

# Texas Business Today

First Quarter 2014

Hope Andrade  
Commissioner Representing Employers

TEXAS  
WORKFORCE SOLUTIONS



Frequently Asked Questions from Employers – Answered

• Who's the Boss? • What To Do If You Lose an Unemployment Claim •

# Employers and Educators: Let's Start the Conversation

The Texas Workforce Commission (TWC) remains committed to equipping our future workforce with both the skill sets and the mindsets needed for the jobs of today and tomorrow. One essential factor in achieving this goal will be opening and expanding the lines of communication between industry and educators. Our teachers, counselors, parents, and students need to be aware of the career and

## Commissioner's Corner

training opportunities in their respective communities. We all play a role in helping to educate the public about current and future high-demand and high-wage opportunities.

As a business owner, I can tell you that I never thought to ask for help when it came to my workforce needs. I never thought to reach out to my local Workforce Solutions Office or my local community college for help filling my job openings – whether I was in need of home health aides, nurses, or administrative staff.

But now that I am at TWC, I realize what a tremendous resource this agency is for employers. And I have also realized that as business owners, managers, and bosses, we are not alone when it comes to hiring quality workforce. But we have to recognize that we, as employers, must go out into the community and communicate our needs. We must come together and begin the conversation with our educators and our workforce partners.

In order to strengthen the conversation between industry and educators, my office is helping to coordinate and develop a series of industry day forums



TWC Commissioner Representing Employers Hope Andrade used a 'gold-plated' drill to celebrate construction of the Kilgore Economic Development Corporation's new Advanced Technology Center during Industry Appreciation Month. Photo courtesy of Kilgore Economic Development Corporation

in communities that are focusing on this issue.

For the first forum, Alamo Community College, Alamo Workforce Solutions, and employers from the San Antonio area will take a day to meet directly with the school districts. They will share occupation and wage data, regional economic growth factors, educational data, and high-demand job data. A panel of employers will explain their current and future workforce needs directly with instructors, counselors, and administrators. They will also discuss the corresponding skills that will be essential for employees in for those positions.

The hope is that our educators and career counselors can take this message

home with them and use it as a reference point for students as they interact with them each day. Making industry a part of the education conversation gives students a deeper context for their learning.

So together, let's promote an open and continuous dialogue that will help Texas meet our current and future workforce needs.

Sincerely,

Hope Andrade  
Texas Workforce Commission  
Commissioner Representing Employers

# Frequently-Asked Questions from Employers – Answered

The following questions were compiled from past Texas Business Conferences around the state and questions from Texas employers on our Employer Hotline.

## Unemployment Insurance

**Q:** TWC just ruled on a case where they denied a claim for payment due to the fact that the employee was found to be insubordinate. How does TWC define insubordination?

**A:** TWC has no formal definition of that term, as such. From my experience, though, I can tell you that cases involving insubordination are distinguished from those involving failure to follow instructions. Those two things are not the same. Insubordination

is basically a direct refusal to submit to legitimate authority. Insubordination can include failure to follow instructions, but the “failure” in that instance would be more like "refusal" to follow instructions. If an employee fails to carry out instructions, it could be attributable to negligence on the part of the employee, or laziness, or apathy. Those things are not insubordination in and of themselves. They are serious problems, to be sure, but they do not involve defiance of legitimate authority, as would be the case with true insubordination. Precedent cases dealing with insubordination can be found in

## Frequently Asked Questions

TWC’s Appeals Policy and Precedent Manual online: <http://www.twc.state.tx.us/ui/appl/mc.pdf#page=85>.

**Q:** We hire registered nurses and licensed vocational nurses on a PRN basis. How would an unemployment insurance claim affect us if all such employees are on PRN?

**A:** Per unemployment insurance precedent cases, an on-call, as-needed employee in Texas who completes an assignment and does not have another assignment to start the next workday is generally considered to be unemployed, so a chargeback could potentially result from an unemployment claim.

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Cover image: Boss working with an employee. *iStockphoto/Thinkstock*



An on-call, as-needed employee in Texas who completes an assignment and does not have another assignment to start the next workday is generally considered to be unemployed. Photo by iStock/Thinkstock

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## Employer Policies

**Q:** *We have a couple of employees who speak both English and Spanish; however, when they are in the break room or in a back processing room, they are speaking Spanish. This makes our non-Spanish-speaking employees uncomfortable. Can you tell me what might be a best practice for having them speak English so that others are not uncomfortable? Is it legal for us to request they only speak English, seeing that it isn't a business necessity for them to speak Spanish?*

**A:** The laws regarding English-only policies can be very complicated. As a general matter, an English-only policy is permissible only if the employer can demonstrate that it is consistent with business necessity. Thus, the burden is not on employees to show that there is

a business need for them to speak in a different language – rather, the burden is on the business to show that there is a business need for the other language to not be spoken at certain times or in certain places. That having been said, if there is credible evidence showing that it is more likely than not that the employees in question are using a different language to conceal harassing or discriminatory treatment of others, or to facilitate some other kind of wrongful action, then the company would have room to argue that there is a business need for the other language not to be spoken, at least in the kind of situation in which complaints have arisen. Before proceeding further, it might help to review the information in the topic titled “English-Only Policies” at [http://www.twc.state.tx.us/news/efte/english\\_only\\_policies.html](http://www.twc.state.tx.us/news/efte/english_only_policies.html) in the online edition of our

book *Especially for Texas Employers*.

