AN ACT

relating to wage claim disputes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (1), Section 61.001, Labor Code, is amended to read as follows:

(1) "Commission" means the Texas Workforce Commission or its designee.

SECTION 2. Section 61.052, Labor Code, is amended to read as follows:

Sec. 61.052. PRELIMINARY WAGE DETERMINATION ORDER. (a) An examiner employed by the commission shall analyze each wage claim filed under Section 61.051 and, if the claim alleges facts actionable under this chapter, shall investigate the claim and issue a preliminary wage determination order:

(1) dismissing the wage claim; or

(2) ordering payment of wages determined to be due and unpaid.

(b) If a commission examiner imposes an administrative penalty under Section 61.053, the preliminary wage determination order must include an order for payment of the penalty.

(c) The commission examiner shall mail notice of the preliminary wage determination order to each party at that party's last known address, as reflected by commission records.
SECTION 3. Subchapter D, Chapter 61, Labor Code, is amended by adding Section 61.0525 to read as follows:

Sec. 61.0525. ESTABLISHMENT OF WAGE CLAIM APPEAL TRIBUNALS.

(a) The commission shall establish one or more impartial wage claim appeal tribunals to hear and decide disputed wage claims if the commission determines that establishment of those tribunals is necessary to ensure prompt disposal of wage claims cases on appeal.

(b) Each wage claim appeal tribunal shall be composed of a salaried examiner appointed by the commission.

SECTION 4. Subsections (a), (b), and (d), Section 61.053, Labor Code, are amended to read as follows:

(a) If the commission examiner, a wage claim appeal tribunal, or the commission determines that an employer acted in bad faith in not paying wages as required by this chapter, the examiner, tribunal, or commission, in addition to ordering the payment of the wages, may assess an administrative penalty against the employer.

(b) If the commission examiner, a wage claim appeal tribunal, or the commission determines an employee acted in bad faith in bringing a wage claim, the examiner, tribunal, or commission may assess an administrative penalty against the employee.

(d) In determining the amount of an administrative penalty assessed under this section, the commission examiner, a wage claim appeal tribunal, or the commission shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;
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(3) the amount necessary to deter a future violation;

and

(4) any other appropriate matter, including mitigating circumstances.

SECTION 5. Section 61.054, Labor Code, is amended to read as follows:

Sec. 61.054. REQUEST FOR HEARING ON PRELIMINARY ORDER.

(a) Either party may request a hearing before a wage claim appeal tribunal to appeal [contest] a preliminary wage determination order made under Section 61.052.

(b) The request for hearing must be made in writing not later than the 21st day after the date the commission examiner mails the notice of the preliminary wage determination order.

SECTION 6. Section 61.055, Labor Code, is amended to read as follows:

Sec. 61.055. PRELIMINARY ORDER FINAL IF HEARING NOT REQUESTED. If neither party requests a hearing to appeal [contest] a preliminary wage determination order within the period prescribed by Section 61.054, the order becomes the final order of the commission for all purposes, and neither party is entitled to judicial review of the order under this subchapter.

SECTION 7. Subsection (a), Section 61.056, Labor Code, is amended to read as follows:

(a) An employer that does not request a hearing within the period prescribed by Section 61.054 to appeal [contest] a preliminary wage determination order shall pay the amount ordered to the commission not later than the 21st day after the date the
commission mails notice of the order. The payment must equal the
net amount of outstanding wages after any valid deductions and must
include an itemized list of those deductions.

SECTION 8. Section 61.057, Labor Code, is amended to read as
follows:

Sec. 61.057. NOTICE; TIME FOR HEARING. (a) A notice
regarding an administrative hearing conducted under this
subchapter must be mailed by the wage claim appeal tribunal
[commission] not later than the 21st day after the date a request
for the hearing is received by the commission.

(b) As soon as practicable, but not later than the 45th day
after the date a notice is mailed under Subsection (a), the tribunal
[commission] shall conduct the hearing.

SECTION 9. Section 61.059, Labor Code, is amended to read as
follows:

Sec. 61.059. [COMMISSION] CONSIDERATION OF PRELIMINARY
WAGE DETERMINATION ORDER. The wage claim appeal tribunal
[commission] may modify, affirm, or rescind a preliminary wage
determination order.

SECTION 10. Section 61.060, Labor Code, is amended to read
as follows:

Sec. 61.060. ORDER AFTER HEARING. After a hearing, the wage
claim appeal tribunal [commission] shall enter a written order for
the payment of wages that the tribunal [commission] determines to
be due or for the payment of any penalty the tribunal [commission]
assesses.

