



The ERISA Industry Committee

Driven By and For Large Employers

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February 7, 2018

Council Member Greg Casar
Austin City Council
301 W 2nd Street
Austin, TX 78701

Dear Council Member Casar,

ERIC applauds your efforts to bring paid sick time to the City of Austin's private sector workers. The proposed Earned Sick Time Ordinance ("Ordinance") you recently introduced, while well-intentioned, without small revisions will increase the compliance burden on large employers that already provide paid leave and operate in multiple states and localities.

Large employers have been providing generous paid leave policies to thousands of workers in Austin and across the country for years. The Ordinance as currently drafted, would place unnecessary burdens on large employers who already satisfy the underlying purpose of the Ordinance—provide paid leave; In addition, it is important to note that the Ordinance is an outlier in comparison to other jurisdictions' paid sick time laws. Ideally, large companies that operate in multiple jurisdictions attempt to provide uniform employee benefits to all employees across the country. While several states and localities have implemented paid sick leave laws, most of these laws have provided large employers that already provide paid leave the flexibility to maintain a uniform policy across the country.

As currently drafted, the Ordinance does not provide such flexibility, largely with respect to the: (i) definition of "family member"; (ii) lack of a waiting period before using accrued time; (iii) maximum accrual; (iv) mandated carryover; and (v) written notice of an employee's earned sick time balance. Our recommendations on alterations to the Ordinance are outlined in greater detail below.

a. Definitions

The Ordinance's definition of "family member" is unusually broad in comparison to the other states and localities that have passed paid sick time laws.¹ The consensus or common theme among most laws is to define family member as a child, spouse, parent, legal guardian, grandparents, and grandchildren.

ERIC respectfully requests that Austin follow suit and maintain uniformity with laws that have already been passed and in place for years. This would lessen the patchwork of laws that large, multistate employers must navigate when complying with countless different laws in multiple jurisdictions, while also recognizing the evolution of the modern American family and its expansion past nuclear members. The Ordinance could be amended to read as follows: "(E) FAMILY MEMBER means an employee's spouse, son, daughter, parent, legal guardian, grandparent, or grandchild, as defined, if so, under the Family and Medical Leave Act of 1993 at 28 U.S.C. § 2611."

¹ *Paid Sick Days—State, District and County Statutes*, NAT'L P'SHIP FOR WOMEN & FAMILIES, <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-statutes.pdf> (last updated, Jan. 2018).

ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation public policies at the federal, state, and local levels.

b. *Waiting Period & Maximum Accrual*

The proposed Ordinance has no waiting period during which employees may not use the earned sick time they have accrued to date. Rather, the Ordinance holds that employees “may request to use earned sick time from an employer as soon as it is accrued.” This makes Austin an outlier from the eight other states, the District of Columbia, and dozens of cities that have passed paid sick time laws. Most of these jurisdictions have a waiting period of at least 90 days.²

ERIC respectfully requests that a waiting period be included in the Ordinance so that it is in line with paid sick time laws across the country. In accordance with most other paid sick time jurisdictions, employees would be able to accrue earned sick time at the commencement of employment, but accrued hours may not be used until 90 days after the commencement of employment. The Ordinance could be amended to read as follows: “(C) An employee will be entitled to accrue earned sick time at the commencement of employment or the date this Ordinance takes effect, whichever is later. (1) An employee may request to use earned sick time beginning on the ninetieth calendar day following commencement of employment. After the ninetieth calendar day, employees may use earned sick time as it is accrued.”

Additionally, the proposed Ordinance sets the minimum amount of earned sick time an employer must provide employees at 64 hours in a calendar year. Since almost all of the other laws and ordinances across the country provide for accrual of 40 to 56 hours in a calendar year (the average is 40 hours), this requirement also makes Austin an outlier from most of the other jurisdictions.³ [Company Name] therefore respectfully requests that the minimum amount of earned sick time provided be lowered to at least 56 hours. These amendments would bring Austin in line with the rest of the country, ensure the greatest level of uniformity for employers that operate across the country, and lessen any administrative burdens on employers.

c. *Carryover*

The Ordinance provides that all “unused earned sick time up to 64 hours [must] be carried over to the following year,” without exception. If large, multistate employers are forced to carryover employees’ unused time, it will impact the total leave package the employer currently provides. Paid sick time is traditionally contemplated alongside, and is meant to dovetail with short and long-term disability plans; thus, a change in one is a change in all three. The recommended alternative, is allowing employers to frontload all available time that employees would accrue over the course of the year and not mandating carryover if they do. When employers frontload time, they do so without generally allowing for carryover, which creates a “use-it-or-lose-it” policy. This type of policy allows employees to use time on an as-needed basis, rather than waiting for it to accrue over the course of the year. This system creates a great benefit to the employee, without imposing any unnecessary burdens on the employer.

Most states and major cities have recognized this benefit and have adopted paid sick leave rules that permit employers to utilize this “use-it-or-lose-it” policy. These jurisdictions have recognized that allowing for frontloading without mandating carryover still provides employees with adequate amounts of leave. There is no difference in the hours available to employees when leave is frontloaded rather than accrued, it is simply available earlier. Austin should keep in line with its sister cities and states and provide this benefit that would result in zero harm to neither the employee nor the employer.

² *Supra* note 1.

³ *Supra* note 1.

ERIC respectfully requests that a provision be added into the Ordinance that gives employers the ability to frontload time and not carry it over. It could read as follows: “(1) An employer may not be required to allow an employee to carryover unused earned sick time under subsection (G) of this section if the employer awards the employee the full amount of earned sick time at the beginning of each year under subsection (A) of this section.”

d. Notice

For informing employees of the amount of earned sick time they have accrued, used, and available, ERIC simply requests that employers be permitted to fulfill this by methods other than in writing. Many employers, both large and small, have moved away from physical pay stubs and the like, and instead have transitioned to electronic outlets for providing employees important information. Employers are providing information related to pay, paid leave, retirement, and more through online portals that can be accessed at any time. Thus, the act of printing physical documents is outdated and would create an unnecessary administrative burden on large employers’ human resources personnel (not to mention an added cost).

A provision could be added into the Ordinance that reads as follows: “(1) An employer may satisfy the requirement under subsection (I) of this section by providing an online system through which an employee may ascertain the balance of the employee’s available earned sick time.”

Our goal is to ensure that large employers, especially those that already meet or exceed the underlying objective of the Ordinance, do not experience an increase in compliance and administrative burdens upon implementation of the Ordinance. ERIC welcomes the opportunity to serve as a resource to the Austin City Council as it considers this Ordinance and its impact on large employers and their employees.

Sincerely,

Will Hansen
Senior Vice President, Retirement & Compensation Policy