**Q:** *Our employees fail to turn in their vacation approval sheet. The policy states they are to have vacation approved by the supervisor and the sheet is to be turned in before the vacation is taken. If the employees fail to turn in an approval sheet, can we not pay them for the days they were out on vacation?*

**A:** Whether the company can treat the time off as unpaid would depend upon how the vacation policy is designed. If the condition in the written policy is that vacation pay is given for time off that is approved in advance using the vacation approval paperwork specified by the company, then the company would not have to pay for time off that is not taken in accordance with that procedure. However, if the policy is

worded so loosely that a reasonable person could read it and believe that vacation pay is given for time off that is approved verbally by a supervisor, then the company should go ahead and pay for the time off. Ultimately, if the employees and supervisors are not using the company's approved paperwork for vacation, that would be a training and/or disciplinary issue.

**Q:** *How do we determine whether we need to provide an employee with benefits (i.e., vacation, holiday pay, group insurance, etc.)? Our policy restricts benefits to those who work an average of 34 hours per week or more.*

**A:** Benefit eligibility is determined according to the plain meaning of whatever benefits policy your company has. If that employee's actual work time meets the benefit eligibility requirement for the benefits, then give him or her the benefits. Remember that your company has the right to control the employee's work hours. If his or her work hours "average a minimum of 34 hours per week" basis, then by the plain meaning of your company's policy, the employee would be entitled to the benefits. Your company can, of course, design its benefit policy any way it sees fit, and can revise a policy once it is written. For example, you could use something like the language suggested in the topic "Part-Time / Full-Time Status" in our book *Especially for Texas Employers* to clarify who is eligible for what kind of benefits. See item 5 of the following topic: [http://www.twc.state.tx.us/news/eft/part\\_time\\_full\\_time.html](http://www.twc.state.tx.us/news/eft/part_time_full_time.html).

**Q:** *Our employees have difficulty arriving on time at the office. What policy can I have in place besides written discipline and counseling?*

**A:** One idea is to promote a car-pooling arrangement and have a reliable employee pry the tardy employees out of their houses so that everyone can get to work on time. Another potential

approach would be to require everyone to sign new wage agreements wherein they agree to work for minimum wage, plus receive a bonus of "X" amount per hour for every hour they work on a day on which they get to work on time and follow various other rules you might want to tie to their pay rate. The bonus would be equal to the difference between \$7.25/hour and the normal hourly rate of pay that they earn. That way, they will quickly see a direct connection between being on time and getting their regular pay. Of course, that kind of pay agreement would likely result in a considerable increase in recordkeeping and time spent by payroll staff.

## Wage & Hour

**Q:** *Is mileage that is reimbursed taxable?*

**A:** Reimbursements for mileage at the IRS-specified rate are not considered to be taxable wage payments. For the current IRS mileage reimbursement figure, see the IRS website at [http://www.irs.gov/pub/irs-pdf/p15\\_13](http://www.irs.gov/pub/irs-pdf/p15_13).

pdf#page=15. For details on the legal issues involved in expense reimbursement policies, see [http://www.twc.state.tx.us/news/eft/eft\\_expense\\_reimbursements.html](http://www.twc.state.tx.us/news/eft/eft_expense_reimbursements.html).

