

By: Collier

H.B. No. 995

A BILL TO BE ENTITLED

AN ACT

relating to requiring certain employers to provide paid 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 LEAVE

Sec. 83.001. DEFINITIONS. In this chapter:

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

(2) "Employee" means a person employed by an employer. The term does not include a person who is:

(A) an unpaid volunteer;

(B) an independent contractor; or

(C) a participant in a work-study program that provides employment opportunities for compensation or vocational training to students attending a secondary or post-secondary educational institution.

(3) "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.

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

(1) an employee who is:

(A) entitled to unemployment benefits or allowances under the Railroad Unemployment Insurance Act (45 U.S.C. Section 351 et seq.);

(B) covered under the Railway Labor Act (45 U.S.C. 151 et seq.); or

(C) employed by the employee's parent, spouse, or child; or

(2) an employer who is:

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

(B) an agency of the federal government; or

(C) a charitable or religious organization exempt from taxation under Section 501(c), Internal Revenue Code of 1986.

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

(b) Notwithstanding Subsection (a), an employer with not more than 75 employees is not required to provide paid leave under this chapter before the second anniversary of the date the employer hires the employer's first employee.

Sec. 83.004. PAID LEAVE ACCRUAL AND CARRYOVER. (a) Paid leave under this chapter accrues beginning on the date of hire:

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

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

1 (b) Each employee is entitled to carry over not more than 40
2 unused accrued hours of paid leave from the current calendar year to
3 the following calendar year unless the employer elects to pay the
4 employee for any unused paid leave at the end of the year at the rate
5 described by Section 83.007.

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

9 Sec. 83.005. ENTITLEMENT TO USE PAID LEAVE; LIMITATIONS.

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

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

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

19 (d) 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 leave that the employee is expected to accrue
22 during the year, quarter, or other period.

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

25 (f) On the mutual consent of the employee and employer, an
26 employee who chooses to work additional hours or shifts during the
27 same or following pay period, instead of hours or shifts missed,

1 does not use accrued paid leave.

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

6 Sec. 83.006. EMPLOYER COMPLIANCE. (a) An employer is
7 considered to be in compliance with this chapter if the employer
8 offers one or more other types of paid leave that:

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

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

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

14 Sec. 83.007. PAY RATE FOR LEAVE. (a) Each employer shall
15 pay each employee for paid leave time taken at a pay rate equal to
16 the normal hourly wage for that employee.

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

22 (c) If an employee receives gratuity in the course of
23 employment to the extent that the gratuity is considered wages in
24 the computation of taxes under the Federal Unemployment Tax Act (26
25 U.S.C. Section 3301 et seq.), the employee's normal hourly wage may
26 not be less than the amount required by Section 62.051.

27 (d) If the employee's normal hourly wage cannot be

1 determined, the employer shall pay the employee for leave under
2 this chapter at an hourly wage that may not be less than the amount
3 required by Section 62.051.

4 Sec. 83.008. USE OF PAID LEAVE. An employee may use paid
5 leave accrued under this chapter for any purpose, and is not
6 required to disclose the reason for taking leave to the employer.

7 Sec. 83.009. NOTICE TO EMPLOYER. (a) If an employee's need
8 to use paid leave under this chapter is foreseeable, an employer may
9 require advance notice of the intention to use paid leave not more
10 than seven days before the date the leave is to begin.

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

14 Sec. 83.010. NOTICE TO EMPLOYEES. (a) Each employer
15 subject to this chapter shall, at the time of hiring, provide notice
16 in both English and Spanish to each employee:

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

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

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

26 (b) An employer may comply with this section by displaying a
27 poster in a conspicuous place, accessible to employees, at the

1 employer's place of business that contains in both English and
2 Spanish the information required by this section.

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

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

9 Sec. 83.011. BREAK IN SERVICE. (a) Termination of an
10 employee's employment by an employer, regardless of whether
11 voluntary or involuntary, is considered a break in service for
12 purposes of this chapter.

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

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

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

22 Sec. 83.012. TRANSFER OF EMPLOYEE. (a) The transfer of an
23 employee to a separate division, entity, or location of the same
24 employer is not considered to be a break in service for purposes of
25 this chapter.

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

1 (1) retain all accrued paid leave under this chapter;
2 and
3 (2) immediately access the retained paid leave time
4 without any waiting period.

5 Sec. 83.013. SUCCESSOR EMPLOYER. If an employer succeeds
6 or takes the place of an existing employer, employees of the former
7 employer who are employed by the successor are entitled to:

8 (1) retain all accrued paid leave under this chapter;
9 and
10 (2) immediately access the retained paid leave time
11 without any waiting period.

12 Sec. 83.014. LIMITATIONS OF CHAPTER. This chapter does
13 not:

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

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

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

22 Sec. 83.015. COLLECTIVE BARGAINING AGREEMENTS. A
23 collective bargaining agreement may waive the requirements of this
24 chapter by clear and unambiguous language within the agreement.

25 Sec. 83.016. RETALIATION PROHIBITED. An employer may not
26 take retaliatory personnel action or otherwise discriminate
27 against an employee because the employee:

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

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

5 Sec. 83.017. COMPLAINT; HEARING; PENALTY. (a) Any
6 employee aggrieved by a violation of this chapter may file a claim
7 with the commission in the manner prescribed by Subchapter D,
8 Chapter 61.

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

12 (c) An employer who is found by the commission, by a
13 preponderance of the evidence, to have violated Section 83.016 is
14 liable to the commission for an administrative penalty of \$500 for
15 each violation.

16 (d) An employer who is found by the commission, by a
17 preponderance of the evidence, to have violated a provision under
18 this chapter other than Section 83.016 is liable to the commission
19 for an administrative penalty of not more than \$100 for each
20 violation.

21 (e) The commission may award the employee all appropriate
22 relief, including payment for used paid leave, rehiring or
23 reinstatement to the employee's previous job, payment of back
24 wages, and reestablishment of employee benefits for which the
25 employee otherwise would have been eligible if the employee had not
26 been subject to retaliatory personnel action or other
27 discrimination.

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

3 Sec. 83.018. 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 third 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 SECTION 2. (a) The change in law made by this Act applies to
26 an employee hired on or after January 1, 2021. For an employee
27 hired before January 1, 2021, paid leave under Chapter 83, Labor

1 Code, as added by this Act, begins to accrue on that date, and the
2 employee may begin to use the paid leave 90 calendar days after that
3 date, unless the employer agrees to an earlier date.

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

7 SECTION 3. This Act takes effect January 1, 2021.