SUBJECT: Implementing state family and medical leave act

COMMITTEE: Economic Development — favorable, with amendment

VOTE: 8 ayes — Oliveira, Yarbrough, Keffer, Luna, Raymond, Seaman, Siebert, Van de Putte

0 nays

1 absent — Greenberg

WITNESSES: For — Rick Levy, Texas AFL-CIO

Against — Dane Harris, Texas Association of Business and Chambers of Commerce; Robert Houden, National Federation of Independent Business; Chris Knepp, Texas Employment Law Council; David Pinkus, Small Business United of Texas

On — Randy McNair, Office of the Attorney General

BACKGROUND: In 1993, Congress enacted the Family and Medical Leave Act (FMLA), requiring employers to allow workers up to 12 weeks of unpaid leave because of illness or to care for children, parents, or spouses with illnesses.

DIGEST: HB 2400, as amended, would require employers with at least 50 workers within a 75-mile radius to allow eligible employees up to 12 weeks unpaid leave per year to care for a newborn child; accept a foster child or adopt a child; care for a spouse, child, or parent with a serious health condition; or attend to the employee's own serious health condition. Employees could be required to use any accrued paid leave as part of the 12-week total. Alternatively, employers could reduce the number of hours worked to accommodate the employee's needs.

Employees would be eligible to take family and medical leave if they had been employed by the employer for at least 12 months and worked at least 1,250 hours during those 12 months. Husbands and wives working for the same employer would be entitled to 12 weeks of leave total for the placement or birth of a child or to care for a sick parent with a serious health

condition. Each would be entitled to the full 12 weeks for a serious health condition.

"Serious health condition" would be defined as an illness, injury, or other physical or mental condition requiring either inpatient care in a medical care facility or ongoing medical treatment, including serious diseases such as cancer or AIDS.

Employees requesting intermittent leave for family or medical purposes could be required to temporarily transfer to an another position with equivalent pay and benefits that would better accommodate intermittent periods of leave.

Employees would have to notify employers 30 days in advance to take leave for the birth or placement of a child, and would have to make reasonable efforts to avoid work disruptions in taking leave for planned medical treatment.

Employers could request that workers on leave for serious medical conditions affecting them or family members furnish a statement from a health care provider giving information about the condition and care needed. Employers could require periodic recertification of this information and could pay for the employee to obtain a second opinion from an employer-designated health care provider. Where opinions differed, the employer could require a third opinion from a health care provider jointly approved with employee. This third opinion would be final and binding by both the employee and employer.

Employees could be required to report on their status and intentions to return to work while on leave. In the interim, the employer would be required to continue health insurance coverage. Employees who failed to return to work after taking leave could be charged the cost of all health insurance premiums paid unless the employee still suffered from the serious health condition or extenuating circumstances were beyond the control of the employee.

Employers could require that employees returning to work furnish certification from a health care provider certifying they were able to resume

their jobs. Employees would be entitled to reinstatement in their former position of employment or an equivalent position with the same benefits, pay, and other terms and conditions of employment. However, an employer would not be required to reinstate a salaried employee whose compensation was in the highest 10 percent of compensation paid to those employed by the company within 75 miles of the employee's worksite.

Teachers in public or private elementary or secondary schools or school districts would be subject to special provisions regulating when they could return to work, based on the length of the school terms and the period of leave.

HB 2400 would require the Texas Workforce Commission (TWC) to adopt by November 1, 1997, rules to implement the family and medical leave provisions. Rules could not conflict with the federal Family and Medical Leave Act. The commission could conduct investigations of employers to ensure compliance with the law and could issue subpoenas. In addition, the commission could request employers to report annually to the commission, and more frequently if it had reasonable cause to believe an employer had violated the law.

HB 2400 would require employers to post information on family and medical leave in the workplace. An employer that willfully violated the posting requirement would be subject to a civil penalty, not to exceed $100 per violation. The attorney general could bring action to collect the penalty, and any civil penalties collected would be deposited into the general revenue fund.

HB 2400 also would prohibit an employer from interfering with employees' right to take leave. Employers could not fire or otherwise discriminate against individuals who filed a charge or instituted a proceeding, gave information in connection with, or testified in a proceeding relating to rights granted under the law. Violations could make an employer liable for damages and interest and, where appropriate, for equitable relief, including reinstatement and promotion. In addition, the employer could be required to pay attorney's fees and other costs of litigation. If the employer proved that it had reasonable grounds to believe its actions did not violate the law, a court could exclude liquidated damages from the award.

TWC could bring an action in court to recover damages on behalf of an employee. Monies collected would be paid to the employee; any monies not paid within three years because the affected employee could not be located would be credited to the general revenue fund.

An action would have to be filed within two years after the date of the last event of the alleged violation. Actions alleging willful violation of the law would have to be brought within three years after the date of the last event.

HB 2400 would take effect September 1, 1997, and apply to leave beginning January 1, 1998.

SUPPORTERS SAY:

HB 2400 would give Texans access to state courts to address employer violations of FMLA and make it easier to remedy these situations. Because of the backlogged federal court system, Texas workers now have no quick avenue of redress when employers improperly deny a request for leave. By codifying the federal act into state law, this bill would allow Texas courts to resolve problems in Texas workplaces. The result will be not only quicker remedies for employees and employers but also smaller damage awards.

HB 2400 would not create additional causes of action against employers; it would simply allow employees to pursue in state court a cause of action that is already in federal law.

HB 2400 would assure employees that they could take leave from work to care for a seriously ill sick child or parent without having to worry about losing their job. Most employers already are willing to grant time off from work for such purposes; this bill would merely ensure that working Texans could use up to 12 weeks unpaid leave if circumstances required this.

HB 2400 would facilitate implementation of the federal FMLA in Texas and codify a federal law, much like the Texas Commission on Human Rights Act codified the federal Civil Rights Act of 1964. Under the bill, the Texas Workforce Commission could not adopt rules inconsistent with federal FMLA rules; the commission would have merely an administrative role in implementing FMLA.

OPPONENTS SAY:

HB 2400 would unnecessarily create a state-level bureaucracy to implement an already effective federal law. It would be a waste of taxpayer money to promulgate rules to implement this law in Texas.

HB 2400 is unnecessary because Sec. 2917(a)(2) of the federal FMLA already provides employees access to state courts. Employees can choose to file an action to recover damages or equitable relief in any state or federal court.

HB 2400 would be one more intervention in the daily practices of Texas businesses. Most employers already accommodate employee requests for medical and family emergencies and would be unduly burdened by the additional government red tape created by state rules and regulations.

HB 2400 would create additional causes of action against employers because employers would be exposed to lawsuits in both state and federal courts. Employees who lost their case in federal court could try again in state court.

OTHER OPPONENTS SAY:

By unnecessarily specifying AIDS and cancer as serious health conditions, HB 2400 could unintentionally restrict the definition of serious disease.

NOTES:

The committee amendments would prohibit the Texas Workforce Commission from adopting rules inconsistent with the federal FMLA and its rules and establish eligibility criteria for employees covered by the law.