

By: Rose

H.B. No. 3037

A BILL TO BE ENTITLED

AN ACT

relating to employment leave to comply with certain family or medical obligations; providing a civil penalty.

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

SECTION 1. Subtitle D, Title 2, Labor Code, is amended by adding Chapter 85 to read as follows:

CHAPTER 85. EMPLOYEE LEAVE FOR FAMILY OR MEDICAL OBLIGATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 85.001. DEFINITIONS. In this chapter:

(1) "Child" means a biological child, adopted or foster child, stepchild, legal ward, or child of a person standing in loco parentis who is:

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a physical or mental disability or serious health condition.

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

(3) "Employee" means an individual who performs services for an employer for compensation under an oral or written contract of hire, whether express or implied. The term does not include an independent contractor.

(4) "Employer" means a person who employs employees. The term includes a public employer.

1 (5) "Employment benefits" means all benefits provided
2 by or made available to employees by an employer. The term includes
3 group life insurance, health insurance, disability insurance, sick
4 leave, annual leave, educational benefits, and pensions whether the
5 benefits are provided by a practice or written policy of an employer
6 or through an employee benefit plan.

7 (6) "Grandchild" means the child of a child of an
8 employee.

9 (7) "Grandparent" means the parent of a parent of an
10 employee.

11 (8) "Grandparent-in-law" means the parent of a parent
12 of an employee's spouse.

13 (9) "Health care provider" means:

14 (A) a licensed individual who provides or renders
15 health care; or

16 (B) an unlicensed individual who provides or
17 renders health care under the direction or supervision of a
18 physician.

19 (10) "Parent" means:

20 (A) the biological parent of an employee; or

21 (B) an individual who stood in loco parentis to
22 an employee when the employee was a child.

23 (11) "Parent-in-law" means the parent of an employee's
24 spouse.

25 (12) "Serious health condition" means an illness,
26 injury, impairment, or physical or mental condition that requires
27 inpatient care in a hospital, hospice, or residential medical care

1 facility or continuing treatment by a health care provider. The
2 term includes a serious disease such as cancer or acquired immune
3 deficiency syndrome.

4 [Sections 85.002-85.050 reserved for expansion]

5 SUBCHAPTER B. FAMILY AND MEDICAL LEAVE

6 Sec. 85.051. FAMILY AND MEDICAL LEAVE. An eligible
7 employee is entitled to use the employee's choice of accrued paid
8 sick leave or other accrued paid leave to care for the following
9 individuals:

10 (1) the employee's child;

11 (2) the employee's grandchild;

12 (3) the employee's spouse;

13 (4) the employee's parent or parent-in-law; or

14 (5) the employee's grandparent or grandparent-in-law.

15 Sec. 85.052. NOTICE; CIVIL PENALTY. (a) Each employer
16 shall post in conspicuous places on the premises of the employer
17 where notices to employees and applicants for employment are
18 customarily posted a notice, prepared or approved by the
19 commission, setting forth the pertinent provisions of this
20 subchapter and information relating to the enforcement of this
21 subchapter.

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

27 Sec. 85.053. INSTITUTION OF PAID LEAVE PROGRAM NOT

1 REQUIRED. This subchapter does not require an employer who does
2 not provide paid sick leave or other paid medical leave to institute
3 a program of paid leave for any situation in which that employer is
4 not normally providing paid leave.

5 Sec. 85.054. FORESEEABILITY OF LEAVE; NOTICE TO EMPLOYER.

6 (a) If the necessity for leave under Section 85.051 is reasonably
7 foreseeable, the affected employee shall provide notice to the
8 employer as is practicable.

9 (b) If the necessity for leave under Section 85.051 is
10 foreseeable because of planned medical treatment, the employee
11 shall make a reasonable effort to schedule the treatment to avoid
12 disrupting unduly the operations of the employer, subject to the
13 approval of the health care provider of the employee or of the
14 child, spouse, or parent of the employee, as applicable.

15 Sec. 85.055. CERTIFICATION. (a) An employer may require
16 that a request for leave under Section 85.051 be certified by the
17 health care provider of the employee or of the child, grandchild,
18 spouse, parent, parent-in-law, grandparent, or grandparent-in-law
19 of the employee, as appropriate. The employee shall provide, in a
20 timely manner, a copy of the certification to the employer.

21 (b) Certification provided under Subsection (a) is
22 sufficient if it states:

23 (1) the date on which the serious health condition
24 began;

25 (2) the probable duration of the condition;

26 (3) the appropriate medical facts within the knowledge
27 of the health care provider regarding the condition; and

1 (4) a statement that the eligible employee is needed
2 to care for the child, grandchild, spouse, parent, parent-in-law,
3 grandparent, or grandparent-in-law and an estimate of the amount of
4 time that the employee is needed to care for that individual.

5 Sec. 85.056. EMPLOYMENT AND BENEFITS PROTECTION;
6 EXCEPTION. (a) An employee who takes leave under Section 85.051
7 is entitled, on return from the leave, to reinstatement in the
8 former position of employment or an equivalent position of
9 employment with equivalent employment benefits, pay, and other
10 terms and conditions of employment.

11 (b) Leave taken under Section 85.051 may not result in the
12 loss of any employment benefit accrued before the date on which the
13 leave began.

14 (c) This section does not entitle an employee who is
15 reinstated in employment to:

16 (1) the accrual of seniority or other employment
17 benefits during any period of leave; or

18 (2) any right, benefit, or position of employment
19 other than any right, benefit, or position to which the employee
20 would have been entitled had the employee not taken the leave.

