

By: Zaffirini

S.B. No. 2153

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the adjudication of emergency evacuation
3 discrimination complaints by the Texas Workforce Commission civil
4 rights division.

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

6 SECTION 1. Section 22.001, Labor Code, is amended to read as
7 follows:

8 Sec. 22.001. DEFINITIONS. In this chapter:

9 (1) "Commission" means the Texas Workforce Commission
10 civil rights division.

11 (2) "Complainant" means an employee who brings an
12 action or proceeding under this chapter.

13 (3) "Disaster" means the occurrence or imminent threat
14 of widespread or severe damage, injury, or loss of life or property
15 that results from a natural or man-made cause, including fire,
16 flood, earthquake, wind, storm, wave action, oil spill or other
17 water contamination, volcanic activity, epidemic, air
18 contamination, blight, drought, infestation, explosion, riot,
19 hostile military or paramilitary action, or other public calamity
20 requiring emergency action, or an energy emergency.

21 (4) [~~(2)~~] "Emergency evacuation order" means an
22 official statement issued by the governing body of this state or a
23 political subdivision of this state to recommend the evacuation of
24 all or part of the population of an area stricken or threatened with

1 a disaster. The term includes a declaration of local disaster under
2 Section 418.108, Government Code.

3 (5) [~~(3)~~] "Emergency services personnel" includes
4 fire fighters, police officers and other peace officers, emergency
5 medical technicians, and other individuals who are required, in the
6 course and scope of their employment, to provide services for the
7 benefit of the general public during emergency situations.

8 (6) [~~(4)~~] "Employee" means an individual who is
9 employed by an employer for compensation.

10 (7) [~~(5)~~] "Employer" means a person who employs one or
11 more employees.

12 (8) [~~(6)~~] "Political subdivision" means a county,
13 municipality, special district, or authority of this state.

14 (9) "Respondent" means an employer who is the subject
15 of a complaint filed under this chapter.

16 SECTION 2. Section 22.002, Labor Code, is amended to read as
17 follows:

18 Sec. 22.002. DISCRIMINATION PROHIBITED. (a) An employer
19 may not discharge or in any other manner discriminate against an
20 employee who leaves the employee's place of employment to
21 participate in a general public evacuation ordered under an
22 emergency evacuation order.

23 (b) A violation of this section is an unlawful employment
24 practice.

25 SECTION 3. Chapter 22, Labor Code, is amended by adding
26 Sections 22.005 through 22.017 to read as follows:

27 Sec. 22.005. FILING OF COMPLAINT. (a) An employee claiming

1 to be aggrieved by an unlawful employment practice under Section
2 22.002, or the employee's agent, may file a complaint with the
3 commission.

4 (b) A complaint must be in writing and must include:

5 (1) a statement that an unlawful employment practice
6 under Section 22.002 was committed;

7 (2) the facts on which the complaint is based,
8 including the date, place, and circumstances of the alleged
9 unlawful employment practice; and

10 (3) facts sufficient to enable the commission to
11 identify the respondent.

12 (c) Not later than the 10th day after the date a complaint
13 meeting the requirements of Subsection (b) is filed, the commission
14 shall serve the respondent with a copy of the complaint.

15 (d) A complaint may be amended to cure technical defects or
16 omissions or to clarify and amplify an allegation made in the
17 complaint.

18 (e) An amendment to a complaint alleging additional facts
19 that constitute an unlawful employment practice under Section
20 22.002 relating to or arising from the subject matter of the
21 original complaint relates back to the date the complaint was first
22 received by the commission.

23 Sec. 22.006. INVESTIGATION BY COMMISSION. The commission
24 shall investigate a complaint filed under Section 22.005 and
25 determine if there is reasonable cause to believe that the
26 respondent engaged in an unlawful employment practice as alleged in
27 the complaint.

1 Sec. 22.007. DISMISSAL FOR LACK OF REASONABLE CAUSE. (a)

2 If, after investigation, the commission determines that reasonable
3 cause does not exist to believe that the respondent engaged in an
4 unlawful employment practice as alleged in a complaint, the
5 commission shall issue a written determination incorporating the
6 finding that the evidence does not support the complaint and
7 dismissing the complaint.

8 (b) The commission shall provide a copy of a determination
9 and dismissal issued under Subsection (a) to the complainant, the
10 respondent, and other agencies as required by law.

11 Sec. 22.008. RESOLUTION BY INFORMAL METHODS. (a) If, after
12 investigation, the commission determines that there is reasonable
13 cause to believe that the respondent engaged in an unlawful
14 employment practice as alleged in a complaint, the commission shall
15 endeavor to resolve the complaint by informal methods of
16 conference, conciliation, and persuasion.

