

By: McClendon

H.B. No. 1057

A BILL TO BE ENTITLED

AN ACT

1
2 relating to family care leave for certain employees; providing a
3 civil penalty.

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

5 SECTION 1. Section 204.022(a), Labor Code, is amended to
6 read as follows:

7 (a) Benefits computed on benefit wage credits of an employee
8 or former employee may not be charged to the account of an employer
9 if the employee's last separation from the employer's employment
10 before the employee's benefit year:

11 (1) was required by a federal statute;

12 (2) was required by a statute of this state or an
13 ordinance of a municipality of this state;

14 (3) would have disqualified the employee under Section
15 207.044, 207.045, 207.051, or 207.053 if the employment had been
16 the employee's last work;

17 (4) imposes a disqualification under Section 207.044,
18 207.045, 207.051, or 207.053;

19 (5) was caused by a medically verifiable illness of
20 the employee or the employee's minor child;

21 (6) was based on a natural disaster that results in a
22 disaster declaration by the president of the United States under
23 the Robert T. Stafford Disaster Relief and Emergency Assistance Act
24 (42 U.S.C. Section 5121 et seq.), if the employee would have been

1 entitled to unemployment assistance benefits under Section 410 of
2 that act (42 U.S.C. Section 5177) had the employee not received
3 state unemployment compensation benefits;

4 (7) was caused by a natural disaster, fire, flood, or
5 explosion that causes employees to be separated from one employer's
6 employment;

7 (8) was based on a disaster that results in a disaster
8 declaration by the governor under Section 418.014, Government Code;

9 (9) resulted from the employee's resigning from
10 partial employment to accept other employment that the employee
11 reasonably believed would increase the employee's weekly wage;

12 (10) was caused by the employer being called to active
13 military service in any branch of the United States armed forces on
14 or after January 1, 2003;

15 (11) resulted from the employee leaving the employee's
16 workplace to protect the employee from family violence or stalking
17 as evidenced by:

18 (A) an active or recently issued protective order
19 documenting family violence against, or the stalking of, the
20 employee or the potential for family violence against, or the
21 stalking of, the employee;

22 (B) a police record documenting family violence
23 against, or the stalking of, the employee; or

24 (C) a physician's statement or other medical
25 documentation that describes the family violence against the
26 employee that:

27 (i) is recorded in any form or medium that

1 identifies the employee as the patient; and

2 (ii) relates to the history, diagnosis,
3 treatment, or prognosis of the patient;

4 (12) resulted from a move from the area of the
5 employee's employment that:

6 (A) was made with the employee's spouse who is a
7 member of the armed forces of the United States; and

8 (B) resulted from the spouse's permanent change
9 of station of longer than 120 days or a tour of duty of longer than
10 one year;

11 (13) was caused by the employee being unable to
12 perform the work as a result of a disability for which the employee
13 is receiving disability insurance benefits under 42 U.S.C. Section
14 423; ~~or~~

15 (14) resulted from the employee leaving the employee's
16 workplace to care for the employee's terminally ill spouse as
17 evidenced by a physician's statement or other medical
18 documentation, but only if no reasonable, alternative care was
19 available; or

20 (15) resulted from the birth of the employee's child or
21 the placement of a child with the employee in connection with the
22 adoption or foster care of the child by the employee and the
23 employee was paid benefits under Chapter 218.

24 SECTION 2. Subtitle A, Title 4, Labor Code, is amended by
25 adding Chapter 218 to read as follows:

26 CHAPTER 218. FAMILY CARE LEAVE UNEMPLOYMENT BENEFITS

27 Sec. 218.001. DEFINITIONS. In this chapter:

1 (1) "Child" means a person:

2 (A) who is a biological, adopted, or foster
3 child, a stepchild, or a legal ward of an employee; or

4 (B) for whom the employee stands in loco
5 parentis.

6 (2) "Employee" means an individual who performs
7 services for an employer for compensation under an oral or written
8 contract of hire, whether express or implied. The term does not
9 include an independent contractor.

10 (3) "Employer" means a person who employs employees.

11 Sec. 218.002. APPLICABILITY OF CHAPTER. This chapter
12 applies to each employer who employs 100 or more employees in this
13 state.

14 Sec. 218.003. FAMILY CARE LEAVE. An employee who has been
15 employed by the employer for at least six months is entitled to use
16 the employee's choice of not less than two weeks of accrued paid
17 sick leave or other accrued paid leave due to:

18 (1) the birth of the employee's child; or

19 (2) the placement of a child with the employee in
20 connection with the adoption or foster care of the child by the
21 employee.

22 Sec. 218.004. ELIGIBILITY FOR FAMILY CARE LEAVE
23 UNEMPLOYMENT BENEFITS. An employee is eligible for not less than
24 two weeks of family care leave unemployment benefits under this
25 chapter due to the birth of the employee's child or the placement of
26 a child with the employee in connection with the adoption or foster
27 care of the child by the employee if:

1 (1) the employer does not provide paid leave to
2 employees;

3 (2) the employee does not have adequate leave
4 accumulated; or

5 (3) the employee is not eligible to use leave.

6 Sec. 218.005. LEAVE CONCURRENT WITH FEDERAL FAMILY LEAVE
7 ACT. An employee who is entitled to leave under the federal Family
8 and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.) must
9 take leave under that law concurrent with any leave taken under this
10 chapter.

