



Testimony

SBs 2485, 2486, 2487, and 2488 Testimony Before the Texas House Committee on State Affairs

by Shelby Sterling, Policy Analyst

Mr. Chairman and Members of the Committee:

My name is Shelby Sterling, and I am the policy analyst for the Think Local Liberty project at the Texas Public Policy Foundation. Thank you for the opportunity to address the committee. I am testifying in support of Senate Bills [2485](#), [2486](#), [2487](#), and [2488](#).

As engrossed by the Senate, SBs 2485-2488 prohibit local ordinances that regulate private employment practices. In particular, this legislative package allows private employers and employees the ability to operate in an economy where they can freely negotiate the terms of employment, and it ensures consistency and uniformity in employment regulations.

Texas has often been regarded as a business-friendly state; however, in recent years, local governments have begun over-regulating by implementing mandates that hinder the private industry. These city mandates deviate from the foundation of success in our state.

Throughout the state, cities are beginning to interject themselves in the employer-employee relationship by way of local regulation. Mandatory paid sick leave is the most recent example of this, and it has sparked a broader conversation on the proper role of city governance.

Last year, some city governments, like Austin and San Antonio, began passing one-size-fits-all mandates that forced private employers to offer specific benefits to full- and part-time employees. These new rules effectively limited the benefit choices available to employees that best work for them. By forcing employers to offer specific incentives, like mandatory paid sick leave, workers have less freedom to negotiate for more attractive benefits like flex time, vacation, higher pay, increased hours, or bonuses.

Mandating terms of employment is government overreach into private affairs and excessive interference in the employer-employee relationship. Terms of employment are best left for negotiation between the employer and employee without one-size-fits-all mandates from the city that may not be in either party's best interest. The Legislature should follow suit and leave the terms and conditions of employment for an employer and employee to negotiate.

Senate Bills 2485, 2486, 2487, and 2488 present statewide solutions to rein in local governments by specifically preempting local governments from enacting any rule or regulation that dictates the terms and conditions of employment. Each of these bills takes one common sense step toward liberty and serves as smart policy for Texas.

For all of the following reasons, we strongly support Senate Bills 2485, 2486, 2487, and 2488. Employers and employees should have the freedom to negotiate benefits without local governments stepping in to choose for them. This package of legislation will ensure consistency and uniformity in employment regulations and allow private employers and employees to operate in an economy where they can freely negotiate the terms of employment.

Senate Bill 2485

As engrossed by the Senate, SB 2485 would prohibit local regulations of employment leave that attempt to require private employers to provide their employees certain benefits like health insurance, life insurance, and retirement.

Mandating an employer to provide employment incentives such as health insurance or retirement funds is not only burdensome on the business but will have unintended consequences on the employees and consumers as well.

One-size-fits-all mandates hurt employers by forcing them to absorb higher costs without an increase in output as well as loading them down with time-consuming recordkeeping requirements. With a costly policy change and no increased profit, employers are forced to shift existing benefit dollars away from employees just to comply with the new regulations. Such mandates also harm employees by depriving them of benefit options, wage gains, and more work hours available. Lastly, consumers are inevitably made to pay higher prices for goods and services and left with fewer business options when some close due to the cost of new requirements.

Texas should fight to maintain its business-friendly reputation by ensuring that an employer and an employee's freedom to negotiate is protected. Protecting the employer-employee relationship is one way to ensure that Texans continue to prosper. Employees should remain free to negotiate for the incentives they deem more important. Reining in local governments and their overreaching mandates that endanger this freedom of the employee is imperative.

Senate Bill 2486

The Senate engrossed version of SB 2486 seeks to preempt local ordinances that regulate private employment practices, particularly relating to the regulation of scheduling practices. If finally passed by the Legislature, the bill would enhance employment standards in Texas by ending the inconsistent patchwork of regulations that have made it difficult to attract businesses and create jobs.

Predictive scheduling, also referred to as fair scheduling, would require businesses to provide employees with their schedules a certain amount of days in advance. There are different versions of predictive scheduling laws that cities have adopted, each with varying components. However, one consistent component remains in each law: penalty provisions.

Generally, if an employer violates the advance notice requirement for an employee, that employer will be required to pay costly penalties for those shifts worked without advance notice. Some ordinances require the employer to pay the employee time and a half. Others require the employer to pay the employee compensation when they are "on call" but not needed.

Mandating predictive scheduling is another example of government overreach into the private affairs of the employer-employee relationship. It is another component that should be left for negotiation between an employer and employee because one-size-fits-all mandates may not be in either party's best interest.

For example, a study of San Francisco's Formula Retail Scheduling Ordinance indicated that the ordinance was actually doing harm to workers. The study found that because of the ordinance: 21 percent of employers offer fewer part-time positions, 19 percent of employers schedule fewer employees per shift, and 17 percent of employers offer fewer jobs across the board to both full- and part-time employees.

