



Texas Public Policy Foundation
**LEGISLATOR'S GUIDE
TO THE ISSUES
2021-2022**

Employment Freedom

The Issue

Texas has long maintained a reputation as a business-friendly state. This is due in part to a welcoming regulatory climate that allows businesses to thrive. In fact, states with more burdensome regulations have driven businesses and entrepreneurs to the economically friendly state of Texas.

However, in recent years, city governments have begun to overregulate private industry by imposing oppressive mandates that hinder employment practices. These mandates deviate from the spirit that has made our state successful and infringe upon the freedom of employees and employers to negotiate.

Mandatory paid sick leave is the latest manifestation of this trend in Texas, and it has sparked a broader conversation on the proper role of city governance.

Over the last few years, three cities—Austin, San Antonio, and Dallas—implemented mandatory paid-sick-leave ordinances, which require private employers to offer specific benefits to both full- and part-time employees. In November 2019, the state's Third Court of Appeals ruled that Austin's mandate was unconstitutional and blocked the ordinance from taking effect. Lawsuits against San Antonio's and Dallas's mandates also kept their ordinances from being implemented, but all three remain in pending litigation.

With a long and costly court battle still in play on this narrow issue, there is greater need for broad reform at the state level. Governor Greg Abbott summed up this idea well when he said that Texas needs a "...broad-based ban on regulations at the local level unless and until certain standards are met." As these regulations have traditionally been handled at the state and federal level to ensure consistency and compliance, broad-based reform at the state level is imperative to protect the rights of employers and employees in the private industry from local government interference.

Mandatory paid sick leave may be the most recent example; however, it is not the only infringement upon employment choice. Other intrusive mandates making their way through various city halls include predictive scheduling, "Ban-the-Box" initiatives, and requiring private employers to provide specific benefits like health or life insurance.

Mandating any terms of employment is an overreach by local governments into private affairs and negatively impacts the employer-employee relationship. Terms of employment are best left for negotiation between the employer and employee without one-size-fits-all city mandates that may not be in either party's best interest.

Such interference in the employer-employee relationship effectively limits the choices available to employees that best work for them, like flex time, vacation, higher pay, increased hours, or bonuses. In fact, by forcing employers to offer particular incentives, like mandatory paid sick leave or health insurance, employees have less freedom to negotiate for those more attractive

options. Further, local government mandates negatively impact the competitiveness between businesses during the hiring process.

Additionally, these overreaching local government mandates hurt everyone. They harm employers by forcing them to absorb higher costs without an increase in output and load them down with intrusive and time-consuming recordkeeping requirements. These mandates harm employees by depriving them of benefit options, wage gains, and more work hours available. Lastly, they harm consumers by increasing prices for goods and services and leave them with fewer options as stores and businesses close because of the new requirements.

One-size-fits-all mandates carry never-ending consequences in many aspects of private employment and cities that attempt to regulate private employment need to be reined in. With the passage of some ordinances, the broader conservation of proper local government authority began. Employers and employees should have the freedom to negotiate without local governments stepping in to choose for them. Prohibiting local governments from enacting these regulations will help protect the freedom of employees and employers to operate in an economy where they can negotiate the terms of employment.

The Facts

- Terms of employment are best negotiated between employers and employees because any one-size-fits-all local government mandate may not be in the best interest of either party.
- Mandating employers to offer specific incentives forces them to shift the cost burden from benefits they voluntarily offered and take away other incentives workers may have found more appealing.
- One-size-fits-all mandates hurt employers, employees, and consumers alike.
- WPA polling showed that 58% of voters agreed that employers and employees should have the freedom to negotiate benefits that work for them. WPA polling also suggests that a plurality of voters (40%) do not support government-mandated paid sick leave because it "allow[ed] governments to infringe on the employees' and employers' freedom to negotiate terms of an employment contract..."
- "Ban-the-Box" and "Fair Chance" hiring ordinances negatively impact private citizens, and research shows that these practices actually hurt the chances that minority groups will be called back for secondary interviews or get positions of employment.

Recommendations

- Prohibit local governments from regulating private employment practices.
- Amend state law to make it unmistakably clear that cities cannot mandate paid sick leave.

Resources

[*The Broad-Based Preemption Spark: Mandatory Paid Sick Leave*](#) by Shelby Sterling, James Quintero, and Michael Galyen, Texas Public Policy Foundation (Feb. 2019).

[*The Regulatory Preemption Spark: Mandatory Paid Sick Leave*](#) by Shelby Sterling, Texas Public Policy Foundation (2019).

[“Gov. Abbott: This county isn’t the ‘United States of Municipalities’”](#) by Patrick Svitek, *Texas Tribune* (Mar. 27, 2017).

