

House Bill 1205
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Subtitle A, Title 2, Labor Code, is amended by adding Chapter 23 to read as follows:

CHAPTER 23. EMPLOYMENT DISCRIMINATION REGARDING

VOLUNTEER EMERGENCY RESPONDERS

Sec. 23.001. DEFINITIONS. In this chapter:

(1) "Emergency" includes a fire, hazardous or toxic materials spill and cleanup, medical emergency, or other situation that poses an imminent threat of loss of life or property to which a fire department or provider of emergency medical services has been or later could be dispatched.

(2) "Emergency medical services" has the meaning assigned by Chapter 773, Health and Safety Code.

(3) "Emergency medical services volunteer" has the meaning assigned by Section 773.003(13), Health and Safety Code.

(4) "Emergency service organization" means any entity established to provide for the public:

(A) fire prevention and suppression;

(B) hazardous materials response operations; or

(C) emergency medical services.

(5) "Employee" means an individual who is employed by an employer for compensation.

(6) "Employer" means a person who employs one or more employees. The term includes the state or a political subdivision of the state.

(7) "Political subdivision" means a county, municipality,

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SECTION 1. Subtitle A, Title 2, Labor Code, is amended by adding Chapter 23 to read as follows:

CHAPTER 23. EMPLOYMENT DISCRIMINATION REGARDING

VOLUNTEER EMERGENCY RESPONDERS

Sec. 23.001. DEFINITIONS. In this chapter:

(1) "Emergency" includes a proclamation declaring a state of disaster by the Governor of Texas or the President of the United States that includes a fire, hazardous or toxic materials spill and cleanup, medical emergency, or other situation that poses an imminent threat of loss of life or property to which a fire department or provider of emergency medical services has been or later could be dispatched.

(2) "Emergency medical services" has the meaning assigned by Chapter 773, Health and Safety Code.

(3) "Emergency medical services volunteer" has the meaning assigned by Section 773.003(13), Health and Safety Code.

(4) "Emergency service organization" means any entity established to provide for the public:

(A) fire prevention and suppression;

(B) hazardous materials response operations; or

(C) emergency medical services.

(5) "Employee" means an individual who is employed by an employer for compensation.

(6) "Employer" means a person who employs one or more employees. The term includes the state or a political subdivision of the state.

(7) "Political subdivision" means a county, municipality,

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special district, or authority of this state.

(8) "Volunteer emergency responder" means an individual who is an active participant in an emergency service organization but who does not receive compensation for the individual's services. The term includes an emergency medical services volunteer and a volunteer firefighter.

(9) "Volunteer fire department" has the meaning assigned by Section 614.101, Government Code.

(10) "Volunteer firefighter" means an individual who is a member of a volunteer fire department.

Sec. 23.002. DISCRIMINATION PROHIBITED; LIMITATION. (a) Except as provided by this chapter, an employer may not terminate or suspend the employment of, or in any other manner discriminate against, an employee who is a volunteer emergency responder and who is absent from or late to the employee's employment because the employee is responding to an emergency in the employee's capacity as a volunteer emergency responder.

(b) Notwithstanding Subsection (a), an employee who is a volunteer emergency responder is not entitled under this chapter to be absent from the employee's employment for more than 14 days in a calendar year unless the employee's absence is approved by the employer.

Sec. 23.003. EXCEPTION FOR CERTAIN SMALL EMPLOYERS. (a) Except as provided by Subsection (b), this chapter does not apply to an employer for whom an absence to respond to an emergency by an employee

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special district, or authority of this state.

(8) "Volunteer emergency responder" means an individual who is an active participant in an emergency service organization but who does not receive compensation for the individual's services. The term includes an emergency medical services volunteer and a volunteer firefighter.

(9) "Volunteer fire department" has the meaning assigned by Section 614.101, Government Code.

(10) "Volunteer firefighter" means an individual who is a member of a volunteer fire department.

Sec. 23.002. DISCRIMINATION PROHIBITED; LIMITATION. (a) Except as provided by this chapter, an employer may not terminate or suspend the employment of, or in any other manner discriminate against, an employee who is a volunteer emergency responder and who is absent from or late to the employee's employment because the employee is responding to an emergency in the employee's capacity as a volunteer emergency responder.

(b) Notwithstanding Subsection (a), an employee who is a volunteer emergency responder is not entitled under this chapter to be absent from the employee's employment for more than 14 days in a calendar year unless the employee's absence is approved by the employer.

Sec. 23.003. EXCEPTION FOR CERTAIN SMALL EMPLOYERS. This chapter does not apply to employers with fewer than 50 employees.

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who is a volunteer emergency responder would result in hardship by reducing the employer's workforce by 50 percent.

(b) An employer described by Subsection (a) may permit an employee to provide services as a volunteer emergency responder. An employer who elects under this subsection to permit an employee to provide services as a volunteer responder is subject to this chapter.

Sec. 23.004. EXCEPTION FOR CERTAIN CRITICAL EMPLOYEES. (a) In this section, "critical employee" means an individual:

(1) employed as a peace officer, firefighter, emergency medical services personnel member, or dispatcher for law enforcement, firefighters, or emergency medical services personnel; or

(2) whose presence is required in order to continue the essential functions of the employer, the absence of which could cause substantial and grievous economic injury, severely compromise the ability of the employer to accomplish mission critical functions, or jeopardize the safety and well-being of others.

