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Whose Benefits Are They?
Local Employment Ordinances and Preemption

Key Points

- Employers and employees should be free to negotiate employment benefits, including paid sick leave, without unnecessary government interference.
- Local ordinances on employment benefits and workplaces are unnecessary, duplicative, or in conflict with state and federal laws.
- Local ordinances relating to employment benefits are costly to employers, particularly small ones.

Introduction

The freedom to engage in work and commerce as an individual or a business is among the most cherished and important rights of Americans. Equally important is the right for each individual to determine the terms and benefits of any employment in which they wish to engage. It is imperative to our free market principles that these terms of employment be determined by individuals and businesses in the marketplace and not by governments.

Employment and workplace standards are already exhaustively covered by federal and state laws dealing with issues such as pay, leave benefits, discrimination, and workplace safety. There is no need or purpose for additional varied restrictions issued by local governments.

Regulations imposed on individuals and businesses by the federal government already contain nearly 103 million words and 1.08 million regulatory restrictions as of June 2020 (Broughel & McLaughlin, 2020). The state of Texas adds another 263,000 regulatory restrictions in its Texas Administrative Code. Allowing local governments to add even more regulations through local ordinances would overwhelm all but the largest businesses. They would also add significant legal, reporting, and compliance costs.

Government-imposed laws and regulations on employment benefits and workplaces are problematic because they restrict the participants' ability to negotiate in the free marketplace. They are even more problematic at the local level due to the sheer number of cities and counties with authority to adopt separate ordinances with which businesses and individuals are forced to comply.

In Texas, there are more than 1,200 incorporated cities (Texas Comptroller, n.d.). More than 350 of them are eligible for "home rule" status, with broad ordinance powers affecting their populations (Shirley, 2018). Government-mandated employment benefits and workplace standards frustrates the efforts of businesses and workers to negotiate and determine the best accommodations for their needs in an ever-changing labor market. Such local ordinances adversely affect all businesses, but particularly those operating in multiple cities that are inundated with the burden of identifying and complying with the many jurisdictional variations.

Finally, not all employees have the same needs and desires, and they may wish to negotiate their own terms. Some may want more pay, others may want greater leave benefits, while others may prefer flexible work conditions. Government mandates interfere with those determinations and impose overly restrictive terms on both

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parties that ultimately interfere with the employee–employer relationship and force the parties to seek desired changes through lengthy and costly amendments to these governmental regulations. At the end of this process, the terms of employment may meet the requirements deemed best by the local government but fail to accommodate the needs and desires of the parties concerned.

Recently, many big cities across the nation, including in Texas, have adopted or proposed requirements mandating certain employment benefits and workplace standards. These ordinances essentially force private businesses to provide their workers with specific types and levels of benefits such as paid leave, rest or water breaks, and protections from specific forms of discrimination. Proponents of these policies argue that the benefits and standards are necessary rights for workers, and any costs associated with the mandates are offset by the benefits to the employees and the community in general.

However, businesses are forced to absorb the cost and burden of providing the benefits, additional recordkeeping, administrative compliance and reporting, understanding legal requirements, and obtaining or training qualified staff or vendors to assist with compliance. This increased cost and burden borne by employers is then passed down to consumers through higher prices for goods or services. In addition, the costs associated with these mandates can be so onerous, particularly for small businesses, that they often result in fewer jobs filled or even businesses being forced to shut down or relocate to less restrictive localities. Some employers have even reported reducing the number of full-time employees, reducing the hours available for employees to work, and decreasing other benefits and bonuses offered to their employees.

As local governments decide whether or not to adopt these ordinances, they should first determine if and to what extent they have the authority to do so. Then, even if the authority exists, they should question the need for such ordinances, especially if state or federal law already addresses the issues involved. Finally, they should try to answer the one question that often seems left out of the debate: Ultimately, whose benefits are these anyway? If these mandates imposed by the ordinances are meant to benefit employees, these employees should be allowed to negotiate those benefits. In fact, these municipal government ordinances are taking these rights away from employees by mandating and imposing a one-size-fits-all approach, leaving the employee and the employer outside the room when the terms of employment are being determined.

