

By: Collier

H.B. No. 3483

A BILL TO BE ENTITLED

AN ACT

relating to requiring certain employers to provide paid leave to employees; authorizing 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. DEFINITION. (a) In this chapter, "commission" means the Texas Workforce Commission.

(b) In this chapter, "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; but does not include the following:

(1) State of Texas including any State agency as defined in Chapter 21 of the Texas Labor Code Section 21.002 (14) (A), (B), and (C);

(2) United State of America including any Federal agency;

(3) Political subdivision as defined in Chapter 21 of the Texas Labor Code Section 21.002 (12); and

(4) Any non-profit charitable or religious organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

1 (c) In this chapter, "employee" means an individual
2 employed by an employer, but does not include the following:

3 (1) An individual covered under Title 45, U.S.C.
4 Chapter 11, Sec. 351(d) and (e) of the federal Railroad
5 Unemployment Insurance Act;

6 (2) An individual covered under Title 45, U.S.C.
7 Chapter 8, Subchapter I, Sec. 151(fifth) and Subchapter II, Sec.
8 181 of the federal Railway Labor Act;

9 (3) Unpaid volunteers;

10 (4) Independent contractors;

11 (5) A participant in a work-study program that
12 provides students in secondary or post-secondary educational
13 institutions with employment opportunities for financial or
14 vocational training; and

15 (6) Individuals employed by their parent, spouse, or
16 child.

17 Sec. 83.002. PAID LEAVE REQUIRED. (a) Each employer shall
18 provide paid leave annually to each employee in this state under the
19 terms of this chapter.

20 (b) Notwithstanding Subsection (a), an employer with at
21 least 50 but not more than 75 employees is not required to provide
22 paid leave under this chapter until the second anniversary of the
23 date the employer hires the employer's first employee.

24 Sec. 83.003. PAID LEAVE ACCRUAL AND CARRYOVER. (a) Paid
25 leave under this chapter accrues beginning on the date of hire:

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

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

2 (b) Each employee is entitled to carry over not more than 40
3 unused accrued hours of paid leave from the current calendar year to
4 the following calendar year unless the employer elects to pay the
5 employee for any unused paid leave at the end of the year at the rate
6 described by Section 83.006.

7 (c) Leave hours carried over from a previous calendar year
8 must be immediately available to the employee in the following
9 calendar year.

10 Sec. 83.004. ENTITLEMENT TO USE PAID LEAVE; LIMITATIONS.

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

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

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

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

24 (e) At the employer's discretion, an employer may loan paid
25 leave time to an employee in advance of accrual by the employee.

26 (f) On the mutual consent of the employee and employer, an
27 employee who chooses to work additional hours or shifts during the

1 same or following pay period, instead of hours or shifts missed,
2 does not use accrued paid leave.

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

7 Sec. 83.005. EMPLOYER COMPLIANCE. (a) An employer is
8 considered to be in compliance with this chapter if the employer
9 offers one or more other types of paid leave that:

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

11 (2) is accrued at a rate equal to or greater than the
12 rate described by Section 83.003.

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

15 Sec. 83.006. PAY RATE FOR LEAVE. (a) Each employer shall
16 pay each employee for paid leave time taken at a pay rate equal to
17 the normal hourly wage for that employee.

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

23 (c) If an employee receives gratuity in the course of
24 employment to the extent that the gratuity is considered wages in
25 the computation of taxes under the Federal Unemployment Tax Act (26
26 U.S.C. Section 3301 et seq.), the employee's normal hourly wage
27 shall include the projected average gratuity for an hour of

1 service.

2 (d) If an employee is paid in a manner other than on an
3 hourly basis, the employee's normal hourly wage shall be computed
4 by calculating the employee's average weekly wage in the manner
5 provided by Subchapter C, Chapter 408, and dividing that number by
6 the average number of hours the employee works in a week.

7 (e) If the employee's normal hourly wage cannot be
8 determined, the employer shall pay the employee for leave under
9 this chapter at an average hourly wage for this state, determined by
10 the commission based on the average weekly wage in covered
11 employment in this state under Section 207.002(c).