(b) Except as provided by Subsection (c), this chapter does not apply to an employee who is a critical employee of the employee's employer.

(c) An employer may permit a critical employee to provide services as a volunteer emergency responder. An employer who elects under this subsection to permit a critical employee to provide services as a volunteer emergency responder is subject to this chapter.

Sec. 23.005. NOTICE TO EMPLOYER. An employee

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Sec. 23.004. EXCEPTION FOR CERTAIN CRITICAL EMPLOYEES. (a) In this section, "critical employee" means an individual:

(1) employed as a peace officer, firefighter, emergency medical services personnel member, or dispatcher for law enforcement, firefighters, or emergency medical services personnel; or

(2) whose presence is required in order to continue the essential functions of the employer, the absence of which could cause substantial and grievous economic injury, severely compromise the ability of the employer to accomplish mission critical functions, or jeopardize the safety and well-being of others.

(b) Except as provided by Subsection (c), this chapter does not apply to an employee who is a critical employee of the employee's employer.

(c) An employer may permit a critical employee to provide services as a volunteer emergency responder. An employer who elects under this subsection to permit a critical employee to provide services as a volunteer emergency responder is subject to this chapter.

Sec. 23.005. NOTICE TO EMPLOYER. An employee

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who is a volunteer emergency responder and who may be absent from or late to employment because the employee is responding to an emergency as a volunteer emergency responder shall make a reasonable effort to notify the employer that the employee may be absent or late. If the employee is unable to provide the notice due to the extreme circumstances of the emergency or inability to contact the employer, the employee shall submit to the employer, on the employer's request, a written verification of participation in an emergency activity that:

(1) is signed by the supervisor, or the designee of the supervisor, of the entity for which the affected volunteer emergency responder provides services or the applicable emergency service organization; and

(2) states that the volunteer emergency responder responded to an emergency and provides the date and time of the emergency.

Sec. 23.006. EFFECT ON EMPLOYEE WAGES; USE OF LEAVE TIME. (a) An employer may reduce the wages otherwise owed to the employee for any pay period because the employee took time off during that pay period for an absence authorized by this chapter.

(b) In lieu of reducing an employee's wages under Subsection (a), an employer may require an employee who is a volunteer emergency responder to use existing vacation leave time, personal leave time, or compensatory leave time for an absence authorized by this chapter, except as otherwise provided by a collective bargaining agreement.

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who is a volunteer emergency responder and who may be absent from or late to employment because the employee is responding to an emergency as a volunteer emergency responder shall make a reasonable effort to notify the employer that the employee may be absent or late. If the employee is unable to provide the notice due to the extreme circumstances of the emergency or inability to contact the employer, the employee shall submit to the employer, on the employer's request, a written verification of participation in an emergency activity that:

(1) is signed by the supervisor, or the designee of the supervisor, of the entity for which the affected volunteer emergency responder provides services or the applicable emergency service organization; and

(2) states that the volunteer emergency responder responded to an emergency and provides the date and time of the emergency.

Sec. 23.006. EFFECT ON EMPLOYEE WAGES; USE OF LEAVE TIME. (a) An employer may reduce the wages otherwise owed to the employee for any pay period because the employee took time off during that pay period for an absence authorized by this chapter.

(b) In lieu of reducing an employee's wages under Subsection (a), an employer may require an employee who is a volunteer emergency responder to use existing vacation leave time, personal leave time, or compensatory leave time for an absence authorized by this chapter, except as otherwise provided by a collective bargaining agreement.

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(c) This section does not affect an employee's right to wages or leave time under Section 661.905, Government Code.

Sec. 23.007. LIABILITY; REINSTATEMENT. An employee whose employment is suspended or terminated in violation of this chapter is entitled to:

(1) reinstatement to the employee's former position or a position that is comparable in terms of compensation, benefits, and other conditions of employment;

(2) compensation for wages lost during the period of suspension or termination; and

(3) reinstatement of any fringe benefits and seniority rights lost because of the suspension or termination.

Sec. 23.008. CIVIL ACTION. (a) An employee whose employer violates this chapter may bring a civil action against the employer to enforce rights protected by this chapter.

(b) An action under this section must be brought in the county in which the place of employment is located not later than the first anniversary of the date of the violation.

SECTION 2. Chapter 23, Labor Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

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(c) This section does not affect an employee's right to wages or leave time under Section 661.905, Government Code.

Sec. 23.007. LIABILITY; REINSTATEMENT. An employee whose employment is suspended or terminated in violation of this chapter is entitled to:

(1) reinstatement to the employee's former position or a position that is comparable in terms of compensation, benefits, and other conditions of employment;

(2) compensation for wages lost during the period of suspension or termination; and

(3) reinstatement of any fringe benefits and seniority rights lost because of the suspension or termination.

Sec. 23.008. CIVIL ACTION. (a) An employee whose employer violates this chapter may bring a civil action against the employer to enforce rights protected by this chapter.

(b) An action under this section must be brought in the county in which the place of employment is located not later than the 15th business day after first anniversary of the date of the violation.

Same as House version.

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SECTION 3. This Act takes effect September 1, 2007.

Same as House version.