

Mandatory Reporting and Antiretaliation Protection (TX HB 5538)



On Dec. 22, 2023, the Supreme Court of Texas decided *Baylor Scott & White Memorial Hospital v. Thompson*. The case involved a nurse who reported suspected abuse and neglect to Child Protective Services (CPS) and was terminated by her employer for doing so. The court ruled in favor of the employer determining that Section 261.110(b) of the Texas Family Code imposed a but-for causation standard and that the employer would have terminated the nurse when it did even if she had not reported her concerns to CPS.

This case raised serious concerns in the nursing community about the weakness of the antiretaliation standard in Section 261.110(b) of the Texas Family Code. The Texas Legislature should amend the standard to provide broader protections for professionals subject to the mandatory reporting requirements of the Texas Family Code.

The mandatory reporting law requires licensed professionals to report suspected abuse or neglect of a minor to CPS within 48 hours of learning of the suspected abuse or neglect. See Tex. Fam. Code § 261.101(b). Failure to do so results in serious consequences for the professional, including potential criminal liability. See Tex. Fam. Code § 261.109(a-1).

Given the short turnaround for reporting the violation, it is completely unrealistic to expect the professional to review internal policies and see if they impose more onerous restrictions on communication than federal law, as was the case in *Baylor Scott & White Memorial Hospital v. Thompson*. In that case, the justification for the professional's termination was sharing patient information with a school nurse without a valid release of information form—an internal policy that imposed more onerous requirements than federal law.

The antiretaliation protection in statute should be broad enough to protect an employee from an inconsequential policy violation when the public interest to be protected is the health and safety of minor children. To impose potential criminal liability on the professional for failing to report, but then also expect an employee to reconcile any difference between internal policy and federal law within 48 hours is unrealistic. If the statute's antiretaliation protections do not protect a professional in such a situation, it does not provide meaningful protection.

Texas nurses are asking you to support HB 5538, which would correct this issue by applying a motivating-factor standard to professionals' mandatory reporting obligation. This standard would provide better protection for professionals and ultimately minor children in Texas, and would make use of a standard discussed by the Supreme Court of the United States in *Babb v. Wilkie*, 589 U.S. 399 (2020).

