

By: Rodriguez

H.B. No. 456

A BILL TO BE ENTITLED

AN ACT

relating to the employment of certain day laborers; authorizing the imposition of an administrative penalty.

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

SECTION 1. Subtitle B, Title 2, Labor Code, is amended by adding Chapter 53 to read as follows:

CHAPTER 53. EMPLOYMENT OF DAY LABORERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Day labor" means occasional or irregular labor for which an individual is employed for a period not longer than that required to complete a specific assignment, and for which wages are paid directly to the individual or indirectly by a day labor service agency or third party employer for work undertaken by the individual. The term does not include labor of a professional or clerical nature.

(3) "Day labor employer" means any person who directly, or indirectly through an agent or any other person acting in the person's interest, engages or permits a day laborer to work, or who otherwise has the right to exercise control over the wages, hours, or working conditions of a day laborer. The term:

(A) includes:

1 (i) a day labor service agency; and

2 (ii) a third party employer; and

3 (B) does not include an employment service or
4 labor training program provided by a governmental entity or a
5 nonprofit organization.

6 (4) "Day labor service agency" means any person who
7 recruits, dispatches, or otherwise facilitates the employment of
8 day laborers by a third party employer. The term includes a
9 temporary common worker employer under Chapter 92.

10 (5) "Day laborer" means an individual engaged in or
11 waiting to be engaged in day labor. The term includes a common
12 worker described by Chapter 92.

13 (6) "Day laborer shape-up site" means any public area
14 at which day laborers assemble to seek employment. The term may
15 include residential and commercial locations and street corners.

16 (7) "Regular rate of pay" means the hourly wage rate
17 agreed to by a day labor employer and a day laborer.

18 (8) "Third party employer" means a person who permits
19 a day laborer to work by contracting with a day labor service
20 agency. The term includes a user of common workers under Chapter
21 92.

22 (9) "Workday" means any consecutive 24-hour period
23 beginning at the same time each calendar day.

24 Sec. 53.002. RIGHTS UNDER OTHER LAW. The rights provided by
25 this chapter are cumulative of all other rights to which day
26 laborers are entitled under other law.

27 [Sections 53.003-53.050 reserved for expansion]

1 SUBCHAPTER B. PAYMENT OF DAY LABORERS

2 Sec. 53.051. SUSTAINABLE WAGE REQUIRED. (a) A day labor
3 employer shall pay a day laborer a wage rate that is not less than
4 the prevailing wage rate paid to permanent employees who are
5 performing substantially equivalent work, with due consideration
6 given to seniority, experience, and skills.

7 (b) A day labor employer may not reduce the wage rate of any
8 permanent full-time employee in order to comply with this section.

9 (c) A day labor employer may not pay a day laborer a regular
10 hourly rate of pay that is less than the minimum wage required by
11 law.

12 Sec. 53.052. COMPUTATION OF REGULAR HOURLY RATE OF PAY. (a)
13 If a day labor employer and a day laborer negotiate a rate of pay,
14 the day laborer's regular hourly rate of pay is computed by dividing
15 the total amount agreed on for one week by 40.

16 (b) For a job requiring payment of the prevailing wage rate,
17 the regular hourly rate of pay is the greater of:

18 (1) the prevailing wage; or

19 (2) the wage agreed to by the day labor employer and
20 day laborer.

21 Sec. 53.053. REDUCTION OF PREVIOUSLY NEGOTIATED WAGE RATE
22 PROHIBITED. If a day labor employer has offered and a day laborer
23 has accepted a wage rate for a workday, the employer may not reduce
24 the negotiated rate during that workday.

25 Sec. 53.054. NOTICE OF WAGE RATE REQUIRED. (a) A day labor
26 employer shall provide notice of the wage rate expected to be paid
27 to each day laborer.

1 (b) A day labor service agency shall provide notice to each
2 day laborer of the wage rate expected to be paid by each third party
3 employer using the services of the agency. The notice must be
4 provided in English and Spanish.

5 (c) A third party employer using the services of a day labor
6 service agency shall pay a day laborer a wage rate that is not less
7 than the wage rate stated in the notice provided to the day laborer
8 by the agency. A third party employer may not reduce the wage rate
9 of any permanent full-time employee in order to comply with this
10 subsection.

11 (d) The commission by rule shall prescribe the content of
12 the notice required by this section.

13 Sec. 53.055. MINIMUM DAILY WAGE RATE. A day labor employer
14 shall compensate a day laborer for at least four hours of work for
15 each workday worked by the day laborer.

16 Sec. 53.056. COMPENSATION FOR OVERTIME. (a) A day labor
17 employer shall pay a day laborer one and one-half times the regular
18 hourly rate of pay for:

19 (1) each hour worked by the day laborer in excess of
20 eight hours during any workday, up to and including 12 hours; and

21 (2) each of the first eight hours worked by the day
22 laborer during a workday if the workday is the seventh consecutive
23 workday worked by the day laborer in that week.

