

AN ACT

relating to the prohibition of certain employment discrimination regarding an employee who is a volunteer emergency responder.

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

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

1 (C) emergency medical services.

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

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

7 (7) "Political subdivision" means a county,
8 municipality, special district, or authority of this state.

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

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

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

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

25 (b) Notwithstanding Subsection (a), an employee who is a
26 volunteer emergency responder is not entitled under this chapter to
27 be absent from the employee's employment for more than 14 days in a

1 calendar year unless the employee's absence is approved by the
2 employer.

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

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

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

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

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

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

25 Sec. 23.005. NOTICE TO EMPLOYER. An employee who is a
26 volunteer emergency responder and who may be absent from or late to
27 employment because the employee is responding to an emergency as a

1 volunteer emergency responder shall make a reasonable effort to
2 notify the employer that the employee may be absent or late. If the
3 employee is unable to provide the notice due to the extreme
4 circumstances of the emergency or inability to contact the
5 employer, the employee shall submit to the employer, on the
6 employer's request, a written verification of participation in an
7 emergency activity that:

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

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

15 Sec. 23.006. EFFECT ON EMPLOYEE WAGES; USE OF LEAVE TIME.

16 (a) An employer may reduce the wages otherwise owed to the employee
17 for any pay period because the employee took time off during that
18 pay period for an absence authorized by this chapter.

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

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

27 Sec. 23.007. LIABILITY; REINSTATEMENT. An employee whose

1 employment is suspended or terminated in violation of this chapter
2 is entitled to:

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

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

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

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

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

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

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

H.B. No. 1205

President of the Senate

Speaker of the House

I certify that H.B. No. 1205 was passed by the House on May 11, 2007, by the following vote: Yeas 132, Nays 5, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1205 on May 25, 2007, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1205 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor