

BILL ANALYSIS

Senate Research Center
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S.B. 1743
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There are countless instances in which employers fail to pay workers their promised wages, pay them less than the full amount they are owed, or do not pay them at all. Wage theft undercuts responsible businesses and hurts working families by forcing them to face unexpected hardships.

In certain sectors, wage theft is pervasive. For example, a recent study by The University of Texas found that one out of every five construction workers has experienced wage theft.

Furthermore, 30 percent of Texas construction workers who experienced wage theft also reported that they had suffered retaliation from their employers, including threats, dismissal, pay cuts, reduced hours, violence, or being assigned more difficult work tasks. Current Texas law does not provide specific protections from retaliation for workers who have reported a wage theft. The lack of consequences for employers who retaliate against their workers only serves to make workers who are most vulnerable to wage theft even more vulnerable.

S.B. 1743 prohibits retaliation for a worker who seeks to recover wages owed by filing a formal complaint, seeking assistance, or exercising a right or remedy protected by law. Additionally, the bill creates a rebuttable presumption that an employer has taken retaliatory action if the action occurs within 90 days of seeking to recover wages. The law provides for remedies in a court case including reasonable damages and a penalty of \$500, attorney fees, reinstatement, and injunctive relief. For cases filed with the Texas Workforce Commission, S.B. 1743 provides for an administrative penalty of \$1,000 for each violation.

It also creates a presumption in favor of the employee's records if the employer fails to meet the recordkeeping requirements of the Texas Labor Code.

As proposed, S.B. 1743 amends current law relating to prohibiting employer retaliation against employees who seek recovery of unpaid wages and procedures in wage claim hearings conducted by the Texas Workforce Commission and provides administrative penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Workforce Commission (TWC) in SECTION 1 (Section 61.105, Labor Code) and SECTION 7 of this bill.

Rulemaking authority previously granted to TWC is modified in SECTION 6 (Section 61.058, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 61, Labor Code, by adding Subchapter G, as follows:

SUBCHAPTER G RETALIATION PROHIBITED FOR ACTION TO RECOVER UNPAID WAGES

Sec. 61.101. **EMPLOYER RETALIATION PROHIBITED.** Prohibits an employer from suspending or terminating the employment of, or in any other manner disciplining,

discriminating against, or retaliating 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 (Wage Claims).

Sec. 61.102. CAUSE OF ACTION; PRESUMPTION. (a) Authorizes an employee who is the subject of an adverse employment action prohibited under Section 61.101 to bring suit against the employer.

(b) Provides that it is a rebuttable presumption that the employee's employment was suspended or terminated or the employee was otherwise subjected to discipline, discrimination, or retaliation in violation of Section 61.101 if the adverse employment action was taken on or before the 90th day after the date the employee takes an action described by Section 61.101 for recovery of wages owed by the employer.

(c) Authorizes presumption under Subsection (b) to be rebutted only by clear and convincing evidence that the adverse employment action was not taken for a reason prohibited under Section 61.101.

Sec. 61.103. REMEDIES. (a) Authorizes an employee who prevails in a suit brought under Section 61.102 to recover:

- (1) reasonable damages incurred by the employee as a result of the adverse employment action;
- (2) additional damages in an amount equal to the average wages the employee earns during a two-week period plus \$500; and
- (3) court costs and reasonable attorney's fees incurred by the employee in the suit.

(b) Provides that, in addition to amounts recovered under Subsection (a), an employee who prevails in a suit under Section 61.102 is entitled to:

- (1) reinstatement to the employee's former position or a position that is comparable in terms of compensation, benefits, and other conditions of employment; and
- (2) reinstatement of any benefits and seniority rights lost because of the suspension, termination, or other adverse employment action.

Sec. 61.104. INJUNCTION. Authorizes a person aggrieved by a violation of Section 61.101 to bring an action in a district court for appropriate injunctive relief.

Sec. 61.105. COMPLAINTS. (a) Authorizes a person who has reason to believe that an employer has violated Section 61.101 to file a complaint with the Texas Workforce Commission (TWC).

(b) Requires TWC, on receipt of a complaint, to investigate the complaint and take appropriate enforcement action.

(c) Requires TWC to adopt rules for filing a complaint under this section; develop a simple standardized form for filing a complaint; and ensure that the form and information regarding the complaint process are available on TWC's Internet website.

SECTION 2. Amends Section 61.052(b), Labor Code, to require that the preliminary wage determination order, if a TWC examiner imposes an administrative penalty under Section 61.053 (Bad Faith; Administrative Penalty) or 61.0531, include an order for payment of the penalty.

SECTION 3. Amends Section 61.053(a), Labor Code, to require, rather than authorize, the assessment of an administrative penalty against the employer, if the TWC examiner, a wage claim appeal tribunal, or TWC determines that an employer acted in bad faith in not paying wages as required by this chapter, in addition to ordering the payment of the wages.

SECTION 4. Amends Subchapter D, Chapter 61, Labor Code, by adding Section 61.0531, as follows:

Sec. 61.0531. RETALIATION; ADMINISTRATIVE PENALTY. (a) Requires the TWC examiner, a wage claim appeal tribunal, or TWC, if after an investigation of a complaint under Section 61.105 the examiner, tribunal, or TWC determines that an employer violated Section 61.101, to assess an administrative penalty against the employer.

(b) Provides that the amount of an administrative penalty assessed under this section is \$1,000 for each violation.

SECTION 5. Amends the heading to Section 61.058, Labor Code, to read as follows:

Sec. 61.058. HEARING PROCEDURES; PRESUMPTION.

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

(a) Provides that, except as provided by Subsections (c) and (d), a hearing conducted under this subchapter is subject to the rules and hearings procedures used by TWC in the determination of a claim for unemployment compensation benefits.

(c) Provides that, in a hearing under this subchapter, an employer's failure to comply with Section 62.003 (Earnings Statement) 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) Authorizes a presumption under Subsection (c) to be rebutted by clear and convincing evidence provided by the employer of the employee's hours worked, pay rate, and earnings.

SECTION 7. Requires TWC, not later than December 1, 2013, to adopt rules necessary to implement Section 61.105, Labor Code, as added by this Act.

SECTION 8. Makes application of Section 61.0531, Labor Code, as added by this Act, prospective.

SECTION 9. Makes application of Section 61.058, Labor Code, as amended by this Act, prospective.

SECTION 10. Makes application of Subchapter G, Chapter 61, Labor Code, as added by this Act, prospective.

SECTION 11. Effective date: September 1, 2013.