24 (b) A day labor employer shall pay a day laborer double the
25 regular hourly rate of pay for:

26 (1) each hour worked by the day laborer in excess of 12
27 hours during any workday; and

1 (2) each hour worked by the day laborer in excess of
2 eight hours during a workday if the workday is the seventh
3 consecutive workday worked by the day laborer in that week.

4 Sec. 53.057. PAYMENT AFTER TERMINATION OF EMPLOYMENT. A
5 day labor employer shall pay in full a day laborer who is discharged
6 from employment not later than 72 hours after the day laborer is
7 terminated.

8 Sec. 53.058. TIME OF PAYMENT FOR EMPLOYMENT LESS THAN ONE
9 WEEK. If a day labor employer employs a day laborer for a period of
10 less than one week, the employer shall pay the day laborer wages not
11 later than the completion of each workday.

12 Sec. 53.059. COMPENSATION FOR TRAVEL TIME. (a) A day labor
13 employer shall compensate a day laborer for travel time if the
14 travel is an integral and indispensable part of the principal
15 activities the day laborer is employed to perform.

16 (b) For purposes of this section, time spent by a day
17 laborer traveling to the designated travel worksite from a labor
18 hall, day laborer shape-up site, or any other day laborer hiring
19 site is compensable at the day laborer's regular hourly rate of pay.

20 Sec. 53.060. PAYMENT BY CHECK; PROHIBITION AGAINST
21 CHECK-CASHING CHARGES. (a) If a day labor employer pays a day
22 laborer by check, the check must be immediately redeemable.

23 (b) A day labor employer may not charge a day laborer,
24 directly or indirectly, for cashing a check issued by the employer
25 for wages earned by the day laborer for work performed for or
26 through that employer.

27 Sec. 53.061. NEGOTIABLE TENDER REQUIRED. A day labor

1 employer shall provide any non-cash payment of wages to a day
2 laborer in the form of immediately negotiable tender payable in
3 cash on demand at a financial institution and without discount.

4 [Sections 53.062-53.100 reserved for expansion]

5 SUBCHAPTER C. ADDITIONAL DUTIES OF DAY LABOR EMPLOYERS

6 Sec. 53.101. DISCLOSURE OF EMPLOYER INFORMATION REQUIRED.

7 At the time of hire, a day labor employer shall provide a day
8 laborer with the employer's business name, phone number, and
9 address.

10 Sec. 53.102. BREAKS AND MEALS. A day labor employer shall
11 provide a day laborer:

12 (1) a 15-minute compensated break for each four-hour
13 period of uninterrupted work; and

14 (2) a 30-minute compensated lunch for each period of
15 uninterrupted work lasting longer than six hours.

16 Sec. 53.103. TRANSPORTATION BACK TO POINT OF HIRE. (a) At
17 the end of each workday the day labor employer shall provide a day
18 laborer with transportation from the designated worksite back to
19 the labor hall, day laborer shape-up site, or other day laborer
20 hiring site, as applicable.

21 (b) A day labor employer may charge a day laborer a
22 reasonable amount not to exceed \$1.50 each way to transport the day
23 laborer to or from the designated worksite from the labor hall, day
24 laborer shape-up site, or other day laborer hiring site, as
25 applicable.

26 Sec. 53.104. WORKERS' COMPENSATION BENEFITS. (a) A day
27 labor employer is responsible for providing a day laborer with

1 workers' compensation benefits to the extent required by other law.

2 (b) A day labor employer shall provide to a day laborer not
3 later than the completion of the day laborer's first workday:

4 (1) written notice prescribed by the commission, in
5 English and Spanish, regarding the availability of workers'
6 compensation benefits; and

7 (2) the name and phone number of the employer's
8 workers' compensation insurance carrier, if applicable.

9 Sec. 53.105. PROHIBITION AGAINST CERTAIN WORK RESTRICTIONS
10 IMPOSED BY DAY LABOR SERVICE AGENCY. A day labor service agency may
11 not:

12 (1) restrict the right of a day laborer to accept an
13 offer of permanent employment with a third party employer to which
14 the agency referred the day laborer for temporary work;

15 (2) restrict the right of the third party employer to
16 offer permanent employment to a day laborer; or

17 (3) charge the third party employer or day laborer a
18 fine or any additional amount for making or accepting an offer of
19 permanent employment, as applicable.

20 Sec. 53.106. SAFETY AND HEALTH REQUIREMENTS; PROHIBITION
21 AGAINST CHARGES FOR SAFETY EQUIPMENT. (a) A day labor employer
22 shall comply with any safety and health requirements required of
23 employers under other law.

24 (b) A day labor employer may not charge a day laborer for any
25 safety equipment, clothing, or accessories required by the nature
26 of the work, either by law, custom, or the requirements of the
27 employer.

1 [Sections 53.107-53.150 reserved for expansion]

2 SUBCHAPTER D. ADMINISTRATIVE PENALTY

3 Sec. 53.151. ADMINISTRATIVE PENALTY. The commission may
4 impose an administrative penalty against a day labor employer who
5 violates a provision of this chapter. The enforcement of a penalty
6 imposed under this section is governed by Subchapter F, Chapter 51,
7 Occupations Code.

8 SECTION 2. This Act takes effect September 1, 2007.