



Small Business Owners Speak Mandatory Paid Sick Leave Hurts More Than It Helps

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Key Points

- Several Texas cities have passed mandatory paid sick leave ordinances.
- Small business owners say the ordinances will harm their ability to keep their lights on and pay their employees.
- Business owners are in favor of providing benefits to their employees. What they oppose is a government mandate.
- City governments have passed the ordinances despite business owners expressing their concern and opposition.
- State-level legislation that would pre-empt these ordinances failed to pass.

Introduction

Several city governments across Texas have interfered with relationships between employers and employees by passing ordinances forcing businesses to provide paid sick leave as a benefit. City councils in Austin ([Austin, Texas](#)), Dallas ([Dallas, Texas](#)), and San Antonio ([San Antonio, Texas 2018](#)) have each passed ordinances to this effect; though San Antonio has recently revised its originally adopted ordinance ([San Antonio, Texas 2018](#)). The city's updated mandate—the Sick and Safe Leave ordinance ([San Antonio, Texas 2019](#))—now “requires employees in San Antonio [to] be given earned paid time off for use if an employee needs to be absent from work due to illness or injury, medical treatment or preventative care, domestic or sexual assault, and care of a family member” ([City of San Antonio](#)). The ordinance takes effect December 1, 2019.

This intrusion has been especially harmful to small business owners, who rarely have accountants, attorneys, or human resources managers to help them navigate through a jumbled mix of local labor law regulations. Many small business owners already strive to offer good benefits packages to their employees and are not opposed to paid sick leave. However, they fear that mandated paid sick leave ordinances would require them to shuffle around dollars and benefits already promised to their employees just to comply with one local law.

Not only are these policies harmful, they are also illegal. Last year, the Third Court of Appeals declared the city of Austin's paid sick leave ordinance to be unconstitutional because it was pre-empted by the Texas Minimum Wage Act ([Texas Association of Business v. City of Austin](#)).

Proponents of mandatory paid sick leave often justify their policies with vague hypotheticals that appeal to emotions, such as the case of a single mother working two jobs who needs to care for her sick children. While these arguments are appealing on the surface, they conceal the actual cost and consequences of one-size-fits-all mandates.

This paper provides some real-life stories of small business owners and the potential effects of paid sick leave mandates on themselves and their employees.

In Their Own Words: *Small Business Owners Speak of Paid Sick Leave (PSL) Problems*

■ Skeeter Miller, Owner and President of the County Line

Skeeter Miller is a restaurateur and owns the popular County Line restaurant in Austin. He stated that his company provides meals to employees while they are working at a cost of \$300,000 a year ([Miller](#)).

“That’s something we have to consider when we talk about paid sick leave,” said Miller of this particular benefit. “Are we still going to be able to do that?” He continued: “As far as the economic impact for us, just to cover paid sick leave for my Austin operations is going to cost—just for the employee level—about \$200,000 a year.”

■ Eduardo Contreras, CEO of ALCON DTS

On May 1, 2019, Eduardo Contreras, founder and CEO of an Austin-based IT consulting company, offered his concerns about mandatory paid sick leave and other types of city ordinances affecting the employer-employee relationship in testimony before the Texas House Committee on State Affairs:

“I’m a small business. I don’t have teams of accountants and attorneys and an HR department to keep track of all this,” he said about the possibility of cities passing numerous and varying mandates. “If I’m not in compliance with these local ordinances, there are very serious penalties and fines associated with that.” Emphasizing the effect that such ordinances have on employees as well, he added that “the repercussions could be that I might have to shut down business and kill jobs” ([Contreras, 28:44](#)).

Contreras also reminded the committee that many small businesses organized as single-member LLCs are “pass-through” tax entities, meaning that cities would have the ability to audit finances of individuals because these ordinances give government officials the ability to subpoena private business employment records. He described this practice as being both “distasteful and dangerous.”

Contreras testified in support of Senate bills [2485](#), [2486](#), [2487](#), and [2488](#). These bills would have ensured that the state pre-emption of local paid sick leave ordinances in the Minimum Wage Act is stated clearly as a reminder to other cities that might be tempted to follow the lead of Austin, Dallas, and San Antonio.

■ Andy Ellard, Owner—General Manager at Manda Machine

Andy Ellard, owner of a small manufacturing business which employs 18 people, also provided testimony to the State Affairs Committee:

We offer many benefits including paid vacation, paid holidays, overtime, paid medical and dental insurance, a matching 401(k), we pay for jury duty, and give time off to vote. We work with our employees when they need time off and provide flexibility in the work schedule for our employees.