12 Sec. 83.007. USE OF PAID LEAVE. An employee may use paid
13 leave accrued under this chapter for any purpose, and is not
14 required to disclose the reason for taking leave to the employer.

15 Sec. 83.008. NOTICE TO EMPLOYER. (a) If an employee's need
16 to use paid leave under this chapter is foreseeable, an employer may
17 require advance notice of the intention to use paid leave not more
18 than seven days before the date the leave is to begin.

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

22 Sec. 83.009. NOTICE TO EMPLOYEES. (a) Each employer
23 subject to this chapter shall, at the time of hiring, provide notice
24 in both English and Spanish to each employee:

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

1 (2) that retaliation by the employer against the
2 employee for requesting or using paid leave to which the employee is
3 entitled is prohibited; and

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

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

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

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

17 Sec. 83.010. BREAK IN SERVICE. (a) Termination of an
18 employee's employment by an employer, regardless of whether
19 voluntary or involuntary, is considered a break in service for
20 purposes of this chapter.

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

23 (1) begins to accrue paid leave under this chapter;
24 and

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

1 agrees to reinstate some or all of the employee's previously
2 accrued paid leave.

3 Sec. 83.011. TRANSFER OF EMPLOYEE. (a) The transfer of an
4 employee to a separate division, entity, or location of the same
5 employer is not considered to be a break in service for purposes of
6 this chapter.

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

9 (1) retain all accrued paid leave under this chapter;
10 and

11 (2) immediately access the retained paid leave time
12 without any waiting period.

13 Sec. 83.012. SUCCESSOR EMPLOYER. If an employer succeeds
14 or takes the place of an existing employer, employees of the former
15 employer who are employed by the successor are 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.

20 Sec. 83.013. LIMITATIONS OF CHAPTER. This chapter does
21 not:

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

24 (2) prohibit an employer that provides paid leave in
25 addition to the paid leave required under this chapter from
26 restricting the purposes for which an employee may take that
27 additional leave; or

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

3 Sec. 83.014. COLLECTIVE BARGAINING AGREEMENTS. A
4 collective bargaining agreement may waive the requirements of this
5 chapter by clear and unambiguous language within the agreement.

6 Sec. 83.015. RETALIATION PROHIBITED. An employer may not
7 take retaliatory personnel action or otherwise discriminate
8 against an employee because the employee:

9 (1) requests or uses paid leave in accordance with
10 this chapter; or

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

13 Sec. 83.016. COMPLAINT; HEARING; PENALTY. (a) Any
14 employee aggrieved by a violation of this chapter may file a claim
15 with the commission in the manner prescribed by Subchapter D,
16 Chapter 61.

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

20 (c) An employer who is found by the commission, by a
21 preponderance of the evidence, to have violated Section 83.015 is
22 liable to the commission for an administrative penalty of \$500 for
23 each violation.

24 (d) An employer who is found by the commission, by a
25 preponderance of the evidence, to have violated a provision under
26 this chapter other than Section 83.015 is liable to the commission
27 for an administrative penalty of not more than \$100 for each

1 violation.

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

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

11 Sec. 83.017. CIVIL ACTION BY EMPLOYEE. (a) An employee
12 aggrieved by a violation of this chapter may bring a civil action to
13 enforce rights protected by this chapter, including an action for
14 appropriate injunctive relief, in the district court in the county
15 in which the alleged violation occurred or in which the alleged
16 violator's residence or principal place of business is located.

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

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

27 (d) An employer described by Subsection (c) is also liable

1 for equitable relief as appropriate, including reinstatement and
2 promotion.

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

6 SECTION 2. (a) The change in law made by this Act applies
7 to an employee hired on or after January 1, 2019. For an employee
8 hired before January 1, 2019, paid leave under Chapter 83, Labor
9 Code, as added by this Act, begins to accrue on that date, and the
10 employee may begin to use the paid leave 90 calendar days after that
11 date, unless the employer agrees to an earlier date.

12 (b) Chapter 83, Labor Code, as added by this Act, does not
13 preempt or override the terms of any collective bargaining
14 agreement effective before January 1, 2019.

15 SECTION 3. This Act takes effect January 1, 2019.