

By: Minjarez

H.B. No. 656

A BILL TO BE ENTITLED

AN ACT

relating to employment leave for certain family or medical obligations; imposing an assessment.

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 an employee by an employer. The term
3 includes group life insurance, health insurance, disability
4 insurance, sick leave, annual leave, educational benefits, and
5 pensions whether the benefits are provided by a practice or written
6 policy of an employer or through an employee benefit plan.

7 (6) "Family violence" has the meaning assigned by
8 Section 71.004, Family Code.

9 (7) "Grandchild" means the child of a child of an
10 employee.

11 (8) "Grandparent" means the parent of a parent of an
12 employee.

13 (9) "Grandparent-in-law" means the parent of a parent
14 of an employee's spouse.

15 (10) "Health care provider" means:

16 (A) a licensed individual who provides or renders
17 health care; or

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

21 (11) "Parent" means:

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

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

25 (12) "Parent-in-law" means the parent of an employee's
26 spouse.

27 (13) "Serious health condition" means an illness,

injury, impairment, or physical or mental condition that requires inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider. The term includes a serious disease such as cancer or acquired immune deficiency syndrome.

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

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

(16) "Sibling" means the brother or sister of an employee or an employee's spouse.

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

(18) "Trafficking" means any conduct that constitutes an offense under Section 20A.02, Penal Code.

Sec. 85.002. RULES. The commission shall adopt rules as necessary to administer this chapter.

SUBCHAPTER B. FAMILY AND MEDICAL LEAVE

Sec. 85.051. FAMILY AND MEDICAL LEAVE. (a) An employee who has been employed by an employer for at least one year is entitled to not less than 30 days of leave:

(1) to attend to the employee's own serious health condition;

(2) to care for the following individuals with a serious health condition:

(A) the employee's child;

(B) the employee's grandchild;

(C) the employee's spouse;

(D) the employee's sibling;

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

(F) the employee's grandparent or
grandparent-in-law;

(3) to spend time with a child due to:

(A) the birth of the employee's child; or

(B) the placement of a child with the employee in
connection with the adoption or foster care of the child by the
employee; or

(4) to attend to the following, if the employee or
employee's family member described by Subdivision (2) is a victim
of family violence, sexual assault, sexual abuse, stalking, or
trafficking:

(A) the receipt of medical care or psychological
or other counseling for physical or psychological injury or
disability;

(B) the receipt of services from a victim
services organization;

(C) relocation due to the family violence, sexual
assault, sexual abuse, stalking, or trafficking; or

(D) participation in any civil or criminal
proceeding related to or resulting from the family violence, sexual
assault, sexual abuse, stalking, or trafficking.

(b) For purposes of Subsection (a)(2), care provided by an
employee includes physical care, emotional support, visitation,
assistance in treatment, transportation, arranging for a change in

1 care, assistance with essential daily living matters, and personal
2 attendant services.

3 (c) Eligibility for leave under Subsection (a)(3) expires
4 on the first anniversary of the date of the child's birth or
5 placement with the employee, as applicable.

6 (d) If the employer provides paid sick leave, or other
7 accrued paid leave, the employee described by Subsection (a) is
8 entitled to use up to 30 days of paid leave for a purpose authorized
9 under this chapter.

10 (e) If the employer does not provide paid leave for the
11 employee, or provides paid leave that may not be used for the
12 purposes described by this section, the employee is entitled to
13 wage replacement benefits under Subchapter C for leave taken for a
14 purpose authorized under this chapter.

15 Sec. 85.052. INSTITUTION OF PAID LEAVE PROGRAM NOT
16 REQUIRED. This subchapter does not require an employer who does
17 not provide paid sick leave or other paid medical leave to institute
18 a program of paid leave.

19 Sec. 85.053. FORESEEABILITY OF LEAVE; NOTICE TO EMPLOYER.

20 (a) If the necessity for leave under Section 85.051(a) is
21 reasonably foreseeable, the affected employee shall provide notice
22 to the employer.

23 (b) If the necessity for leave under Section 85.051(a)(1) or
24 (2) is foreseeable because of planned medical treatment, the
25 employee shall make a reasonable effort to schedule the treatment
26 to avoid disrupting the operations of the employer, subject to the
27 approval of the applicable health care provider.

1 Sec. 85.054. DOCUMENTATION. (a) An employer may require
2 that an employee requesting leave under this chapter provide
3 documentation for the reason the leave was taken and the amount of
4 leave taken.

5 (b) The commission shall adopt rules regarding the forms of
6 documentation an employer may require under this section.

7 Sec. 85.055. AMOUNT OF PAID LEAVE. (a) An employee who is
8 eligible for leave under this chapter and whose employer provides
9 paid leave is entitled to an amount paid by the employer equal to
10 the average amount the employee would have been paid if the employee
11 had worked during that pay period.

12 (b) If the employee takes less than a full pay period of
13 leave under this chapter, the employer shall prorate the amount of
14 pay for each day of leave the employee takes.

