

By: Reynolds

H.B. No. 3410

A BILL TO BE ENTITLED

AN ACT

relating to requiring certain employers to provide paid sick leave to employees; providing administrative and civil 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 SICK LEAVE

Sec. 83.001. DEFINITIONS. In this chapter:

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

(2) "Employee" means a person employed by an employer.

(3) "Employer" means a person who is engaged in an industry affecting commerce and who employs one or more employees.

(4) "Family member" means:

(A) the employee's spouse;

(B) the employee's natural child, adopted child, stepchild, foster child, or legal ward;

(C) a child to whom the employee stands in loco parentis;

(D) a person to whom the employee stood in loco parentis when the person was a child;

(E) the employee's parent, foster parent, stepparent, adoptive parent, or legal guardian or conservator;

(F) a parent, foster parent, stepparent,

1 adoptive parent, or legal guardian or conservator of the employee's
2 spouse;

3 (G) the employee's grandparent or
4 step-grandparent;

5 (H) the grandparent or step-grandparent of the
6 employee's spouse;

7 (I) the employee's brother or sister of the whole
8 or half blood or by adoption;

9 (J) a brother or sister of the whole or half blood
10 or by adoption of the employee's spouse;

11 (K) the employee's stepbrother or stepsister;

12 (L) a stepbrother or stepsister of the employee's
13 spouse;

14 (M) the employee's foster brother or sister;

15 (N) a foster brother or sister of the employee's
16 spouse;

17 (O) the employee's grandchild or
18 step-grandchild;

19 (P) a grandchild or step-grandchild of the
20 employee's spouse;

21 (Q) a person for whom the employee is responsible
22 for providing or arranging care; or

23 (R) a person related to the employee by
24 consanguinity or affinity who lives in the employee's household.

25 (5) "Family violence" has the meaning assigned by
26 Section 71.004, Family Code.

27 (6) "Harassment" means any conduct that constitutes an

1 offense under Section 42.07, Penal Code.

2 (7) "Health care professional" means an individual who
3 is licensed, certified, or otherwise authorized to administer
4 health care in this state.

5 (8) "Household" has the meaning assigned by Section
6 71.005, Family Code.

7 (9) "Sexual abuse" means any conduct that constitutes
8 an offense under Section 21.02, 21.11, or 25.02, Penal Code.

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

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

13 Sec. 83.002. APPLICABILITY OF CHAPTER. This chapter does
14 not apply to:

15 (1) an employee who is entitled to unemployment
16 benefits or allowances under the Railroad Unemployment Insurance
17 Act (45 U.S.C. Section 351 et seq.); or

18 (2) an employer who is an agency of the federal
19 government.

20 Sec. 83.003. PAID SICK LEAVE REQUIRED. Each employer shall
21 provide paid sick leave annually to each employee in this state
22 under the terms of this chapter.

23 Sec. 83.004. PAID SICK LEAVE ACCRUAL AND CARRYOVER. (a)
24 Paid sick leave under this chapter accrues beginning on the date of
25 hire at a rate of one hour of paid sick leave for each 30 hours
26 worked by an employee.

27 (b) Each employee is entitled to carry over unused paid sick

1 leave from the current calendar year to the following calendar year
2 unless the employer elects to pay an employee for unused sick leave
3 at the end of the calendar year and make paid sick leave available
4 at the beginning of the next calendar year as provided by Section
5 83.005(b).

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

9 Sec. 83.005. ENTITLEMENT TO USE PAID SICK LEAVE;
10 LIMITATIONS. (a) An employee is entitled to use accrued paid sick
11 leave under this chapter 60 calendar days after the date of hire,
12 unless the employer agrees to an earlier date.

13 (b) An employer may make immediately available to an
14 employee at the beginning of a year, quarter, or other period the
15 entire amount of paid sick leave that the employee is expected to
16 accrue during the year, quarter, or other period.

17 (c) At the employer's discretion, an employer may loan paid
18 sick leave time to an employee in advance of accrual by the
19 employee.

20 (d) Unless an employee policy or collective bargaining
21 agreement provides for the payment of accrued fringe benefits on
22 termination, an employee is not entitled to payment of unused
23 accrued paid sick leave under this chapter on termination of
24 employment.

25 Sec. 83.006. EMPLOYER COMPLIANCE. An employer is
26 considered to be in compliance with this chapter if the employer
27 offers one or more other types of paid leave that:

1 (1) may be used for the purposes described by this
2 chapter; and

3 (2) is accrued at a rate equal to or greater than the
4 rate described by Section 83.004.

5 Sec. 83.007. PAY RATE FOR SICK LEAVE. (a) Each employer
6 shall pay each employee for paid sick leave time taken at a pay rate
7 equal to the normal hourly wage for that employee.

8 (b) For purposes of Subsection (a) and Section 83.004, an
9 employee who is exempt from the overtime requirements under the
10 federal Fair Labor Standards Act (29 U.S.C. 213(a)(1)), is presumed
11 to work 40 hours each week unless the employee's regular workweek is
12 less than 40 hours.