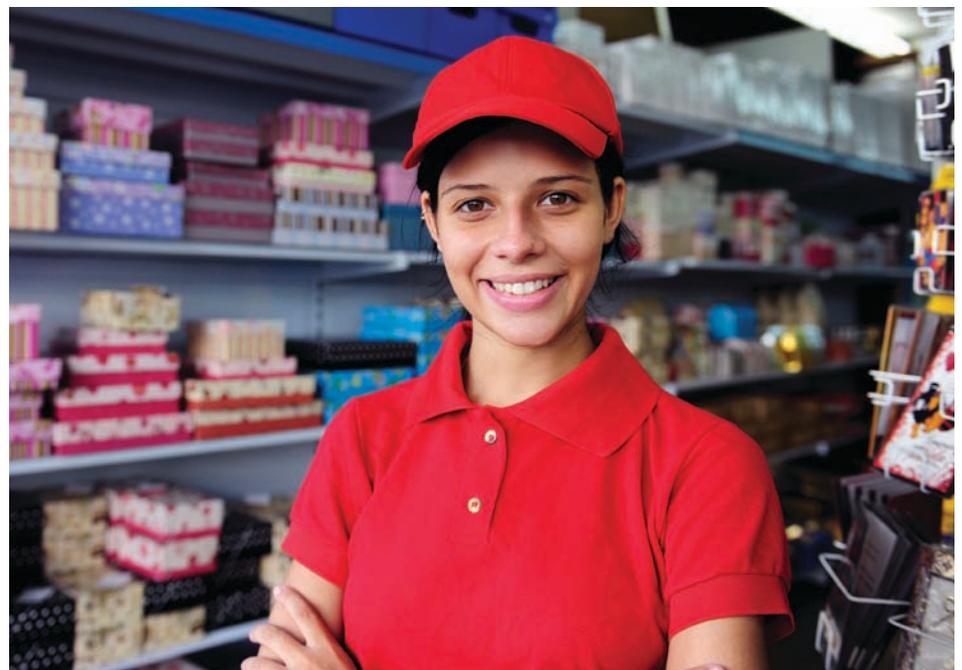
**Q:** *As far as uniform deductions, do lawful deductions have to meet minimum wage at gross or net?*

**A:** A deduction for a required uniform may not take the employee's gross pay below \$7.25/hour.

**Q:** *Is a work release note a medical record?*

**A:** A work release note is indeed a medical record. As such, it should be maintained in a separate and confidential medical file, along with other medical-related documents such as hospital records, doctor's notes, records of dental office visits, requests for medical leave, documentation for job injuries and/or FMLA leave, requests for accommodation for disabilities, and the like. 🇹🇽

*Marissa Marquez, Legal Counsel to Commissioner Andrade  
William T. Simmons, Senior Legal Counsel to Commissioner Andrade*



A deduction for a required uniform may not take the employee's gross pay below \$7.25/hour. Photo by iStock/Thinkstock

# Who's the Boss?

Over the last several months, I've been noticing a trend in the calls we get from employers on the employer hotline. More and more employers are calling in because of issues with employees that they don't know how to handle. It appears that the employees are in charge and running things, and the employers don't know what to do about it.

Does this sound familiar: *My employee is scheduled to be at work at 7:30 in the morning, but comes in whenever she wants. She just texts me that she's coming in late, but gives me no reasons or excuses.*

Perhaps this is more familiar: *I have one employee who takes smoking breaks all day long. He's supposed to have two 15-minute breaks every day, not counting lunch, but he's leaving his area to go outside all the time, and now the other employees are getting upset because they don't think it's fair. We've talked to him about this, but he just tells us that he's entitled to his breaks.*

Or how about this from a recent employer phone call: *I have two employees who are supposed to work 40 hours each week. However, whenever they think the work is done, they just leave. Even when the supervisor tells them that they're not supposed to leave until 5:00pm, they just tell him that there's nothing left to do and they go.*

Or finally this: *I have an employee who is taking days off during our busiest time. She just informed us that she's taking her vacation knowing full well that we're short-staffed. She's really leaving us in a bind.*

In each of these examples, what's an employer to do?

Although it sounds simple, employers can say "No." No, it's not OK for you to show up late every day. No, it's not

acceptable for you to text me instead of calling me to report your tardiness. No, you're not allowed to take more breaks than your co-workers; you get two 15-minute breaks each day. No, you can't leave early without authorization from your supervisor. No, you won't be able to take your vacation because we're short-staffed and really need you now.

I have good news and bad news for employers in these situations. The good news is: You're the boss. The bad news is: You're the boss. And being the boss means that sometimes you will have to say "no" to certain requests and certain behaviors. You have to take control of your business and manage your employees instead of letting them manage you. Easier said than done, right? I said it was simple. I never said it was easy. Here are some tips to help you take back the reins.

## **Tip 1: Have Clear Rules and Policies In Place.**

I know, I know. You've been hearing that you need a policy handbook for a long time, and you've been meaning to get that policy handbook finished. But how are you supposed to run a business, manage your employees, and still have time to get a policy handbook together? Yes, you are busy. But with a policy handbook you would be less busy handling a lot of the employee issues that come up because of the *lack* of a handbook. Make the time to get some kind of handbook or rule book together. Invest the time at the front end, and you will save a lot of time and trouble on the back end.

Many employers are intimidated by the thought of drafting a policy handbook from scratch. You don't have to. There are many resources to

help get you started on a handbook. Just go online and do a search for "sample policy handbooks," and you'll understand what I mean. For example, in section VI of our employer handbook, *Especially for Texas Employers*, we have sample policies available to employers that cover all sorts of topics. They can also be found here: [http://www.twc.state.tx.us/news/eft/table\\_of\\_contents-az.html](http://www.twc.state.tx.us/news/eft/table_of_contents-az.html). While these policies are a good starting point, remember that you are free to amend and change the policies to fit your particular business needs. Just be sure to consult with a licensed employment law attorney to make sure that whatever changes you want to make comply with state and federal laws.