Economic Demands and Demographic Changes

In recent years, the traditional lines of employment have become more blurred as workers and employers have looked for more flexible working arrangements. There has been an increase in the use of temporary workers, staff leasing and independent contractor arrangements, and "gig" platforms. A Gallup survey conducted in 2019 prior to the pandemic indicated that 44 million workers, or 28%, were self-employed at some point in 2019. About half of those reported that self-employment was their primary source of income (Rothwell & Harlan, 2019, p 7). While some data suggest little or no increase in the percentage of self-employed workers, IRS records show a steady increase in individuals reporting self-employed income. In 2017, 17% of U.S. adults filed a schedule C form with the IRS, a record number since the IRS started reporting in 1957 (p.7) .

Balancing the needs and desires of current and prospective employees with the needs and ability to pay of employers has traditionally been a challenge, but the current economic environment is adding pressure on both parties. Not all employees and employers have the same needs and desires. Nor have they been affected in the same way by changes in the workplace and the economy. Because each individual and each employer have their own needs and preferences, there must be flexibility to negotiate and change employee pay, benefits, and work conditions. This need for flexibility to accommodate all parties is even more pronounced today than in the past. Since the COVID-19 pandemic, many employees have left the workforce, and many businesses are having difficulty finding qualified workers. At the end of February 2022, there were 11.3 million unfilled jobs available in the U.S., little changed from the prior month (U.S. Bureau of Labor Statistics [BLS], 2022b). Although the labor force participation rate (the percentage of the population that is employed) had increased at a small but steady pace in the years before the pandemic, the rate decreased significantly during the pandemic (BLS, n.d.). In 2021, the rate increased but had still not risen to pre-pandemic levels. The decrease was greater for women—a 13.4% drop compared to 11.4% for men (Dunn, 2022, p. 2). Likewise, Hispanic and Black workers experienced a steeper decline than White workers. However, as the restrictions on economic activity were lifted, the numbers began to rise in 2021, faster for women and minorities than for White males (pp. 2, 5). Nonetheless, employment was still down from 2019 for both women and men—3.2% and 3.7%, respectively (p. 2).

Small businesses have been particularly hard hit by these economic changes, as many often lack the resources to

adapt to these changing demands. In 2021, small businesses (those with fewer than 500 employees) made up 99.8% of all Texas businesses and employed 45.1% of the private workforce (U.S. Small Business Administration, 2021, p. 1). Between March 2019 and March 2020, 60,952 small businesses closed and 69,430 opened (p. 1). While the result was a net increase in small businesses overall, the large number of closures represents significant disruptions in the marketplace.

Current inflation and supply chain disruptions add even more pressure on businesses. The Consumer Price Index (CPI) rose 8.3% year over year in April 2022, down from 8.5% the month before, which was the highest in more than four decades (BLS, 2022a). These additional costs and operational burdens make it far more difficult for employers to attract and retain qualified personnel.

According to turnover data from the Bureau of Labor Statistics, "over the 12 months ending in February 2022, employee hires totaled 77 million and separations totaled 70.6 million, yielding a net employment gain of 6.4 million" (BLS, 2022b, "Net Change in Employment" section). According to a survey by the Pew Research Center, the majority of employees who quit their jobs in 2021 did so due to low pay, lack of advancement opportunities, and disrespect. Child care issues and lack of flexible hours were next (Parker & Horowitz, 2022). Clearly, workers are looking for terms of employment that best suit their needs, and they are doing it in record numbers. In 2021, those who quit their jobs voluntarily (quits) increased to a record high of 47.8 million, a gain of 12.0 million from the year before (BLS, 2022c, "Annual Levels and Rates" section).

