

By: Keffer, Gonzalez Toureilles, et al.

H.B. No. 1205

A BILL TO BE ENTITLED

AN ACT

relating to the prohibition of certain employment discrimination regarding an employee who is a volunteer emergency responder.

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

SECTION 1. Subtitle A, Title 2, Labor Code, is amended by adding Chapter 23 to read as follows:

CHAPTER 23. EMPLOYMENT DISCRIMINATION REGARDING

VOLUNTEER EMERGENCY RESPONDERS

Sec. 23.001. DEFINITIONS. In this chapter:

(1) "Emergency" includes a fire, hazardous or toxic materials spill and cleanup, medical emergency, or other situation that poses an imminent threat of loss of life or property to which a fire department or provider of emergency medical services has been or later could be dispatched.

(2) "Emergency medical services" has the meaning assigned by Chapter 773, Health and Safety Code.

(3) "Emergency medical services volunteer" has the meaning assigned by Section 773.003(13), Health and Safety Code.

(4) "Emergency service organization" means any entity established to provide for the public:

(A) fire prevention and suppression;

(B) hazardous materials response operations; or

(C) emergency medical services.

(5) "Employee" means an individual who is employed by

1 an employer for compensation.

2 (6) "Employer" means a person who employs one or more  
3 employees. The term includes the state or a political subdivision  
4 of the state.

5 (7) "Political subdivision" means a county,  
6 municipality, special district, or authority of this state.

7 (8) "Volunteer emergency responder" means an  
8 individual who is an active participant in an emergency service  
9 organization but who does not receive compensation for the  
10 individual's services. The term includes an emergency medical  
11 services volunteer and a volunteer firefighter.

12 (9) "Volunteer fire department" has the meaning  
13 assigned by Section 614.101, Government Code.

14 (10) "Volunteer firefighter" means an individual who  
15 is a member of a volunteer fire department.

16 Sec. 23.002. DISCRIMINATION PROHIBITED; LIMITATION. (a)  
17 Except as provided by this chapter, an employer may not terminate or  
18 suspend the employment of, or in any other manner discriminate  
19 against, an employee who is a volunteer emergency responder and who  
20 is absent from or late to the employee's employment because the  
21 employee is responding to an emergency in the employee's capacity  
22 as a volunteer emergency responder.

23 (b) Notwithstanding Subsection (a), an employee who is a  
24 volunteer emergency responder is not entitled under this chapter to  
25 be absent from the employee's employment for more than 14 days in a  
26 calendar year unless the employee's absence is approved by the  
27 employer.

1       Sec. 23.003. EXCEPTION FOR CERTAIN SMALL EMPLOYERS. (a)

2       Except as provided by Subsection (b), this chapter does not apply to  
3       an employer for whom an absence to respond to an emergency by an  
4       employee who is a volunteer emergency responder would result in  
5       hardship by reducing the employer's workforce by 50 percent.

6       (b) An employer described by Subsection (a) may permit an  
7       employee to provide services as a volunteer emergency responder.  
8       An employer who elects under this subsection to permit an employee  
9       to provide services as a volunteer responder is subject to this  
10       chapter.

11       Sec. 23.004. EXCEPTION FOR CERTAIN CRITICAL EMPLOYEES. (a)

12       In this section, "critical employee" means an individual:

13               (1) employed as a peace officer, firefighter,  
14       emergency medical services personnel member, or dispatcher for law  
15       enforcement, firefighters, or emergency medical services  
16       personnel; or

17               (2) whose presence is required in order to continue  
18       the essential functions of the employer, the absence of which could  
19       cause substantial and grievous economic injury, severely  
20       compromise the ability of the employer to accomplish mission  
21       critical functions, or jeopardize the safety and well-being of  
22       others.

23       (b) Except as provided by Subsection (c), this chapter does  
24       not apply to an employee who is a critical employee of the  
25       employee's employer.

26       (c) An employer may permit a critical employee to provide  
27       services as a volunteer emergency responder. An employer who

1 elects under this subsection to permit a critical employee to  
2 provide services as a volunteer emergency responder is subject to  
3 this chapter.

4 Sec. 23.005. NOTICE TO EMPLOYER. An employee who is a  
5 volunteer emergency responder and who may be absent from or late to  
6 employment because the employee is responding to an emergency as a  
7 volunteer emergency responder shall make a reasonable effort to  
8 notify the employer that the employee may be absent or late. If the  
9 employee is unable to provide the notice due to the extreme  
10 circumstances of the emergency or inability to contact the  
11 employer, the employee shall submit to the employer, on the  
12 employer's request, a written verification of participation in an  
13 emergency activity that:

14 (1) is signed by the supervisor, or the designee of the  
15 supervisor, of the entity for which the affected volunteer  
16 emergency responder provides services or the applicable emergency  
17 service organization; and

18 (2) states that the volunteer emergency responder  
19 responded to an emergency and provides the date and time of the  
20 emergency.

21 Sec. 23.006. EFFECT ON EMPLOYEE WAGES; USE OF LEAVE TIME.

22 (a) An employer may reduce the wages otherwise owed to the employee  
23 for any pay period because the employee took time off during that  
24 pay period for an absence authorized by this chapter.

25 (b) In lieu of reducing an employee's wages under Subsection  
26 (a), an employer may require an employee who is a volunteer  
27 emergency responder to use existing vacation leave time, personal

1 leave time, or compensatory leave time for an absence authorized by  
2 this chapter, except as otherwise provided by a collective  
3 bargaining agreement.

4 (c) This section does not affect an employee's right to  
5 wages or leave time under Section 661.905, Government Code.

6 Sec. 23.007. LIABILITY; REINSTATEMENT. An employee whose  
7 employment is suspended or terminated in violation of this chapter  
8 is entitled to:

9 (1) reinstatement to the employee's former position or  
10 a position that is comparable in terms of compensation, benefits,  
11 and other conditions of employment;

12 (2) compensation for wages lost during the period of  
13 suspension or termination; and

14 (3) reinstatement of any fringe benefits and seniority  
15 rights lost because of the suspension or termination.

16 Sec. 23.008. CIVIL ACTION. (a) An employee whose employer  
17 violates this chapter may bring a civil action against the employer  
18 to enforce rights protected by this chapter.

19 (b) An action under this section must be brought in the  
20 county in which the place of employment is located not later than  
21 the first anniversary of the date of the violation.

22 SECTION 2. Chapter 23, Labor Code, as added by this Act,  
23 applies only to a cause of action that accrues on or after the  
24 effective date of this Act. An action that accrued before the  
25 effective date of this Act is governed by the law applicable to the  
26 action immediately before the effective date of this Act, and that  
27 law is continued in effect for that purpose.

1 SECTION 3. This Act takes effect September 1, 2007.