

## **BILL ANALYSIS**

Senate Research Center

H.B. 2400  
By: Garcia (Patterson)  
Economic Development  
5-18-97  
Engrossed

### **DIGEST**

In 1993, Congress passed the Family and Medical Leave Act, allowing employees to take up to 12 weeks of unpaid leave to care for ill minor children and spouses. However, the Act did not explicitly address the issue of employees taking time to care for adult children or parents who have catastrophic illnesses such as cancer or AIDS. This bill would allow employees to take work leave to enable them to tend to their adult children or parents that have serious illnesses and codifies the federal Family and Medical Leave Act into state law.

### **PURPOSE**

As proposed, H.B. 2400 sets forth provisions regarding work leave for certain employees.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Workforce Commission under SECTION 1 (Section 84.012, Labor Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 2D, Labor Code, by adding Chapter 84, as follows:

#### **CHAPTER 84. FAMILY AND MEDICAL LEAVE**

Sec. 84.001. DEFINITIONS. Defines "child," "commission," "employee," "employer," "employment benefits," "employee benefit plan," "health care provider," "parent," "reduced leave schedule," and "serious health condition."

Sec. 84.002. APPLICATION OF CHAPTER; ELIGIBLE EMPLOYEES. Provides that this chapter applies to each employer who employs 50 or more employees in this state. Sets forth requirements regarding eligibility for family and medical leave from an employer under this chapter. Provides that, notwithstanding Subsections (a) and (b), an employee who is employed at a worksite of an employer at which the employer employs fewer than 50 employees is not eligible for family and medical leave under this chapter if the total number of employees employed by that employer within 75 miles of that worksite is fewer than 50 employees.

Sec. 84.003. FAMILY AND MEDICAL LEAVE. Provides that, except as provided by Section 84.008, an eligible employee is entitled to a total of 12 workweeks during any 12-month period because of certain occurrences. Provides that entitlement to leave under Subsection (a) for a birth or placement of a child expires on the first anniversary of the date of the birth or placement. Prohibits an employee from taking leave under Subsection (a)(1) or (a)(2) intermittently unless the employee and the employer of the employee agree in writing to that leave. Authorizes an employee to take leave under Subsection (a)(3) or (a)(4) intermittently when that leave is medically necessary. Sets forth provisions applicable if an employee requests intermittent leave under Subsection (a)(3) or (a)(4) that is foreseeable because of planned medical treatment. Sets forth additional provisions regarding the taking of leave. Sets forth provisions regarding the posting on notice regarding the pertinent provisions of this chapter by each employer.

Sec. 84.004. UNPAID LEAVE PERMITTED. Authorizes leave granted under Section 84.003 to consist of unpaid leave, except as provided by Subsection (b). Sets forth provisions applicable if an employer provides paid leave for fewer than 12 workweeks.

Sec. 84.005. SUBSTITUTION OF PAID LEAVE. Authorizes an eligible employee to elect, or an employer to require an employee, to substitute accrued paid vacation leave, personal leave, or other leave for leave provided under Section 84.003(a)(1), (2), or (3) for any part of the 12 weeks of leave required under Section 84.003. Sets forth provisions regarding the substitution of accrued paid vacation leave, personal leave, or medical or sick leave for leave provided under Section 84.003(a)(3) or (4). Provides that this chapter does not require an employer to provide paid sick leave or paid medical leave in any situation in which that employer would not normally provide paid leave.

Sec. 84.006. FORESEEABILITY OF LEAVE; NOTICE. Sets forth provisions applicable if the necessity of leave under Section 84.003(a)(1) or (2) is foreseeable because of an expected birth or adoption. Sets forth provisions applicable if the necessity for leave under Section 84.003(a)(3) or (4) is foreseeable because of planned medical treatment.

Sec. 84.007. SPOUSES EMPLOYED BY SAME EMPLOYER. Sets forth provisions applicable if a husband and wife entitled to leave under Section 84.003 are employed by the same employer.

Sec. 84.008. CERTIFICATION. Authorizes an employer to require that a request for leave under Section 84.003(a)(3) or (4) be certified by the health care provider of the eligible employee or of the child, spouse, or parent of the employee, as appropriate. Requires the employee to provide a copy of the certification to the employer in a timely manner. Sets forth provisions regarding sufficient certification. Sets forth provisions applicable if the employer has reason to doubt the validity of the certification provided under Subsection (a) for leave under Section 84.003(a)(3) or (4). Sets forth provisions applicable if a second opinion obtained under Subsection (c) differs from the opinion in the original certification provided under Subsection (a). Authorizes the employer to require that the eligible employee obtain subsequent recertifications on a reasonable basis.

