

1-1 By: Estes S.B. No. 1408  
1-2 (In the Senate - Filed March 10, 2005; March 21, 2005, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 April 18, 2005, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 18, 2005,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1408 By: Estes

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to wage claim disputes.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subdivision (1), Section 61.001, Labor Code, is  
1-13 amended to read as follows:

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

1-16 SECTION 2. Section 61.052, Labor Code, is amended to read as  
1-17 follows:

1-18 Sec. 61.052. PRELIMINARY WAGE DETERMINATION ORDER. (a) An  
1-19 examiner employed by the [The] commission shall analyze each wage  
1-20 claim filed under Section 61.051 and, if the claim alleges facts  
1-21 actionable under this chapter, shall investigate the claim and  
1-22 issue a preliminary wage determination order:

1-23 (1) dismissing the wage claim; or

1-24 (2) ordering payment of wages determined to be due and  
1-25 unpaid.

1-26 (b) If a commission examiner imposes an administrative  
1-27 penalty [is imposed] under Section 61.053, the preliminary wage  
1-28 determination order must include an order for payment of the  
1-29 penalty.

1-30 (c) The commission examiner shall mail notice of the  
1-31 preliminary wage determination order to each party at that party's  
1-32 last known address, as reflected by commission records.

1-33 SECTION 3. Subchapter D, Chapter 61, Labor Code, is amended  
1-34 by adding Section 61.0525 to read as follows:

1-35 Sec. 61.0525. ESTABLISHMENT OF WAGE CLAIM APPEAL TRIBUNALS.

1-36 (a) The commission shall establish one or more impartial wage  
1-37 claim appeal tribunals to hear and decide disputed wage claims if  
1-38 the commission determines that establishment of those tribunals is  
1-39 necessary to ensure prompt disposal of wage claims cases on appeal.

1-40 (b) Each wage claim appeal tribunal shall be composed of a  
1-41 salaried examiner appointed by the commission.

1-42 SECTION 4. Subsections (a), (b), and (d), Section 61.053,  
1-43 Labor Code, are amended to read as follows:

1-44 (a) If the commission examiner, a wage claim appeal  
1-45 tribunal, or the commission determines that an employer acted in  
1-46 bad faith in not paying wages as required by this chapter, the  
1-47 examiner, tribunal, or commission, in addition to ordering the  
1-48 payment of the wages, may assess an administrative penalty against  
1-49 the employer.

1-50 (b) If the commission examiner, a wage claim appeal  
1-51 tribunal, or the commission determines an employee acted in bad  
1-52 faith in bringing a wage claim, the examiner, tribunal, or  
1-53 commission may assess an administrative penalty against the  
1-54 employee.

1-55 (d) In determining the amount of an administrative penalty  
1-56 assessed under this section, the commission examiner, a wage claim  
1-57 appeal tribunal, or the commission shall consider:

1-58 (1) the seriousness of the violation;

1-59 (2) the history of previous violations;

1-60 (3) the amount necessary to deter a future violation;

1-61 and

1-62 (4) any other appropriate matter, including  
1-63 mitigating circumstances.

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

Sec. 61.054. REQUEST FOR HEARING ON PRELIMINARY ORDER. (a) Either party may request a hearing before a wage claim appeal tribunal to appeal ~~[contest]~~ a preliminary wage determination order made under Section 61.052.

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

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

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

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

(a) An employer that does not request a hearing within the period prescribed by Section 61.054 to appeal ~~[contest]~~ a preliminary wage determination order shall pay the amount ordered to the commission not later than the 21st day after the date the commission mails notice of the order. The payment must equal the net amount of outstanding wages after any valid deductions and must include an itemized list of those deductions.

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

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

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

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

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

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

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

SECTION 11. Subsections (a) and (c), Section 61.061, Labor Code, are amended to read as follows:

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

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

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

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

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

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

Sec. 61.0611. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE

3-1 WAGE CLAIM APPEAL TRIBUNAL. (a) The commission by order may  
 3-2 remove to itself or transfer to another wage claim appeal tribunal  
 3-3 the proceedings on a wage claim pending before a wage claim appeal  
 3-4 tribunal.

3-5 (b) The commission promptly shall mail to the parties to the  
 3-6 affected wage claim a notice of the order under Subsection (a).

