

By: Collier

H.B. No. 404

A BILL TO BE ENTITLED

AN ACT

relating to requiring certain employers to provide paid leave to employees; providing civil and administrative 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 LEAVE

Sec. 83.001. DEFINITIONS. In this chapter:

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

(2) "Employee" means a person employed by an employer. The term does not include a person who is:

(A) an unpaid volunteer;

(B) an independent contractor; or

(C) a participant in a work-study program that provides employment opportunities for compensation or vocational training to students attending a secondary or post-secondary educational institution.

(3) "Employer" means a person who is engaged in an industry affecting commerce and who has 50 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

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

1 (1) an employee who is:

2 (A) entitled to unemployment benefits or
3 allowances under the Railroad Unemployment Insurance Act (45 U.S.C.
4 Section 351 et seq.);

5 (B) covered under the Railway Labor Act (45
6 U.S.C. Section 151 et seq.); or

7 (C) employed by the employee's parent, spouse, or
8 child; or

9 (2) an employer who is:

10 (A) a state agency or political subdivision, as
11 those terms are defined by Section 21.002;

12 (B) an agency of the federal government; or

13 (C) a charitable or religious organization
14 exempt from taxation under Section 501(c), Internal Revenue Code of
15 1986.

16 Sec. 83.003. PAID LEAVE REQUIRED. (a) Each employer shall
17 provide paid leave annually to each employee in this state under the
18 terms of this chapter.

19 (b) Notwithstanding Subsection (a), an employer with not
20 more than 75 employees is not required to provide paid leave under
21 this chapter before the second anniversary of the date the employer
22 hires the employer's first employee.

23 Sec. 83.004. PAID LEAVE ACCRUAL AND CARRYOVER. (a) Paid
24 leave under this chapter accrues beginning on the date of hire:

25 (1) at a rate of one hour of paid leave for each 30
26 hours worked by an employee; and

27 (2) up to a maximum of 40 hours per calendar year.

1 (b) Each employee is entitled to carry over not more than 40
2 unused accrued hours of paid leave from the current calendar year to
3 the following calendar year unless the employer elects to:

4 (1) pay the employee for any unused paid leave at the
5 end of the year at the rate described by Section 83.007; or

6 (2) make available to the employee at the beginning of
7 the year the entire amount of paid leave that the employee is
8 expected to accrue during the year as provided by Section
9 83.005(d).

10 (c) Leave hours carried over from a previous calendar year
11 must be immediately available to the employee in the following
12 calendar year.

13 Sec. 83.005. ENTITLEMENT TO USE PAID LEAVE; LIMITATIONS.

14 (a) An employee is entitled to use accrued paid leave under this
15 chapter 90 calendar days after the date of hire, unless the employer
16 agrees to an earlier date.

17 (b) An employee is not entitled to use accrued paid leave
18 under this chapter if the employee did not work an average of 18 or
19 more hours a week for the employer in the most recent complete
20 calendar year.

21 (c) An employee is not entitled to use more than 40 hours of
22 accrued paid leave under this chapter in any calendar year.

23 (d) An employer may make immediately available to an
24 employee at the beginning of a year, quarter, or other period the
25 entire amount of paid leave that the employee is expected to accrue
26 during the year, quarter, or other period.

27 (e) At the employer's discretion, an employer may loan paid

1 leave time to an employee in advance of accrual by the employee.

2 (f) On the mutual consent of the employee and employer, an
3 employee who chooses to work additional hours or shifts during the
4 same or following pay period, instead of hours or shifts missed,
5 does not use accrued paid leave.

6 (g) Unless an employee policy or collective bargaining
7 agreement provides for the payment of accrued fringe benefits on
8 termination, an employee is not entitled to payment of unused
9 accrued paid leave under this chapter on termination of employment.

10 Sec. 83.006. EMPLOYER COMPLIANCE. (a) An employer is
11 considered to be in compliance with this chapter if the employer
12 offers one or more other types of paid leave that:

13 (1) may be used for any purpose; and

14 (2) accrues at a rate equal to or greater than the rate
15 described by Section 83.004.

16 (b) For the purposes of this section, other types of paid
17 leave include paid vacation, personal days, and paid time off.

18 Sec. 83.007. PAY RATE FOR LEAVE. (a) Each employer shall
19 pay each employee for paid leave time taken at a pay rate equal to
20 the normal hourly wage for that employee.

21 (b) For any employee whose hourly wage varies depending on
22 the work performed by the employee, the normal hourly wage is
23 considered to be the average hourly wage of the employee in the pay
24 period preceding the pay period in which the employee uses paid
25 leave.

26 (c) If an employee receives gratuity in the course of
27 employment to the extent that the gratuity is considered wages in

1 the computation of taxes under the Federal Unemployment Tax Act (26
2 U.S.C. Section 3301 et seq.), the employee's normal hourly wage may
3 not be less than the amount required by Section 62.051.

4 (d) If the employee's normal hourly wage cannot be
5 determined, the employer shall pay the employee for leave under
6 this chapter at an hourly wage that may not be less than the amount
7 required by Section 62.051.

8 Sec. 83.008. USE OF PAID LEAVE. An employee may use paid
9 leave accrued under this chapter for any purpose and is not required
10 to disclose to the employer the reason for taking leave.

11 Sec. 83.009. NOTICE TO EMPLOYER. (a) If an employee's need
12 to use paid leave under this chapter is foreseeable, an employer may
13 require advance notice of the intention to use paid leave under this
14 chapter but may not require the employee to give notice more than
15 seven days before the date the leave is to begin.

16 (b) If an employee's need for paid leave is not foreseeable,
17 an employer may require the employee to give notice of the
18 employee's intention to use paid leave under this chapter as soon as
19 practicable.

20 Sec. 83.010. NOTICE TO EMPLOYEES. (a) Each employer
21 subject to this chapter shall, at the time of hiring, provide notice
22 in both English and Spanish to each employee:

23 (1) of the employee's entitlement to paid leave, the
24 amount of paid leave provided to employees, and the terms under
25 which paid leave may be used under this chapter;

26 (2) that retaliation by the employer against the
27 employee for requesting or using paid leave to which the employee is

1 entitled is prohibited; and

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

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

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

12 (d) The commission may adopt rules to establish additional
13 requirements concerning the means by which employers provide notice
14 required under this section.

15 Sec. 83.011. BREAK IN SERVICE. (a) Termination of an
16 employee's employment by an employer, regardless of whether
17 voluntary or involuntary, is considered a break in service for
18 purposes of this chapter.

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

21 (1) begins to accrue paid leave under this chapter;
22 and

23 (2) is not entitled to any unused hours of paid leave
24 that had accrued before the employee's break in service, unless the
25 employee is rehired within 30 days of separation or the employer
26 agrees to reinstate some or all of the employee's previously
27 accrued paid leave.

1 Sec. 83.012. TRANSFER OF EMPLOYEE. (a) The transfer of an
2 employee to a separate division, entity, or location of the same
3 employer is not considered to be a break in service for purposes of
4 this chapter.

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

7 (1) retain all accrued paid leave under this chapter;
8 and

9 (2) immediately access the retained paid leave time
10 without any waiting period, except that the employee remains
11 subject to any remaining period of the initial waiting period
12 described by Section 83.005(a), if applicable.

13 Sec. 83.013. SUCCESSOR EMPLOYER. If an employer succeeds
14 or takes the place of an existing employer, each employee of the
15 former employer who is employed by the successor is entitled to:

16 (1) retain all accrued paid leave under this chapter;
17 and

18 (2) immediately access the retained paid leave time
19 without any waiting period, except that the employee remains
20 subject to any remaining period of the initial waiting period
21 described by Section 83.005(a), if applicable.

22 Sec. 83.014. LIMITATIONS OF CHAPTER. This chapter does
23 not:

24 (1) prevent an employer from providing more paid leave
25 than is required under this chapter;

26 (2) prohibit an employer that provides paid leave in
27 addition to the paid leave required under this chapter from

1 restricting the purposes for which an employee may take that
2 additional leave; or

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

5 Sec. 83.015. COLLECTIVE BARGAINING AGREEMENT. A collective
6 bargaining agreement may waive the requirements of this chapter by
7 clear and unambiguous language within the agreement.

8 Sec. 83.016. RETALIATION PROHIBITED. An employer may not
9 take retaliatory personnel action or otherwise discriminate
10 against an employee because the employee:

11 (1) requests or uses paid leave in accordance with
12 this chapter; or

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

15 Sec. 83.017. COMPLAINT; HEARING; PENALTY. (a) Any
16 employee aggrieved by a violation of this chapter may file a claim
17 with the commission in the manner prescribed by Subchapter D,
18 Chapter 61.

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

22 (c) An employer who is found by the commission, by a
23 preponderance of the evidence, to have violated Section 83.016 is
24 liable to the commission for an administrative penalty of \$500 for
25 each violation.

26 (d) An employer who is found by the commission, by a
27 preponderance of the evidence, to have violated a provision under

1 this chapter other than Section 83.016 is liable to the commission
2 for an administrative penalty of not more than \$100 for each
3 violation.

4 (e) The commission may award the employee all appropriate
5 relief, including payment for used paid leave, rehiring or
6 reinstatement to the employee's previous job, payment of back
7 wages, and reestablishment of employee benefits for which the
8 employee otherwise would have been eligible if the employee had not
9 been subject to retaliatory personnel action or other
10 discrimination.

11 (f) A party may appeal a final decision of the commission by
12 filing suit in district court.

13 Sec. 83.018. CIVIL ACTION BY EMPLOYEE. (a) An employee
14 aggrieved by a violation of this chapter may bring a civil action to
15 enforce rights protected by this chapter, including an action for
16 appropriate injunctive relief, in the district court in the county
17 in which the alleged violation occurred or in which the alleged
18 violator's residence or principal place of business is located.

19 (b) An action under this section must be brought not later
20 than the third anniversary of the date of the violation.

21 (c) The employer of an employee who prevails in a civil
22 action under this section is liable to the affected employee for
23 damages equal to the amount of any wages, salary, employment
24 benefits, or other compensation denied or lost to the employee by
25 reason of the violation or, if wages, salary, employment benefits,
26 or other compensation has not been denied or lost, any actual
27 monetary losses sustained by the employee as a direct result of the

1 violation.

2 (d) An employer described by Subsection (c) is also liable
3 for equitable relief as appropriate, including reinstatement and
4 promotion.

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

8 SECTION 2. (a) The change in law made by this Act applies to
9 an employee hired on or after January 1, 2025. For an employee
10 hired before January 1, 2025, paid leave under Chapter 83, Labor
11 Code, as added by this Act, begins to accrue on that date, and the
12 employee may begin to use the paid leave 90 calendar days after that
13 date, unless the employer agrees to an earlier date.

14 (b) Chapter 83, Labor Code, as added by this Act, does not
15 preempt or override the terms of any collective bargaining
16 agreement effective before January 1, 2025.

17 SECTION 3. This Act takes effect January 1, 2025.