

BILL ANALYSIS

Senate Research Center
82R6205 KJM-F

H.B. 1178
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Economic Development
5/10/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The legislature enacted legislation in 2003 and 2007 to provide protections mirroring federal law (Uniformed Services Employment and Reemployment Act) for members of the Texas military forces when called to state active duty in response to natural disasters and other emergencies.

Texas law does not provide any avenue for processing service members' complaints of violations of Chapter 431 (State Militia), Government Code, nor remedies when it is determined that a public or private employer has failed to comply with the law.

H.B. 1178 amends current law to provide a formal investigative process for complaints of violations of Chapter 431 and remedies to serve as a deterrent against non-compliance, in addition to making the Texas Workforce Commission the state's formal investigator.

H.B. 1178 amends current law relating to employment protection for members of the state military forces.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 431.001, Government Code, by adding Subdivisions (5)-(7), to define "employee," "employer," and "political subdivision."

SECTION 2. Amends Section 431.006, Government Code, as follows:

Sec. 431.006. REEMPLOYMENT OF PERSON CALLED TO TRAINING OR DUTY.

(a) Prohibits an employer from terminating the employment of an employee, rather than prohibits a private employer from terminating the employment of a permanent employee, who is a member of the state military forces of this state or any other state because the employee is ordered to authorized training or duty by a proper authority. Makes a nonsubstantive change.

(b) Provides that a violation of this section is an unlawful employment practice. Authorizes a person injured by a violation of this section to file a complaint with the Texas Workforce Commission (TWC) civil rights division under Subchapter K. Deletes existing text entitling a person injured by a violation of this section to damages in an amount not exceeding six months' compensation at the rate at which the person was compensated when ordered to training or duty, and reasonable attorney's fees approved by the court.

Deletes existing Subsection (c) providing that it is a defense to an action under this section that the employer's circumstances changed while the employee was in training or on duty to an extent that makes reemployment impossible or unreasonable. Deletes text of existing Subsection (c) providing that the employer

has the burden of proving the impossibility or unreasonableness of reemploying the employee under the employer's changed circumstances.

Deletes existing Subsection (d) prohibiting an employer from delaying or attempting to defeat a reemployment obligation under this section by demanding documentation that does not exist or is not readily available at the time notice is given under Subsection (a).

SECTION 3. Amends Chapter 431, Government Code, by adding Subchapter K, as follows:

SUBCHAPTER K. ADMINISTRATIVE REVIEW AND JUDICIAL ENFORCEMENT

Sec. 431.151. DEFINITIONS. Defines, in this chapter, "commission," "complainant," and "respondent."

Sec. 431.152. FILING OF COMPLAINT; FORM AND CONTENT; SERVICE. (a) Authorizes a person claiming to be aggrieved by an unlawful employment practice under Section 431.006 or the person's agent to file a complaint with the TWC civil rights division.

(b) Requires that the complaint be in writing and made under oath.

(c) Requires that the complaint state:

(1) that an unlawful employment practice under Section 431.006 has been committed;

(2) the facts on which the complaint is based, including the date, place, and circumstances of the alleged unlawful employment practice; and

(3) facts sufficient to enable the TWC civil rights division to identify the respondent.

(d) Requires the TWC civil rights division to serve the respondent with a copy of the perfected complaint not later than the 10th day after the date the complaint is filed.

(e) Authorizes a complaint to be amended to cure technical defects or omissions, including a failure to verify the complaint or to clarify and amplify an allegation made in the complaint.

(f) Provides that an amendment to a complaint alleging additional facts that constitute an unlawful employment practice under Section 431.006 relating to or arising from the subject matter of the original complaint relates back to the date the complaint was first received by the TWC civil rights division.

Sec. 431.153. ALTERNATIVE DISPUTE RESOLUTION. Provides that the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under Section 431.006. Provides that the settlement of a disputed claim under this subchapter that results from the use of traditional or alternative means of dispute resolution is binding on the parties to the claim.