21 (d) This section does not prohibit an employer from
22 requiring an employee on leave under Section 85.051 to report
23 periodically to the employer on the status and intention of the
24 employee to return to work.

25 Sec. 85.057. COMMISSION POWERS AND DUTIES. The commission
26 shall adopt rules as necessary to implement this subchapter.

27 Sec. 85.058. PROHIBITED ACTS. (a) An employer may not

1 interfere with, restrain, or deny the exercise of or the attempt to
2 exercise any right provided under this subchapter.

3 (b) An employer may not discharge or otherwise discriminate
4 against an individual for opposing a practice made unlawful by this
5 subchapter.

6 (c) A person may not discharge or otherwise discriminate
7 against an individual because that individual has:

8 (1) filed a charge, or instituted or caused to be
9 instituted a proceeding, under or related to this subchapter;

10 (2) given, or is about to give, any information in
11 connection with an inquiry or proceeding relating to a right
12 provided under this subchapter; or

13 (3) testified, or is about to testify, in an inquiry or
14 proceeding relating to a right provided under this subchapter.

15 Sec. 85.059. ENFORCEMENT. (a) An employer who violates
16 Section 85.058 is liable to an affected individual for damages
17 equal to the amount of:

18 (1) any wages, salary, employment benefits, or other
19 compensation denied or lost to the individual by reason of the
20 violation or, if wages, salary, employment benefits, or other
21 compensation has not been denied or lost, any actual monetary
22 losses sustained by the individual as a direct result of the
23 violation, including the cost of providing necessary care, not to
24 exceed an amount equal to the individual's wages or salary for 12
25 weeks;

26 (2) interest on the amount determined under
27 Subdivision (1) computed at the prevailing rate of interest on

1 judgments; and

2 (3) an additional amount as liquidated damages equal
3 to the sum of the amount determined under Subdivision (1) and the
4 interest determined under Subdivision (2).

5 (b) If an employer who has violated Section 85.058 proves to
6 the satisfaction of the court that the act or omission that violated
7 Section 85.058 was in good faith and that the employer had
8 reasonable grounds for believing that the act or omission was not a
9 violation, the court may reduce the amount of damages to the amount
10 determined under Subsections (a)(1) and (2).

11 (c) The employer is also liable for equitable relief as
12 appropriate, including employment, reinstatement, and promotion.

13 (d) An action to recover damages or equitable relief under
14 this section may be maintained by any one or more individuals for
15 and on behalf of those individuals.

16 (e) In addition to any judgment awarded to the plaintiff,
17 the court may require the defendant to pay reasonable attorney's
18 fees, reasonable expert witness fees, and other costs.

19 (f) Unless the action is dismissed without prejudice on
20 motion of the commission, the right to bring an action under this
21 section terminates on:

22 (1) the filing of a complaint by the commission in an
23 action under Subsection (j) in which:

24 (A) restraint is sought of any further delay in
25 the payment of the damages described in Subsection (a); or

26 (B) equitable relief is sought as a result of
27 alleged violations of Section 85.058; or

1 (2) the filing of a complaint by the commission in an
2 action under Subsection (h) in which a recovery is sought of the
3 damages described in Subsection (a).

4 (g) The commission shall receive, investigate, and attempt
5 to resolve complaints of violations under Section 85.058 in the
6 same manner that the commission receives, investigates, and
7 attempts to resolve complaints of violations under Chapter 61.

8 (h) The commission may bring an action to recover on behalf
9 of an individual the damages described in Subsection (a). Any
10 amount recovered by the commission on behalf of an individual under
11 this subsection shall be held in a special deposit account and shall
12 be paid, on order of the commission, directly to the individual. Any
13 amount not paid to the individual within three years of receipt
14 because of inability to make the payment shall be deposited in the
15 state treasury to the credit of the general revenue fund.

16 (i) Except as otherwise provided by this subsection, an
17 action must be brought under this section not later than the second
18 anniversary of the date of the last event constituting the alleged
19 violation for which the action is brought. If the action alleges a
20 wilful violation of Section 85.058, the action must be brought not
21 later than the third anniversary of the date of the last event
22 constituting the alleged violation. For the purposes of this
23 subsection, an action is begun by the commission under Subsection
24 (h) on the date on which the complaint is filed under Subsection
25 (g).

26 (j) In addition to an action to recover damages, the
27 commission may bring an action to restrain violations of Section

1 85.058, including an action to restrain the withholding of payment
2 of wages, salary, employment benefits, or other compensation, plus
3 interest, found by the court to be due to eligible employees.

4 SECTION 2. (a) This Act applies only to a suspension,
5 termination, or other adverse employment action that is taken by an
6 employer against an employee because of an employee absence
7 authorized under Chapter 85, Labor Code, as added by this Act, that
8 occurs on or after January 1, 2008. Action taken by an employer
9 against an employee for an employee absence occurring before
10 January 1, 2008, is governed by the law in effect immediately before
11 the effective date of this Act, and the former law is continued in
12 effect for that purpose.

13 (b) An employee is not entitled to take leave as provided by
14 Chapter 85, Labor Code, as added by this Act, before January 1,
15 2008.

16 (c) The Texas Workforce Commission shall adopt rules and
17 prescribe notices and forms as required by Chapter 85, Labor Code,
18 as added by this Act, not later than November 1, 2007.

19 SECTION 3. This Act takes effect September 1, 2007.