

SUBJECT: Damages for retaliation against filing workers' compensation claims

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Brimer, Rhodes, Corte, Elkins, Giddings, Janek, Woolley
0 nays
2 absent — Dukes, Solomons

WITNESSES: For — Pam Beachley, Business Insurance Consumers Association; Robert Kamm, Texas Association of Business and Chambers of Commerce
Against — Emmett Sheppard, Texas AFL-CIO
On — None

BACKGROUND : An employer may not discharge or otherwise discriminate against an employee for filing a workers' compensation claim in good faith, hiring a lawyer to represent that claim, or testifying on a workers' compensation claim. An employer who violates this prohibition may be liable for reasonable damages, and the employee may be entitled to reinstatement.

DIGEST: CSHB 768 would amend the Labor Code to provide that an employer would be liable only for economic damages for retaliatory discharge or discrimination relating to workers' compensation claims.

Economic damages would be defined as damages for pecuniary loss, including loss of or damage to property, lost wages, earning capacity, medical care, and burial expenses. The definition would specifically exclude damages for pain and suffering, mental anguish, disfigurement, or loss of companionship or consortium.

CSHB 768 would take effect September 1, 1997, and apply only to a cause of action that accrued on or after that date.

SUPPORTERS
SAY:

HB 768 would restore some rationality to claims against employers. Suits for retaliatory discharge or discrimination due to workers' compensation claims have proliferated in the past few years. Because damages for injuries are limited under the workers' compensation statute, workers have begun using the claim of retaliatory discrimination or discharge to extract additional money from employers, even though most personnel actions are due to other factors, such as job performance. By limiting the damages available for such claims to economic damages, HB 768 would make sure that employees used legal action not to generate an economic windfall but to remedy real and serious problems.

Limiting damages to economic damages would conform to the original intent of the law. Courts have held that the correct measure of damages for retaliatory discrimination or discharge is the sum of money the employee would have received after being discriminated against or discharged less the sum of money the employee did receive. *DeFord Lumber Co., Inc. v. Roys*, 615 S.W.2d (Tex. Civ. App.— Dallas, 1981). Allowing employees to be awarded noneconomic damages forces employers into acquiescing to employee demands lest they face a costly suit.

Current case law allows employees to claim damages even though the filing of a workers' compensation claim was not a proximate cause of the discrimination or discharge. This allows any employee who has filed a workers' compensation claim to file a suit for retaliatory discrimination or discharge no matter what other causes for discrimination or discharge the employer may have had. CSHB 768 does not attempt to change that part of the law because doing so could affect some genuine discriminatory acts. However, by limiting awards to economic damages, the bill would help weed out many of the meritless and outlandish suits.

OPPONENTS
SAY:

Limiting damages for retaliatory discharge to economic damages alone would not fully compensate most plaintiffs. In many of these cases, the damages caused are not of an economic nature. Discrimination, prohibited by law, rarely has clear economic damages other than loss of wages for not receiving a promotion. If the law truly means to ensure that employees who file workers' compensation claims will not be discriminated against, it must cover all damages that normally arise in these actions.

OTHER
OPPONENTS
SAY:

A more important problem with suits filed for retaliatory discrimination or discharge is that the employee is only required at trial to show that the filing of a workers' compensation claim was partially responsible for the discrimination or discharge. If the claim contributed in any way to the discrimination, the employee can receive damages for all the harm done. Employees should have to at least demonstrate that a retaliatory action involving workers' compensation was the substantial cause of any discrimination or discharge by the employer in order to recover damages under the statute.

NOTES:

The original version of HB 768 would have removed retaliatory discrimination as a ground for an employee suit and required employees to prove that the retaliatory action was the substantial cause of their discharge.

The companion bill, SB 837 by Duncan, has been referred to the Senate Economic Development Committee.