Small businesses deal with many things. Taxes, insurance, OSHA, ordinances and regulations to name a few. But I will tell you the most critical is having to deal with constant changes and confusing government mandates. If these bills are not passed, government will now be administrating my benefits package...

Paid sick days are a nice benefit to offer as part of your benefits package, but just because a law has mandated it does not mean you can afford it. The employer will be faced with either taking away current vacation time they offer, possibly cutting back hours, or even positions to pay for the cost of the time off ([Ellard, 1:15:36](#)).

Ellard also expressed concerns regarding cities’ ability to enforce such mandates, saying that “they would have to grow government to regulate it at the expense of taxpayers.” He ended his testimony by asking the members of the committee to support the bills to keep the “Texas business model moving forward” ([Ellard](#)).

■ Lisa Fullerton, President and CEO of A Novel Idea, LLC

In another testimony before State Affairs, Lisa Fullerton said, “I have been in business in the city of San Antonio for 19 years, and I am in a highly volatile, high burnout industry. We’re in the quick-serve restaurant business. I believe the reason for our longevity is that we have a benefits package that we have created over time that is generous and makes us distinctly different from our peers” ([Fullerton, 01:18:25](#)).

Fullerton, president and CEO of A Novel Idea, LLC, told committee members that her company’s benefits package provides a 401k and profit sharing. “So I’m here today not because I’m against any benefits. We offer a lot of them ourselves. I’m here because I’m against the *mandate*” (emphasis added). She then informed the committee that her company had opened nine quick-

serve restaurants over the past 19 years and that not all of the establishments had been successful:

We had the unfortunate event this January of having to shut down one of those businesses that was not sustainable. We had to pay rent to the landlord to get out of our lease early. We had to pay to deconstruct it. I'm talking over six figures. It's a substantial loss.

So if the paid sick leave was mandatory in San Antonio, I would have to borrow money just to pay for operating expenses. I find this very dangerous to allow cities to dictate policies for business when they don't understand those businesses ([Fullerton](#)).

■ **Robert Mayfield, Owner of Wally's Burger Express and Dairy Queen franchisee**

Robert Mayfield owns several Dairy Queen franchises as well as the Austin-area restaurant Wally's Burger Express. While Mayfield does not provide sick time as a benefit, he told Fox 7 Austin that he seeks to ensure that his employees' needs are met. "What we do is we let them make up the time, say, the next week when we have time, even if it's overtime. We look after these folks," he said shortly ahead of the Austin City Council vote in February 2018 on the ordinance requiring businesses within the city to provide paid sick time as a benefit ([Claiborne](#)).

Mayfield later [testified](#) before the Texas Senate Committee on State Affairs on April 4, 2019, in support of Senate Bills 2485-2488:

I've never seen small business people and other business people just as stirred up as they are over this issue [he told the committee in reference to the Austin ordinance]. And now there's Dallas and San Antonio that need to be considered too. People we know up there, they're worried to death about it. You know, you would be too if you were a small business person...

If you don't have good employees, if you don't take care of them, you don't have a business. If somebody's sick, we take care of them. We do what we need to do. And we'll continue to do that ([Mayfield, 04:08:01](#)).

He told the committee his business has 250 employees, and that his company interviews "hundreds of people a year. Nobody has ever asked us if we had sick leave, because they know we take care of our people" ([Mayfield](#)).

■ **Rita Conner, President of 360 Electrical Contractors**

A business owner for over 20 years, Rita Conner serves as [the president](#) of an electrical contracting company. Regarding the possibility of the city of Austin's paid sick leave ordinance, she stated:

If it was even at a minimum of 40 hours per year for the small number of employees we have, we're looking at \$25,000 a year just for being paid sick leave. And that's a lot of money. May not be a lot of money to the big guys but it really hits home when you're a small company like we are ([Claiborne](#)).

■ **Carol Huntsberger, Owner of Quality Seafood Market**

Carol Huntsberger is the [owner of Quality Seafood Market](#), a business that has been operating in Austin for over 80 years.

She also testified before the Austin City Council in February 2018 in protest of the city's mandatory sick leave ordinance. "You're telling me how to run my business. Don't do that, don't do that to all the people in the city of Austin" ([Huntsberger, 0:32:12](#)).