For businesses, employee turnover has always been costly (Hall, 2019). Now, with increased rates of employees quitting, employers are dealing with greater numbers. Recruiting, hiring, onboarding, and training new employees to replace those who leave can be daunting. That, along with the downtime between the date of separation and the date of production from the new employee, could be significant. During this time, employers are forced to redistribute duties to other existing employees. Replacing an employee with many years of valuable training and experience is even more difficult and costly.

While the increase in quits may be a positive sign for the strength of the job market, it does present additional challenges for employers who are now offering increased pay and benefits to hire and retain the most qualified workers (Leonhardt, 2022). Governmental interference in the process, particularly from a large number of local governments, only adds to those challenges and, in some cases, adversely impacts the benefits that employees and applicants are seeking.

Authority for Local Ordinances

Like any law or regulation imposed by the government, whether or not an ordinance is effective policy is a question that should only be asked after first determining if the city has the legal authority to adopt the mandate.

The 10th Amendment of the U.S. Constitution specifically provides that "all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The document is silent as to local governments. In Texas, as in many states, local governments only have such power as is expressly granted by the state or necessarily and fairly implied from the grant of power and is necessary for their function.

Article 11, Section 5 of the Texas Constitution grants greater power to cities and towns with a population over 5,000. These municipalities may be chartered as "home rule" cities if approved by the voters of that municipality and have the authority to adopt local ordinances so long as they are not inconsistent with state law. Article 11, Section 4 refers to cities with 5,000 or fewer in population and provides no such authority to adopt local ordinances. These are referred to as "general law" cities and have only such authority as is specifically granted in state law. There are over 1,200 municipalities in the state of Texas, and over 350 of them are eligible as home rule chartered cities (Texas Comptroller, n.d.; Shirley, 2018).

Both general law and home rule cities are granted some ordinance powers by Texas law, which states that "the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that is for the good government, peace, or order of the municipality … and is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality" (Texas Local Government Code, Section 51.001).

Thus, home rule cities have relatively broad authority to adopt ordinances that are not in conflict with state law, whereas general law cities have no direct authority to adopt ordinances unless specifically directed by state law or implied as necessary to carry out a function of government specifically granted by state law.

Paid Sick Leave Ordinances

Mandating benefits affects all parties in a business: employers, current employees, and prospective employees. An employment arrangement is fairly simple. At its core, the

employer agrees to pay a set amount of money and other benefits to an employee in consideration for work performed by that employee. Except in some cases, such as with the minimum wage and other labor laws, in most states, employment benefits are not dictated by law and the employer and employee may negotiate them. When government laws and regulations interfere with this negotiation, it upsets the market balance and can impose significant unintended and unaccounted costs.

One recent example of local governments mandating employment benefits is the attempt to force businesses to provide paid sick leave. Although paid sick leave is not required by federal law or state law in Texas, most businesses provide it. About 73% of all private sector workers in the U.S. have access to paid sick leave, although that varies depending on the industry and occupation (DeSilver, 2020, para. 6). However, keeping it optional allows businesses to determine the best benefits they are able to afford while allowing employees to determine the best place to work and negotiate the benefits they most desire. Even among those businesses offering it, the amount of leave and the terms under which it can be used can vary greatly.

Paid sick leave is designed to accommodate an employee's short-term illnesses, injuries, or need to seek preventive care for themselves or family members while still being paid. Ultimately, the definition of paid sick leave is determined by the marketplace, that is, the employer and employee. In the case of mandated sick leave, the definition would depend on the language in the statute or ordinance. Typically, when offered, sick leave is earned and accrued by the employee based on the number of hours worked. It may also be offered at the end of a period of work, such as weekly or monthly. In almost all instances, these benefits are offered to full-time employees only. Part-time and temporary staff may in, some cases, have limited benefits, but rarely on the same terms as full-time employees, although these benefits have been increasing in recent years (DeSilver, 2020).

