86R13765 SMT-D

By:  Bowers H.B. No. 2501

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 83 to read as follows:

CHAPTER 83. EMPLOYEE RIGHT TO PARTICIPATIONIN CERTAIN ACTIVITIES OF EMPLOYEE'S CHILD

Sec. 83.001.  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. The term includes an employee engaged to work flexible hours established periodically by the employer.

(2)  "Employer" means a person who employs more than 50 employees in this state, regardless of whether those employees are exempt from the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.). 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. 83.002.  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, or possessory conservator of a child who is in a licensed or certified child-care facility or prekindergarten through grade 12;

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

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

Sec. 83.003.  EMPLOYEE RIGHT TO PARTICIPATE IN CERTAIN ACTIVITIES OF EMPLOYEE'S CHILD. (a) An employee who is subject to this chapter is entitled to unpaid time off as provided by this section to:

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

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

(b)  Except as limited by Subsection (c), an employee is entitled under this section to up to four hours of time off at one time in any one-year period for each of the employee's children for whose activities the employee is entitled to time off under this chapter.

(c)  An employee is not entitled to take time off under this section more than two times in a one-month period.

(d)  Before taking time off under this section, an employee must provide the employer with reasonable advance written notice of the planned absence of the employee, unless the need for the absence was not reasonably foreseeable. The notice must include the date and time of the planned absence and a brief description of the meeting or activity in which the employee will be participating. An employer may not require notice under this subsection of more than five calendar days.

Sec. 83.004.  USE OF LEAVE TIME. (a) An employee may, but is not required to, use existing vacation leave time, personal leave time, or compensatory leave time for the purpose of a planned absence authorized by this chapter except as otherwise provided by a collective bargaining agreement entered into before September 1, 2019.

(b)  The use of leave time under this section may not be restricted by a term or condition adopted under a collective bargaining agreement entered into on or after September 1, 2019.

Sec. 83.005.  DOCUMENTATION. (a) An employee shall provide documentation to the employer of the employee's attendance at a meeting or participation in a particular activity on the employer's request. An employer may waive the documentation requirement.

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

Sec. 83.006.  SAME EMPLOYER. If both parents of a child are employed by the same employer at the same workplace, the entitlement granted under Section 83.003 may be exercised as regards a specific meeting or activity of that child only by the employee who first gives notice to the employer as required under Section 83.003(d). The other parent is entitled to time off to attend the meeting or activity only as approved by the employer.

Sec. 83.007.  EMPLOYER RETALIATION PROHIBITED. (a) An employer may not suspend or terminate the employment of, or otherwise discriminate against, an employee who takes a planned absence authorized by this chapter to attend a meeting or participate in an activity of the employee's child if the employee has fulfilled the requirements of Section 83.003(d).

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

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

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

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

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

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

Sec. 83.008.  NOTICE TO EMPLOYEES. (a) Each employer shall inform its employees of their rights under this chapter by posting a conspicuous sign in a prominent location in the employer's workplace.

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

SECTION 2.  This Act applies only to a suspension, termination, or other adverse employment action that is taken by an employer against an employee because of an employee absence authorized under Chapter 83, Labor Code, as added by this Act, that occurs on or after the effective date of this Act. Action taken by an employer against an employee for an employee absence occurring before that date is governed by the law in effect on the date the absence occurred, and the former law is continued in effect for that purpose.

SECTION 3.  This Act takes effect September 1, 2019.