Sec. 431.154. INVESTIGATION BY COMMISSION. Requires the TWC civil rights division to investigate a complaint arising under Section 431.006 and determine if there is reasonable cause to believe that the respondent engaged in an unlawful employment practice as alleged in the complaint.

Sec. 431.155. LACK OF REASONABLE CAUSE; DISMISSAL OF COMPLAINT. (a) Requires the TWC civil rights division, if, after investigation, it determines that

reasonable cause does not exist to believe that the respondent engaged in an unlawful employment practice under Section 431.006 as alleged in a complaint, to issue a written determination incorporating the finding that the evidence does not support the complaint and dismissing the complaint.

(b) Requires the TWC civil rights division to serve a copy of the determination on the complainant, the respondent, and other agencies as required by law.

Sec. 431.156. DETERMINATION OF REASONABLE CAUSE; REVIEW BY PANEL. Requires the TWC civil rights division, if, after investigation, it determines that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice under Section 431.006 as alleged in a complaint, to:

(1) issue a written determination incorporating the finding that the evidence supports the complaint; and

(2) serve a copy of the determination on the complainant, the respondent, and other agencies as required by law.

Sec. 431.157. RESOLUTION BY INFORMAL METHODS. (a) Provides that if a determination of reasonable cause is made, the TWC civil rights division is required to eliminate the alleged unlawful employment practice arising under Section 431.006 by informal methods of conference, conciliation, and persuasion.

(b) Prohibits the TWC civil rights division, the TWC executive director, or TWC's other officers or employees, without the written consent of the complainant and respondent, from disclosing to the public information about the efforts in a particular case to resolve an alleged unlawful employment practice by conference, conciliation, or persuasion, regardless of whether there is a determination of reasonable cause.

Sec. 431.158. NOTICE OF DISMISSAL OR UNRESOLVED COMPLAINT. Requires the TWC civil rights division, if it dismisses a complaint or does not resolve the complaint, to inform the complainant of the dismissal or failure to resolve the complaint in writing by certified mail.

Sec. 431.159. TEMPORARY INJUNCTIVE RELIEF. (a) Requires the TWC civil rights division, if it concludes from a preliminary investigation of an unlawful employment practice arising under Section 431.006 alleged in a complaint that prompt judicial action is necessary, to file a petition seeking appropriate temporary relief against the respondent pending final determination of a proceeding under this subchapter.

(b) Requires that the petition be filed in a district court in a county in which:

(1) the alleged unlawful employment practice that is the subject of the complaint occurred; or

(2) the respondent resides.

(c) Prohibits a court from issuing temporary injunctive relief unless the TWC civil rights division shows:

(1) a substantial likelihood of success on the merits; and

(2) irreparable harm to the complainant in the absence of the preliminary relief pending final determination on the merits.

Sec. 431.160. CIVIL ACTION BY COMMISSION. (a) Authorizes the TWC civil rights division to bring a civil action against a respondent if:

(1) the TWC civil rights division determines that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice under Section 431.006; and

(2) the TWC civil rights division's efforts to resolve the discriminatory practice to the satisfaction of the complainant and respondent through informal methods have been unsuccessful.

(b) Authorizes the complainant to intervene in a civil action brought by the TWC civil rights division.

Sec. 431.161. NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL ACTION. (a) Entitles a complainant who receives notice under Section 431.158 that the complaint is dismissed or not resolved to request from the TWC civil rights division a written notice of the complainant's right to file a civil action.

(b) Requires the complainant to request the notice in writing.

(c) Authorizes the executive director of TWC to issue the notice.

(d) Provides that failure of the executive director of TWC to issue the notice of a complainant's right to file a civil action does not affect the complainant's right under this subchapter to bring a civil action against the respondent.

Sec. 431.162. CIVIL ACTION BY COMPLAINANT. Authorizes the complainant, within 60 days after the date a notice of the right to file a civil action is received, to bring a civil action against the respondent.