13 Sec. 83.008. USE OF PAID SICK LEAVE. (a) An employee may
14 use paid sick leave accrued under this chapter for:

15 (1) the employee's mental or physical illness, injury,
16 or health condition;

17 (2) the medical diagnosis, care, or treatment of the
18 employee's mental or physical illness, injury, or health condition;

19 (3) preventative medical care for the employee;

20 (4) the employee's family member's mental or physical
21 illness, injury, or health condition;

22 (5) the medical diagnosis, care, or treatment of the
23 employee's family member's mental or physical illness, injury, or
24 health condition; or

25 (6) preventative medical care for the employee's
26 family member.

27 (b) An employee who is or whose family member is a victim of

1 family violence, sexual assault, sexual abuse, stalking, or
2 harassment may use paid sick leave accrued under this chapter:

3 (1) for medical care or psychological or other
4 counseling for physical or psychological injury or disability;

5 (2) to obtain services from a victim services
6 organization;

7 (3) to relocate due to the family violence, sexual
8 assault, sexual abuse, stalking, or harassment; or

9 (4) to participate in a legal proceeding or
10 court-ordered requirement relating to the family violence, sexual
11 assault, sexual abuse, stalking, or harassment.

12 (c) An employee may use paid sick leave to attend a meeting
13 at a child family member's school.

14 (d) An employee may use paid sick leave while the employee's
15 place of business or the school or child care facility of the
16 employee's child family member is closed due to a public health
17 emergency.

18 (e) An employee may not use paid sick leave in increments of
19 less than one hour.

20 (f) An employer may not require an employee to find another
21 employee to work during the time the employee intends to use paid
22 sick leave as a condition of using paid sick leave.

23 Sec. 83.009. NOTICE TO EMPLOYER. (a) If an employee's need
24 to use paid sick leave under this chapter is foreseeable, an
25 employer may require advance notice of the intention to use paid
26 sick leave.

27 (b) If an employee's need for paid sick leave is not

1 foreseeable, an employer may require the employee to give notice of
2 the intention to use paid sick leave under this chapter as soon as
3 practicable.

4 Sec. 83.010. EMPLOYER RECORDS. An employer shall retain
5 records that document the amount of paid sick leave accrued and
6 taken by each employee. The records must be maintained for at least
7 three years.

8 Sec. 83.011. DOCUMENTATION. (a) For paid sick leave of
9 three or more consecutive days, an employer may require reasonable
10 documentation that the leave is being taken for a purpose permitted
11 under this chapter.

12 (b) If paid sick leave is taken for a reason described by
13 Section 83.008(a), documentation signed by a health care provider
14 who is treating the employee or the employee's family member
15 indicating the need for the number of days of the leave is
16 considered to be reasonable documentation. An employer may not
17 require that the documentation explain the nature of the illness,
18 injury, or health condition.

19 (c) If paid sick leave is taken for a reason described by
20 Section 83.008(b), reasonable documentation includes:

- 21 (1) a copy of a court document;
22 (2) an incident report or other record maintained by a
23 law enforcement agency or official; or
24 (3) documentation from a victim's assistance counselor
25 from a state or local agency or other entity.

26 (d) An employer may not require the documentation under
27 Subsection (c) to include details of the family violence, sexual

1 assault, sexual abuse, stalking, or harassment, including any
2 references to specific acts.

3 (e) Documentation and information provided to an employer
4 is confidential.

5 (f) If an employer requires documentation under this
6 section, the employer is responsible for the cost of obtaining
7 copies of that documentation.

8 Sec. 83.012. NOTICE TO EMPLOYEES. (a) Each employer
9 subject to this chapter shall, at the time of hiring, provide notice
10 in both English and Spanish to each employee:

11 (1) of the employee's entitlement to paid sick leave,
12 the amount of paid sick leave provided to employees, and the terms
13 under which leave may be used under this chapter;

14 (2) that retaliation by the employer against the
15 employee for requesting or using paid sick leave to which the
16 employee is entitled is prohibited; and

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

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

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

27 (d) The commission by rule shall prescribe the form and

1 content of the notice required under this section.

2 (e) The commission may adopt rules to establish additional
3 requirements concerning the means by which employers provide notice
4 required under this section.

5 Sec. 83.013. BREAK IN SERVICE. (a) Termination of an
6 employee's employment by an employer, regardless of whether
7 voluntary or involuntary, is considered a break in service for
8 purposes of this chapter.

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

11 (1) begins to accrue paid sick leave under this
12 chapter; and

13 (2) is not entitled to any unused hours of paid sick
14 leave that had accrued before the employee's break in service,
15 unless the employee is rehired within 30 days of separation or the
16 employer agrees to reinstate some or all of the employee's
17 previously accrued paid sick leave.

18 Sec. 83.014. TRANSFER OF EMPLOYEE. (a) The transfer of an
19 employee to a separate division, entity, or location of the same
20 employer is not considered to be a break in service for purposes of
21 this chapter.

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

24 (1) retain all accrued paid sick leave under this
25 chapter; and

26 (2) immediately access the retained paid sick leave
27 time without any waiting period.