When offered by an employer rather than required by law, the terms of such leave can be as flexible and generous as the parties agree to and the circumstances warrant. In these situations, when employees are offered the opportunity to take paid time off for sick leave–related issues, their employers agree to pay for such time even though they receive no labor for that time in return. If an employer is unable to profitably account for such costs, they may not offer the benefit. Conversely, if they do not offer the benefit, the employee may seek employment elsewhere where the benefits are offered. This is the free marketplace in which businesses and employees are able to negotiate and often thrive. By taking the options away and mandating set terms such as paid leave, the government has inserted itself in the marketplace to the detriment of both businesses and employees.

In the challenge to the city of Austin ordinance, a national business group, the American Staffing Association, argued that "paid leave mandates impose an especially onerous burden on staffing firms, because they must track the hours of large numbers of employees on short-term, intermittent job assignments for purposes of leave accrual and utilization" (Alvarez, 2018, para 31).

In fact, many business owners and organizations that have opposed such ordinances argue that they do, in fact, add significant costs and burdens on their businesses, even at the state level. In a case where the state of Michigan was proposing statewide paid sick leave standards, the Michigan Chamber of Commerce argued that "a one-size-fits-all policy is really not appropriate," indicating, according to the article, that "some employers provide more generous leave policies than would be allowed under the proposal, while other employers can't afford the leave time they'd be forced to offer" (Alvarez, 2018, para. 16).

Legal Challenges in Texas

The city of Austin was the first major city in Texas to pass a local ordinance forcing businesses to provide paid sick leave to their employees. Adopted on February 15, 2018, it required every private employer in the city with more than 15 employees to provide sick leave of up to 64 hours, or 8 workdays per year. The 64 hours would have accrued in the amount of 1 hour earned for every 30 hours worked. Unused sick leave would have then accumulated and been carried over from year to year. Smaller businesses with 15 or fewer employees were required to offer up to 48 hours, or 6 workdays of paid sick leave per year. Only businesses with 5 or fewer employees were exempt from the law (City of Austin, 2018).

While independent contractors and unpaid interns were excluded, the definition of employee included "any individual who performs at least 80 hours of work for pay within the City of Austin in a calendar year for an employer, including work performed through the services of a temporary or employment agency" (City of Austin, 2018, Sec. 4-19-1).

The ordinance provided the city with subpoena powers to force the production of documents and the ability to assign civil and criminal penalties to businesses not in compliance.

If a business refused or failed to share business records with the city, it could be charged with a Class C misdemeanor.

While unionized employees were exempt and able to negotiate their own benefits, non-union employees were prohibited from doing so and were subject to the terms in the ordinance.

Once adopted by the city, the ordinance was challenged by a coalition of businesses and business associations represented by the Texas Public Policy Foundation. Among other things, the lawsuit alleged that the Texas Legislature had already passed legislation that prohibited local governments from enacting mandates requiring private businesses to provide paid sick leave benefits, the Texas Minimum Wage Act (TMWA). Specifically, the TMWA adopts the federal minimum wage and specifically preempts local regulations that require employers to pay their employees more than the federal minimum wage. The act specifies that "the minimum wage provided by this chapter supersedes a wage established in an ordinance, order, or charter provision governing wages in private employment" (Texas Labor Code Sec. 62.0515 (a)). Since the Texas Constitution prohibits local regulations from containing "any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State," such local regulations would be preempted by state law (Tex. Const., Art 11, Sec. 5).

The Third Court of Appeals emphasized this rationale in holding that "the plain language of the TMWA preempts the Ordinance and, as a result, the Ordinance violates the Texas Constitution's mandate that no city ordinance 'shall contain any provision inconsistent with the … general laws enacted by the Legislature of this State" (*Tx. Assn. of Bus. et al. v. City of Austin,* 2018).

As a result, this ordinance was ruled unconstitutional and was never actually implemented. The city of Austin appealed the court's ruling, but on June 5, 2020, the Texas Supreme Court declined to hear the appeal, thus upholding the decision by the lower court. (*City of Austin v. Texas Association of Business, et al.,* 2020).

