

By: Reynolds

H.B. No. 893

A BILL TO BE ENTITLED

1 AN ACT
2 relating to requiring certain employers to provide paid sick leave
3 to employees; providing administrative and civil penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subtitle D, Title 2, Labor Code, is amended by
6 adding Chapter 83 to read as follows:

7 CHAPTER 83. EARNED PAID SICK LEAVE

8 Sec. 83.001. DEFINITIONS. In this chapter:

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

11 (2) "Employee" means an individual employed by an
12 employer.

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

15 (4) "Family member" means:

16 (A) the employee's spouse;

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

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

21 (D) an individual to whom the employee stood in
22 loco parentis when the individual was a child;

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

1 (F) a parent, foster parent, stepparent,
2 adoptive parent, or legal guardian or conservator of the employee's
3 spouse;

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

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

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

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

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

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

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

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

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

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

22 (Q) an individual for whom the employee is
23 responsible for providing or arranging care; or

24 (R) an individual related to the employee by
25 consanguinity or affinity who lives in the employee's household.

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

1 (6) "Harassment" means any conduct that constitutes an
2 offense under Section 42.07, Penal Code.

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

6 (8) "Household" has the meaning assigned by Section
7 71.005, Family Code.

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

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

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

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

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

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

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

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

1 (b) Each employee is entitled to carry over unused paid sick
2 leave from the current calendar year to the following calendar year
3 unless the employer elects to pay an employee for unused sick leave
4 at the end of the calendar year and make paid sick leave available
5 at the beginning of the next calendar year as provided by Section
6 83.005(b).

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

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

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

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

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

26 Sec. 83.006. EMPLOYER COMPLIANCE. An employer is
27 considered to be in compliance with this chapter if the employer

1 offers one or more other types of paid leave that:

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

4 (2) accrues at a rate equal to or greater than the rate
5 described by Section 83.004.

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

9 (b) For purposes of Subsection (a) and Section 83.004, an
10 employee who is exempt from the overtime requirements under Section
11 13(a)(1), Fair Labor Standards Act of 1938 (29 U.S.C. Section
12 213(a)(1)), is presumed to work 40 hours each week unless the
13 employee's regular workweek is less than 40 hours.

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

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

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

20 (3) preventative medical care for the employee;

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

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

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

1 (b) An employee who is or whose family member is a victim of
2 family violence, sexual assault, sexual abuse, stalking, or
3 harassment may use paid sick leave accrued under this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (d) An employer may not require the documentation under

1 Subsection (c) to include details of the family violence, sexual
2 assault, sexual abuse, stalking, or harassment, including any
3 references to specific acts.

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

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

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

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

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

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

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

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

1 (d) The commission by rule shall prescribe the form and
2 content of the notice required under this section.

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

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

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

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

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

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

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

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

27 (2) immediately access the retained paid sick leave

1 time without any waiting period, except that the employee remains
2 subject to any remaining period of the initial waiting period
3 described by Section 83.005(a), if applicable.

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

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

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

11 Sec. 83.016. LIMITATIONS OF CHAPTER. This chapter does
12 not:

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

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

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

21 Sec. 83.017. COLLECTIVE BARGAINING AGREEMENT. A collective
22 bargaining agreement may waive the requirements of this chapter by
23 clear and unambiguous language within the agreement.

24 Sec. 83.018. RETALIATION PROHIBITED. An employer may not
25 take retaliatory personnel action or otherwise discriminate
26 against an employee because the employee:

27 (1) requests or uses paid sick leave in accordance

1 with this chapter; or

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

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

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

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

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

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

24 Sec. 83.020. CIVIL PENALTY. An employer who wilfully
25 violates this chapter is liable for a civil penalty not to exceed
26 \$100 for each violation. The attorney general may bring an action
27 to collect a civil penalty under this chapter. Civil penalties

1 assessed under this section shall be deposited in the general
2 revenue fund.

3 Sec. 83.021. CIVIL ACTION BY EMPLOYEE. (a) An employee
4 aggrieved by a violation of this chapter may bring a civil action to
5 enforce rights protected by this chapter, including an action for
6 appropriate injunctive relief, in the district court in the county
7 in which the alleged violation occurred or in which the alleged
8 violator's residence or principal place of business is located.

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

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

19 (d) An employer described by Subsection (c) is also liable
20 for equitable relief as appropriate, including reinstatement and
21 promotion.

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

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

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

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

3 (2) best practices for employers with respect to paid
4 sick leave.

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

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

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

14 SECTION 2. (a) The change in law made by this Act applies to
15 an employee hired on or after January 1, 2024. For an employee
16 hired before January 1, 2024, paid sick leave under Chapter 83,
17 Labor Code, as added by this Act, begins to accrue on that date, and
18 the employee may begin to use the paid sick leave 90 calendar days
19 after that date, unless the employer agrees to an earlier date.

20 (b) Chapter 83, Labor Code, as added by this Act, does not
21 preempt or override the terms of any collective bargaining
22 agreement effective before January 1, 2024.

23 SECTION 3. Not later than December 1, 2023, the Texas
24 Workforce Commission shall:

25 (1) prescribe the form and content of the notice
26 required by Section 83.012(a), Labor Code, as added by this Act;

27 (2) post on the commission's Internet website the

1 information required by Section 83.022(a), Labor Code, as added by
2 this Act; and

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

5 SECTION 4. This Act takes effect September 1, 2023.