SUBJECT: Preempting local regulation of certain employment policies

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 7 ayes — Paddie, Harless, Hunter, P. King, Metcalf, Shaheen, Smithee

3 nays — Hernandez, Howard, Lucio

3 absent — Deshotel, Raymond, Slawson

SENATE VOTE: On final passage, August 11 — 18-11 (Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Lucio, Powell, West, Whitmire, Zaffirini)

WITNESSES: No public hearing.

DIGEST: CSSB 14 would prohibit a municipality or county from adopting or enforcing an ordinance, order, rule, regulation, or policy requiring any terms of employment that exceeded or conflicted with federal or state law relating to any form of employment leave, hiring practices, employment benefits, scheduling practices, or other terms of employment.

An "employer" would include a person who employed at least one employee. An "employee" would be an individual employed by an employer for compensation. "Employment benefit" would mean anything of value that an employee received from an employer beyond regular salary or wages.

Any provision of an ordinance, order, rule, regulation, or policy that violated this bill would be void and unenforceable.

The bill would not affect:

- the Texas Minimum Wage Act;
- the authority of a municipality or county to negotiate the terms of employment with the municipality's or county's employees or the employees' designated bargaining agent;

- a rule or policy relating to terms of employment for employees of a municipality or county, regardless of when the rule or policy was adopted;
- employment and safety protections afforded by and in compliance with state and federal law, including rest and water breaks as required under the Occupational Safety and Health Act of 1970 or any applicable guidance of the Occupational Safety and Health Administration Heat Illness Prevention Campaign; or
- a contract or agreement relating to terms of employment voluntarily entered into between a private employer or entity and a governmental entity.

The bill would take effect January 1, 2022, and would apply to an ordinance, order, rule, regulation, or policy adopted before, on, or after that date.

SUPPORTERS SAY:

CSSB 14 would provide more certainty and consistency for Texas businesses, including those impacted by the COVID-19 pandemic, by preempting certain burdensome and costly local regulations imposed on private employers.

Local governments should not dictate how businesses provide employment leave, establish hiring or scheduling practices, or offer employment benefits. Such regulations interfere with the freedom of private businesses to establish their own practices and benefits, and they amount to government overreach.

Many small businesses and restaurants work on small profit margins, so costly local mandates for terms of employment, such as some paid sick leave mandates, could force them to close. Other ordinances may affect the ability of a business to retain staff or make benefit agreements and can lead to reductions in employee hours, ultimately harming employees. Employers want their businesses to remain operational and competitive, so attracting and retaining the best employees under their own terms is in their best interest.

Cities and counties have imposed several ordinances on private employers in recent years to mandate certain terms of employment, creating a patchwork of regulations across the state. This has created burdensome compliance costs for businesses that operate across city or county lines. A business operating in a single county may have several differing city regulations for which to account. CSSB 14 would provide statewide consistency and fairness by removing the patchwork regulations with respect to employee benefits, scheduling requests, leave policies, and other mandates. As businesses struggle due to the COVID-19 pandemic, it is increasingly important to provide certainty in the state's business environment to rebuild a thriving economy and ensure Texas businesses remain competitive.

Concerns that the bill would negatively impact certain workers are misguided. Protections in state and federal laws, rules, and regulations already address the health and safety of workers, nondiscrimination, and other worker rights. Concerns about paid sick leave or LGBTQ+ rights already have been addressed by the courts. The federal Occupational Safety and Health Administration (OSHA) regulates health and safety standards such as water and rest breaks, and businesses follow OSHA guidance. CSSB 14 would not affect municipal or county employee contracts or collective bargaining agreements.

The bill would specify that only a provision in an ordinance that violated the bill would be made void, leaving the rest of the ordinance intact and preventing any unintended consequences. The scope of this bill would be only to clarify where the jurisdiction of employment regulations is located, not to determine or establish new statewide regulations. Concerns that some have expressed about local health and safety requirements during an emergency or disaster would not relate directly to this bill or its purpose.

CRITICS SAY:

CSSB 14 could roll back important workplace protections and tie the hands of local elected officials by preempting local ordinances on employment leave, hiring and scheduling practices, benefits, and other worker protections.

The bill could make it more difficult for employees to receive basic worker rights, including paid sick leave and nondiscrimination protections for LGBTQ+ individuals, minorities, and other vulnerable groups that eliminate biases from the hiring process, as well as "ban the box" protections that can provide a second chance for those who have been involved with the criminal justice system. Because the bill's exemption for OSHA breaks would not cover local mandates, CSSB 14 also could void local requirements for water and rest breaks for outdoor workers in the summer heat. State and federal laws and regulations do not go far enough to protect workers, and local communities should be able to adopt policies to fill the gaps. The Legislature should enact statewide protections rather than rolling back local worker benefits.

CSSB 14 also could hinder local efforts to respond to circumstances such as the current pandemic. Given the impact of COVID-19 on employees, especially low-wage employees, it is especially important to ensure proper worker protections. The bill could prevent local mandates for protection of frontline workers, including handwashing stations, mask mandates, and social distancing requirements, that help prevent the spread of COVID-19. Local mandates on paid sick leave, which could be voided by this bill, also would help stop the spread of viruses by allowing workers to take off necessary sick time rather than being compelled to attend work while ill and potentially contagious. Because of the broad language of CSSB 14, it is not clear whether the bill would apply to local emergency response ordinances if those ordinances affected a business's scheduling practices or other terms of employment.

The bill would remove local control from cities and counties, contrary to the idea that the government closest to the people best serves the people. Local government officials are elected to represent the community's best interests, including worker protections, and local policies are crafted with input from local businesses. Such protections and benefits incentivize employers to locate in Texas, as they may help businesses recruit workers.