

In response to a lawsuit filed by a number of San Antonio business groups, the San Antonio City Council approved certain revisions to the city's paid sick leave (PSL) ordinance, including renaming it the **Sick and Safe Leave (SSL) ordinance**. The SSL ordinance is scheduled to become effective on December 1, 2019, **although a court hearing is set for November 7, 2019, which may impact the effective date.**

The Lawsuit

On July 15, 2019, a coalition of San Antonio business groups filed suit against the City of San Antonio claiming that the PSL ordinance was an unconstitutional violation of the Texas Minimum Wage Act. Soon thereafter, the plaintiffs and the city entered into an agreement that **delayed the effective date** of the ordinance from August 1, 2019, to December 1, 2019, and on July 24, 2019, a Bexar County district court judge entered an order consistent with the parties' agreement.

The order effectively abated the litigation until November 7, 2019, to allow the City of San Antonio Paid Sick Leave Commission to confer with stakeholders, study the PSL ordinance, and recommend revisions to the mayor and City Council. The order provided that should the City Council pass an amended ordinance before November 7, the plaintiffs would have the right to renew their application for injunctive relief with the court.

The Amended Ordinance

On October 3, 2019, the San Antonio City Council voted to approve an amended ordinance, now known as the SSL ordinance. It includes a number of significant revisions:

- The effective date of the SSL ordinance for *all employers, regardless of size*, is December 1, 2019.
 - Previously, for employers with no more than five employees within the preceding 12-month period, the effective date would have been August 1, 2021.
- The SSL ordinance now requires *all employers, regardless of size*, to provide up to 56 hours' worth of SSL time. Employees will be eligible to accrue 1 hour of SSL time for every 30 hours worked, up to 56 hours per year.
 - Previously, there was a distinction between larger and smaller employers, with the former being required to provide up to 64 hours of leave and the latter being required to provide up to 48 hours of leave.
- Employees who are typically based outside the City of San Antonio (i.e., those who work more than 50 percent of their time outside the city limits) but who perform work in the city on an occasional basis are covered by the ordinance only if they perform more than 240 hours of work in the city within a year.
 - Previously, employees would have been eligible for leave under the ordinance if they worked 80 or more hours a year in the city.
- Employers can require new employees to wait up to 90 days before using any accrued SSL. Please note, however, that new employees begin accruing SSL on their first working day of employment.
 - Previously, the ordinance allowed for a 60-day waiting period only for those employees working pursuant to an employment agreement of at least 1 year's duration. In essence, the prior ordinance did not allow for any waiting period for at-will employees.
- The revised ordinance includes a more specific definition of a "family member," which now includes (i) "[s]pouses, domestic partners, and both different-sex and same-sex significant others"; (ii) "[a]ny other family member within the second degree of consanguinity or affinity"; and (iii) "[a] member of the covered employee's household," as well as "[a] minor's parents, regardless of the sex or gender of either parent." In addition, "[t]he concept of parenthood is to be liberally construed without limitation as encompassing legal parents, foster parents, same-sex parent, step-parents, those serving *in loco parentis*, and other persons operating in caretaker roles."
 - Previously, the ordinance defined "family member" as "an 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."

- Employers can request medical documentation or other verification of the use of SSL upon an employee's fourth consecutive day of using SSL, *or when employers reasonably suspect abuse of SSL*. The revised ordinance also identifies examples of what the city would consider to be indicative of abuse.
 - Previously, an employer would have been entitled to request documentation only after an employee's third consecutive day of absence.
- The SSL ordinance now provides that SSL "is a fringe benefit as defined by the Texas Labor Code and not a wage or a component of salary." In this regard, employers are not required to pay out SSL upon an employee's separation from employment, and SSL is not to be "calculated as an increase to salary or wages of an employee." Additionally, if an employer chooses to pay out SSL at the time of separation, the employer is not required to reinstate the SSL balance if the employee is rehired within six months.
- The limitations period for filing a complaint with the city has been shortened from two years to one year.
- The revised ordinance has refined the civil penalty provision by including a \$500-per-day penalty for employers that "intentionally, knowingly, recklessly or negligently violate[] any provision" of it. "Each day that a violation is committed or permitted to exist shall constitute a separate offense."

The plaintiffs have set a hearing for November 7 to seek a permanent injunction blocking the SSL ordinance.

Tiffany Cox Stacy
Employment Attorney
SAHRMA President, 2019

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