There are also unintended consequences of scheduling laws. First, employers may be more likely to leave slots open by not scheduling anyone, which allows them to avoid paying any fines that may arise. Secondly, scheduling laws take away the freedom of workers to participate in commonplace practices like shift swapping. Although many of the laws do not directly prohibit shift swapping, they discourage it because documenting shift swaps can become extremely difficult. Thus, scheduling laws are harming the flexibility of employees. Lastly, companies still have the ability to outsource for on-demand talent, which allows the employer to avoid any fines associated with changing schedules.

San Francisco is not the only city to implement a predictive scheduling law. New York City passed a scheduling ordinance in 2018; however, that law currently faces a lawsuit by a group of business associations. Similar to the lawsuit against the city of Austin, businesses are voicing their objections to these burdensome local government laws that are causing a regulatory nightmare that will cause them to shift funds from workers and consumers just to comply with the new laws.

While predictive scheduling laws have appeared in just four cities and one state, several other states have taken precautionary measures by passing state laws that prevent cities from adopting such mandates, including Iowa, Alabama, and Georgia. After Austin passed its mandatory paid sick leave ordinance, rumors circled within the business community that the city council was also considering an ordinance regulating predictive scheduling.

Texas should follow this preemption trend to ensure that the rights of employers and employees are protected. No one should have their freedoms infringed upon, and everyone should be free to negotiate what's best for their particular situation.

Senate Bill 2487

As engrossed by the Senate, SB 2487 would prohibit local regulations that require private employers to provide their employees sick leave and employment leave.

Since early 2018, three Texas cities—Austin, San Antonio, and Dallas—have passed one-size-fits-all mandates that force private employers to offer specific benefits to full- and part-time employees. By forcing employers to offer specific incentives, the mandates force them to shift the cost burden from benefits they voluntarily offered and take away other incentives workers may have found more appealing like flex time or vacation.

Mandating paid sick leave is simply government overreach into private affairs and excessive interference in the employer-employee relationship. This push is neither popular nor effective. WPA polling showed that *58 percent* 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 percent*) 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 employment contract...”

Mandated leave policies are best negotiated between employers and employees because any government mandate may not be in the best interest of either party. The Legislature should follow suit and leave paid sick leave for an employer and employee to negotiate as a component in the compensation package.

SB 2487 takes aim at the patchwork quilt of local employment regulations throughout the state and would ensure that employees and employers would maintain their freedom to negotiate.

Senate Bill 2488

The Senate engrossed version of SB 2488 would amend current law to prohibit local “Ban the Box” and “Fair Chance” hiring ordinances. Pursuant to the bill, local governments will be barred from enacting a law that prohibits, limits, or regulates a private employer’s ability to look into a prospective employee’s criminal history when considering them for a job.

Local “Ban the Box” and “Fair Chance” hiring ordinances negatively impact private citizens. At the Texas Public Policy Foundation, it has always been our position to advocate strongly for reentry programs and policy that help ex-offenders break the cycle of incarceration. However, these local ordinances thrust burdensome regulations on private businesses while providing no return on public safety or successful reentry.

In fact, a significant body of research has demonstrated that Fair Chance hiring practices actually hurt the chances that minority groups will be called back for secondary interviews or get positions of employment. By placing such restrictions on private businesses, these regulations have deep effects throughout the entire state. An employer should have the ability to know who they are hiring, especially if the employee's criminal history could be damaging for the operation of the business. Restricting employers from considering criminal history also places heavy burdens on small businesses while also opening up the cost of liability.

Local governments should not have the ability to interject themselves into the employer-employee relationship. The employer should have the right to know who their employees are. Local overregulation violates the employers' and employees' freedom to contract.

A statewide solution is needed so that Texas employers are not burdened by a patchwork of different regulations and they are left to freely negotiate the terms of employment. SB 2488 attempts to rein in local governments by specifically preempting them from enacting any rule or regulation that prohibits private employers from considering an applicant's or employee's criminal history for employment. This bill takes one common sense step toward liberty and serves as smart policy for reentry programs.

Thank you for your time and consideration. I am happy to answer any questions you may have. ★

ABOUT THE AUTHOR



Shelby Sterling, J.D., is a policy analyst for the Think Local Liberty project at Texas Public Policy Foundation. She was previously an intern in the Foundation's Center for the American Future.

Sterling has a J.D. from Texas A&M University School of Law in Fort Worth. She participated in the law school's residency externship program and graduated with a concentration in public policy. Sterling received her B.A. in Letters from the University of Oklahoma, a combination study of philosophy, history, and literature on the U.S. Constitution and the Founding Fathers.

About Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute. The Foundation promotes and defends liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by thousands of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