Despite these court rulings, a number of cities have continued to adopt and consider ordinances on other employment matters.

Nondiscrimination Ordinances

Some cities have begun proposing ordinances prohibiting discrimination in employment for certain individuals and classes often already protected by federal law. These ordinances include race, gender, sexual orientation, and even hair discrimination (Office of Civil Rights, 2022). As with other ordinances, there is no local basis for such laws, and they either conflict with or replicate existing federal and state laws. If individuals or classes of individuals need protection from discrimination, it is a statewide or federal issue to be determined by the legislative branch of the state or federal government, not local authorities.

The U.S. Department of Labor (DOL) and the U.S. Equal Employment Opportunity Commission (EEOC) have exhaustive regulations prohibiting discrimination in hiring, pay, and benefits (DOL, n.d.; EEOC, 2022). The EEOC's webpage lists 13 enumerated types of discrimination the agency investigates. These include those based on protections enumerated in the U.S. Constitution and federal statutes such as race, sex, religion, age, and disability, but also others such as discrimination against veterans or immigration status.

In addition to federal law, the state of Texas, like many states, has additional enumerated protections against employment discrimination in its laws as overseen by the Texas Workforce Commission (see Texas Labor Code, Chapter 21 – Employment Discrimination). The state and federal governments have the authority to protect these rights and enforce the laws against discrimination, and such laws preempt any local law that is in conflict. Any proposed local ordinance addressing discrimination on any basis is already adequately covered by federal and state laws.

Workplace Safety Ordinances

Local governments have also adopted ordinances dealing with safety standards at workplaces within the city. For instance, the city of Austin adopted an ordinance specifying the length and frequency of rest breaks at certain construction sites (City of Austin, 2010). While the safety of employees is certainly important, federal law already provides lengthy and specific workplace safety standards through the Occupational Safety and Health Administration (OSHA, n.d.). The OSHA Act provides numerous standards to be applied by all workplaces broadly as well as those workplaces in specific industries or having specific workplace hazards. Federal law preempts any conflicting laws by states or local governments, but state law may expand on OSHA standards as long as they are not in conflict with the federal standard. Given the length and complexity of these standards, any attempts by local jurisdictions to impose workplace safety standards are more likely to run into conflict with federal or state standards and be unenforceable. A state may add to the

federal standards with approval from OSHA, but Texas has not chosen to do so. As noted above, local municipalities in Texas are prohibited by state law from adopting ordinances that are in conflict or inconsistent with state law. Any attempts to adopt safety standards that are in addition to those adopted by OSHA should be proposed by the state not by local jurisdictions.

In addition to adopting standards for workplace safety, OSHA inspects worksites and issues penalties on businesses that fail to follow OSHA regulations for safe workplaces. Despite having a varied and diversified economy with many workplaces and workers engaged in relatively dangerous industries, Texas has a safety record that is better than the national average, as measured by its workplace injury rate that is well below the national average. In 2020, the most recent year of OSHA injury data reported by the Texas Department of Insurance, Division of Workers Compensation, Texas had an occupational injury and illness rate of 2.0 per 100 full-time workers, compared to the national average of 2.7 per 100 full-time workers (TDI, 2021). Both numbers were down slightly from the previous year.

Adding local ordinances would provide no added benefits and only add confusion and further costs to businesses already subject to significant regulatory oversight by federal and state agencies.

Mask Mandates

Although Texas, like most states, allowed mask mandates to be imposed by local governments during the early stages of the COVID-19 pandemic, in May 2021, Gov. Abbott issued an executive order prohibiting governmental entities in Texas, including counties, cities, school districts, public health authorities, or government officials, from requiring or mandating mask-wearing (Exec. Order No. GA-36, 2021).

