

By: Reynolds

H.B. No. 221

A BILL TO BE ENTITLED

AN ACT

relating to requiring certain employers to provide paid sick leave to employees; providing administrative and civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Labor Code, is amended by adding Chapter 83 to read as follows:

CHAPTER 83. EARNED PAID SICK LEAVE

Sec. 83.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Workforce Commission.

(2) "Employee" means a person employed by an employer.

(3) "Employer" means a person who is engaged in an industry affecting commerce and who employs one or more employees.

(4) "Family member" means:

(A) the employee's spouse;

(B) the employee's natural child, adopted child, stepchild, foster child, or legal ward;

(C) a child to whom the employee stands in loco parentis;

(D) a person to whom the employee stood in loco parentis when the person was a child;

(E) the employee's parent, foster parent, stepparent, adoptive parent, or legal guardian or conservator;

(F) a parent, foster parent, stepparent,

1 adoptive parent, or legal guardian or conservator of the employee's
2 spouse;

3 (G) the employee's grandparent or
4 step-grandparent;

5 (H) the grandparent or step-grandparent of the
6 employee's spouse;

7 (I) the employee's brother or sister of the whole
8 or half blood or by adoption;

9 (J) a brother or sister of the whole or half blood
10 or by adoption of the employee's spouse;

11 (K) the employee's stepbrother or stepsister;

12 (L) a stepbrother or stepsister of the employee's
13 spouse;

14 (M) the employee's foster brother or sister;

15 (N) a foster brother or sister of the employee's
16 spouse;

17 (O) the employee's grandchild or
18 step-grandchild;

19 (P) a grandchild or step-grandchild of the
20 employee's spouse;

21 (Q) a person for whom the employee is responsible
22 for providing or arranging care; or

23 (R) a person related to the employee by
24 consanguinity or affinity who lives in the employee's household.

25 (5) "Family violence" has the meaning assigned by
26 Section 71.004, Family Code.

27 (6) "Harassment" means any conduct that constitutes an

1 offense under Section 42.07, Penal Code.

2 (7) "Household" has the meaning assigned by Section
3 71.005, Family Code.

4 (8) "Sexual abuse" means any conduct that constitutes
5 an offense under Section 21.02, 21.11, or 25.02, Penal Code.

6 (9) "Sexual assault" means any conduct that
7 constitutes an offense under Section 22.011 or 22.021, Penal Code.

8 (10) "Stalking" means any conduct that constitutes an
9 offense under Section 42.072, Penal Code.

10 Sec. 83.002. APPLICABILITY OF CHAPTER. This chapter does
11 not apply to:

12 (1) an employee who is entitled to unemployment
13 benefits or allowances under the Railroad Unemployment Insurance
14 Act (45 U.S.C. Section 351 et seq.); or

15 (2) an employer who is an agency of the federal
16 government.

17 Sec. 83.003. PAID SICK LEAVE REQUIRED. Each employer shall
18 provide paid sick leave annually to each employee in this state
19 under the terms of this chapter.

20 Sec. 83.004. PAID SICK LEAVE ACCRUAL AND CARRYOVER. (a)
21 Paid sick leave under this chapter accrues beginning on the date of
22 hire at a rate of one hour of paid sick leave for each 30 hours
23 worked by an employee.

24 (b) Each employee is entitled to carry over unused paid sick
25 leave from the current calendar year to the following calendar year
26 unless the employer elects to pay an employee for unused sick leave
27 at the end of the calendar year and make paid sick leave available

1 at the beginning of the next calendar year as provided by Section
2 83.005(b).

3 (c) Sick leave hours carried over from a previous calendar
4 year must be immediately available to the employee in the following
5 calendar year.

6 Sec. 83.005. ENTITLEMENT TO USE PAID SICK LEAVE;
7 LIMITATIONS. (a) An employee is entitled to use accrued paid sick
8 leave under this chapter 60 calendar days after the date of hire,
9 unless the employer agrees to an earlier date.

10 (b) An employer may make immediately available to an
11 employee at the beginning of a year, quarter, or other period the
12 entire amount of paid sick leave that the employee is expected to
13 accrue during the year, quarter, or other period.

