

By: Estes

S.B. No. 1408

A BILL TO BE ENTITLED

AN ACT

relating to wage claim disputes.

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

SECTION 1. Subdivision (1), Section 61.001, Labor Code, is amended to read as follows:

(1) "Commission" means the Texas Workforce ~~[Employment]~~ Commission ~~[or its designee]~~.

SECTION 2. Section 61.052, Labor Code, is amended to read as follows:

Sec. 61.052. PRELIMINARY WAGE DETERMINATION ORDER. (a) An examiner employed by the ~~[The]~~ commission shall analyze each wage claim filed under Section 61.051 and, if the claim alleges facts actionable under this chapter, shall investigate the claim and issue a preliminary wage determination order:

(1) dismissing the wage claim; or

(2) ordering payment of wages determined to be due and unpaid.

(b) If a commission examiner imposes an administrative penalty ~~[is imposed]~~ under Section 61.053, the preliminary wage determination order must include an order for payment of the penalty.

(c) The commission examiner shall mail notice of the preliminary wage determination order to each party at that party's last known address, as reflected by commission records.

1 SECTION 3. Subchapter D, Chapter 61, Labor Code, is amended
2 by adding Section 61.0525 to read as follows:

3 Sec. 61.0525. ESTABLISHMENT OF WAGE CLAIM APPEAL TRIBUNALS.

4 (a) The commission shall establish one or more impartial wage
5 claim appeal tribunals to hear and decide disputed wage claims if
6 the commission determines that establishment of those tribunals is
7 necessary to ensure prompt disposal of wage claims cases on appeal.

8 (b) Each wage claim appeal tribunal shall be composed of a
9 salaried examiner appointed by the commission.

10 SECTION 4. Subsections (a), (b), and (d), Section 61.053,
11 Labor Code, are amended to read as follows:

12 (a) If the commission examiner, a wage claim appeal
13 tribunal, or the commission determines that an employer acted in
14 bad faith in not paying wages as required by this chapter, the
15 examiner, tribunal, or commission, in addition to ordering the
16 payment of the wages, may assess an administrative penalty against
17 the employer.

18 (b) If the commission examiner, a wage claim appeal
19 tribunal, or the commission determines an employee acted in bad
20 faith in bringing a wage claim, the examiner, tribunal, or
21 commission may assess an administrative penalty against the
22 employee.

23 (d) In determining the amount of an administrative penalty
24 assessed under this section, the commission examiner, a wage claim
25 appeal tribunal, or the commission shall consider:

- 26 (1) the seriousness of the violation;
27 (2) the history of previous violations;

1 (3) the amount necessary to deter a future violation;
2 and

3 (4) any other appropriate matter, including
4 mitigating circumstances.

5 SECTION 5. Section 61.054, Labor Code, is amended to read as
6 follows:

7 Sec. 61.054. REQUEST FOR HEARING ON PRELIMINARY ORDER.

8 (a) Either party may request a hearing before a wage claim appeal
9 tribunal to appeal [~~contest~~] a preliminary wage determination order
10 made under Section 61.052.

11 (b) The request for hearing must be made in writing not
12 later than the 21st day after the date the commission examiner mails
13 the notice of the preliminary wage determination order.

14 SECTION 6. Section 61.055, Labor Code, is amended to read as
15 follows:

16 Sec. 61.055. PRELIMINARY ORDER FINAL IF HEARING NOT
17 REQUESTED. If neither party requests a hearing to appeal [~~contest~~]
18 a preliminary wage determination order within the period prescribed
19 by Section 61.054, the order becomes the final order of the
20 commission for all purposes, and neither party is entitled to
21 judicial review of the order under this subchapter.

22 SECTION 7. Subsection (a), Section 61.056, Labor Code, is
23 amended to read as follows:

24 (a) An employer that does not request a hearing within the
25 period prescribed by Section 61.054 to appeal [~~contest~~]
26 a preliminary wage determination order shall pay the amount ordered
27 to the commission not later than the 21st day after the date the

1 commission mails notice of the order. The payment must equal the
2 net amount of outstanding wages after any valid deductions and must
3 include an itemized list of those deductions.

4 SECTION 8. Section 61.057, Labor Code, is amended to read as
5 follows:

6 Sec. 61.057. NOTICE; TIME FOR HEARING. (a) A notice
7 regarding an administrative hearing conducted under this
8 subchapter must be mailed by the wage claim appeal tribunal
9 [~~commission~~] not later than the 21st day after the date a request
10 for the hearing is received by the commission.

11 (b) As soon as practicable, but not later than the 45th day
12 after the date a notice is mailed under Subsection (a), the tribunal
13 [~~commission~~] shall conduct the hearing.

14 SECTION 9. Section 61.059, Labor Code, is amended to read as
15 follows:

16 Sec. 61.059. [~~COMMISSION~~] CONSIDERATION OF PRELIMINARY
17 WAGE DETERMINATION ORDER. The wage claim appeal tribunal
18 [~~commission~~] may modify, affirm, or rescind a preliminary wage
19 determination order.

20 SECTION 10. Section 61.060, Labor Code, is amended to read
21 as follows:

22 Sec. 61.060. ORDER AFTER HEARING. After a hearing, the wage
23 claim appeal tribunal [~~commission~~] shall enter a written order for
24 the payment of wages that the tribunal [~~commission~~] determines to
25 be due or for the payment of any penalty the tribunal [~~commission~~]
26 assesses.

