

By: Van de Putte

S.B. No. 1861

A BILL TO BE ENTITLED

AN ACT

relating to the ability of a nonexempt employee to participate in certain academic, extracurricular, and developmental activities of the employee's child.

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

SECTION 1. Subtitle D, Title 2, Labor Code, is amended by adding Chapter 86 to read as follows:

CHAPTER 86. EMPLOYEE RIGHT TO PARTICIPATION

IN CERTAIN ACTIVITIES OF THE EMPLOYEE'S CHILD

Sec. 86.001. DEFINITIONS. In this chapter:

(1) "Employee" means a person other than an independent contractor who, for compensation, performs services for an employer under a written or oral contract of hire, whether express or implied.

(2) "Employer" means a person who employs at least one employee in this state. The term includes a public employer.

(3) "Reasonable advance written notice" means the period, determined by the employer, for an employee to provide written notice of the employee's planned absence under this chapter.

Sec. 86.002. APPLICABILITY. This chapter applies to an employee who:

(1) is a parent as defined by Section 101.024, Family Code, legal guardian, custodial caregiver, managing conservator,

1 or possessory conservator of a child who is in a licensed or
2 certified child-care facility or prekindergarten through grade 12;

3 (2) has been employed for not less than 90 days by the
4 employer granting the unpaid time off; and

5 (3) is not exempt from the overtime provisions of the
6 federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et
7 seq.).

8 Sec. 86.003. EMPLOYEE RIGHT TO PARTICIPATE IN CERTAIN
9 ACTIVITIES OF EMPLOYEE'S CHILD. (a) An employee who is subject to
10 this chapter is entitled to unpaid time off as provided by this
11 section to:

12 (1) meet with a teacher, counselor, or school
13 administrator of the employee's child or with a caregiver of the
14 child in a child-care facility; or

15 (2) participate in a facility or school activity of
16 the employee's child, including award ceremonies, school
17 productions or events in which the child is participating, or
18 hearings regarding admission, review, or dismissal.

19 (b) An employee who works at least 30 hours a week is
20 entitled under this section to up to eight hours in a calendar month
21 but not more than 40 hours in one calendar year.

22 (c) An employee who works less than 30 hours a week is
23 entitled under this section to up to four hours in a calendar month
24 but not more than 20 hours in one calendar year.

25 (d) Before taking time off under this section, an employee
26 must provide the employer with reasonable advance written notice of
27 the planned absence of the employee, unless the need for the absence

1 was not reasonably foreseeable. An employer may not require notice
2 under this subsection of more than seven calendar days.

3 Sec. 86.004. USE OF LEAVE TIME. (a) An employee may, but
4 is not required to, use existing vacation leave time, personal
5 leave time, or compensatory leave time for the purpose of a planned
6 absence authorized by this chapter except as otherwise provided by
7 a collective bargaining agreement entered into before September 1,
8 2011.

9 (b) The use of leave time under this section may not be
10 restricted by a term or condition adopted under a collective
11 bargaining agreement entered into on or after September 1, 2011.

12 Sec. 86.005. DOCUMENTATION. (a) An employee shall provide
13 documentation to the employer of the employee's participation in a
14 particular activity on the employer's request. An employer may
15 waive the documentation requirement.

16 (b) For purposes of this section, "documentation" means any
17 verification of parental participation in a facility or school
18 activity that the child's facility or school considers reasonable
19 and appropriate.

20 Sec. 86.006. SAME EMPLOYER. If both parents of a child are
21 employed by the same employer at the same workplace, the
22 entitlement granted under Section 86.003 may be exercised as
23 regards a specific activity of that child only by the employee who
24 first gives notice to the employer as required under Section
25 86.003(d). The other parent is entitled to time off to attend the
26 activity only as approved by the employer.

27 Sec. 86.007. EMPLOYER RETALIATION PROHIBITED. (a) An

1 employer may not suspend or terminate the employment of, or
2 otherwise discriminate against, an employee who takes a planned
3 absence authorized by this chapter to participate in an activity of
4 the employee's child if the employee has fulfilled the requirements
5 of Section 86.003(d).

6 (b) An employee whose employment is suspended or terminated
7 in violation of this chapter is entitled to:

8 (1) reinstatement to the employee's former position or
9 a position that is comparable in terms of compensation, benefits,
10 and other conditions of employment;

11 (2) compensation for wages lost during the period of
12 suspension or termination;

13 (3) reinstatement of any fringe benefits and seniority
14 rights lost because of the suspension or termination; and

15 (4) if the employee brings an action to enforce this
16 subsection and is the prevailing party, payment by the employer of
17 court costs and reasonable attorney's fees.

18 (c) An employer may not decline to interview or hire an
19 applicant solely because the applicant is a parent, legal guardian,
20 custodial caregiver, managing conservator, or possessory
21 conservator of a child in prekindergarten through grade 12.

22 Sec. 86.008. NOTICE TO EMPLOYEES. (a) Each employer shall
23 inform its employees of their rights under this chapter by posting a
24 conspicuous sign in a prominent location in the employer's
25 workplace.

26 (b) The Texas Workforce Commission by rule shall prescribe
27 the design and content of the sign required by this section.

1 SECTION 2. This Act applies only to a suspension,
2 termination, or other adverse employment action that is taken by an
3 employer against an employee because of an employee absence
4 authorized under Chapter 86, Labor Code, as added by this Act, that
5 occurs on or after the effective date of this Act. Action taken by
6 an employer against an employee for an employee absence occurring
7 before that date is governed by the law in effect on the date the
8 absence occurred, and the former law is continued in effect for that
9 purpose.

10 SECTION 3. This Act takes effect September 1, 2011.