

By: Rodriguez of Travis

H.B. No. 106

A BILL TO BE ENTITLED

AN ACT

1
2 relating to employer retaliation against employees who seek
3 recovery of unpaid wages and procedures in wage claim hearings
4 conducted by the Texas Workforce Commission.

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

6 SECTION 1. Subchapter B, Chapter 61, Labor Code, is amended
7 by adding Sections 61.021 and 61.022 to read as follows:

8 Sec. 61.021. EMPLOYER RETALIATION PROHIBITED; CAUSE OF
9 ACTION. (a) An employer may not suspend or terminate the
10 employment of or in any other manner discipline, discriminate
11 against, or retaliate against an employee who in good faith seeks to
12 recover wages owed to the employee by:

13 (1) filing a complaint with a governmental entity;

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

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

19 (4) filing a wage claim under Subchapter D.

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

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

1 section:

2 (1) may recover:

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

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

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

10 (2) is entitled to:

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

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

16 Sec. 61.022. COMPLAINTS REGARDING EMPLOYER RETALIATION.

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

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

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

27 SECTION 2. Section 61.053(a), Labor Code, is amended to

1 read as follows:

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

8 SECTION 3. Subchapter D, Chapter 61, Labor Code, is amended
9 by adding Section 61.0531 to read as follows:

10 Sec. 61.0531. RETALIATION; DAMAGES. (a) If, after an
11 investigation of a complaint under Section 61.022, the commission
12 examiner, a wage claim appeal tribunal, or the commission
13 determines that an employer violated Section 61.021(a), the
14 examiner, tribunal, or commission shall order the employer to pay
15 to the employee damages in an amount equal to the greater of \$1,000
16 or the amount of wages owed to the employee.

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

19 SECTION 4. The heading to Section 61.058, Labor Code, is
20 amended to read as follows:

21 Sec. 61.058. HEARING PROCEDURES; PRESUMPTION.

22 SECTION 5. Section 61.058, Labor Code, is amended by
23 amending Subsection (a) and adding Subsections (c) and (d) to read
24 as follows:

25 (a) Except as provided by Subsections (c) and (d), a [A]
26 hearing conducted under this subchapter is subject to the rules and
27 hearings procedures used by the commission in the determination of

1 a claim for unemployment compensation benefits.

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

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

12 SECTION 6. Not later than December 1, 2019, the Texas
13 Workforce Commission shall adopt rules necessary to implement
14 Section 61.022, Labor Code, as added by this Act.

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

21 SECTION 8. Section 61.0531, Labor Code, as added by this
22 Act, applies only to conduct that occurs on or after the effective
23 date of this Act. Conduct that occurs before that date is governed
24 by the law in effect on the date the conduct occurred, and the
25 former law is continued in effect for that purpose.

26 SECTION 9. Section 61.058, Labor Code, as amended by this
27 Act, applies only to a hearing that commences on or after the

1 effective date of this Act. A hearing that commences before that
2 date is governed by the law in effect on the date the hearing
3 commenced, and the former law is continued in effect for that
4 purpose.

5 SECTION 10. This Act takes effect September 1, 2019.