Huntsberger informed the council that her business provides benefits such as covering 75 percent of employees' health insurance, paid holidays, and being closed on Sundays. "Let us run our businesses.... I believe in helping people," she stated. "I have \$20,000 in loans out right now for my people to have everything that they need. I buy clothes. I pay food ... I'm proud to help the people that I employ."

■ **Patrick Garcia, President of Division Laundry**

Patrick Garcia, president of Division Laundry in San Antonio, [spent close to \\$170,000](#) to cover the cost of paid sick leave required by having a federal contract.

While not opposed to paid sick leave, he told the *Rivard Report*, "With nine months of sick-leave costs under your belt, you know how much it's going to cost." But those costs are not always apparent up front. "I'm just saying I've had this experience with it, and if we're going to impose it on the business community, businesses need to understand how it works" ([Biediger](#)).

Garcia has also had to deal with some employees abusing the benefit. The *Rivard Report* noted, "In the first 212 days of this year, 82 percent of employees who work the morning shift at Division Laundry & Cleaners, a San Antonio-based commercial laundry service, took sick leave to care for themselves or a family member or

to see a doctor. The night shift had 79 percent take sick leave.”

“We’ve had to counsel a few people because they falsified,” Garcia said. “If I have to babysit this sick-leave policy, are managers going to spend more time and hours figuring out who is abusing it? Or am I just better off just paying it and passing the cost to customers?”

■ Louis Barrios, president and CEO of Los Barrios Enterprises

Louis Barrios believes that the restaurant industry would be the most negatively affected by paid sick leave ordinances.

A restaurant owner himself in San Antonio—as well as the CEO and president of Los Barrios Enterprises—Barrios stated that he has a great executive team to help his business navigate these ordinances. However, he contrasted the difference with smaller establishments, saying, “I don’t even know how they made it this far” ([Biediger](#)). According to Barrios, “When you place these burdens on [small mom-and-pop restaurants](#), more than likely, they will go bankrupted or the owners will be doing that much more work.”

■ Kyle Noonan, president and owner of The Rustic restaurant

As president of the Greater Dallas Restaurant Association and owner of The Rustic restaurant, [Kyle Noonan](#) stated in a text to local news media that “we believe that the Supreme Court will take up the Austin paid sick leave appeal and rule to uphold the Third Court’s opinion and hold that all paid sick leave ordinances around the state are unconstitutional. With that said, restaurant owners care deeply about their employees, and do whatever they can to accommodate schedules, life events, and work schedule choices” ([Kalthoff](#)).

Status of Mandatory Paid Sick Leave in Texas

Ultimately, Senate bills 2485-2488 failed to pass the 86th Texas Legislature after being sent to the Texas

House Calendars Committee. The Austin City Council [passed its paid sick leave ordinance](#) overwhelmingly with a [vote of 9-2](#), and the Dallas City Council [voted 10-4](#) in favor of a paid sick leave ordinance that took effect on August 1, 2019.

In November 2018, the Texas Third Court of Appeals issued an opinion in a case brought by the Texas Public Policy Foundation against the city of Austin’s mandatory paid sick leave ordinance. The opinion held that the city’s ordinance violated the Texas Constitution because it was pre-empted by the Texas Minimum Wage Act. The city of Austin has petitioned the Texas Supreme Court to review the appellate court’s findings.

In San Antonio, a state district court will have a hearing on November 7 to decide “on whether to issue [a] permanent injunction blocking the city’s paid sick leave ordinance, which is set to roll out Dec. 1. . . .” ([Bailey](#)). The court is expected to decide whether the updated ordinance still suffers from the same legal defects as the original.

In Dallas, the city’s [Earned Paid Sick Time Ordinance](#) officially took effect on August 1, 2019 following its enactment by the city in April 2019. However, according to the city’s website, officials “will not enforce the Ordinance, except for violations of the anti-retaliation provision, until April 1, 2020” ([City of Dallas](#)).

Conclusion

Business owners across the state concur that mandated sick leave policies obstruct their companies’ operations and impede their relationships with their employees.

Texas employers want to provide good benefits for the people who work for them. However, their ability to do so is hindered when government steps in with across-the-board mandates that fail to take into account the needs of individual employers and employees. The best thing for these business owners and their employees is for government to step aside and allow them to make these decisions for themselves. ★

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