

## Updates from the Office of the Commissioner Representing Employers

# Texas BusinessToday

Aaron S. Demerson  
Commissioner Representing Employers

December 2022

Dear Texas Employers,

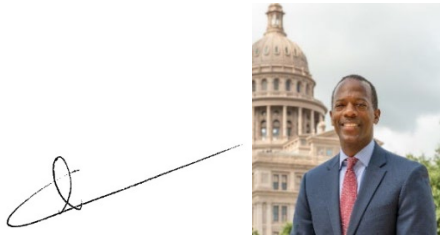
Welcome to your December issue of *Texas Business Today*! Wow! What a year it has been for the great state of Texas and our Texas employers.

I want to say thank you to all of our Texas employers, large and small! Thank you for all of your hard work, dedication, and always remaining steadfast and flexible. We are so grateful you have chosen Texas to start and grow your businesses, and we want you to continue to choose Texas!

As we approach 2023, I look forward to meeting you in your respective communities and continuing to serve as your Commissioner Representing Employers. Please know that we are ALWAYS here for you as your number one resource and do not hesitate to contact me or my office if you need assistance.

Wishing you and your families a very happy holiday season and best wishes for the new year!

Let's Continue to Make Progress!



Aaron Demerson  
Commissioner Representing Employers  
Texas Workforce Commission

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## Notices of Chargeback Review

Some of you may have received Notices of Chargeback Review. If so, it is a special kind of claim notice giving your company a second chance to dispute a chargeback from 2020 that you may have missed responding to before. Follow the instructions on the form, respond carefully, and document your response. Call 1-800-832-9394 (option 4) or e-mail [employerinfo@twc.texas.gov](mailto:employerinfo@twc.texas.gov) if you have any questions regarding such a notice. For those of you who have disputed chargebacks in the past, TWC is working hard to process the many responses the agency received, and any deletions from chargebacks will result in tax rate recalculations as soon as possible.



## A Pocket-sized Guide to Employee Breaks

By Jikku John  
Legal Counsel to Commissioner Aaron Demerson

A common topic of confusion for many employers concerns employee breaks. Although this topic can be complicated, this article provides the fundamental rules on employee breaks.

### Breaks — are they required?

The general answer to this question is no. Currently, there are no Texas or Federal laws which require employers to provide breaks during the workday. This includes coffee breaks, smoking breaks, rest breaks, or even meal breaks. While many employees live under the presumption that occasional, or even 10-minute breaks

are required, this is incorrect. Employers have the authority, per the terms of their written policy, to define the terms of a break.

Although breaks are not required by law, failing to provide reasonable breaks can land employers in hot water. For example, although employers are not obligated to provide routine bathroom breaks, under the Occupational Safety and Health Administration (OSHA) standards, failing to provide such a break can result in violation of various OSHA rules. See:

<https://www.oshaeducationcenter.com/articles/restroom-breaks/>. Moreover, decreased motivation, burnout, and increased fatigue are only some of the other consequences that can arise from an employer's failure to provide breaks.

### **What about Compensation?**

Rest or coffee breaks, defined as 20 minutes or less, are compensable work time, since they are regarded as being a benefit to both the employer and the employee. Meal breaks, on the other hand, are not compensable, as long as they are at least 30 minutes in length and the employee is "completely relieved from duty for the purpose of eating a regular meal." See:

[https://www.twc.texas.gov/news/efted\\_breaks.html](https://www.twc.texas.gov/news/efted_breaks.html). If the employee does in fact perform work during the allotted meal break, that time will become compensable.

### **Exceptions?**

As you can probably imagine, there are exceptions to the general rule that employers are not required to provide employee breaks.



Under the 2010 health care reform law, the Fair Labor Standards Act (FLSA) requires employers to allow reasonable break times for a nursing mother for the purpose of expressing breast milk for her baby during the first year following the child's birth. Employers should note that the law applies only to non-exempt employees, i.e., those who are entitled to overtime pay if they work overtime, and it exempts employers with fewer than 50 employees if providing such a break would be an undue hardship for the business. Employers should be aware that such breaks do not have to be paid. See: [https://efte.twc.texas.gov/nursing\\_mothers.html](https://efte.twc.texas.gov/nursing_mothers.html).

Similarly, some cities in Texas may have their own ordinances on breaks, such as Austin and Dallas, which require at least one ten-minute break per four-hour shift for construction workers in that city. Employers may wish to consult their local city ordinances to determine whether their locality exercises any special rules on breaks.

Finally, under the Americans with Disabilities Act (ADA), if an employer has 15 or more employees, then they will need to reasonably accommodate employees with disabilities. Hence, in the case that an employee requires additional breaks as a

form of reasonable accommodation, employers must provide the additional break, unless doing so would pose an undue hardship to the employer.

## **Conclusion**

For further inquiries, and to avoid misinformation on employee breaks, employers can contact our TWC employer hotline at 1-800-832-9394.



## **‘Twas the Eve of the Party**

‘Twas the eve of the party, and all through the land,  
All employees were stirring the drinks in their hands.

The bosses declared this a booze-free event,  
In hopes of avoiding last year’s incidents.

But few had paid heed to instructions this year.  
There were bottles, and mixers, and cases of beer.

Oh no! There goes Bob, mistletoe in his hand.  
He should already know that harassment won’t stand.

The women don’t think that his antics are cute,  
A repeat of last year may bring us a lawsuit.

Now Susan is stumbling, someone please get her keys!  
She’s really impaired. Should we call the police?

She could get arrested for driving like this.  
She needs to stay put. It’s not worth the risk.

Or she may hurt others in case of a crash.  
Many lives changed forever in only a flash.

While Susan, as driver, would be held responsible,  
Could the business, as party host, also be liable?

Ignoring instructions this year once again  
May lead us to incidents causing much pain.

Employers and workers, I ask, heed these words.  
A drama-free party is really preferred.

Please know there's a way out of all this – a fix.  
Alcohol and holiday parties don't mix.

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## TEXAS EMPLOYER HOTLINE

### 1-800-832-9394

Hiring Issues · Medical Leave-Related Laws · Personnel Policies and Handbooks · Independent Contractors and Unemployment Tax Issues · The Unemployment Claims and Appeals Process · Texas and Federal Wage and Hour Laws



**Employer Hotline Hours: M-F, 8am-5pm**  
*Information provided by employment law attorneys in the Office of the Commissioner Representing Employers at the Texas Workforce Commission*

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## **Connect with the Office of the Commissioner Representing Employers**

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