

## Publications

### Client Alert: Austin, Texas, Paid Sick Leave Law Ruled Unconstitutional

#### Related Attorneys

Monica A. Fitzgerald

Michael C. Griffaton

#### Related Services

Employee Benefits and Executive Compensation

Labor and Employment

**CLIENT ALERT** | 11.20.2018

A Texas Court of Appeals recently ruled that the City of Austin's paid sick leave law is unconstitutional under Texas law. The Third District Appeals Court held that paid sick leave entitlements are an increase in wages, causing Austin's law to violate the Texas Minimum Wage Act (TMWA). The TMWA prohibits municipalities from establishing or regulating private employee wages. As we [previously reported](#), the law would have affected some 211,000 employees, at a cost of \$34 million annually to employers.

Originally scheduled to take effect on October 1, 2018, the Austin law would have required employers to credit employees with one hour of paid sick leave at their normal rate for every 30 hours worked in the City of Austin. The law was challenged in court by Austin business representatives and the Texas Attorney General in April, but their initial challenge to enjoin the law was unsuccessful so they appealed. The Third District Court of Appeals reversed lower court's decision, and temporarily enjoined the law from taking effect until the merits of the case were fully evaluated.

On November 16, 2018, the appeals court made its injunction permanent while the case is remanded to the trial court for final proceedings. The Court rejected the city's arguments that the employers had not suffered the harms necessary to give them a right to sue. The Court reasoned that the employers demonstrated their harm by alleging that the law was unconstitutional, and the costs of compliance with an unconstitutional law were "a sufficient threat of actual injury."

The Court issued a ruling against the city. The Texas Minimum Wage Act forbids municipalities from establishing a "wage" for private employees. A "wage" is a payment to an employee "for service rendered," and the sick leave ordinance "establishes the payment that a person receives for services rendered to an employer." Accordingly, the Austin law violates the TMWA. The city has not announced whether it will appeal to the Texas Supreme Court.

The City of San Antonio also passed a similar ordinance in 2018, which is set to take effect in August 2019. The fate of the Austin law is expected to determine the fate of the San Antonio law. The Texas Legislature is also expected to pass a law expressly overturning any paid sick leave laws passed by Texas municipalities. Consult with your Vorys attorney if you have questions regarding compliance with any paid sick leave law or about what these rulings mean for your business.