3-7 (c) A quorum of the commission shall hear a proceeding  
 3-8 removed to the commission under Subsection (a).

3-9 Sec. 61.0612. COMMISSION REVIEW OF WAGE CLAIM APPEAL  
 3-10 TRIBUNAL ORDER. The commission may:

3-11 (1) on its own motion:

3-12 (A) affirm, modify, or set aside an order issued  
 3-13 under Section 61.061 on the basis of the evidence previously  
 3-14 submitted in the case; or

3-15 (B) direct the taking of additional evidence; or

3-16 (2) permit any of the parties affected by the order to  
 3-17 initiate a further appeal before the commission.

3-18 Sec. 61.0613. NOTICE OF COMMISSION ACTION. (a) The  
 3-19 commission shall mail to each party to the appeal under Section  
 3-20 61.0612 notice of:

3-21 (1) the commission's decision;

3-22 (2) the amount of wages subject to the order;

3-23 (3) the amount of any penalty assessed; and

3-24 (4) the parties' right to judicial review of the order.

3-25 (b) The notice shall be mailed to a party's last known  
 3-26 address, as shown by commission records.

3-27 Sec. 61.0614. FINALITY OF COMMISSION ORDER. An order of the  
 3-28 commission becomes final 14 days after the date the order is mailed  
 3-29 unless before that date:

3-30 (1) the commission by order reopens the appeal; or

3-31 (2) a party to the appeal files a written motion for  
 3-32 rehearing.

3-33 SECTION 13. Subsection (a), Section 61.062, Labor Code, is  
 3-34 amended to read as follows:

3-35 (a) A party who has exhausted the party's administrative  
 3-36 remedies under this chapter, other than a motion for rehearing, may  
 3-37 bring a suit to appeal the order.

3-38 SECTION 14. Subsections (a) and (c), Section 301.0015,  
 3-39 Labor Code, are amended to read as follows:

3-40 (a) In administering its functions under this title or  
 3-41 another law, the commission shall limit its activities to:

3-42 (1) setting commission policies, including policies  
 3-43 that clearly separate the policymaking responsibilities of the  
 3-44 commission and the management responsibilities of the executive  
 3-45 director and commission staff;

3-46 (2) giving general direction to the executive director  
 3-47 regarding the implementation of the commission's policies, and  
 3-48 holding the executive director accountable for implementing the  
 3-49 policies;

3-50 (3) approving the commission's budget recommendation  
 3-51 to the legislature;

3-52 (4) reviewing under Subchapter D, Chapter 212, the  
 3-53 decision of an appeal tribunal regarding unemployment  
 3-54 compensation;

3-55 (5) reviewing under Subchapter D, Chapter 61, the  
 3-56 decision of a wage claim appeal tribunal regarding a wage claim;

3-57 (6) adopting rules necessary to administer the  
 3-58 commission's policies, including rules necessary for the  
 3-59 administration of this title and rules governing required reports,  
 3-60 procedures, and orders;

3-61 (7) [~~(6)~~] responding to questions and comments that  
 3-62 are directed to the commission by the executive director and that  
 3-63 relate to setting or clarifying commission policies or relate to  
 3-64 other matters of general interest to the commission; and

3-65 (8) [~~(7)~~] requesting information from commission  
 3-66 staff.

3-67 (c) The commission, acting as a governmental body, or an  
 3-68 individual member of the commission may conduct the activities  
 3-69 listed in Subsections (a)(7) [~~(a)(6)~~] and (8) [~~(7)~~].

4-1 SECTION 15. Subsection (b), Section 301.006, Labor Code, is  
4-2 amended to read as follows:

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

4-5 (1) when the commission acts under:

4-6 (A) Subchapter D, Chapter 61; or

4-7 (B) Subchapter D, Chapter 212; and

4-8 (2) in commission hearings involving unemployment  
4-9 insurance issues regarding tax coverage, contributions, or  
4-10 reimbursements.

4-11 SECTION 16. The change in law made by this Act applies only  
4-12 to a wage claim that is filed with the Texas Workforce Commission on  
4-13 or after the effective date of this Act. A wage claim filed before  
4-14 that date is governed by the law in effect on the date that the wage  
4-15 claim was filed, and the former law is continued in effect for that  
4-16 purpose.

4-17 SECTION 17. This Act takes effect September 1, 2005.

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