SUBJECT: Adjusting the window for filing suit related to discrimination in pay

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 8 ayes — J. Davis, Bell, Y. Davis, Isaac, Murphy, Perez, E. Rodriguez, Workman

0 nays

1 absent — Vo

WITNESSES: For — Jason Smith, Texas Employment Lawyers Association; (*Registered, but did not testify*: Rene Lara, Texas AFL-CIO; Ted Melina Raab, Texas AFT)

Against — Kathy Barber, NFIB Texas; (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas)

On — Boone Fields, Texas Workforce Commission

BACKGROUND: Labor Code, sec. 21.202 requires that lawsuits for employment discrimination, including equal-pay lawsuits, be brought within 180 days of the alleged instance of discrimination. Labor Code, sec. 21.258 limits the award of back pay in a successful employment discrimination case to two years from the date the lawsuit is filed.

DIGEST: HB 950 would amend Labor Code, sec. 21.202 so that, with respect to a case involving a discriminatory compensation decision, an unlawful employment practice would be deemed to have occurred each time:

- a discriminatory compensation decision was adopted;
- an individual became subject to a discriminatory compensation decision; or
- an individual was adversely affected by application of a discriminatory compensation decision or practice, including each time wages, benefits, or other compensation affected by the decision were paid.

The bill would also amend Labor Code, sec. 21.258 to stipulate that for the maximum two years of back pay to apply to a case triggered by an unlawful employment practice, unlawful practices made within the 180-day period for filing a lawsuit would have to be similar or related to the unlawful practices with regard to the discrimination in wage payments made outside of the filing period.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 950 would place Texas at the forefront of establishing a policy forbidding discrimination by conforming state law to the new federal standard. In 2009, the Lilly Ledbetter Fair Pay Act was enacted, which amended federal law so that an instance of discrimination occurs each time wages, which relate to a past discriminatory compensation decision, are paid. Since the *Prairie View A&M v. Chatha* decision by the Texas Supreme Court in 2012, state law has been interpreted to not allow a suit to be brought outside the 180-day window following the original pay decision. With HB 950, Texas law appropriately would mirror federal law in this regard.

Currently in Texas, if an employee does not find out about a discriminatory pay decision within 180 days, he or she has no recourse in state court. Instead, employees and employers are forced to bring and defend such cases in federal court. In addition to being less expensive than federal court, state courts also allow speedier resolution. By stipulating that the statute of limitations would begin each time an employee received wages as the result of a discriminatory practice, HB 950 would allow more of these claims to be settled in state court.

Pay equity is a serious concern nationally and in Texas. A 2010 National Committee on Pay Equity study found that women on average make 77.4 percent of the amount men earn. The bill would allow more women access to state court to help reverse this problem.

The bill would limit the back pay that an employee could recover to the two years prior to filing the complaint. So even if an employer made a discriminatory decision 10 years ago, employees could sue for only two years of back pay.

OPPONENTS SAY:

If Texas adopted the federal standard for when pay inequality cases could be brought, it would effectively do away with the current statute of limitations. The change would create the possibility of an unlawful practice occurring each time wages were paid. A pension check also could be included if it were discovered that there had been a discriminatory decision.

The change proposed by HB 950 would open employers up to significant liability. For example, even if a discriminatory decision were made 10 years ago, the employee still would be able to sue for the past decision. This could be the case even if the original bad decision was made by a manager no longer employed at the company. In addition, employees currently have ample opportunity to bring suit at the federal level.

NOTES:

The identical companion, SB 248 by Davis, was reported favorably by the Senate Economic Development Committee on March 27 and placed on the Senate Intent Calendar.