11 Sec. 218.006. WEEKLY BENEFIT AMOUNT; MAXIMUM BENEFIT
12 AMOUNTS. (a) An employee who is eligible for family care
13 unemployment benefits under this chapter is entitled to a weekly
14 benefit amount equal to the amount for which the employee would be
15 eligible under Section 207.002.

16 (b) The maximum amount payable to an employee under this
17 chapter is six times the employee's weekly benefit amount in any
18 12-month period.

19 (c) An employee may not receive more than six weeks of
20 benefits under this chapter in any 12-month period.

21 Sec. 218.007. NOTICE; CIVIL PENALTY. (a) Each employer
22 shall post in conspicuous places on the premises of the employer
23 where notices to employees and applicants for employment are
24 customarily posted a notice, prepared or approved by the
25 commission, setting forth the pertinent provisions of this chapter
26 and information relating to the enforcement of this chapter.

27 (b) An employer who wilfully violates this section is liable

1 for a civil penalty not to exceed \$100 for each violation. The
2 attorney general may bring an action to collect a civil penalty
3 under this section. Civil penalties assessed under this section
4 shall be deposited in the general revenue fund.

5 Sec. 218.008. INSTITUTION OF PAID LEAVE PROGRAM NOT
6 REQUIRED. This chapter does not require an employer who does not
7 provide paid sick leave or other paid medical leave to institute a
8 program of paid leave for any situation in which that employer is
9 not normally providing paid leave.

10 Sec. 218.009. EMPLOYMENT AND BENEFITS PROTECTION;
11 EXCEPTION. (a) An employee who takes leave under Section 218.003 or
12 218.004 is entitled, on return from the leave, to reinstatement in
13 the former position of employment or an equivalent position of
14 employment with equivalent employment benefits, pay, and other
15 terms and conditions of employment.

16 (b) Leave taken under Section 218.003 or 218.004 may not
17 result in the loss of any employment benefit accrued before the date
18 on which the leave began.

19 (c) This section does not entitle an employee who is
20 reinstated in employment to:

21 (1) the accrual of seniority or other employment
22 benefits during any period of leave; or

23 (2) any right, benefit, or position of employment
24 other than any right, benefit, or position to which the employee
25 would have been entitled had the employee not taken the leave.

26 (d) This section does not prohibit an employer from
27 requiring an employee on leave under Section 218.003 or 218.004 to

1 report periodically to the employer on the status and intention of
2 the employee to return to work.

3 Sec. 218.010. COMMISSION POWERS AND DUTIES. The commission
4 shall adopt rules as necessary to implement this chapter.

5 Sec. 218.011. PROHIBITED ACTS. (a) An employer may not
6 interfere with, restrain, or deny the exercise of or the attempt to
7 exercise any right provided under this chapter.

8 (b) An employer may not discharge or otherwise discriminate
9 against an individual for opposing a practice made unlawful by this
10 chapter.

11 (c) A person may not discharge or otherwise discriminate
12 against an individual because that individual has:

13 (1) filed a charge, or instituted or caused to be
14 instituted a proceeding, under or related to this chapter;

15 (2) given, or is about to give, any information in
16 connection with an inquiry or proceeding relating to a right
17 provided under this chapter; or

18 (3) testified, or is about to testify, in an inquiry or
19 proceeding relating to a right provided under this chapter.

20 Sec. 218.012. ENFORCEMENT. (a) An employer who violates
21 Section 218.011 is liable to an affected individual for damages
22 equal to the amount of:

23 (1) any wages, salary, employment benefits, or other
24 compensation denied or lost to the individual by reason of the
25 violation or, if wages, salary, employment benefits, or other
26 compensation has not been denied or lost, any actual monetary
27 losses sustained by the individual as a direct result of the

1 violation, including the cost of providing necessary care, not to
2 exceed an amount equal to the individual's wages or salary for 12
3 weeks; and

4 (2) interest on the amount determined under
5 Subdivision (1) computed at the prevailing rate of interest on
6 judgments.

7 (b) The employer is also liable for equitable relief as
8 appropriate, including employment, reinstatement, and promotion.

9 (c) An action to recover damages or equitable relief under
10 this section may be maintained by any one or more individuals for
11 and on behalf of those individuals.

12 (d) In addition to any judgment awarded to the plaintiff,
13 the court may require the defendant to pay reasonable attorney's
14 fees, reasonable expert witness fees, and other costs.

15 Sec. 218.013. RULES. The commission shall adopt rules as
16 necessary to administer this chapter.

17 SECTION 3. (a) This Act applies only to a suspension,
18 termination, or other adverse employment action that is taken by an
19 employer against an employee because of an employee absence
20 authorized under Chapter 218, Labor Code, as added by this Act, that
21 occurs on or after January 1, 2010. Action taken by an employer
22 against an employee for an employee absence occurring before
23 January 1, 2010, is governed by the law in effect immediately before
24 the effective date of this Act, and the former law is continued in
25 effect for that purpose.

26 (b) An employee is not entitled to take leave as provided by
27 Chapter 218, Labor Code, as added by this Act, before January 1,

1 2010.

2 (c) The Texas Workforce Commission shall adopt rules and
3 prescribe notices and forms as required by Chapter 218, Labor Code,
4 as added by this Act, not later than November 1, 2009. In adopting
5 rules under this Act, the commission shall develop procedures for
6 the payment of unemployment benefits under Chapter 218, Labor Code,
7 as added by this Act, to employees who become eligible for family
8 care leave unemployment benefits under that chapter on and after
9 January 1, 2010.

10 SECTION 4. This Act takes effect September 1, 2009.