

By: Estes

S.B. No. 1408

A BILL TO BE ENTITLED

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AN ACT

relating to the review of wage claim disputes by the Texas Workforce Commission.

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

SECTION 1. Section 301.0015. Labor Code, is amended to read as follows:

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

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

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

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

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

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

~~(56)~~ adopting rules necessary to administer the

1 commission's policies, including rules necessary for the  
2 administration of this title and rules governing required reports,  
3 procedures, and orders;

4 (~~6~~7) responding to questions and comments that are  
5 directed to the commission by the executive director and that  
6 relate to setting or clarifying commission policies or relate to  
7 other matters of general interest to the commission; and

8 (~~7~~8) requesting information from commission staff.

9 (b) Except as provided by Subsection (c), the commission may  
10 conduct the activities listed in Subsection (a) only when acting as  
11 a governmental body.

12 (c) The commission, acting as a governmental body, or an  
13 individual member of the commission may conduct the activities  
14 listed in Subsections (a)(6) and (7).

15 (d) In administering its functions under this title or  
16 another law, the commission, acting as a governmental body, or an  
17 individual member of the commission may not:

18 (1) direct the day-to-day operations of the executive  
19 director or other commission staff; or

20 (2) establish the details for the implementation of  
21 commission policies or direct the executive director or other  
22 commission staff about those details.

23 SECTION 2. Section 301.006. Labor Code, is amended to read  
24 as follows:

25 (a) The governor shall designate the chair of the commission  
26 from among the members of the commission. The chair shall serve in  
27 that capacity at the pleasure of the governor for a two-year term.

1 The governor may redesignate the same member to serve consecutive  
2 terms.

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

5 (1) when the commission acts under Subchapter D,  
6 Chapter 212; ~~and~~

7 (2) in commission hearings involving unemployment  
8 insurance issues regarding tax coverage, contributions, or  
9 reimbursements; and

10 (3) when the commission acts under Subchapter D,  
11 Chapter 61.

12 SECTION 3. DEFINITIONS. Section 61.001, Labor Code, is  
13 amended to read as follows:

14 (1) "Commission" means the Texas ~~Employment~~ Workforce  
15 Commission ~~or its designee.~~

16 (2) "Day" means a calendar day.

17 (3) "Employee" means an individual who is employed by  
18 an employer for compensation. The term does not include:

19 (A) a person related to the employer or the  
20 employer's spouse within the first or second degree by  
21 consanguinity or affinity, as determined under Chapter 573,  
22 Government Code; or

23 (B) an independent contractor.

24 (4) "Employer" means a person who:

25 (A) employs one or more employees; or

26 (B) acts directly or indirectly in the interests  
27 of an employer in relation to an employee.

1           (5) "Employment" means any service, including service  
2 in interstate commerce, that is performed for wages or under a  
3 contract of hire, whether written or oral or express or implied.  
4 The term does not include any service performed by an individual for  
5 wages if it is shown that the individual is free from control or  
6 direction in the performance of the service, both under any  
7 contract of service and in fact.

8           (6) "Mail" means to deposit for mailing with the  
9 United States Postal Service.

10           (7) "Wages" means compensation owed by an employer  
11 for:

12                   (A) labor or services rendered by an employee,  
13 whether computed on a time, task, piece, commission, or other  
14 basis; and

15                   (B) vacation pay, holiday pay, sick leave pay,  
16 parental leave pay, or severance pay owed to an employee under a  
17 written agreement with the employer or under a written policy of the  
18 employer.

19           SECTION 4. PRELIMINARY WAGE DETERMINATION ORDER. Section  
20 61.052, Labor Code, is amended to read as follows:

21           (a) ~~The~~ A commission examiner shall analyze each wage claim  
22 filed under Section 61.051 and, if the claim alleges facts  
23 actionable under this chapter, shall investigate the claim and  
24 issue a preliminary wage determination order:

- 25                   (1) dismissing the wage claim; or  
26                   (2) ordering payment of wages determined to be due and  
27 unpaid.

