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Dallas city attorney responds to paid sick leave lawsuit, wants new judge in case



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Interim Dallas City Attorney Chris Caso wants a new federal judge to decide whether the paid sick leave ordinance is legal.

Caso on Tuesday filed a motion to move the case from the Eastern District to the Northern District Court of Texas in Dallas — which would replace U.S. District Court Judge Amos Mazzant with another randomly selected judge.

The filing Tuesday marked the city attorney's first public response to the lawsuit over the paid sick leave ordinance since two companies sued the city in federal court late July.



After the city passed an ordinance in the spring requiring companies that have employees in Dallas to provide paid sick leave, the two Collin County-based companies filed suit to push to stop the ordinance, which was implemented Aug. 1. The Eastern District includes Collin County.

Caso and assistant city attorneys on Tuesday also responded to the motion for a preliminary injunction and argued that the denial of sick leave to Dallas workers would cause more "irreparable injury" than any alleged harm to the companies that sued the city. Caso asked the judge for an extension to file a response to the main arguments in the complaint until Sept. 30.

"At this point, any temporary injunctive relief will only create confusion and could lead to a loss or suspension of accrued benefits for thousands of workers across the city," Caso wrote.

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Dallas is the first Texas city to have implemented its paid sick leave law. A lawsuit stopped a similar ordinance in Austin from taking effect, and San Antonio delayed implementation of its law until December because of a legal challenge in state court.

The Texas Public Policy Foundation and Texas Association of Businesses last year sued Austin, the first city in Texas to pass mandatory paid sick leave. A state appeals court in November favored businesses' argument that it violates the state's minimum wage act.

Legal experts have said they expect the Texas Supreme Court to hear the Austin case.

Robert Henneke, an attorney with the Texas Public Policy Foundation who represents the two companies who sued Dallas, said the city attorney has yet to acknowledge the decision by the appellate court in Austin.

He said the motion to transfer the case to a different court is the city's blatant attempt at "court shopping" to better the city's chances. The court has until late August to decide on the transfer.

"The city continues to reject the only case law that exists in Texas on this issue," Henneke said.

Two companies — ESI/Employee Solutions LP and Hagan Law Group LLC, which are based in Collin County — filed the federal lawsuit against the city two days before the ordinance was implemented Aug. 1.

contended that the ordinance violates the Texas constitution because it is inconsistent with the state's minimum wage law.

The ordinance requires that private employees who worked in Dallas at least 80 hours in a year accrue at least one hour of paid sick leave for every 30 hours worked. The Dallas City Council in a 10-4 vote approved the paid sick leave ordinance in April after labor groups pushed the law.

Attorneys have said they expect the paid sick leave lawsuit to face a tough battle in federal court, largely because of the precedent set by the decision on Austin's paid sick leave.

Texas Attorney General Ken Paxton also joined the businesses' lawsuit against Dallas earlier this month.

Kent Rutter, an appellate lawyer based in Houston, said he thinks the city is looking for a better shot at success with a different judge. The case had been assigned to Judge Amos Mazzant, whom Rutter described as "fair but conservative."

And the next one could either be equally as conservative or, if the city's lucky, more sympathetic to employees without sick leave, Rutter said.

"They're rolling the dice on a new judge," Rutter said.

In response to the request for a preliminary injunction, Caso said it's unlikely the companies that sued the city would face any repercussions of not complying with the law until April 2020, which is when the city will start to enforce the ordinance. Businesses can face up to a \$500 fine if the city's Office of Equity and Human Rights finds a violation.

Caso said ESI/Employee Solutions' allegations of harm also "rely on numerous questionable or faulty assumptions" on the direct impacts the ordinance would have on the business.

The city also argued that the denial of the ordinance causes harm to the city which incurred costs to implement it, and the public. That harm outweighs any potential injury to the plaintiffs, the city attorney said.

As evidence, Caso included a study by the Institute for Women's Policy Research, which relied on U.S. census data, that estimated about 300,000 workers don't have paid sick leave.



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