15 Sec. 85.056. EMPLOYMENT AND BENEFITS PROTECTION;
16 EXCEPTION. (a) An employee who takes leave under this chapter is
17 entitled, on return from the leave, to reinstatement in the former
18 position of employment or an equivalent position of employment with
19 equivalent employment benefits, pay, and other terms of employment.

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

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

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

27 (2) any right, benefit, or position of employment

other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(d) This section does not prohibit an employer from requiring an employee on leave under this chapter to report periodically to the employer on the status and intention of the employee to return to work.

Sec. 85.057. LEAVE CONCURRENT WITH FEDERAL FAMILY LEAVE ACT. An employee who is entitled to leave under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.) must take leave under that law concurrent with any leave taken under this chapter.

SUBCHAPTER C. WAGE REPLACEMENT BENEFITS

Sec. 85.101. ELIGIBILITY FOR FAMILY CARE LEAVE WAGE REPLACEMENT BENEFITS. If an employer does not provide paid leave, an employee who has been employed by the employer for at least one year is eligible for family care leave wage replacement benefits under this chapter for not more than 30 days.

Sec. 85.102. AMOUNT OF WAGE REPLACEMENT BENEFITS. (a) An employee who is eligible for wage replacement benefits under Section 85.101 shall be paid an amount equal to the average amount the employee would have been paid if the employee had worked during that pay period.

(b) An employee who takes less than a full pay period of leave under this chapter is entitled to a prorated amount of the benefit under Subsection (a).

(c) An employee may not receive more than 30 days of wage replacement benefits under this subchapter in any 12-month period.

1 Sec. 85.103. INELIGIBILITY OF CERTAIN EMPLOYEES FOR
2 BENEFITS. An employee is not eligible for benefits under this
3 subchapter with respect to any day for which the employee receives:

4 (1) benefits under any other law providing
5 unemployment compensation; or

6 (2) disability insurance benefits or workers'
7 compensation benefits under any state or federal law.

8 Sec. 85.104. WAGE REPLACEMENT BENEFIT FUND. The wage
9 replacement benefit fund is an account in the general revenue fund
10 to be administered by the commission. Money in the fund may be
11 appropriated only to pay benefits required under this subchapter.

12 Sec. 85.105. EMPLOYEE CONTRIBUTION. Each employee shall
13 contribute monthly to the wage replacement benefit fund by paying
14 an assessment in an amount equal to one quarter of one percent of
15 the employee's average monthly pay.

16 Sec. 85.106. RULES. The commission shall adopt rules
17 regarding:

18 (1) the application by an employee for benefits under
19 this subchapter, including any necessary supporting documentation
20 an employee must submit;

21 (2) the manner of collecting employee contributions
22 required under Section 85.105; and

23 (3) the manner of payment of benefits under this
24 subchapter.

25 Sec. 85.107. APPEAL. A person whose application for wage
26 replacement benefits under this subchapter is denied may appeal the
27 denial in the manner provided for appeal of a contested case under

Chapter 2001, Government Code.

Sec. 85.108. REPORT. (a) Not later than December 1, 2020, the commission shall submit to the legislature a report on the wage replacement benefits paid under this chapter that includes:

- (1) the total number of applications filed;
- (2) the average number of days between the filing of an application for benefits and a determination by the commission; and
- (3) any contested cases between an employee and the commission regarding wage replacement filed under this subchapter and the outcome of those cases.

(b) This section expires August 31, 2021.

SUBCHAPTER D. ENFORCEMENT

Sec. 85.151. PROHIBITED ACTS. (a) An employer may not interfere with, restrain, or deny the exercise of or an attempt to exercise any right provided under this chapter.

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

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

- (1) filed a charge, or instituted or caused to be instituted a proceeding, under or related to this chapter;
- (2) given, or is about to give, any information in connection with an inquiry or proceeding relating to a right provided under this chapter; or
- (3) testified, or is about to testify, in an inquiry or proceeding relating to a right provided under this chapter.

1 Sec. 85.152. UNLAWFUL EMPLOYMENT PRACTICE. An employer who
2 violates this chapter commits an unlawful employment practice under
3 Chapter 21.

4 SUBCHAPTER E. COMMUNITY OUTREACH

5 Sec. 85.201. OUTREACH PROGRAM. (a) The commission shall
6 develop and implement an outreach program to inform employees about
7 the availability of paid leave under this chapter.

8 (b) The program must include distribution of notices and
9 other written materials in both English and Spanish.

10 (c) The commission shall make the written materials under
11 Subsection (b) available on the commission's Internet website.

12 SECTION 2. (a) An employee is not entitled to take leave as
13 provided by Chapter 85, Labor Code, as added by this Act, before
14 January 1, 2018.

15 (b) The Texas Workforce Commission shall adopt rules as
16 required by Chapter 85, Labor Code, as added by this Act, not later
17 than November 1, 2017. In adopting rules under this Act, the
18 commission shall develop procedures for the payment of wage
19 replacement benefits under Subchapter C, Chapter 85, Labor Code, as
20 added by this Act, to employees who become eligible for family care
21 leave wage replacement benefits under that subchapter on and after
22 January 1, 2018.

23 SECTION 3. This Act takes effect September 1, 2017.