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

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

8 SECTION 5. BAD FAITH; ADMINISTRATIVE PENALTY. Section  
9 61.053, Labor Code, is amended to read as follows:

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

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

21 (c) An administrative penalty assessed under this section  
22 may not exceed the lesser of:

- 23 (1) the amount of the wages in question or claimed; or  
24 (2) \$1,000.

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

- 1 (1) the seriousness of the violation;
- 2 (2) the history of previous violations;
- 3 (3) the amount necessary to deter a future violation;
- 4 and
- 5 (4) any other appropriate matter, including
- 6 mitigating circumstances.

7 SECTION 6. REQUEST FOR HEARING ON PRELIMINARY ORDER.  
 8 Section 61.054, Labor Code, is amended to read as follows:

9 (a) Either party may request a hearing to ~~contest~~ appeal a  
 10 preliminary wage determination order.

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 7. PRELIMINARY ORDER FINAL IF HEARING NOT  
 15 REQUESTED. Section 61.055, Labor Code, is amended to read as  
 16 follows:

17 (A) If neither party requests a hearing to  
 18 ~~contest~~ appeal a preliminary wage determination order within the  
 19 period prescribed by Section 61.054, the order becomes the final  
 20 order of the commission for all purposes, and neither party is  
 21 entitled to judicial review of the order under this subchapter.

22 SECTION 8. PAYMENT REQUIRED IF HEARING NOT REQUESTED.  
 23 Section 61.056, Labor Code, is 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 ~~contest~~ appeal a preliminary  
 26 wage determination order shall pay the amount ordered to the  
 27 commission not later than the 21st day after the date the commission

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

4 (b) Payment to the commission constitutes payment to the  
5 employee for all purposes.

6 SECTION 9. ESTABLISHMENT OF WAGE CLAIM APPEAL TRIBUNALS.  
7 Section 61.057, Labor Code, is amended to read as follows:

8 (a) The commission shall establish one or more impartial  
9 wage claim appeal tribunals to hear and decide disputed wage claims  
10 if the establishment of those wage claim appeal tribunals is  
11 necessary to ensure prompt disposal of wage claims cases on appeal.

12 (b) A wage claim appeal tribunal is composed of a salaried  
13 examiner.

14 SECTION 10. NOTICE; TIME FOR HEARING. Section 61.0578,  
15 Labor Code, is amended to read as follows:

16 (a) A notice regarding an administrative hearing conducted  
17 under this subchapter must be mailed by the ~~commission~~ wage claim  
18 appeal tribunal not later than the 21st day after the date a request  
19 for the hearing is received by the commission.

20 (b) As soon as practicable, but not later than the 45th day  
21 after the date a notice is mailed under Subsection (a), the  
22 ~~commission~~ wage claim appeal tribunal shall conduct the hearing.

23 SECTION 11. HEARING PROCEDURES. Section 61.0589, Labor  
24 Code, is amended to read as follows:

25 (a) A hearing conducted under this subchapter is subject to  
26 the rules and hearings procedures used by the commission in the  
27 determination of a claim for unemployment compensation benefits.

1 (b) The hearing is not subject to Chapter 2001, Government  
2 Code.

3 SECTION 12. ~~COMMISSION~~ WAGE CLAIM APPEAL TRIBUNAL  
4 CONSIDERATION OF PRELIMINARY WAGE DETERMINATION ORDER. Section  
5 61.05960, Labor Code, is amended to read as follows:

6 (a) The ~~commission~~ wage claim appeal tribunal may modify,  
7 affirm, or rescind a preliminary wage determination order.

8 SECTION 13. ORDER AFTER HEARING. Section 61.06061, Labor  
9 Code, is amended to read as follows:

10 After a hearing, the ~~commission~~ wage claim appeal tribunal  
11 shall enter a written order for the payment of wages that the  
12 ~~commission~~ wage claim appeal tribunal determines to be due or for  
13 the payment of any penalty the ~~commission~~ wage claim appeal  
14 tribunal assesses.

