court.

Likely emboldened by the result in Austin, several business groups representing a variety of industries filed a lawsuit on July 15, 2019, challenging the San Antonio ordinance. The Texas Attorney General intervened in support of the challenger's position while an employee rights group (the Texas Organizing Project) intervened in opposition. Negotiations with the City eventually led to an agreement to delay the effective date from August 1, 2019, until December 1, 2019, to allow the city time to amend the statute. An amended version passed on October 3, 2019, but failed to placate all of the business groups' objections. The state court judge then granted a motion for preliminary injunction in late November 2019, preventing the ordinance from taking effect. An appeal to the Fourth Court of Appeals in San Antonio ensued, but the case is stayed pending a decision from the Texas Supreme Court in the Austin case.

UT LAW CLE | THE UNIVERSITY OF TEXAS | TEXASLAW

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the UT Law CLE eLibrary (utcle.org/elibrary)

Title search: Riding the Paid Sick Leave Wave: An Update on Texas Paid Sick Leave Ordinances

Also available as part of the eCourse
2020 Labor and Employment Law eConference

First appeared as part of the conference materials for the
27th Annual Labor and Employment Law Conference session
"Riding the Paid Sick Leave Wave: An Update on Texas Paid Sick Leave Ordinances"