14 (c) At the employer's discretion, an employer may loan paid
15 sick leave time to an employee in advance of accrual by the
16 employee.

17 (d) Unless an employee policy or collective bargaining
18 agreement provides for the payment of accrued fringe benefits on
19 termination, an employee is not entitled to payment of unused
20 accrued paid sick leave under this chapter on termination of
21 employment.

22 Sec. 83.006. EMPLOYER COMPLIANCE. An employer is
23 considered to be in compliance with this chapter if the employer
24 offers one or more other types of paid leave that:

25 (1) may be used for the purposes described by this
26 chapter; and

27 (2) accrues at a rate equal to or greater than the rate

1 described by Section 83.004.

2 Sec. 83.007. PAY RATE FOR SICK LEAVE. (a) Each employer
3 shall pay each employee for paid sick leave time taken at a pay rate
4 equal to the normal hourly wage for that employee.

5 (b) For purposes of Subsection (a) and Section 83.004, an
6 employee who is exempt from the overtime requirements under Section
7 13(a)(1), Fair Labor Standards Act of 1938 (29 U.S.C. Section
8 213(a)(1)), is presumed to work 40 hours each week unless the
9 employee's regular workweek is less than 40 hours.

10 Sec. 83.008. USE OF PAID SICK LEAVE. (a) An employee may
11 use paid sick leave accrued under this chapter for:

12 (1) the employee's mental or physical illness, injury,
13 or health condition;

14 (2) the medical diagnosis, care, or treatment of the
15 employee's mental or physical illness, injury, or health condition;

16 (3) preventive medical care for the employee;

17 (4) the employee's family member's mental or physical
18 illness, injury, or health condition;

19 (5) the medical diagnosis, care, or treatment of the
20 employee's family member's mental or physical illness, injury, or
21 health condition; or

22 (6) preventive medical care for the employee's family
23 member.

24 (b) An employee who is or whose family member is a victim of
25 family violence, sexual assault, sexual abuse, stalking, or
26 harassment may use paid sick leave accrued under this chapter:

27 (1) for medical care or psychological or other

1 counseling for physical or psychological injury or disability;
2 (2) to obtain services from a victim services
3 organization;
4 (3) to relocate due to the family violence, sexual
5 assault, sexual abuse, stalking, or harassment; or
6 (4) to participate in a legal proceeding or
7 court-ordered requirement relating to the family violence, sexual
8 assault, sexual abuse, stalking, or harassment.

9 (c) An employee may use paid sick leave to attend a meeting
10 at a child family member's school.

11 (d) An employee may use paid sick leave while the employee's
12 place of business or the school or child care facility of the
13 employee's child family member is closed due to a public health
14 emergency.

15 (e) An employee may not use paid sick leave in increments of
16 less than one hour.

17 (f) An employer may not require an employee to find another
18 employee to work during the time the employee intends to use paid
19 sick leave as a condition of using paid sick leave.

20 Sec. 83.009. NOTICE TO EMPLOYER. (a) If an employee's need
21 to use paid sick leave under this chapter is foreseeable, an
22 employer may require advance notice of the intention to use paid
23 sick leave.

24 (b) If an employee's need for paid sick leave is not
25 foreseeable, an employer may require the employee to give notice of
26 the employee's intention to use paid sick leave under this chapter
27 as soon as practicable.

1 Sec. 83.010. EMPLOYER RECORDS. An employer shall retain
2 records that document the amount of paid sick leave accrued and
3 taken by each employee. The records must be maintained for at least
4 three years.

5 Sec. 83.011. DOCUMENTATION. (a) For paid sick leave of
6 three or more consecutive days, an employer may require reasonable
7 documentation that the leave is being taken for a purpose permitted
8 under this chapter.

9 (b) If paid sick leave is taken for a reason described by
10 Section 83.008(a), documentation signed by a health care provider
11 who is treating the employee or the employee's family member
12 indicating the need for the number of days of the leave is
13 considered to be reasonable documentation. An employer may not
14 require that the documentation explain the nature of the illness,
15 injury, or health condition.

16 (c) If paid sick leave is taken for a reason described by
17 Section 83.008(b), reasonable documentation includes:

18 (1) a copy of a court document;

19 (2) an incident report or other record maintained by a
20 law enforcement agency or official; or

21 (3) documentation from a victim's assistance counselor
22 from a state or local agency or other entity.

