

SUBJECT: Prohibiting termination of certain employees prior to MMI certification

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Martinez Fischer, Darby, Beckley, Collier, Landgraf, Moody, Parker

0 nays

2 absent — Patterson, Shine

WITNESSES: For —Chris Jones, CLEAT; John Loughran; Sarah McRee; (*Registered, but did not testify*: Donald Baker, Austin Police Association; Aidan Alvarado, Laredo Fire Fighters Association; Jimmy Rodriguez, San Antonio Police Officers Association; Mitch Landry, Texas Municipal Police Association; Glenn Deshields, Texas State Association of Fire Fighters; Julie Gilberg; Idona Griffith)

Against — None

On — Brian Hawthorne, Sheriffs Association of Texas; John Dahill, Texas Conference of Urban Counties

BACKGROUND: Labor Code ch. 408 governs the computation of workers' compensation benefits. Sec. 401.011 defines a compensable injury as an injury that arises in the course of employment for which compensation is payable. Maximum medical improvement (MMI) is defined as the earlier of:

- the date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;
- the expiration of two years from the date on which income benefits begin to accrue; or
- for a person recovering from spinal surgery, another established date if ordered by the commissioner of worker's compensation.

Sec. 408.0041 allows a medical examination to be requested to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the ability of the employee to return to work, or other, similar issues.

Local Government Code ch. 143 allows cities with a population of 10,000 or more with a paid fire or police department to vote to adopt the chapter and establish a firefighters' and police officers' civil service commission, which helps firefighters and police officers reach agreements on compensation and other conditions.

DIGEST:

HB 359 would prohibit a governmental entity from discharging, indefinitely suspending, or terminating from employment a peace officer, detention officer, county jailer, or firefighter based on the employee's inability to perform duties due to a compensable injury before the employee was certified as having reached maximum medical improvement, unless a doctor indicated that the employee was unable to return to work.

An employer in violation of this bill would be liable for reasonable damages incurred by the employee in an amount up to \$100,000. The employee would be entitled to reinstatement.

The burden of proof in a proceeding under this bill would be on the peace officer, detention officer, county jailer, or firefighter. A current or former peace officer, detention officer, county jailer, or firefighter could sue for damages and reinstatement.

The bill would not apply to an employer that had adopted Local Government Code ch. 143.

The bill would take effect September 1, 2019, and would apply only to a discharge, indefinite suspension, or termination that occurred on or after that date.

SUPPORTERS

HB 359 would close a gap between the timelines some cities and counties

SAY: have adopted to discharge, indefinitely suspend, or terminate injured public safety employees and the statutory timelines to certify maximum medical improvement (MMI). By bridging this gap, the bill would ensure that all employees were treated equally.

Currently, workers' compensation laws normally allow injured employees up to two years before a doctor makes a determination of MMI. However, some cities make employment decisions for injured police officers and firefighters before certification of MMI. Public safety personnel who perform dangerous duties may find themselves unemployed without being given a chance to improve their medical condition. This bill would protect the jobs of those who paid a high price in the course of their public service and give them reasonable time to recover.

Wages would be reimbursed as normally understood in workers' compensation laws, beginning from the date of wrongful termination. The bill would not interfere with termination for cause, but would relate only to termination due to an employee's inability to fully return to duty before reaching MMI. The bill would not force a newly elected sheriff to retain unwanted staff.

Taking care of officers who put their lives on the line is part of the cost of public safety, and local governments should factor that cost into their budgets.

While some have raised concerns about capping damages in a suit, HB 359 is a reasonable step toward allowing certain public safety employees to sue to recover costs, which currently is not an available option for them. Current law places limitations on the amount of liability for local governments where sovereign immunity is waived.

OPPONENTS
SAY: HB 359 could interfere with a sheriffs' ability to staff as the sheriff deemed appropriate. The bill lacks clarity as to when an employee who successfully sued would have to be reimbursed for wages after leaving the workplace due to injury. As a result, a new sheriff could end up having to pay additional wages if the process was not resolved quickly and the

employee had to be sworn in for an extra term.

The bill also could negatively impact smaller counties that were forced to make a damage award of \$100,000. Small counties would have a hard time operating without a necessary employee for months or years, and there may not be room in the budget for an additional civil service employee. HB 359 should be amended to allow an increase in the maximum allowable full-time equivalent employees to allow more flexibility in small county budgeting.

OTHER
OPPONENTS
SAY:

HB 359 would place an unnecessary cap on reimbursements that would not align with the true medical and legal costs associated with the wrongful termination cases addressed in the bill, which could be greater than \$100,000. Most cities are part of a risk pool that insures against these types of cases, so there is no reason to cap damages.

NOTES:

The author plans to offer a floor amendment that would:

- exempt a county with a civil service system from the bill;
- specify that a "treating doctor," not a "designated doctor," would indicate whether an employee was unable to return to work; and
- require a dispute under the bill to be adjudicated in the manner established in statute under the Texas Workers' Compensation Act.