

By: Rodríguez, Garcia

S.B. No. 476

A BILL TO BE ENTITLED

AN ACT

relating to claims for unpaid wages.

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, an employee rights organization, or an attorney;

(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.

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

(1) may recover:

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

3           (B) additional damages in an amount equal to the  
4 greater of \$1,000 or the amount of actual damages incurred as a  
5 result of the adverse employment action; and

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

8           (2) is entitled to:

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

12           (B) reinstatement of any benefits and seniority  
13 rights lost because of the adverse employment action.

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

17           (b) On receipt of a complaint, the commission shall  
18 investigate and dispose of the complaint in the same manner as a  
19 wage claim under Subchapter D. The commission may incorporate the  
20 investigation into any ongoing investigation of an underlying wage  
21 claim filed by the employee, if applicable.

22           (c) The commission shall ensure that information regarding  
23 the complaint process is available on the commission's Internet  
24 website.

25           SECTION 2. Section 61.051(c), Labor Code, is amended to  
26 read as follows:

27           (c) A wage claim must be filed not later than the second

1 anniversary of [~~180th day after~~] the date the wages claimed became  
2 due for payment. The filing [~~180-day~~] deadline is a matter of  
3 jurisdiction.

4 SECTION 3. Section 61.053, Labor Code, is amended by  
5 amending Subsection (a) and adding Subsection (a-1) to read as  
6 follows:

7 (a) If the commission examiner, a wage claim appeal  
8 tribunal, or the commission determines that an employer acted in  
9 bad faith in not paying wages as required by this chapter, the  
10 examiner, tribunal, or commission, in addition to ordering the  
11 payment of the wages, shall [~~may~~] assess an administrative penalty  
12 against the employer.

13 (a-1) For purposes of Subsection (a), acts that constitute  
14 bad faith by an employer include:

15 (1) a history of previous violations of this chapter;

16 (2) failure to pay wages to an employee as required by  
17 this chapter as an act of discrimination or retaliation against the  
18 employee;

19 (3) failure to pay wages as required by this chapter to  
20 multiple employees at the same time;

21 (4) failure to pay wages to an employee as required by  
22 this chapter knowing that the failure was a violation of state law;

23 or

24 (5) actions showing reckless disregard of the  
25 requirements of this chapter.

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

1       Sec. 61.0531. RETALIATION; DAMAGES. (a) If after an  
2 investigation of a complaint under Section 61.022 the commission  
3 examiner, a wage claim appeal tribunal, or the commission  
4 determines that an employer violated Section 61.021(a), the  
5 examiner, tribunal, or commission shall order the employer to pay  
6 to the employee damages in an amount equal to the greater of \$1,000  
7 or the amount of wages owed to the employee.

8       (b) Damages under Subsection (a) are in addition to any  
9 payment of wages ordered under this subchapter.

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

12       Sec. 61.058. HEARING PROCEDURES; PRESUMPTION.

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

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

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

27       (d) A presumption under Subsection (c) may be rebutted by

1 clear and convincing evidence provided by the employer of the  
2 employee's hours worked, pay rate, and earnings.

3 SECTION 7. Not later than December 1, 2017, the Texas  
4 Workforce Commission shall adopt rules necessary to implement  
5 Section 61.022, Labor Code, as added by this Act.

6 SECTION 8. Sections 61.021 and 61.022, Labor Code, as added  
7 by this Act, apply only to an adverse employment action that is  
8 taken by an employer against an employee on or after the effective  
9 date of this Act. An adverse employment action taken before that  
10 date is governed by the law in effect on the date the action was  
11 taken, and the former law is continued in effect for that purpose.

12 SECTION 9. Section 61.051, Labor Code, as amended by this  
13 Act, applies to a wage claim filed under Subchapter D, Chapter 61,  
14 Labor Code, for wages that become due for payment on or after March  
15 5, 2017. A wage claim for wages that became due for payment before  
16 that date is governed by the law in effect immediately before the  
17 effective date of this Act, and the former law is continued in  
18 effect for that purpose.

19 SECTION 10. Section 61.053(a), Labor Code, as amended by  
20 this Act, and Section 61.0531, Labor Code, as added by this Act,  
21 apply only to conduct that occurs on or after the effective date of  
22 this Act. Conduct that occurs before that date is governed by the  
23 law in effect on the date the conduct occurred, and the former law  
24 is continued in effect for that purpose.

25 SECTION 11. Section 61.058, Labor Code, as amended by this  
26 Act, applies only to a hearing that commences on or after the  
27 effective date of this Act. A hearing that commences before that

1 date is governed by the law in effect on the date the hearing  
2 commenced, and the former law is continued in effect for that  
3 purpose.

4 SECTION 12. This Act takes effect September 1, 2017.