

By: Rodriguez of Travis

H.B. No. 298

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting employer retaliation against employees who seek recovery of unpaid wages and procedures in wage claim hearings conducted by the Texas Workforce Commission; providing administrative penalties.

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

SECTION 1. Chapter 61, Labor Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. RETALIATION PROHIBITED FOR ACTION TO RECOVER UNPAID

WAGES

Sec. 61.101. EMPLOYER RETALIATION PROHIBITED. An employer may not suspend or terminate the employment of, or in any other manner discipline, discriminate against, or retaliate against an employee who in good faith seeks to recover wages owed to the employee by:

(1) filing a complaint with a governmental entity;

(2) seeking or accepting the assistance of a nonprofit organization or an employee rights organization;

(3) exercising or attempting to exercise a right or remedy granted to the employee by a contract, local ordinance or order, or federal or state law; or

(4) filing a wage claim under Subchapter D.

Sec. 61.102. CAUSE OF ACTION; PRESUMPTION. (a) An employee who is the subject of an adverse employment action prohibited under

1 Section 61.101 may bring suit against the employer.

2 (b) It is a rebuttable presumption that the employee's  
3 employment was suspended or terminated or the employee was  
4 otherwise subjected to discipline, discrimination, or retaliation  
5 in violation of Section 61.101 if the adverse employment action was  
6 taken on or before the 90th day after the date the employee takes an  
7 action described by Section 61.101 for recovery of wages owed by the  
8 employer.

9 (c) A presumption under Subsection (b) may be rebutted only  
10 by clear and convincing evidence that the adverse employment action  
11 was not taken for a reason prohibited under Section 61.101.

12 Sec. 61.103. REMEDIES. (a) An employee who prevails in a  
13 suit brought under Section 61.102 may recover:

14 (1) reasonable damages incurred by the employee as a  
15 result of the adverse employment action;

16 (2) additional damages in an amount equal to the  
17 average wages the employee earns during a two-week period plus  
18 \$500; and

19 (3) court costs and reasonable attorney's fees  
20 incurred by the employee in the suit.

21 (b) In addition to amounts recovered under Subsection (a),  
22 an employee who prevails in a suit under Section 61.102 is entitled  
23 to:

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

27 (2) reinstatement of any benefits and seniority rights

1 lost because of the suspension, termination, or other adverse  
2 employment action.

3 Sec. 61.104. INJUNCTION. A person aggrieved by a violation  
4 of Section 61.101 may bring an action in a district court for  
5 appropriate injunctive relief.

6 Sec. 61.105. COMPLAINTS. (a) A person who has reason to  
7 believe that an employer has violated Section 61.101 may file a  
8 complaint with the commission.

9 (b) On receipt of a complaint, the commission shall  
10 investigate the complaint and take appropriate enforcement action.

11 (c) The commission shall:

12 (1) adopt rules for filing a complaint under this  
13 section;

14 (2) develop a simple standardized form for filing a  
15 complaint; and

16 (3) ensure that the form and information regarding the  
17 complaint process are available on the commission's Internet  
18 website.

19 SECTION 2. Section 61.052(b), Labor Code, is amended to  
20 read as follows:

21 (b) If a commission examiner imposes an administrative  
22 penalty under Section 61.053 or 61.0531, the preliminary wage  
23 determination order must include an order for payment of the  
24 penalty.

25 SECTION 3. Section 61.053(a), Labor Code, is amended to  
26 read as follows:

27 (a) If the commission examiner, a wage claim appeal

1 tribunal, or the commission determines that an employer acted in  
2 bad faith in not paying wages as required by this chapter, the  
3 examiner, tribunal, or commission, in addition to ordering the  
4 payment of the wages, shall [~~may~~] assess an administrative penalty  
5 against the employer.

6 SECTION 4. Subchapter D, Chapter 61, Labor Code, is amended  
7 by adding Section 61.0531 to read as follows:

8 Sec. 61.0531. RETALIATION; ADMINISTRATIVE PENALTY. (a) If  
9 after an investigation of a complaint under Section 61.105 the  
10 commission examiner, a wage claim appeal tribunal, or the  
11 commission determines that an employer violated Section 61.101, the  
12 examiner, tribunal, or commission shall assess an administrative  
13 penalty against the employer.

14 (b) The amount of an administrative penalty assessed under  
15 this section is \$1,000 for each violation.

16 SECTION 5. The heading to Section 61.058, Labor Code, is  
17 amended to read as follows:

18 Sec. 61.058. HEARING PROCEDURES; PRESUMPTION.

19 SECTION 6. Section 61.058, Labor Code, is amended by  
20 amending Subsection (a) and adding Subsections (c) and (d) to read  
21 as follows:

22 (a) Except as provided by Subsections (c) and (d), a [A]  
23 hearing conducted under this subchapter is subject to the rules and  
24 hearings procedures used by the commission in the determination of  
25 a claim for unemployment compensation benefits.

26 (c) In a hearing under this subchapter, an employer's  
27 failure to comply with Section 62.003 or the recordkeeping

1 requirements of the Fair Labor Standards Act of 1938 (29 U.S.C.  
2 Section 201 et seq.) applicable to an employee creates a rebuttable  
3 presumption that the employee's hours worked, pay rate, and  
4 earnings are equal to those amounts provided in the employee's  
5 testimony or records presented at the hearing.

6 (d) A presumption under Subsection (c) may be rebutted by  
7 clear and convincing evidence provided by the employer of the  
8 employee's hours worked, pay rate, and earnings.

9 SECTION 7. Not later than December 1, 2013, the Texas  
10 Workforce Commission shall adopt rules necessary to implement  
11 Section 61.105, Labor Code, as added by this Act.

12 SECTION 8. Section 61.0531, Labor Code, as added by this  
13 Act, applies only to conduct that occurs on or after the effective  
14 date of this Act. Conduct that occurs before that date is governed  
15 by the law in effect on the date the conduct occurred, and the  
16 former law is continued in effect for that purpose.

17 SECTION 9. Section 61.058, Labor Code, as amended by this  
18 Act, applies only to a hearing that commences on or after the  
19 effective date of this Act. A hearing that commences before that  
20 date is governed by the law in effect on the date the hearing  
21 commenced, and the former law is continued in effect for that  
22 purpose.

23 SECTION 10. Subchapter G, Chapter 61, Labor Code, as added  
24 by this Act, applies only to an adverse employment action that is  
25 taken by an employer against an employee on or after the effective  
26 date of this Act. An adverse employment action taken before that  
27 date is governed by the law in effect on the date the action was

1 taken, and the former law is continued in effect for that purpose.

2 SECTION 11. This Act takes effect September 1, 2013.