A number of local jurisdictions challenged the order on various grounds, and the appeals have bounced around the state and federal courts with varying decisions from upholding the governor's order banning mask mandates to ruling that the governor lacks such authority. On December 21, 2021, the Fifth U.S. Circuit Court of Appeals upheld the governor's order banning mask mandates and ruled that the order was not in violation of the Americans with Disabilities Act, one of the challenges used by the various plaintiffs (*E.T. v. Paxton*, 2021). Thus, the executive order stands while the other appeals continue through the courts.

The number of local ordinances and challenges on various grounds further add confusion and costs, which could be avoided with a statewide standard and preemption of local ordinances.

Vaccine Mandates

While vaccine mandates imposed by local government have been less prevalent than mask mandates, at least in Texas, proposals to impose such mandates at the federal level were recently affected by a decision from the U.S. Supreme Court. In a case brought by the National Federation of Independent Business and other businesses, the U.S. Supreme Court overturned an OSHA rule requiring employers with more than 100 employees to mandate COVID vaccines for their employees (*National Federation of Independent Business, et al. v. Dept. of Labor, Occupational Safety and Health Administration*, 2022). The court found the rule was beyond the statutory authority granted to OSHA by Congress and, therefore, the requirement was found unlawful.

In its ruling, the court provided an important reminder on the limits of governmental authority, namely that such authority is limited to that provided by statutory provisions and the U.S. Constitution. Without even having to determine whether Congress had the constitutional authority to authorize such a mandate, the court found that the OSHA statute, no matter how broad, lacked any authority to impose such a mandate on businesses generally. In fact, OSHA's authority is to regulate the health and safety of the workplace and does not extend to broad health risks that exist outside the workplace and affect the public generally. The court did rule that such authority may exist in cases of workplaces with narrow and unique risks, such as certain healthcare providers.

While this case does not address the authority of other governmental institutions to adopt this or other mandates, it is an important check on such authority and a reminder to determine if and where such authority lies. There will likely be further attempts by the federal government to more narrowly craft such mandates in the future, but any attempts to do so at the local levels will certainly add further costs and confusion.

Texas Legislative Action

In 2021, the 87th Texas Legislature attempted to more specifically prohibit these local ordinances, but the bill failed to pass in the final days of the session. Senate Bill 14 (2021) had the support of Gov. Abbott and passed the House and the Senate with different language. A conference committee report again passed the Senate but failed to pass in the House. The bill would have prohibited local jurisdictions from adopting or enforcing an ordinance that exceeds or conflicts with federal or state law relating to employment

benefits and policies. The intent, as described, was to prevent local governments from micromanaging employment practices of businesses and their employees. SB14 was refiled in the 2nd called session and again passed the Senate but failed to pass in the House.

As was noted in the bill analysis,

> *certain local governments in Texas have begun passing ordinances regulating private employment practices, which results in a patchwork of different burdensome regulations that creates hurdles for employers of all sizes and confusion for their employees. It has been suggested that these policies are better left to the employer and, if necessary, the state and federal governments, for the sake of greater consistency and ease of compliance. S.B. 14 seeks to prohibit the adoption of these local ordinances and streamline statewide employment regulations to allow job creators to spend less time fighting through a web of red tape and focus more time investing in their employees, their businesses, and their communities.* (SB 14 Analysis, 2021)

Conclusion

Since the outbreak of COVID-19, many employers have been forced to adapt their workplaces and schedules. Some were even forced to shut down for some time either by direct government order or due to a lack of business, needed supplies, or employees.

In this environment, flexibility was key, not only for the prevention of the spread of the virus but also for businesses to survive by accommodating the needs of their customers and employees. At the same time, inflation and supply chain disruptions have pushed many businesses, especially small businesses, to cut costs and employees. Large numbers of employees have also left the workforce or are changing jobs for better wages or more flexible accommodations.

This is a challenging time for businesses and workers alike, but with added flexibility, both businesses and workers can evolve and prosper. Government intervention in employment practices, benefits, and workplace conditions, even if well-intentioned, does not accommodate needed flexibility and will frustrate necessary adjustments by imposing stringent conditions on both parties. This is true of governments at all levels, but even more so at local levels due to the sheer number of jurisdictions with varying requirements.