17 (b) The Texas Workforce Commission, its executive director,
18 or its other officers or employees may publicly disclose
19 information about efforts to resolve an alleged unlawful employment
20 practice by conference, conciliation, or persuasion only after
21 receiving from the complainant and respondent written consent to
22 such disclosure. This subsection applies regardless of whether the
23 commission has made a determination of reasonable cause.

24 Sec. 22.009. NOTICE OF DISMISSAL OR FAILURE TO RESOLVE
25 COMPLAINT. If, after determining that there is reasonable cause to
26 believe that the respondent engaged in an unlawful employment
27 practice as alleged in a complaint, the commission dismisses or

1 fails to resolve the complaint, the commission shall inform the
2 complainant of the dismissal or the failure to resolve in writing by
3 certified mail.

4 Sec. 22.010. TEMPORARY INJUNCTIVE RELIEF. (a) If the
5 commission concludes from a preliminary investigation of an
6 unlawful employment practice alleged in a complaint that prompt
7 judicial action is necessary, the commission shall file a petition
8 seeking appropriate temporary relief against the respondent
9 pending final determination of a proceeding under this chapter.

10 (b) The petition shall be filed in a district court in a
11 county in which:

12 (1) the alleged unlawful employment practice that is
13 the subject of the complaint occurred; or

14 (2) the respondent resides.

15 (c) A court may not issue temporary injunctive relief unless
16 the commission shows:

17 (1) a substantial likelihood of success on the merits;
18 and

19 (2) irreparable harm to the complainant in the absence
20 of temporary relief pending final determination on the merits.

21 (d) Temporary injunctive relief issued under this section
22 may include:

23 (1) prohibiting the respondent from engaging in an
24 unlawful employment practice under Section 22.002; and

25 (2) ordering additional equitable relief under
26 Section 22.003.

27 Sec. 22.011. CIVIL ACTION BY COMMISSION. (a) The

1 commission may bring a civil action against a respondent if:

2 (1) the commission determines that there is reasonable
3 cause to believe that the respondent engaged in an unlawful
4 employment practice as alleged in a complaint; and

5 (2) the commission's efforts to resolve the complaint
6 to the satisfaction of the complainant and respondent through
7 informal methods have been unsuccessful.

8 (b) The complainant may intervene in a civil action brought
9 by the commission.

10 Sec. 22.012. NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL
11 ACTION. (a) A complainant who receives notice under Section 22.009
12 that the commission has dismissed or failed to resolve a complaint
13 may request from the commission a written notice of the
14 complainant's right to file a civil action.

15 (b) The complainant must request the notice in writing.

16 (c) The executive director of the Texas Workforce
17 Commission may issue the notice.

18 (d) Failure of the executive director of the Texas Workforce
19 Commission to issue the notice of a complainant's right to file a
20 civil action does not affect the complainant's right under this
21 chapter to bring a civil action against the respondent.

22 Sec. 22.013. CIVIL ACTION BY COMPLAINANT. A complainant in
23 a proceeding under this chapter may bring a civil action against the
24 respondent. If a complainant receives a notice from the commission
25 under Section 22.012, the complainant must initiate the civil
26 action not later than 60 days after the date the notice is received.

27 Sec. 22.014. COMMISSION'S INTERVENTION IN CIVIL ACTION BY

1 COMPLAINANT. After receipt of a timely application, a court may
2 permit the commission to intervene in a civil action filed under
3 Section 22.013 if:

4 (1) the commission certifies that the case is of
5 general public importance; and

6 (2) before commencement of the action, the commission
7 issued a determination of reasonable cause to believe that Section
8 22.002 was violated.

9 Sec. 22.015. INJUNCTION; EQUITABLE RELIEF. On finding that
10 a respondent engaged in an unlawful employment practice as alleged
11 in a complaint, a court may:

12 (1) prohibit by injunction the respondent from
13 engaging in an unlawful employment practice under Section 22.002;
14 and

15 (2) order additional equitable relief under Section
16 22.003.

17 Sec. 22.016. COMPELLED COMPLIANCE. If a respondent fails
18 to comply with a court order issued under this chapter, the
19 complainant or, on the complainant's written request, the
20 commission, may commence proceedings to compel compliance with the
21 order.

22 Sec. 22.017. TRIAL DE NOVO. (a) A judicial proceeding
23 under this chapter is by trial de novo.

24 (b) A commission finding, recommendation, determination, or
25 other action is not binding on a court.

26 SECTION 4. The changes in law made by this Act apply only to
27 a violation of Section 22.002, Labor Code, as amended by this Act,

1 that is based on conduct occurring on or after the effective date of
2 this Act. A violation of Section 22.002, Labor Code, that is based
3 on conduct occurring before the effective date of this Act is
4 governed by the law in effect on the date the conduct occurred, and
5 the former law is continued in effect for that purpose.

6 SECTION 5. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2019.