15 SECTION 14. NOTICE AND FINALITY OF ORDER. Section  
16 61.06162, Labor Code, is amended as follows:

17 (a) The ~~commission~~ wage claim appeal tribunal shall mail to  
18 each party to the appeal notice of:

- 19 (1) the decision;  
20 (2) the amount of wages subject to the order; and  
21 (3) the amount of any penalty assessed; ~~and~~  
22 ~~(4) the parties' right to judicial review of the order.~~

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

25 (c) The order becomes final 14 days after the date on which  
26 it is mailed unless further appeal is initiated as provided by  
27 Section 61.064 ~~before that date.~~



1           ~~(1) a party to the appeal files a written motion for~~  
2 ~~rehearing; or~~

3           ~~(2) the commission reopens the hearing.~~

4           SECTION 15. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE  
5 WAGE CLAIM APPEAL TRIBUNAL. Section 61.063, Labor Code, is amended  
6 as follows:

7           (a) The commission may remove to itself or transfer to  
8 another wage claim appeal tribunal the proceedings on a wage claim  
9 pending before a wage claim appeal tribunal.

10           (b) A quorum of the commission shall hear a proceeding  
11 removed to the commission under Subsection (a).

12           (c) The commission promptly shall mail to the parties before  
13 it a notice of its order.

14           SECTION 16. COMMISSION REVIEW OF WAGE CLAIM APPEAL TRIBUNAL  
15 ORDER. Section 61.064, Labor Code, is amended as follows:

16           The commission may:

17           (1) on its own motion:

18                   (A) affirm, modify, or set aside any order issued  
19 under Section 61.062 on the basis of the evidence previously  
20 submitted in the case; or

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

22           (2) permit any of the parties to the order to initiate  
23 a further appeal before the commission.

24           SECTION 17. NOTICE OF COMMISSION ACTION. Section 61.065,  
25 Labor Code, is amended as follows:

26           (a) The commission shall mail to each party to the appeal  
27 notice of:

- 1           (1) the decision;
- 2           (2) the amount of wages subject to the order;
- 3           (3) the amount of any penalty assessed; and
- 4           (4) the parties' right to judicial review of the order.

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

7           SECTION 18. FINALITY OF COMMISSION ORDER. Section  
8 61.066, Labor Code, is amended as follows:

9           An order of the commission becomes final 14 days after the  
10 date the order is mailed unless before that date:

- 11           (1) the commission by order reopens the appeal; or
- 12           (2) a party to the appeal files a written motion for  
13 rehearing.

14           SECTION 19. JUDICIAL REVIEW. Section 61.0627, Labor  
15 Code, is amended as follows:

16           (a) A party who has exhausted the party's administrative  
17 remedies under this chapter may bring a suit to appeal the order.

18           (b) The exhaustion of those remedies does not include a  
19 motion for rehearing.

20           ~~(b)~~ (c) The suit must be filed not later than the 30th day after  
21 the date the final order is mailed.

22           ~~(c)~~ (d) The commission and any other party to the proceeding  
23 before the commission must be made defendants in the suit.

24           ~~(d)~~ (e) The suit must be brought in the county of the  
25 claimant's residence. If the claimant is not a resident of this  
26 state, the suit must be brought in the county in this state in which  
27 the employer has its principal place of business.

1           (~~e~~f) An appeal under this subchapter is by trial de novo  
2 with the substantial evidence rule being the standard of review in  
3 the manner as applied to an appeal from a final decision under  
4 Subtitle A, Title 4.

5           SECTION 20. PAYMENT TO COMMISSION; ESCROW PENDING REVIEW;  
6 WAIVER. Section 61.0638, Labor Code, is amended as follows.

