

By: Bernal

H.B. No. 3728

A BILL TO BE ENTITLED

AN ACT

relating to requiring certain employers to provide paid sick leave to employees; providing 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 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 for compensation who works at least 80 hours in a calendar year. The term includes a person who works through an employment agency, as defined by Section 21.002, and a temporary help firm, as defined by Section 201.011. The term does not include a person who is:

(A) an unpaid volunteer; or

(B) an independent contractor.

(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) a person related to an employee within the third degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code; or

(B) a person related to an employee by

consanguinity or affinity who lives in the employee's household.

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

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

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

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

Sec. 83.002. APPLICABILITY OF CHAPTER. This chapter does not apply to an employer who is:

(1) a state agency or political subdivision, as those terms are defined by Section 21.002; or

(2) an agency of or a corporation wholly owned by the federal government.

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

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

(b) An employer may not limit the maximum number of hours of paid sick leave an employee may accrue to less than:

(1) 64 hours per calendar year, if the employer employed at least 15 employees, not including family members, at any time during the preceding calendar year; or

1           (2) 48 hours per calendar year, if the employer  
2 employed fewer than 15 employees, not including family members, at  
3 any time during the preceding calendar year.

4           (c) Each employee is entitled to carry over not more than  
5 the number of hours specified in Subsection (b) of unused paid sick  
6 leave from the current calendar year to the following calendar year  
7 unless the employer elects to make paid sick leave available at the  
8 beginning of a year as provided by Section 83.005(c).

9           (d) Sick leave hours carried over from a previous calendar  
10 year must be immediately available to the employee in the following  
11 calendar year.

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

16           (b) An employee is not entitled to use accrued paid sick  
17 leave under this chapter on more than eight calendar days in any  
18 calendar year.

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

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

26           (e) 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 sick leave. An employer may establish  
3 incentives to encourage employees to work additional hours or  
4 shifts as provided by this subsection instead of using accrued paid  
5 sick leave.

6 (f) Unless an employee policy or collective bargaining  
7 agreement provides for the payment of accrued fringe benefits on  
8 termination, an employee is not entitled to payment of unused  
9 accrued paid sick leave under this chapter on termination of  
10 employment.

11 Sec. 83.006. PAY RATE FOR SICK LEAVE. Each employer shall  
12 pay each employee for paid sick leave taken at a pay rate equal to  
13 the normal hourly wage for that employee. The employee's normal  
14 hourly wage may not be less than the amount required by Section  
15 [62.051](#).

16 Sec. 83.007. USE OF PAID SICK LEAVE. (a) An employee may  
17 use paid sick leave accrued under this chapter if:

18 (1) the employee is ill, is injured, or has an  
19 appointment with a health care provider;

20 (2) it is necessary for the employee to:

21 (A) care for a family member who is ill or  
22 injured; or

23 (B) accompany a family member to an appointment  
24 with a health care provider; or

25 (3) the employee or the employee's family member is a  
26 victim of family violence, sexual assault, or stalking and the  
27 employee or the family member needs to:

1           (A) receive medical attention;

2           (B) relocate the employee's or the family  
3 member's residence;

4           (C) receive services from a victim services  
5 organization; or

6           (D) participate in a legal proceeding or  
7 court-ordered requirement relating to the family violence, sexual  
8 assault, or stalking.

9           (b) An employer may adopt a reasonable procedure to verify  
10 that the use of paid sick leave by an employee who uses the leave for  
11 more than three consecutive work days meets the requirements of  
12 this section.

13           (c) An employer may not require an employee to find another  
14 employee to work during the time the employee intends to use paid  
15 sick leave as a condition of using paid sick leave.

16           Sec. 83.008. NOTICE TO EMPLOYER. (a) If an employee's need  
17 to use paid sick leave under this chapter is foreseeable, an  
18 employer may require advance notice of the intention to use paid  
19 sick leave.

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

24           Sec. 83.009. EMPLOYER STATEMENT. (a) At least monthly, an  
25 employer shall provide to each employee an electronic or written  
26 statement that includes an accounting of the paid sick leave taken  
27 by the employee and the current amount of paid sick leave available

1 to the employee.

2 (b) An employer shall retain records that document the  
3 amount of paid sick leave accrued and taken by each employee. The  
4 records must be maintained for the applicable period of time  
5 required by 29 C.F.R. Part 516, Subpart A.

6 (c) This section does not create a new requirement for a  
7 certified payroll.

8 Sec. 83.010. NOTICE TO EMPLOYEES. (a) An employer shall  
9 include in the employer's employee handbook a notice containing an  
10 employee's rights and remedies relating to paid sick leave required  
11 by this chapter.