1 Sec. 83.015. SUCCESSOR EMPLOYER. If an employer succeeds
2 or takes the place of an existing employer, employees of the former
3 employer who are employed by the successor are entitled to:

4 (1) retain all accrued paid sick leave under this
5 chapter; and

6 (2) immediately access the retained paid sick leave
7 time without any waiting period.

8 Sec. 83.016. LIMITATIONS OF CHAPTER. This chapter does
9 not:

10 (1) prevent an employer from providing more paid sick
11 leave than is required under this chapter;

12 (2) prohibit an employer that provides paid leave in
13 addition to the paid sick leave required under this chapter from
14 restricting the purposes for which an employee may take that
15 additional leave; or

16 (3) diminish any rights provided to any employee under
17 a collective bargaining agreement.

18 Sec. 83.017. COLLECTIVE BARGAINING AGREEMENTS. A
19 collective bargaining agreement may waive the requirements of this
20 chapter by clear and unambiguous language within the agreement.

21 Sec. 83.018. RETALIATION PROHIBITED. An employer may not
22 take retaliatory personnel action or otherwise discriminate
23 against an employee because the employee:

24 (1) requests or uses paid sick leave in accordance
25 with this chapter; or

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

1 Sec. 83.019. COMPLAINT; HEARING; PENALTY. (a) Any
2 employee aggrieved by a violation of this chapter may file a claim
3 with the commission in the manner prescribed by Subchapter D,
4 Chapter 61.

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

8 (c) An employer who is found by the commission, by a
9 preponderance of the evidence, to have violated a provision under
10 this chapter is liable to the commission for an administrative
11 penalty.

12 (d) The commission may award the employee all appropriate
13 relief, including payment for used paid sick leave, rehiring or
14 reinstatement to the employee's previous job, payment of back
15 wages, and reestablishment of employee benefits for which the
16 employee otherwise would have been eligible if the employee had not
17 been subject to retaliatory personnel action or other
18 discrimination.

19 (e) A party may appeal a final decision of the commission by
20 filing suit in district court.

21 Sec. 83.020. CIVIL PENALTY. An employer who wilfully
22 violates this chapter is liable for a civil penalty not to exceed
23 \$100 for each violation. The attorney general may bring an action
24 to collect a civil penalty under this chapter. Civil penalties
25 assessed under this section shall be deposited in the general
26 revenue fund.

27 Sec. 83.021. CIVIL ACTION BY EMPLOYEE. (a) An employee

1 aggrieved by a violation of this chapter may bring a civil action to
2 enforce rights protected by this chapter, including an action for
3 appropriate injunctive relief, in the district court in the county
4 in which the alleged violation occurred or in which the alleged
5 violator's residence or principal place of business is located.

6 (b) An action under this section must be brought not later
7 than the second anniversary of the date of the violation.

8 (c) The employer of an employee who prevails in a civil
9 action under this section is liable to the affected employee for
10 damages equal to the amount of any wages, salary, employment
11 benefits, or other compensation denied or lost to the employee by
12 reason of the violation or, if wages, salary, employment benefits,
13 or other compensation has not been denied or lost, any actual
14 monetary losses sustained by the employee as a direct result of the
15 violation.

16 (d) An employer described by Subsection (c) is also liable
17 for equitable relief as appropriate, including reinstatement and
18 promotion.

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

22 Sec. 83.022. INFORMATION FROM AND OUTREACH BY COMMISSION.

23 (a) The commission shall make available to the public on the
24 commission's Internet website information regarding:

25 (1) the requirements of and the rights and remedies
26 under this chapter; and

27 (2) best practices for employers with respect to paid

1 sick leave.

2 (b) The commission shall develop a pamphlet containing the
3 information provided under Subsection (a) and make the pamphlet
4 available at no cost for distribution at child care facilities,
5 health care facilities, family violence shelters, and other
6 community centers.

7 (c) The commission shall make the information under
8 Subsections (a) and (b) available in both English and Spanish.

9 (d) The commission shall conduct additional public outreach
10 efforts to inform employees and the public about this chapter.

11 SECTION 2. (a) The change in law made by this Act applies to
12 an employee hired on or after January 1, 2020. For an employee
13 hired before January 1, 2020, paid sick leave under Chapter 83,
14 Labor Code, as added by this Act, begins to accrue on that date, and
15 the employee may begin to use the paid sick leave 90 calendar days
16 after that date, unless the employer agrees to an earlier date.

17 (b) Chapter 83, Labor Code, as added by this Act, does not
18 preempt or override the terms of any collective bargaining
19 agreement effective before January 1, 2020.

20 SECTION 3. Not later than December 1, 2019, the Texas
21 Workforce Commission shall:

22 (1) prescribe the form and content of the notice
23 required by Section 83.012(b), Labor Code, as added by this Act;

24 (2) post on the commission's Internet website the
25 information required by Section 83.022(a), Labor Code, as added by
26 this Act; and

27 (3) adopt rules necessary to implement Chapter 83,

1 Labor Code, as added by this Act.

2 SECTION 4. This Act takes effect September 1, 2019.