SECTION 11. Subsections (a) and (c), Section 61.061, Labor
Code, are amended to read as follows:

(a) The wage claim appeal tribunal [commission] shall mail to each party to the appeal notice of:

(1) the decision;

(2) the amount of wages subject to the order; and

(3) the amount of any penalty assessed[

[4) the parties' right to judicial review of the order].

(c) The order of the wage claim appeal tribunal becomes final 14 days after the date on which it is mailed unless a further appeal to the commission is initiated as provided by this subchapter [before that date

[(1)] a party files a written motion for rehearing, or

[42] the commission reopens the hearing].

SECTION 12. Subchapter D, Chapter 61, Labor Code, is amended by adding Sections 61.0611 through 61.0614 to read as follows:

Sec. 61.0611. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE WAGE CLAIM APPEAL TRIBUNAL. (a) The commission by order may remove to itself or transfer to another wage claim appeal tribunal the proceedings on a wage claim pending before a wage claim appeal tribunal.

(b) The commission promptly shall mail to the parties to the affected wage claim a notice of the order under Subsection (a).

(c) A quorum of the commission shall hear a proceeding removed to the commission under Subsection (a).
Sec. 61.0612. COMMISSION REVIEW OF WAGE CLAIM APPEAL

TRIBUNAL ORDER. The commission may:

(1) on its own motion:
    (A) affirm, modify, or set aside an order issued under Section 61.061 on the basis of the evidence previously submitted in the case; or
    (B) direct the taking of additional evidence; or
    (2) permit any of the parties affected by the order to initiate a further appeal before the commission.

Sec. 61.0613. NOTICE OF COMMISSION ACTION. (a) The commission shall mail to each party to the appeal under Section 61.0612 notice of:

(1) the commission's decision;
(2) the amount of wages subject to the order;
(3) the amount of any penalty assessed; and
(4) the parties' right to judicial review of the order.

(b) The notice shall be mailed to a party's last known address, as shown by commission records.

Sec. 61.0614. FINALITY OF COMMISSION ORDER. An order of the commission becomes final 14 days after the date the order is mailed unless before that date:

(1) the commission by order reopens the appeal; or
(2) a party to the appeal files a written motion for rehearing.

SECTION 13. Subsection (a), Section 61.062, Labor Code, is amended to read as follows:

(a) A party who has exhausted the party's administrative
remedies under this chapter, other than a motion for rehearing, may bring a suit to appeal the order.

SECTION 14. Subsections (a) and (c), Section 301.0015, Labor Code, are amended to read as follows:

(a) In administering its functions under this title or another law, the commission shall limit its activities to:

(1) setting commission policies, including policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the executive director and commission staff;

(2) giving general direction to the executive director regarding the implementation of the commission's policies, and holding the executive director accountable for implementing the policies;

(3) approving the commission's budget recommendation to the legislature;

(4) reviewing under Subchapter D, Chapter 212, the decision of an appeal tribunal regarding unemployment compensation;

(5) reviewing under Subchapter D, Chapter 61, the decision of a wage claim appeal tribunal regarding a wage claim;

(6) adopting rules necessary to administer the commission's policies, including rules necessary for the administration of this title and rules governing required reports, procedures, and orders;

(7) [Added] responding to questions and comments that are directed to the commission by the executive director and that
relate to setting or clarifying commission policies or relate to
other matters of general interest to the commission; and

(8) [(7)] requesting information from commission
staff.

(c) The commission, acting as a governmental body, or an
individual member of the commission may conduct the activities
listed in Subsections (a)(7) [(a)(6)] and (8) [(7)].

SECTION 15. Subsection (b), Section 301.006, Labor Code, is
amended to read as follows:

(b) Notwithstanding Subsection (a), the member of the
commission who represents the public shall serve as chair:

(1) when the commission acts under:

(A) Subchapter D, Chapter 61; or

(B) Subchapter D, Chapter 212; and

(2) in commission hearings involving unemployment
insurance issues regarding tax coverage, contributions, or
reimbursements.

SECTION 16. The change in law made by this Act applies only
to a wage claim that is filed with the Texas Workforce Commission on
or after the effective date of this Act. A wage claim filed before
that date is governed by the law in effect on the date that the wage
claim was filed, and the former law is continued in effect for that
purpose.

SECTION 17. This Act takes effect September 1, 2005.
David Dewhurst  
President of the Senate

Jim Ash  
Speaker of the House

I hereby certify that S.B. No. 1408 passed the Senate on April 28, 2005, by the following vote: Yeas 31, Nays 0.

Betsy Hannah  
Secretary of the Senate

I hereby certify that S.B. No. 1408 passed the House on May 25, 2005, by a non-record vote.

Robert Haney  
Chief Clerk of the House

Approved:

17 JUNE '05  
Date

Rick Perry  
Governor

Filed in the office of the Secretary of State

JUN 17 2005  
 Secretary of State

Roger Williams