

By: Rodriguez of Travis

H.B. No. 860

A BILL TO BE ENTITLED

AN ACT

relating to 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. Subchapter B, Chapter 61, Labor Code, is amended by adding Sections 61.021 and 61.022 to read as follows:

Sec. 61.021. EMPLOYER RETALIATION PROHIBITED; CAUSE OF ACTION. (a) 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.

(b) An employee who is the subject of an adverse employment action prohibited under Subsection (a) may bring suit against the employer, including an action in a district court for appropriate injunctive relief.

1 (c) An employee who prevails in a suit brought under this
2 section:

3 (1) may recover:

4 (A) reasonable damages incurred by the employee
5 as a result of the adverse employment action;

6 (B) additional damages in an amount equal to the
7 average wages the employee earns during a two-week period plus
8 \$500; and

9 (C) court costs and reasonable attorney's fees
10 incurred by the employee in the suit; and

11 (2) is entitled to:

12 (A) reinstatement to the employee's former
13 position or a position that is comparable in terms of compensation,
14 benefits, and other conditions of employment; and

15 (B) reinstatement of any benefits and seniority
16 rights lost because of the suspension, termination, or other
17 adverse employment action.

18 Sec. 61.022. COMPLAINTS. (a) A person who has reason to
19 believe that an employer has violated Section 61.021 may file a
20 complaint with the commission.

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

23 (c) The commission shall:

24 (1) adopt rules for filing a complaint under this
25 section;

26 (2) develop a simple standardized form for filing a
27 complaint; and

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

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

6 (b) If a commission examiner imposes an administrative
7 penalty under Section 61.053 or 61.0531, the preliminary wage
8 determination order must include an order for payment of the
9 penalty.

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

12 (a) If the commission examiner, a wage claim appeal
13 tribunal, or the commission determines that an employer acted in
14 bad faith in not paying wages as required by this chapter, the
15 examiner, tribunal, or commission, in addition to ordering the
16 payment of the wages, shall ~~may~~ assess an administrative penalty
17 against the employer.

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

20 Sec. 61.0531. RETALIATION; ADMINISTRATIVE PENALTY. (a) If
21 after an investigation of a complaint under Section 61.022 the
22 commission examiner, a wage claim appeal tribunal, or the
23 commission determines that an employer violated Section 61.021(a),
24 the examiner, tribunal, or commission shall assess an
25 administrative penalty against the employer.

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

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

Sec. 61.058. HEARING PROCEDURES; PRESUMPTION.

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

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

(c) In a hearing under this subchapter, an employer's failure to comply with Section 62.003 or the recordkeeping requirements of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) applicable to an employee creates a rebuttable presumption that the employee's hours worked, pay rate, and earnings are equal to those amounts provided in the employee's testimony or records presented at the hearing.

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

SECTION 7. Not later than December 1, 2015, the Texas Workforce Commission shall adopt rules necessary to implement Section 61.022, Labor Code, as added by this Act.

SECTION 8. Sections 61.021 and 61.022, Labor Code, as added by this Act, apply only to an adverse employment action that is taken by an employer against an employee on or after the effective date of this Act. An adverse employment action taken before that

1 date is governed by the law in effect on the date the action was
2 taken, and the former law is continued in effect for that purpose.

3 SECTION 9. Section 61.0531, Labor Code, as added by this
4 Act, applies only to conduct that occurs on or after the effective
5 date of this Act. Conduct that occurs before that date is governed
6 by the law in effect on the date the conduct occurred, and the
7 former law is continued in effect for that purpose.

8 SECTION 10. Section 61.058, Labor Code, as amended by this
9 Act, applies only to a hearing that commences on or after the
10 effective date of this Act. A hearing that commences before that
11 date is governed by the law in effect on the date the hearing
12 commenced, and the former law is continued in effect for that
13 purpose.

14 SECTION 11. This Act takes effect September 1, 2015.