7           (a) Not later than the 30th day after the date a commission  
8 order becomes final, the party required to pay wages or a penalty  
9 shall:

10                   (1) pay the amount to the commission; or

11                   (2) if the party files a petition for judicial review  
12 in a court of competent jurisdiction contesting the final order,  
13 send the amount to the commission for deposit in an  
14 interest-bearing escrow account.

15           (b) Unless the party files an affidavit of inability to pay  
16 with the clerk of the court within the period specified in  
17 Subsection (a), failure to send the amount within that period  
18 constitutes a waiver of the right to judicial review.

19           (c) If after judicial review it is determined that some or  
20 all of the wages are not owed or the penalty is reduced or is not  
21 assessed, the commission shall remit the appropriate amount to the  
22 party assessed the wage payment or penalty, plus the interest  
23 accrued on the escrowed amount. Interest under this section shall  
24 be paid for the period beginning on the date the assessed amount is  
25 paid to the commission and ending on the date the amount is remitted  
26 to the party.

27           SECTION 21. PAYMENT TO EMPLOYEE. Section 61.0649, Labor

1 Code, is amended as follows:

2 Not later than the 30th day after the date on which a claim is  
3 finally adjudicated or otherwise resolved, the commission shall pay  
4 to the claimant wages collected under this subchapter and any  
5 interest earned on those wages.

6 SECTION 22. DEPOSIT OF PENALTY. Section 61.06570, Labor  
7 Code, is amended as follows:

8 The commission shall deposit a penalty collected under this  
9 subchapter in the unemployment compensation special administration  
10 fund established under Subchapter E, Chapter 203.

11 SECTION 23. COMMISSION ACTION; ENFORCEMENT OF ORDER.  
12 Section 61.06671, Labor Code, is amended as follows:

13 (a) The commission, in the name of the state and the  
14 attorney general, may:

15 (1) bring a suit in a district court in Travis County  
16 to enforce a final order from which an appeal under this chapter has  
17 not been taken; or

18 (2) serve on the defaulting party a notice of  
19 assessment stating the amount due.

20 (b) A notice of assessment served under this section is  
21 prima facie evidence of the contents of the notice. However, the  
22 defaulting party may show the incorrectness of the notice of  
23 assessment.

24 (c) The notice shall be served in the manner provided by law  
25 for service of process on a defendant in a civil action in district  
26 court.

27 (d) A person aggrieved by the determination of the

1 commission as stated in the notice of assessment may seek judicial  
2 review of the assessment by filing a petition for judicial review in  
3 a Travis County district court not later than the 30th day after the  
4 date on which the notice of assessment is served. A copy of the  
5 petition shall be served in the manner prescribed by law for service  
6 of process on a defendant in a civil action in district court on:

7 (1) a member of the commission; or

8 (2) a person designated by the commission for service  
9 of process.

10 (e) If the party on whom a notice of assessment is served  
11 does not seek judicial review as provided by this section, the  
12 assessment is final for all purposes. An assessment that is not  
13 contested or that is upheld after judicial review shall be  
14 recorded, enforced, renewed, and otherwise treated as the final  
15 judgment of a district court.

16 (f) Unless the adverse party prevails in the civil action or  
17 the notice of assessment is reversed by a reviewing court, the  
18 adverse party shall pay all costs of either action, including  
19 attorney's fees, investigation costs, service costs, court costs,  
20 and other applicable costs.

21 SECTION 24. RECIPROCAL COLLECTION ARRANGEMENTS. Section  
22 61.06772, Labor Code, is amended as follows:

23 The commission may enter into reciprocal arrangements with  
24 appropriate authorized agencies of the United States or other  
25 states for the collection of wage claims that are final under the  
26 laws of the jurisdictions in which they were filed.

27 SECTION 25. EFFECTIVE DATE. This Act takes effect

1 immediately if it receives a vote of two thirds of all the members  
2 elected to each house, as provided by Section 39, Article III, Texas  
3 Constitution. If this Act does not receive the vote necessary for  
4 immediate effect, this Act takes effect September 1, 2005.