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Labor and Employment Alert: Austin, Texas, Adopts a Paid Sick Leave Law Covering All Employers

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On February 16, 2018, Austin, Texas became the latest jurisdiction to adopt a paid sick leave ordinance. The new law applies to **all** private employers within the city. It is expected to affect 211,000 employees and cost employers approximately \$34 million annually.

Coverage

All employers within the city are covered regardless of size. Employees are covered if they work at least 80 hours within the city in a calendar year. For the most part, the ordinance will take effect on October 1, 2018. However, employers with five or fewer employees are not covered until October 1, 2020.

Accrual of Leave

Employees earn one hour of sick time for every 30 hours worked. The sick time begins to accrue when employment begins or when the law become effective, whichever is later.

The amount of sick time an employee may accrue is capped based on the employer's size. For employers with 15 or more employees, the maximum amount an employee can accrue is 64 hours per calendar year. For employers with fewer than 15 employees, an employee can accrue no more than 48 hours per year. All accrued, unused sick time, up to the applicable cap, must carry over into the next year.

An employee who is rehired by an employer within 12 months following separation of employment from that employer may use any earned sick time the employee had remaining when separated.

Use of Leave

Sick time may be used as soon as it is accrued for: (1) the employee's physical or mental illness or injury, preventative medical or health care, or health condition; (2) the employee's need to care for a family member's physical or mental illness or injury, preventative medical or

health care, or health condition; or (3) the employee's need to seek medical attention or to participate in legal or court ordered action related to domestic abuse, sexual assault, or stalking involving the employee or a family member. A "family member" is the employee's spouse, child, parent, or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

Employees using accrued sick time will be paid whatever compensation they would have earned had they worked their scheduled hours "exclusive of any overtime premium, tips, or commissions, but no less than the state minimum wage."

An employer may not require an employee to find a replacement to cover the hours of earned sick time as a condition of using it.

Reporting and Notification

On at least a monthly basis, an employer must provide electronically or in writing to each employee a statement showing the amount of the employee's available earned sick time. The employer also must maintain records establishing the amount of earned sick time accrued and used by each covered employee.

Employers must include a notice of employee rights and remedies under the ordinance in their employee handbook. Employers must display a sign describing the ordinance's requirements in at least English and Spanish in a conspicuous place or places where notices to employees are customarily posted. An employer is not required to post such signage until the city makes such signage available publicly on its website.

Employee Protections and Enforcement

Employers are prohibited from retaliating against an employee for using earned sick time, for reporting a violation, or for participating in an administrative proceeding.

The city's Equal Employment Opportunity/Fair Housing Office (EEO/FHO) will be responsible for enforcing the new law, and is required to seek voluntary compliance before collecting civil penalties. Barring voluntary compliance, the EEO/FHO may assess a \$500 penalty for each violation. However, the EEO/FHO may issue only citation notices for violations of the sick time requirements occurring after the effective date through May 1, 2019. Penalties for retaliation may be assessed once the law becomes effective.

Conclusion

Employers already providing paid leave are not required to provide additional leave so long as their policies provide at least the same benefits and protections as the new ordinance. Therefore, employers should review their policies and practices to determine what, if any, changes are needed to comply. Contact your Vorys lawyer if you have questions about Austin's new paid sick leave ordinance or similar laws in other jurisdictions.