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Austin, Texas Paid Sick and Safe Leave Law Ruled Unconstitutional

Earlier this year, Austin became the first city in Texas to pass an ordinance requiring private employers to provide paid sick leave. On November 16, the Texas Court of Appeals for the Third District ruled that the ordinance violates the Texas Constitution because it is preempted by the Texas Minimum Wage Act. Originally scheduled to take effect October 1, the ordinance is on hold pending further legal proceedings. Because the outcome of those proceedings has broad potential ramifications for the viability of local sick leave mandates in the state, Texas employers should monitor further developments.

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Background

Earlier this year, the city of Austin, Texas passed a paid sick and safe leave ordinance requiring private employers with more than 15 employees to annually provide eight days of paid sick and safe leave to eligible employees. The ordinance required smaller employers to provide six days of paid leave annually.

The new law allowed employees who work at least 80 hours in Austin in a calendar year to accrue paid sick and safe leave at the rate of one hour for every 30 hours worked in the city, up to 64 or 48 hours annually depending on the employer's size. Employers could limit use of accrued leave to eight calendar days per year. Unless the employer opted to frontload the maximum annual accrual amount at the start of the year, employees would be able to carry over any unused leave time into the following year up to the annual accrual cap.

Under the ordinance, paid sick and safe leave could be used for an employee's or an employee's family member's physical or mental illness or injury, preventative medical or healthcare, or health condition, or for reasons relating to domestic abuse, sexual assault, or stalking involving an employee or employee's family member. For leave used, employees must be paid in an amount equal to what they would have earned if they had worked their scheduled hours, excluding overtime, tips, and/or commissions.

The ordinance was scheduled to go into effect on October 1, 2018 for employers with at least five employees and on October 1, 2020 for smaller employers.

Legal challenge

Shortly after Austin became the first city in Texas to enact a paid sick leave ordinance, a lawsuit filed by various business groups challenged its validity. The district court denied the groups' initial request for a temporary injunction, but that ruling was promptly appealed. In August 2018, the Texas Court of Appeals for the Third District (the Third District) granted temporary relief, putting a hold on the ordinance's October 1, 2018 effective date pending resolution of the appeal.

San Antonio's paid sick leave ordinance

Last August, the San Antonio City Council passed a nearly identical paid sick leave ordinance, slated to take effect for most employers on August 1, 2019. However, its fate is largely tied to that of Austin's ordinance. Judicial and/or legislative efforts are expected to determine whether it will take effect.

On November 16, the Third District reversed the district court's ruling, finding that Austin's paid sick leave ordinance is preempted by the Texas Minimum Wage Act (TMWA). In reaching that conclusion, the court considered whether the TMWA expressly preempts local regulations that establish a wage and whether the ordinance at issue established a wage.

As the Third District explained, the Texas Constitution prohibits city ordinances from containing "any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State." Here, the court found clear legislative intent in the TMWA to pre-empt local law. First, the court said, the TMWA prohibits municipalities from regulating wages for employers subject to the minimum wage requirements of the federal Fair Labor Standards Act. Further, the TMWA explicitly provides that "the minimum wage provided by [the TMWA] *supersedes* a wage established in an ordinance ... governing wages in private employment." Thus, whether Austin's ordinance is preempted hinges on whether the local law establishes a "wage" — a term that the TMWA does not define.

In considering the issue, the court gave the term "wage" its ordinary meaning — generally, payment or compensation that a person receives for work done or services rendered. The court reasoned that an employer subject to the Austin ordinance would have to pay employees who use sick leave for hours they did not actually work. Thus, employees who take sick leave effectively would be paid the same wage for fewer hours worked — or paid more per hour for the hours actually worked. The court found that by increasing the pay of employees using paid sick leave, the ordinance establishes a wage. Rejecting the city's argument that a wage under the TMWA refers only to compensation for workers' services rendered and does not include fringe benefits such as paid sick leave, the court held that the ordinance impermissibly regulated TMWA-defined wages. Further, the Third District held the TMWA pre-empts the ordinance as a matter of law, thereby rendering Austin's ordinance unconstitutional.

The Third District remanded the case to the lower court with instruction to issue the temporary injunction and "for further proceedings consistent with [the appeals court's] opinion."

Buck comment. State legislators may soon weigh in on local paid sick leave mandates. One of the first bills filed for the 86th Texas Legislature that begins on January 8, 2019 is H.B. No. 222 — "An Act relating to prohibiting a municipality from requiring an employer to provide paid sick leave." If passed, the law would bar the local regulation of sick leave effective September 1, 2019, and would apply to any municipal ordinance, rule or regulation adopted before, on or after that date.

In Closing

Austin's paid sick leave ordinance originally slated to take effect last October remains on hold pending further legal proceedings. Whether the ordinance survives legal challenge has broad potential ramifications for local paid sick leave mandates in the state. Texas employers should monitor further developments.

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