27 SECTION 11. Subsections (a) and (c), Section 61.061, Labor

1 Code, are amended to read as follows:

2 (a) The wage claim appeal tribunal [~~commission~~] shall mail
3 to each party to the appeal notice of:

- 4 (1) the decision;
5 (2) the amount of wages subject to the order; and
6 (3) the amount of any penalty assessed[~~, and~~
7 [~~(4) the parties' right to judicial review of the~~
8 ~~order~~].

9 (c) The order of the wage claim appeal tribunal becomes
10 final 14 days after the date on which it is mailed unless a further
11 appeal to the commission is initiated as provided by this
12 subchapter [~~before that date:~~

13 [~~(1) a party to the appeal files a written motion for~~
14 ~~rehearing, or~~

15 [~~(2) the commission reopens the hearing~~].

16 SECTION 12. Subchapter D, Chapter 61, Labor Code, is
17 amended by adding Sections 61.0611 through 61.0614 to read as
18 follows:

19 Sec. 61.0611. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE
20 WAGE CLAIM APPEAL TRIBUNAL. (a) The commission by order may
21 remove to itself or transfer to another wage claim appeal tribunal
22 the proceedings on a wage claim pending before a wage claim appeal
23 tribunal.

24 (b) The commission promptly shall mail to the parties to the
25 affected wage claim a notice of the order under Subsection (a).

26 (c) A quorum of the commission shall hear a proceeding
27 removed to the commission under Subsection (a).

1 Sec. 61.0612. COMMISSION REVIEW OF WAGE CLAIM APPEAL
2 TRIBUNAL ORDER. The commission may:

3 (1) on its own motion:

4 (A) affirm, modify, or set aside an order issued
5 under Section 61.061 on the basis of the evidence previously
6 submitted in the case; or

7 (B) direct the taking of additional evidence; or

8 (2) permit any of the parties affected by the order to
9 initiate a further appeal before the commission.

10 Sec. 61.0613. NOTICE OF COMMISSION ACTION. (a) The
11 commission shall mail to each party to the appeal under Section
12 61.0612 notice of:

13 (1) the commission's decision;

14 (2) the amount of wages subject to the order;

15 (3) the amount of any penalty assessed; and

16 (4) the parties' right to judicial review of the order.

17 (b) The notice shall be mailed to a party's last known
18 address, as shown by commission records.

19 Sec. 61.0614. FINALITY OF COMMISSION ORDER. An order of the
20 commission becomes final 14 days after the date the order is mailed
21 unless before that date:

22 (1) the commission by order reopens the appeal; or

23 (2) a party to the appeal files a written motion for
24 rehearing.

25 SECTION 13. Subsection (a), Section 61.062, Labor Code, is
26 amended to read as follows:

27 (a) A party who has exhausted the party's administrative

1 remedies under this chapter, other than a motion for rehearing, may
2 bring a suit to appeal the order.

3 SECTION 14. Subsections (a) and (c), Section 301.0015,
4 Labor Code, are amended to read as follows:

5 (a) In administering its functions under this title or
6 another law, the commission shall limit its activities to:

7 (1) setting commission policies, including policies
8 that clearly separate the policymaking responsibilities of the
9 commission and the management responsibilities of the executive
10 director and commission staff;

11 (2) giving general direction to the executive director
12 regarding the implementation of the commission's policies, and
13 holding the executive director accountable for implementing the
14 policies;

15 (3) approving the commission's budget recommendation
16 to the legislature;

17 (4) reviewing under Subchapter D, Chapter 212, the
18 decision of an appeal tribunal regarding unemployment
19 compensation;

20 (5) reviewing under Subchapter D, Chapter 61, the
21 decision of a wage claim appeal tribunal regarding a wage claim;

22 (6) adopting rules necessary to administer the
23 commission's policies, including rules necessary for the
24 administration of this title and rules governing required reports,
25 procedures, and orders;

26 (7) [~~6~~] responding to questions and comments that
27 are directed to the commission by the executive director and that

1 relate to setting or clarifying commission policies or relate to
2 other matters of general interest to the commission; and

3 (8) [~~(7)~~] requesting information from commission
4 staff.

5 (c) The commission, acting as a governmental body, or an
6 individual member of the commission may conduct the activities
7 listed in Subsections (a)(7) [~~(a)(6)~~] and (8) [~~(7)~~].

8 SECTION 15. Subsection (b), Section 301.006, Labor Code, is
9 amended to read as follows:

10 (b) Notwithstanding Subsection (a), the member of the
11 commission who represents the public shall serve as chair:

12 (1) when the commission acts under:

13 (A) Subchapter D, Chapter 61; or

14 (B) Subchapter D, Chapter 212; and

15 (2) in commission hearings involving unemployment
16 insurance issues regarding tax coverage, contributions, or
17 reimbursements.

18 SECTION 16. The change in law made by this Act applies only
19 to a wage claim that is filed with the Texas Workforce Commission on
20 or after the effective date of this Act. A wage claim filed before
21 that date is governed by the law in effect on the date that the wage
22 claim was filed, and the former law is continued in effect for that
23 purpose.

24 SECTION 17. This Act takes effect September 1, 2005.