

Client Alert

July 2019

Dallas Paid Sick Leave Law Takes Effect on August 1, 2019

Dallas joins a host of states, cities, and counties across the country that have implemented paid sick leave laws. On August 1, 2019, the Dallas “Earned Paid Sick Time” ordinance goes into effect. Under the new law, employers must provide paid sick leave to all full-time and part-time employees, including employees engaged through the services of a temporary or employment agency. While legal challenges have stopped the enactment of Austin’s ordinance, no such challenges have occurred for Dallas. Thus, employers should prepare to comply with Dallas Ordinance No. 31181.

Does the law apply to my business? The law applies to all employers, including private employers, other than federal, state, and local government entities.

When does the law go into effect? For employers with more than five employees who perform at least 80 hours of work in a year in Dallas, the law goes into effect on August 1, 2019; for those with fewer than five employees, the effective date is August 1, 2021.

How much sick leave must be provided? Employers with 15 or more employees must provide one hour of earned paid sick time to Dallas employees for every 30 hours of time worked. For employers with 15 or fewer employees, the yearly cap is 48 hours, unless the employer chooses a higher limit.

When can an employee use paid sick time? As soon as it accrues, employees may use sick leave for (i) the employee’s physical or mental illness, physical injury, preventative medical or health care, or health condition; (ii) the employee’s need to care for their family member’s physical or mental illness, physical injury, preventative medical or health care, or health condition; or (iii) the employee’s or their family member’s need to seek medical attention, seek relocation, obtain victim services, or participate in legal action related to 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.

Will our PTO policy be sufficient to meet the new requirements? It depends on the purpose, yearly amount, usage, and accrual rate requirements of the existing PTO policy. An employer who already makes paid time off available that meets the law’s requirements does not have to provide additional earned paid sick leave. For example, if your company’s policy provides over 64 hours of paid time off, it may meet the new sick leave requirements provided the accrual and usage requirements are matched, or more generous than the new law. But, for instance, if employees do not begin accruing PTO until an anniversary after employment begins, such a PTO policy would not meet the new law’s requirement that leave accrue at the commencement of employment. Also, the new law generally allows employees to carry over available earned sick leave to the following year – a right PTO policies may not provide.

What are an employee’s obligations regarding paid sick leave? Employees should provide the employer timely notice of the need to take sick leave. However, employers may not prevent an employee from using earned paid sick time for an unforeseen qualified absence. Upon request of the employer, an employee may have to produce verification to support a leave request greater than three consecutive work days. However, employers may not adopt verification procedures that would require an employee to

explain the nature of the domestic violence, sexual assault, stalking, illness, injury, health condition, or other health need.

What are an employer's obligations other than providing paid sick leave? Dallas employers must provide each employee with a monthly statement showing the amount of available paid sick leave the employee has accrued. For employers with a handbook, they must include a section that provides notice of paid sick time rights and remedies. In addition, Dallas employers must post signage outlining certain requirements relating to paid sick leave in a conspicuous place. Importantly, employers may not retaliate against an employee for using earned paid sick time, or for making complaints relating to paid sick time.

What happens when the employment relationship ends? There is no requirement to pay out any accrued and unused sick leave at the end of employment. Employers may turn to their ordinary payout policies for guidance. Under the new law, if an employer rehires an employee within six months following separation, the employer must allow the employee to use any earned paid sick time available to the employee at the time of separation.

Is there a recordkeeping requirement? Yes, under the new law, a record reflecting sick time accrued, used, and available to each employee must be retained. The law is unclear regarding a specific time requirement, but we recommend that employers keep these records for at least three years.

Are there penalties for noncompliance? Employers found to have violated the ordinance may be assessed a civil fine up to \$500 for each offense.

What next steps should an employer take to comply with the Dallas ordinance? Dallas employers should ensure their policies and handbooks are updated and compliant with the new law. The required notices should be posted in the appropriate workplace locations. Employers should establish an effective accrual system to track monthly statements of paid sick time. Finally, an employer should roll out a compliant program to employees and provide training to employees in supervisory/managerial roles as warranted.

Contacts

Amber M. Rogers
arogers@HuntonAK.com

Jayde Ashford Brown
jaydebrown@HuntonAK.com

© 2019 Hunton Andrews Kurth LLP. Attorney advertising materials. These materials have been prepared for informational purposes only and are not legal advice. This information is not intended to create an attorney-client or similar relationship. Please do not send us confidential information. Past successes cannot be an assurance of future success. Whether you need legal services and which lawyer you select are important decisions that should not be based solely upon these materials.