

SUBJECT: Allowing wage claim dispute reviews

COMMITTEE: Economic Development — favorable, without amendment

VOTE: 5 ayes — Ritter, B. Cook, Anchia, Deshotel, McCall
0 nays
2 absent — Kolkhorst, Seaman

SENATE VOTE: On final passage, April 28 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Most employees are permitted to file wage claims with the Texas Workforce Commission (TWC). These are claims made against employers regarding pay to which employees believe they are entitled but have not received.

In a preliminary wage determination order, TWC either dismisses the case or orders the payment of disputed orders. In addition, TWC may impose an administrative penalty on an employer that it deems to have acted in bad faith in not paying the wages. The preliminary order can be appealed, at which point TWC may modify, affirm, or rescind a preliminary wage determination order.

A TWC decision made on the contested order represents the final administrative option unless a motion for rehearing is granted. The decision becomes final after 14 days. A party who has exhausted these administrative options may bring suit within 30 days after the final TWC decision to appeal the order.

DIGEST: SB 1408 would allow TWC to establish one or more wage claim appeal tribunals to hear and decide disputed wage claim appeals if the commission determined such measures necessary to dispose of appeals. Each tribunal would be composed of a TWC examiner. The bill also would allow TWC commissioners to review the decision of a wage claim appeal tribunal.

The wage claim appeal tribunal would send notice of a hearing or appeal, modify a preliminary wage determination order, and enter a written order. The tribunal also could take action related to the notice and finality of the order. The bill would allow for an appeal directly to the TWC commissioners as a step before proceeding to judicial review.

The commissioners could transfer proceedings on a pending case from one tribunal to another or from a tribunal to the body of commissioners and would send notice of such action. The commission member representing the public would serve as chair during such a review. The commissioners could affirm, modify, or set aside a prior wage claim appeal tribunal decision, could look into additional evidence, or could allow affected parties to appeal before the commission. The commissioners would mail notice to the parties of the commissioner's decision, the amount of relevant wages or penalties, and the right to judicial review. The order of the commissioners would become final 14 days after the date the order was mailed unless the commission reopened the appeal or unless a party to the appeal filed a motion for rehearing.

The bill would amend language to reflect the current title of TWC and to specify that an examiner employed by the commission would analyze each wage claim and would undertake related duties. It also would specify that the examiner, wage claim appeal tribunal, or the commission could complete the actions related to wage claim determinations and appeals.

The bill would take effect September 1, 2005, and would apply to a wage claim filed on or after that date.

**SUPPORTERS
SAY:**

SB 1408 would model the wage claim procedure after the procedure used to settle unemployment insurance compensation claims, which can include a third option of commissioner review upon request. Wage claim filings currently consist of a two-step administrative process — investigation and preliminary determination followed by the option for a hearing decision and a possible rehearing. Despite language in statute allowing commissioners to review a wage claim, in practice, employees of the commission almost always hear the wage claims.

Altering the structure, including adding the option of a commissioner review, would have many benefits. One benefit is that the losing party would gain an increased sense that a decision was legitimate if it came from the commissioners, rather than a TWC hearing officer, which would

make the losing party less likely to take the issue to court.

An additional review would resolve more cases quickly and efficiently because fewer would end up in court. For the typical party seeking review, a case would be resolved in about six weeks, not in six months as might be the case for a case that went to court. In addition, this bill would add no time to the basic required process.

Review before the commissioners would allow decisions in cases to be adopted as precedents for deciding future cases, which is not possible for a decision issued by a salaried hearing officer. This would provide more consistency from one case to another as well as guidance to hearing officers and the public as to how the law should be interpreted.

**OPPONENTS
SAY:**

Aligning the wage claim dispute process with the unemployment compensation dispute process could create increased delay for employees who under current law are able to seek relatively swift action. This delay could cause undue hardship.