In most cases, local governments have no authority to impose regulations on employment practices and benefits. Such power rests constitutionally with the state and, in some cases, the federal government. In those cases where local jurisdictions such as home rule cities may possess the legal authority to impose these types of restrictions, and as more of these jurisdictions test their powers by adopting such ordinances, the state of Texas should prohibit and statutorily preempt these local ordinances and reassert its constitutional role of supremacy over local governments.

References

Alvarez, A. (2018, September 24). As more cities push for paid sick leave, states push back. *Stateline*, Pew Trusts. https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/09/24/as-more-cities-push-for-paid-sick-leave-states-push-back

Broughel, J., & McLaughlin, P. (2020). *Quantifying regulation in U.S. states with state regdata 2.0*. Mercatus Center, George Mason University. https://www.mercatus.org/publications/regulation/quantifying-regulation-us-states-state-regdata-20

City of Austin v. Texas Association of Business, et al., Orders Pronounced June 5, 2020, No. 19-0025, (Texas Supreme Court, June 2020). https://rilastagemedia.blob.core.windows.net/rila-web/rila.web/media/media/pdfs/rlc/rlc%20appellate%20briefs/2020/tx-business-supreme-court-of-texas-orders-06-05-2020.pdf

City of Austin Ordinance No. 20100729-047. (2010, July 29). https://www.austintexas.gov/edims/document.cfm?id=140407

City of Austin Ordinance No. 20180215-049. (2018, February 15). https://www.austintexas.gov/edims/document.cfm?id=293797

DeSilver, D. (2020, March 12). *As coronavirus spreads, which U.S. workers have paid sick leave – and which don't?* Pew Research Center. https://www.pewresearch.org/fact-tank/2020/03/12/as-coronavirus-spreads-which-u-s-workers-have-paid-sick-leave-and-which-dont

Dunn, M. (2022). *Demographic changes in employment during the COVID-19 pandemic*. U.S. Bureau of Labor Statistics. https://www.bls.gov/spotlight/2022/demographic-changes-in-employment-during-the-pandemic/pdf/demographic-changes-in-employment-during-the-pandemic.pdf

E.T., et.al. v. Ken Paxton, Order No. 21-51083 (U.S. Fifth Circuit Court of Appeals, Dec. 1, 2021) https://www.ca5.uscourts.gov/opinions/pub/21/21-51083-CV0.pdf

Exec. Order No. GA-36. Governor Greg Abbott. (2021, May 18). https://gov.texas.gov/uploads/files/press/EO-GA-36_prohibition_on_mandating_face_coverings_response_to_COVID-19_disaster_IMAGE_05-18-2021.pdf

Hall, J. (2019, May 9). The cost of turnover can kill your business and make things less fun. *Forbes*. https://www.forbes.com/sites/johnhall/2019/05/09/the-cost-of-turnover-can-kill-your-business-and-make-things-less-fun/

Leonhardt, M. (2022, Feb 23). Employers are upping pay and benefits to keep workers from resigning. Here are the perks workers want most. *Fortune*. https://fortune.com/2022/02/23/employers-increasing-pay-benefits-workers/

National Federation of Independent Business, et al. v. Dept. of Labor, Occupational Safety and Health Administration, Nos. 21A244 and 21A247 (U.S. Supreme Court Jan. 13, 2022). https://www.supremecourt.gov/opinions/21pdf/21a244_hgci.pdf

Office of Civil Rights. (2022, March 17). *Civil rights ATX: Discussing the CROWN Act in our community.* SpeakUp Austin! City of Austin. https://www.speakupaustin.org/civil-rights-atx-community-discussion-crown-act

Occupational Safety and Health Administration. (n.d.). *Regulations (standards – 29 CFR)*. U.S. Department of Labor. Retrieved March 29, 2022, from https://www.osha.gov/laws-regs/regulations/standardnumber/1910

