

BILL ANALYSIS

H.B. 860
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Wage theft can occur when an employer pays less than the promised wage, pays less than the minimum wage, or fails to pay proper overtime wages. According to interested parties, one out of every five construction workers in Texas experiences wage theft, and many of those workers who take action to recover their unpaid wages report suffering retaliation from their employers, including threats, dismissal, pay cuts, reduced hours, or being assigned more difficult work tasks. H.B. 860 seeks to address these issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 1 of this bill.

ANALYSIS

H.B. 860 amends the Labor Code to prohibit 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 filing a complaint with a governmental entity; seeking or accepting the assistance of a nonprofit organization or an employee rights organization; 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 filing a wage claim with the Texas Workforce Commission (TWC).

H.B. 860 authorizes an employee who is the subject of such a prohibited adverse employment action to bring suit against the employer. The bill authorizes an employee who prevails in a suit to recover reasonable damages incurred by the employee as a result of the adverse employment action, additional damages in an amount equal to the average wages the employee earns during a two-week period plus \$500, and court costs and reasonable attorney's fees incurred by the employee in the suit. The bill also entitles an employee to reinstatement to the employee's former position or a position that is comparable in terms of compensation, benefits, and other conditions of employment and reinstatement of any benefits and seniority rights lost because of the suspension, termination, or other adverse employment action.

H.B. 860 authorizes a person who has reason to believe that an employer has taken a prohibited adverse employment action to file a complaint with the TWC. The bill requires the TWC, on receipt of a complaint, to investigate the complaint and take appropriate enforcement action. The bill requires the TWC to adopt rules for filing a complaint not later than December 1, 2015, develop a simple standardized form for filing a complaint, and ensure that the form and

information regarding the complaint process are available on the TWC's website.

H.B. 860 requires, rather than authorizes, a TWC examiner, wage claim appeal tribunal, or the TWC to assess an administrative penalty against an employer determined to have acted in bad faith in not paying required wages. The bill requires a TWC examiner, a wage claim appeal tribunal, or the TWC to assess an administrative penalty against an employer if after the investigation of a complaint it is determined that the employer violated the bill's prohibition against an adverse employment action. The bill sets the amount of the administrative penalty at \$1,000 for each violation. The bill requires a preliminary wage determination order, if a TWC examiner imposes such an administrative penalty, to include an order for payment of the penalty. The bill establishes a rebuttable presumption at a wage claim hearing that an 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 if the employer fails to provide the employee at the end of each pay period a written earnings statement covering the pay period or the employer fails to comply with the recordkeeping requirements of the federal Fair Labor Standards Act of 1938. The bill also establishes that such a presumption may be rebutted by clear and convincing evidence provided by the employer of the employee's hours worked, pay rate, and earnings.

EFFECTIVE DATE

September 1, 2015.