

SUBJECT: Prohibiting employee discrimination for volunteer emergency responders

COMMITTEE: Economic Development — committee substitute recommended

VOTE: 7 ayes — Deshotel, Straus, Kolkhorst, Dunnam, Morrison, Ortiz, Veasey
0 nays

WITNESSES: For — (*Registered, but did not testify*: Trey Blocker, Donnie Pickard, and Shawn Snider, State Firemen's and Fire Marshal's Association)

Against — (*Registered, but did not testify*: Mary Miksa, Texas Association of Business)

BACKGROUND: Texas is an at-will employment state, meaning that employees can be terminated for any legal reason.

DIGEST: CSHB 1205 would amend the Labor Code to add ch. 23 to prevent employers from discriminating against employees who also serve as volunteer emergency responders. It would prevent an employer from terminating, suspending, or discriminating against an employee who was a volunteer emergency responder and was absent from or late to work as a result of responding to an emergency. An employee who was suspended, terminated, or discriminated against would be entitled to:

- reinstatement at his or her former position or a comparable position;
- compensation for lost wages during the period of suspension or termination; and
- reinstatement of any fringe benefits and seniority rights lost.

The bill would allow an employee to bring a civil action to enforce the rights under this bill. Such an action would have to be brought in the county where the place of employment was located within a year of the discriminatory action by the employer.

The bill would entitle an employee to be absent from employment for a maximum of 14 days per year unless the employer approved of additional leave. It would provide an exception for small business owners, who

would not have to grant leave to an employee if the result created hardship by reducing the employer's workforce by 50 percent. However, if the employer granted leave to an employee, then the employer would be subject to the provisions of this bill.

CSHB 1205 would stipulate that an employee should attempt to make a reasonable effort to notify the employer that he or she would be absent or late as a result of responding to an emergency. If an employee could not provide notice, then he or she would submit a written verification of the employee's involvement in an emergency as an emergency responder. The written verification would have to be signed by the volunteer emergency responder's supervisor and state the date and time that the responder responded to the emergency.

The bill would permit an employer to reduce the wages of an employee for the periods that he or she was absent as a result of responding to an emergency. If not prohibited by a collective bargaining agreement, an employer also could require the employee to use existing vacation, personal leave, or compensatory time to account for time lost as a result of responding to emergencies. This bill would not affect an employee's right to wages or leave time.

The bill would take effect September 1, 2007, and would apply only to a cause of action that accrued on or after that date.

**SUPPORTERS
SAY:**

CSHB 1205 would protect volunteer emergency responders from being terminated, suspended, demoted, or discriminated against as they provide a valuable service to the community without compensation. Eight states currently have laws that protect volunteer emergency responders from job termination or demotion, including Illinois, Kentucky, New Jersey, Ohio, Pennsylvania, Washington, and West Virginia. In communities that depend on volunteer emergency services, it is only fair that employers make small concessions to their employees who donate their time, and possibly risk their lives, as volunteer emergency responders. The bill would serve as incentive to encourage people to serve their communities by becoming volunteer emergency responders. Furthermore, it would provide an exemption for small business owners for whom the temporary absence of one employee would be burdensome.

**OPPONENTS
SAY:**

CSHB 1205 would create a mandatory burden on small employers who allow employees to serve as volunteer emergency responders. This bill

only would create an exception for small businesses with two or fewer employees, which would be too restrictive to have any meaningful impact of small businesses. In some cases, the absence of one essential employee can wreak havoc on workflow for small business owners. By failing to address the needs of smaller business owners, this bill actually could have the unintended consequence of forcing employers to forbid their employees from performing such volunteer duties outside of work.

NOTES:

Unlike the bill as introduced, the committee substitute would limit the amount of leave time to 14 days per calendar year.