Sec. 84.009. EMPLOYMENT AND BENEFITS PROTECTION; EXCEPTION. Authorizes an eligible employee who takes leave under Section 84.003 for the intended purpose of the leave is entitled, on return from the leave, to reinstatement in the former position of employment or an equivalent position of employment with equivalent employment benefits, pay, and other terms and conditions of employment. Prohibits leave taken under Section 84.003 from resulting in the loss of any employment benefit accrued before the date on which the leave began. Provides that this section does not entitle an employee who is reinstated in employment to certain rights, benefits, or positions of employment. Authorizes an employer, as a condition of eligibility to return to employment under Subsection (a), to adopt a uniformly applied practice or policy that requires an employee to receive certification from a health care provider that the employee is able to resume work. Provides that this subsection does not supersede a statute of this state, an order or ordinance of a political subdivision of this state, or a collective bargaining agreement that governs the return to work of an employee taking leave under Section 84.003(a)(4). Provides that this section does not prohibit an employer from requiring an employee on leave under Section 84.003 to report periodically to the employer on the status and intention of the employee to return to work. Sets forth provisions regarding the reinstatement of an employee under Subsection (a).

Sec. 84.010. MAINTENANCE OF HEALTH INSURANCE BENEFITS. Requires the employer, except as provided by Subsection (b), during any period that an eligible employee takes leave under Section 84.003, to maintain insurance coverage for that employee under any applicable group health plan for the duration of the leave at the level and under the conditions the coverage would have been provided if the employee had continued in employment continuously from the date on which the employee began the leave until the date on which the employee returned to employment under Section 84.009. Authorizes the employer to recover

the premium that the employer paid to maintain insurance coverage for the employee under the group health plan during any period of unpaid leave taken under Section 84.003 if the employee fails to return to work under certain conditions. Authorizes an employer to require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of a serious health condition be certified by a certain health care provider. Requires the employee to provide, in a timely manner, a copy of the certification to the employer. Sets forth provisions regarding certification required under Subsection (c)(1) and (c)(2). Defines "group health plan."

Sec. 84.011. APPLICATION TO EMPLOYEES OF CERTAIN EDUCATIONAL INSTITUTIONS. Sets forth provisions regarding the application of rights, remedies, and procedures under this chapter to employees of a public or private elementary or secondary school or school district. Sets forth provisions applicable if an eligible employee principally in an instructional capacity by a school requests leave under Section 84.003(a)(3) or (4) that is foreseeable because of planned medical treatment and that leave would exceed 20 percent of the total number of working days in the applicable academic period. Requires an employee who makes an election under Subsection (b) to comply with Section 84.006(b). Sets forth provisions applicable if the eligible employee begins leave under Section 84.003(a)(1), (2), or (3) during a certain time period. Requires the determination required under Section 84.009(a) as to placement in an equivalent position of employment to be made on the basis of established public school district policies and practices, private school policies and practices, and any applicable collective bargaining agreements.

Sec. 84.012. COMMISSION POWERS AND DUTIES. Requires the Texas Workforce Commission (commission) to adopt rules as necessary to implement this chapter. Prohibits the commission from adopting a rule that is inconsistent with certain provisions. Sets forth provisions regarding compliance with this chapter. Prohibits the commission from requiring an employer to submit certain items or information under this section except under certain conditions. Authorizes the commission, for the purposes of any investigation conducted under this section, to exercise the subpoena authority granted under Chapter 301E.

Sec. 84.013. PROHIBITED ACTS. Prohibits an employer from interfering with, restraining, or denying the exercise of or from attempting to exercise any right provided under this chapter. Set sets forth additional prohibitions.

Sec. 84.014. ENFORCEMENT. Sets forth the liability of an employer who violates Section 84.013 to an affected eligible employee. Provides that the employer is also liable for equitable relief as appropriate, including employment, reinstatement, and promotion. Authorizes an action to recover damages or equitable relief under this section to be maintained in a court of competent jurisdiction by any one or more employees and in behalf of those employees or those employees and other employees similarly situated. Authorizes the court, under certain conditions, to require the defendant to pay reasonable attorney's fees, reasonable expert witness fees, and other costs. Sets forth provisions regarding the termination of a right to bring action under this section. Requires the commissioner of the Texas Workforce Commission (commissioner) to receive, investigate, and attempt to resolve complaints of violations under Section 84.013 in the same manner that the commission receives, investigates, and attempts to resolve complaints of violations under Section 84.013 in a certain manner. Sets forth authorizations and provisions regarding an action brought by the commission in a court of competent jurisdiction for certain purposes. Sets forth provisions regarding requirements for an action brought under this section. Authorizes the commission, in addition to an action to recover damages, to bring an action to restrain violations of Section 84.013, including an action to restrain the withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to eligible employees.

SECTION 2. (a) Effective date: September 1, 1997.

(b) Provides that an employee is not entitled to take leave as provided by Section 84.004, Labor code, as added by this Act, before January 1, 1998.

(c) Requires the Texas Workforce Commission to adopt rules and prescribe notices and forms as required by Chapter 84, Labor Code, as added by this Act, not later than November 1, 1997.

SECTION 3. Emergency clause.