

By: Rodriguez

S.B. No. 1743

A BILL TO BE ENTITLED

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

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

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

9 SUBCHAPTER G. RETALIATION PROHIBITED FOR ACTION TO RECOVER UNPAID
10 WAGES

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

- 16 (1) filing a complaint with a governmental entity;
17 (2) seeking or accepting the assistance of a nonprofit
18 organization or an employee rights organization;
19 (3) exercising or attempting to exercise a right or
20 remedy granted to the employee by a contract, local ordinance or
21 order, or federal or state law; or
22 (4) filing a wage claim under Subchapter D.

23 Sec. 61.102. CAUSE OF ACTION; PRESUMPTION. (a) An employee
24 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.