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TEXAS EMPLOYMENT COMMISSION

Austin, Texas 78778-0001



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August 2, 1994

Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
J. P. Clements Building
Austin, Texas 78711

FILE # MC-28164-94

I.D.# 28164

RE: Request for Attorney General's opinion Concerning Provisions
of Texas Labor Code, Chapter 61, and Article 5155 V.A.T.S.,
(Payday Law) ~~Amendment to RQ-440~~

Dear General Morales:

The Texas Employment Commission respectfully requests your opinion with regard to the following questions:

1. "Can the State of Texas transfer or assign a lien based on unpaid wages to the wage claimant, so the claimant might pursue collection efforts on his own?"
2. "Is a wage claimant for whose use and benefit the State of Texas holds a lien precluded from pursuing on his own statutory and common-law remedies to get execution on that lien because it was created in the name of the State?"
3. "Can the State of Texas transfer or assign a Notice of Assessment based on unpaid wages to the wage claimant, so the claimant might pursue collection efforts on his own?"
4. "Is a wage claimant for whose use and benefit the State of Texas has perfected a Notice of Assessment precluded from pursuing on his own statutory and common-law remedies to get execution on that Notice of Assessment because it was created in the name of the State?"

Our previous discussions with your office regarding the acknowledged difficulty, if not the real impossibility, of collection action on all wage claim orders by the Attorney General lead us to the questions posed above.

Section 61.081 of the Texas Labor Code states "A final order of the commission against an employer indebted to the State for penalties or wages, unless timely appealed to a court, is a lien on all the property belonging to the employer." (Emphasis added)

The statute has explicit language prescribing the agency's role when wage payments are made to the agency; those wages are to be remitted to the wage claimant, along with any earned interest. However, until payment is made by the employer, the State stands in the position of creditor and, hopefully, recipient of funds (unpaid wages) for the use and benefit of the wage claimant.

The statute, though, does not specifically grant to the wage claimant any status as a lienholder or the holder of an interest in the Notice of Assessment, thus denying the claimant an opportunity to attempt collection of the wages secured by the lien or ordered to be paid under a Notice of Assessment through action on his own.

Although the administrative liens and Notices of Assessment presently being filed by Texas Employment Commission identify the claimant whose wage claim occasioned the final determination and order, as well as the amount of wages due, both the administrative lien and the Notice of Assessment are filed in the name of the State of Texas.

We would appreciate an early answer to those questions. If further information is needed, please contact Edgar L. Berlin at 795-6610. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Ed Davis', written in a cursive style.

C. Ed Davis
Deputy Administrator for Legal Affairs