23 (d) An employer may not require the documentation under
24 Subsection (c) to include details of the family violence, sexual
25 assault, sexual abuse, stalking, or harassment, including any
26 references to specific acts.

27 (e) Documentation and information provided to an employer

1 are confidential.

2 (f) If an employer requires documentation under this
3 section, the employer is responsible for the cost of obtaining
4 copies of that documentation.

5 Sec. 83.012. NOTICE TO EMPLOYEES. (a) Each employer
6 subject to this chapter shall, at the time of hiring, provide notice
7 in both English and Spanish to each employee:

8 (1) of the employee's entitlement to paid sick leave,
9 the amount of paid sick leave provided to employees, and the terms
10 under which leave may be used under this chapter;

11 (2) that retaliation by the employer against the
12 employee for requesting or using paid sick leave to which the
13 employee is entitled is prohibited; and

14 (3) that the employee has a right to file a complaint
15 with the commission or bring a civil action for damages for any
16 violation of this chapter.

17 (b) An employer may comply with this section by displaying a
18 poster in a conspicuous place, accessible to employees, at the
19 employer's place of business that contains in both English and
20 Spanish the information required by this section.

21 (c) The notice under this section must also be provided in a
22 language other than English or Spanish if that language is the first
23 language spoken by at least 30 percent of the employer's workforce.

24 (d) The commission by rule shall prescribe the form and
25 content of the notice required under this section.

26 (e) The commission may adopt rules to establish additional
27 requirements concerning the means by which employers provide notice

1 required under this section.

2 Sec. 83.013. BREAK IN SERVICE. (a) Termination of an
3 employee's employment by an employer, regardless of whether
4 voluntary or involuntary, is considered a break in service for
5 purposes of this chapter.

6 (b) An employee who is subsequently rehired by the employer
7 following a break in service:

8 (1) begins to accrue paid sick leave under this
9 chapter; and

10 (2) is not entitled to any unused hours of paid sick
11 leave that had accrued before the employee's break in service,
12 unless the employee is rehired within 30 days of separation or the
13 employer agrees to reinstate some or all of the employee's
14 previously accrued paid sick leave.

15 Sec. 83.014. TRANSFER OF EMPLOYEE. (a) The transfer of an
16 employee to a separate division, entity, or location of the same
17 employer is not considered to be a break in service for purposes of
18 this chapter.

19 (b) Following a transfer described by Subsection (a), the
20 transferred employee is entitled to:

21 (1) retain all accrued paid sick leave under this
22 chapter; and

23 (2) immediately access the retained paid sick leave
24 time without any waiting period, except that the employee remains
25 subject to any remaining period of the initial waiting period
26 described by Section 83.005(a), if applicable.

27 Sec. 83.015. SUCCESSOR EMPLOYER. If an employer succeeds

1 or takes the place of an existing employer, employees of the former
2 employer who are employed by the successor are entitled to:

3 (1) retain all accrued paid sick leave under this
4 chapter; and

5 (2) immediately access the retained paid sick leave
6 time without any waiting period.

7 Sec. 83.016. LIMITATIONS OF CHAPTER. This chapter does
8 not:

9 (1) prevent an employer from providing more paid sick
10 leave than is required under this chapter;

11 (2) prohibit an employer that provides paid leave in
12 addition to the paid sick leave required under this chapter from
13 restricting the purposes for which an employee may take that
14 additional leave; or

15 (3) diminish any rights provided to any employee under
16 a collective bargaining agreement.

17 Sec. 83.017. COLLECTIVE BARGAINING AGREEMENT. A collective
18 bargaining agreement may waive the requirements of this chapter by
19 clear and unambiguous language within the agreement.

20 Sec. 83.018. RETALIATION PROHIBITED. An employer may not
21 take retaliatory personnel action or otherwise discriminate
22 against an employee because the employee:

23 (1) requests or uses paid sick leave in accordance
24 with this chapter; or

25 (2) files a complaint with the commission alleging the
26 employer's violation of this chapter.