Sec. 431.163. COMMISSION'S INTERVENTION IN CIVIL ACTION BY COMPLAINANT. Authorizes a court, after receipt of a timely application, to permit the TWC civil rights division to intervene in a civil action filed under Section 431.162 if:

(1) the TWC civil rights division certifies that the case is of general public importance; and

(2) before commencement of the action, the TWC civil rights division issued a determination of reasonable cause to believe that Section 431.006 was violated.

Sec. 431.164. ASSIGNMENT TO EARLY HEARING. Requires the court to set an action brought under this subchapter for hearing at the earliest practicable date to expedite the action.

Sec. 431.165. INJUNCTION; EQUITABLE RELIEF. (a) Authorizes a court, on finding that a respondent engaged in an unlawful employment practice under Section 431.006 as alleged in a complaint, to:

(1) prohibit by injunction the respondent from engaging in an unlawful employment practice under Section 431.006; and

(2) order additional equitable relief as may be appropriate.

(b) Authorizes additional equitable relief to include:

(1) hiring or reinstating with or without back pay;

(2) upgrading an employee with or without pay; and

(3) paying court costs.

(c) Prohibits liability under a back pay award from accruing for a date more than two years before the date a complaint is filed with the TWC civil rights division. Provides that interim earnings, workers' compensation benefits, and unemployment compensation benefits received operate to reduce the back pay otherwise allowable.

Sec. 431.166. COMPENSATORY AND PUNITIVE DAMAGES. (a) Authorizes a court, as provided by this section, on finding that a respondent engaged in an intentional unlawful employment practice under Section 431.006 as alleged in a complaint, to award:

(1) compensatory damages; and

(2) punitive damages.

(b) Authorizes a complainant to recover punitive damages against a respondent, other than a respondent that is a governmental entity, if the complainant demonstrates that the respondent engaged in an unlawful employment practice under Section 431.006 with malice or with reckless indifference to the state-protected rights of an aggrieved individual.

(c) Prohibits compensatory damages awarded under this section from including:

(1) back pay;

(2) interest on back pay; or

(3) other relief authorized under Section 431.165(b).

(d) Prohibits the sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses and the amount of punitive damages awarded under this section from exceeding, for each complainant:

(1) \$50,000 in the case of a respondent that has fewer than 101 employees;

(2) \$100,000 in the case of a respondent that has more than 100 and fewer than 201 employees;

(3) \$200,000 in the case of a respondent that has more than 200 and fewer than 501 employees; and

(4) \$300,000 in the case of a respondent that has more than 500 employees.

(e) Requires that the requisite number of employees, for the purposes of Subsection (d), in determining the number of employees of a respondent, be employed by the respondent for each of 20 or more calendar weeks in the current or preceding calendar year.

Sec. 431.167. ATTORNEY'S FEES; COSTS. (a) Authorizes a court, in a proceeding under this subchapter, to allow the prevailing party, other than the TWC civil rights division, reasonable attorney's fee as part of the costs.

(b) Provides that the state, a state agency, or a political subdivision is liable for costs, including attorney's fees, to the same extent as a private person.

(c) Authorizes the court, in its discretion, in awarding costs and attorney's fees in an action or a proceeding under this subchapter, to include reasonable expert fees.

Sec. 431.168. COMPELLED COMPLIANCE. Authorizes a party to the action or the TWC civil rights division, if an employer fails to comply with a court order issued under this subchapter, on the written request of a person aggrieved by the failure, to commence proceedings to compel compliance with the order.

Sec. 431.169. TRIAL DE NOVO. (a) Provides that a judicial proceeding under this subchapter is by trial de novo.

(b) Provides that a TWC civil rights division finding, recommendation, determination, or other action is not binding on a court.

SECTION 4. Provides that the changes in law made by this Act apply only to a violation of Section 431.006, Government Code, as amended by this Act, that is based on conduct occurring on or after the effective date of this Act. Provides that a violation of Section 431.006, Government Code, that is based on conduct occurring before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 5. Effective date: upon passage or September 1, 2011.