



Obama NLRB Finds Common Employee Handbook Policies Unlawful Contractors Need to Prepare for Paid Sick Leave in Austin

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Who is Eligible for Sick Time?

Any employee who works at least 80 hours within the city in a calendar year is required to receive Paid Sick Leave. This means that employees based in other cities may become entitled to PSL by spending a relatively short period of time working in Austin.

The ordinance does not cover independent contractors, but employers should be careful not to misclassify employees who are subject to the employer's control in an attempt to avoid this ordinance (or, for that matter, any other employment law).

Accrual of Sick Time

Paid Sick Leave must be provided at the rate of one hour for every 30 hours worked in Austin, up to 64 hours (eight days) annually for employers with more than 15 employees, and up to 48 hours (six days) annually for employers with 15 or fewer employees).

From year to year, employers must carry over all available earned sick time, up to the yearly cap. Use-it-or-lose-it Paid Sick Leave will not qualify under this ordinance, b. But employers need not provide an employee with more than the yearly cap of Paid Sick Leave in any calendar year. They and may also inform an employee that leave requested in excess of the employee's available sick time will not be paid.

Use of Sick Time

An employee may use earned Paid Sick Leave for absences (either timely requested or otherwise unforeseeable) caused by any of the following, when such absences were either timely requested or otherwise unforeseeable:

- (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, preventative medical or health care, injury, or health condition; or
- (3) The employee's need to seek medical attention, seek relocation, obtain services from a victim services organization, or participate in legal or court ordered action related to an incident of victimization from domestic abuse, sexual assault, or stalking involving the employee or employee's family member.

Employers may not require an employee to find a replacement to cover the hours of Paid Sick Leave he or she takes. Also, an employer may restrict an employee from using earned sick time during the employee's first 60 days of employment with the employer, only if the employer establishes the employee's term of employment of at least one year.

Payment Requirements



An employer must pay earned sick time in an amount equal to what the employee would have earned if the employee had worked the scheduled work time—exclusive of any overtime premium, tips, or commissions, but no less than the state minimum wage.

Notice Requirements

An employer must post a conspicuous sign describing its PSL obligations, provide notice of employees' PSL rights in their handbook, and provide each employee a statement showing their available PSL on at least a monthly basis.

Reviewing PTO and Vacation Policies

Employers will be happy to note that if an employer provides its employees with paid vacation or PTO, the employer may not have to provide any further PSL—but only if the vacation or PTO that's provided meets each of the ordinance's accrual and usage requirements. As a result, all employers with Austin employees should review (or have their attorney review) their PTO and vacation policies to ensure compliance with the PSL ordinance, and to prevent situations where an employee qualifies for PSL on top of the employer's vacation and PTO provisions.

No Retaliation

Employers may not take or threaten employment actions against employees who use or request PSL, or who report a violation of the ordinance.

Enforcement

Enforcement of the ordinance is through fines of up to \$500 per violation.