27 Sec. 83.019. COMPLAINT; HEARING; PENALTY. (a) Any

1 employee aggrieved by a violation of this chapter may file a claim
2 with the commission in the manner prescribed by Subchapter D,
3 Chapter 61.

4 (b) On receipt of a complaint, the commission shall
5 investigate and dispose of the complaint in the same manner as a
6 wage claim under Subchapter D, Chapter 61.

7 (c) An employer who is found by the commission, by a
8 preponderance of the evidence, to have violated a provision under
9 this chapter is liable to the commission for an administrative
10 penalty.

11 (d) The commission may award the employee all appropriate
12 relief, including payment for used paid sick leave, rehiring or
13 reinstatement to the employee's previous job, payment of back
14 wages, and reestablishment of employee benefits for which the
15 employee otherwise would have been eligible if the employee had not
16 been subject to retaliatory personnel action or other
17 discrimination.

18 (e) A party may appeal a final decision of the commission by
19 filing suit in district court.

20 Sec. 83.020. CIVIL PENALTY. An employer who wilfully
21 violates this chapter is liable for a civil penalty not to exceed
22 \$100 for each violation. The attorney general may bring an action
23 to collect a civil penalty under this chapter. Civil penalties
24 assessed under this section shall be deposited in the general
25 revenue fund.

26 Sec. 83.021. CIVIL ACTION BY EMPLOYEE. (a) An employee
27 aggrieved by a violation of this chapter may bring a civil action to

1 enforce rights protected by this chapter, including an action for
2 appropriate injunctive relief, in the district court in the county
3 in which the alleged violation occurred or in which the alleged
4 violator's residence or principal place of business is located.

5 (b) An action under this section must be brought not later
6 than the second anniversary of the date of the violation.

7 (c) The employer of an employee who prevails in a civil
8 action under this section is liable to the affected employee for
9 damages equal to the amount of any wages, salary, employment
10 benefits, or other compensation denied or lost to the employee by
11 reason of the violation or, if wages, salary, employment benefits,
12 or other compensation has not been denied or lost, any actual
13 monetary losses sustained by the employee as a direct result of the
14 violation.

15 (d) An employer described by Subsection (c) is also liable
16 for equitable relief as appropriate, including reinstatement and
17 promotion.

18 (e) In addition to any judgment awarded to an employee, the
19 court may require the employer to pay reasonable attorney's fees,
20 reasonable expert witness fees, and other costs.

21 Sec. 83.022. INFORMATION FROM AND OUTREACH BY COMMISSION.

22 (a) The commission shall make available to the public on the
23 commission's Internet website information regarding:

24 (1) the requirements of and the rights and remedies
25 under this chapter; and

26 (2) best practices for employers with respect to paid
27 sick leave.

1 (b) The commission shall develop a pamphlet containing the
2 information provided under Subsection (a) and make the pamphlet
3 available at no cost for distribution at child care facilities,
4 health care facilities, family violence shelters, and other
5 community centers.

6 (c) The commission shall make the information under
7 Subsections (a) and (b) available in both English and Spanish.

8 (d) The commission shall conduct additional public outreach
9 efforts to inform employees and the public about this chapter.

10 SECTION 2. (a) The change in law made by this Act applies to
11 an employee hired on or after March 1, 2022. For an employee hired
12 before March 1, 2022, paid sick leave under Chapter 83, Labor Code,
13 as added by this Act, begins to accrue on that date, and the
14 employee may begin to use the paid sick leave 90 calendar days after
15 that date, unless the employer agrees to an earlier date.

16 (b) Chapter 83, Labor Code, as added by this Act, does not
17 preempt or override the terms of any collective bargaining
18 agreement effective before March 1, 2022.

19 SECTION 3. Not later than February 1, 2022, the Texas
20 Workforce Commission shall:

21 (1) prescribe the form and content of the notice
22 required by Section 83.012(a), Labor Code, as added by this Act;

23 (2) post on the commission's Internet website the
24 information required by Section 83.022(a), Labor Code, as added by
25 this Act; and

26 (3) adopt rules necessary to implement Chapter 83,
27 Labor Code, as added by this Act.

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1 SECTION 4. This Act takes effect on the 91st day after the
2 last day of the legislative session.