Parker, K., & Horowitz, J. M. (2022, March 9). *Majority of workers who quit a job in 2021 cite low pay, no opportunities for advancement, feeling disrespected.* Pew Research Center. https://www.pewresearch.org/fact-tank/2022/03/09/majority-of-workers-who-quit-a-job-in-2021-cite-low-pay-no-opportunities-for-advancement-feeling-disrespected/

Rothwell, J., & Harlan, J. (2019). *Gig economy and self-employment report*. Gallup. https://quickbooks.intuit.com/content/dam/intuit/quickbooks/Gig-Economy-Self-Employment-Report-2019.pdf

SB 14. Enrolled. 87th Texas Legislature. Regular. (2021). https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB00014E.pdf

SB 14 Bill Analysis. Senate State Affairs Committee Report. 87th Texas Legislature. Regular. (2021). https://capitol.texas.gov/tlodocs/87R/analysis/pdf/SB00014H.pdf

Shirley, D. (2018, December 19). *Citizens of home rule cities in Texas possess the power to push for changes*. Randle Law Office Ltd., L.L.P. https://www.jgradyrandlepc.com/local-governmental-entities/citizens-home-rule-cities-texas/

Texas Ass'n of Business v. City of Austin, No. 03-18-445-CV, (Tex. App.-Austin Nov. 16, 2018) https://rilastagemedia.blob.core.windows.net/rila-web/rila.web/media/media/pdfs/rlc/rlc%20appellate%20briefs/2020/texas-association-of-business-et-al-state-of-texas-v-city-of-austin-decision.pdf

Texas Comptroller of Public Accounts. (n.d.). *Transparency, local government, Texas cities*. Retrieved March 2022, from https://comptroller.texas.gov/transparency/local/cities.php

Texas Department of Insurance. (2021, December 3). *Non-fatal occupational injury and illness data – BLS programs*. Retrieved March 29, 2022, from https://www.tdi.texas.gov/wc/safety/sis/nonfatalhomepag.html

U.S. Bureau of Labor Statistics. (n.d.). *Civilian labor force participation rate*. Retrieved March 29, 2022, from https://www.bls.gov/charts/employment-situation/civilian-labor-force-participation-rate.htm

U.S. Bureau of Labor Statistics. (2022a, May 11). *Consumer Price Index summary* [News release]. https://www.bls.gov/news.release/cpi.nr0.htm

U.S. Bureau of Labor Statistics. (2022b, March 29). *Job openings and labor turnover summary* [News release]. Retrieved March 29, 2022, from https://www.bls.gov/news.release/jolts.nr0.htm

U.S. Bureau of Labor Statistics. (2022c, March 9). *Job openings and labor turnover survey* [News release]. Retrieved March 29, 2022, from https://www.bls.gov/news.release/archives/jolts_03092022.htm

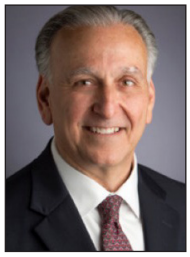
U.S. Department of Labor. (n.d.). *Equal employment opportunity*. Retrieved March 29, 2022, from https://www.dol.gov/general/topic/discrimination

U.S. Equal Employment Opportunity Commission. (n.d.). *Discrimination by type*. Retrieved March 29, 2022, from https://www.eeoc.gov/discrimination-type

U.S. Small Business Administration, Office of Advocacy. (2021). *2021 small business profile, Texas.* https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143722/Small-Business-Economic-Profile-TX.pdf

Notes

ABOUT THE AUTHOR



Rod Bordelon is a distinguished senior fellow, regulatory affairs, at Texas Public Policy Foundation. He is an attorney and regulatory and legislative affairs consultant in Austin, Texas, with over 30 years of experience in insurance, workers' compensation, and health law. He is an eleven-term gubernatorial appointee, former commissioner of workers' compensation, and former public insurance counsel. Bordelon is a graduate of the University of Texas at Austin and South Texas College of Law in Houston.

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