12 (b) This section does not require an employer to create an  
13 employee handbook.

14 (c) An employer shall display in a conspicuous place,  
15 accessible to employees, at the employer's place of business a  
16 notice that describes the requirements of this chapter. The  
17 commission by rule shall prescribe the form and content of the  
18 notice.

19 Sec. 83.011. EMPLOYER COMPLIANCE. An employer is in  
20 compliance with this chapter if the employer offers paid leave  
21 that:

22 (1) may be used for the purposes described by Section  
23 83.007; and

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

26 Sec. 83.012. BREAK IN SERVICE. (a) Termination of an  
27 employee's employment by an employer, regardless of whether

voluntary or involuntary, is considered a break in service for purposes of this chapter.

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

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

(2) is not entitled to any unused hours of paid sick leave that accrued before the employee's break in service, unless the employee is rehired within six months of separation or the employer agrees to reinstate all of the employee's previously accrued paid sick leave.

Sec. 83.013. TRANSFER OF EMPLOYEE. (a) The transfer of an employee to a separate division, entity, or location of the same employer is not considered to be a break in service for purposes of this chapter.

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

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

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

Sec. 83.014. SUCCESSOR EMPLOYER. If an employer succeeds or takes the place of an existing employer, employees of the former employer who are employed by the successor are entitled to:

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

(2) immediately access the retained paid sick leave

without any waiting period.

Sec. 83.015. LIMITATIONS OF CHAPTER. This chapter does not:

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

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

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

Sec. 83.016. COLLECTIVE BARGAINING AGREEMENTS. A collective bargaining agreement may waive the requirements of this chapter by clear and unambiguous language within the agreement.

Sec. 83.017. RETALIATION PROHIBITED. An employer may not take retaliatory personnel action or otherwise discriminate against an employee because the employee:

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

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

Sec. 83.018. COMPLAINT; HEARING; ADMINISTRATIVE PENALTY. (a) Any employee aggrieved by a violation of this chapter may file a claim with the commission in the manner prescribed by Subchapter D, Chapter 61.

(b) On receipt of a complaint, the commission shall investigate and dispose of the complaint in the same manner as a



1 wage claim under Subchapter D, Chapter 61.

2 (c) An employer who is found by the commission, by a  
3 preponderance of the evidence, to have violated Section 83.017 is  
4 liable to the commission for an administrative penalty of \$500 for  
5 each violation.

6 (d) An employer who is found by the commission, by a  
7 preponderance of the evidence, to have violated a provision under  
8 this chapter other than Section 83.017 is liable to the commission  
9 for an administrative penalty of not more than \$100 for each  
10 violation.

11 (e) If the commission finds that an employer violated  
12 Section 83.017, the commission shall award to the employee all  
13 appropriate relief, including payment for used paid sick leave,  
14 rehiring or reinstatement to the employee's previous job, payment  
15 of back wages, and reestablishment of employee benefits for which  
16 the employee otherwise would have been eligible if the employee had  
17 not been subject to retaliatory personnel action or other  
18 discrimination.

19 (f) A complaint under this section must be brought not later  
20 than the second anniversary of the date of the violation.

21 Sec. 83.019. INFORMATION FROM AND OUTREACH BY COMMISSION.

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

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

26 (2) best practices for employers with respect to paid  
27 sick leave.

1        (b) The commission may conduct additional public outreach  
2 efforts to inform employees and the public about this chapter.

3        SECTION 2. (a) The change in law made by this Act applies to  
4 an employee hired on or after January 1, 2021. For an employee  
5 hired before January 1, 2021, paid sick leave under Chapter 83,  
6 Labor Code, as added by this Act, begins to accrue on that date, and  
7 the employee may begin to use the paid sick leave 90 calendar days  
8 after that date, unless the employer agrees to an earlier date.

9        (b) Chapter 83, Labor Code, as added by this Act, does not  
10 preempt or override the terms of any collective bargaining  
11 agreement effective before January 1, 2021.

12        SECTION 3. Not later than September 1, 2020, the Texas  
13 Workforce Commission shall:

14                (1) prescribe the form and content of the notice  
15 required by Section 83.010(c), Labor Code, as added by this Act;

16                (2) post on the commission's Internet website the  
17 information required by Section 83.019(a), Labor Code, as added by  
18 this Act; and

19                (3) adopt rules necessary to implement Chapter 83,  
20 Labor Code, as added by this Act.

21        SECTION 4. Except as provided by Section 3 of this Act, this  
22 Act takes effect January 1, 2021.