And remember, you don't have to start with a full and complete policy handbook which addresses all the situations you're bound to encounter. If all you have are some rules you want to enforce, then put those rules down on paper and make sure that *all* employees are aware of the rules and understand they are expected to follow them. Once the rules are in place, and all employees are aware of what they are, then you can begin to hold your employees accountable for these rules. It's much easier to enforce rules and policies when everyone knows what they are.

## **Tip 2: Train and Empower Your Supervisors.**

Now that you have rules and policies in place, your managers and supervisors should be aware of these policies and understand that they are responsible for enforcing them. For example, if you have a policy that limits employee rest breaks to two 15 minute breaks, your supervisors should know this so they don't allow employees to regularly



It's OK for employers to say "No, it's not OK for you to show up late everyday" to employees who are habitually tardy to work. Ingram Publishing/Thinkstock

exceed their allotted rest periods. Make sure that your supervisors are familiar with the policies, that they have a copy handy or have a way of referring back to the rules if they need to, and that they are free and able to enforce these rules when necessary. Give them the authority to carry out your policies and the confidence to know that you, the employer, support them in this task.

We often hear from employers who have policies in place, but who have supervisors who don't follow the policies themselves. Your supervisors should be role models for their subordinates and all other employees. How can you expect an employee to follow a policy when his supervisor gets away with doing the opposite? This is not one of those cases where you can expect your employees to be OK with,

"Do as I say, not as I do." If you are serious about everyone following the policies, make sure that the supervisors are leaders in that regard.

On the other hand, supervisors sometimes call in and complain about the employer or owner of the company making exceptions to the policies. In these cases, the supervisor has tried to enforce the policy as written, but the owner comes along and changes things, completely contradicting the supervisor. Beware of these situations. It would be best to support your supervisor's decision or actions unless there is a compelling reason for not doing so.

I understand that these situations do arise every so often, but take a good look at the reason for not following your own policy before you decide to stray from it. You might find that the

policy no longer meets the needs of your growing and expanding business, or that certain provisions or rules no longer apply. That's not a problem. Once your policies stop working for you, you are free to change them. Just remember to communicate the changes to all of your employees, so everyone will know what to expect.

**Tip 3: Use Discipline for Infractions.**

Remember that the employer has the ability and right to say "no" to its employees. It's all right to tell employees that they are violating a policy, and to give them some form of write-up, reprimand, or counseling in order to change their behavior and get

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them to stop breaking the rules. You do not have to let the bad behavior or rule violations continue. If verbal reminders of the rules don't work, then don't hesitate to proceed to written warnings. I won't go into too much detail about written warnings here, as we have an article in a prior *Texas Business Today* (4th quarter 2012) that you can access on our website if you're interested. You can find it online here: <http://www.twc.state.tx.us/news/tbt/tbt0213.pdf>.

While many employers and supervisors prefer to use verbal warnings because they are easy, they are also

easy for employees to refute. You don't need to do away with verbal warnings altogether. Many times, a verbal warning is all that an employee needs to make positive changes. Most employees want to do well at work and want to keep their jobs; often they will respond favorably to friendly reminders of the rules. However, if verbal warnings or friendly reminders are not effective, it's time to proceed to the next level, which consists of written warnings. Written warnings are harder for employees to refute. In addition, if written clearly, they help avoid misunderstandings and

miscommunication.

Let me briefly address a concern that employers are quick to express on the phone when we talk about enforcing policies by use of employee discipline, such as written warnings. "*What if the employee just quits?*" Disciplinary meetings with employees are seldom pleasant. Oftentimes employees take the reprimand very personally and respond less than enthusiastically. However, remember that the parties are having a disciplinary meeting because other methods of correcting certain behavior did not work. Employers can try to present the reprimand or warning in a positive light, but employees may still react negatively. And yes, some of them may just quit in the middle of the meeting. Employers tell me that they don't want their employees to quit suddenly leaving them in a lurch. That's understandable. Ultimately, each employer will have to weigh the risk of employees quitting, against the benefits of having a system of rules and procedures in place which enables employers to take back control of their business.

Will following these three pointers guarantee that your employee behavior problems will magically disappear? It's unlikely. Following these suggestions will take time, effort, and work. If an employer has not been enforcing any rules until now, and suddenly institutes new rules it expects all employees to follow, expect that employees will not be happy with the unforeseen changes. But stand firm, be patient, and most importantly, be consistent. The transition will take some time, but I think you will find that having a structure in place that both employers and employees can rely on will solve a lot of the employee management issues that employers face on a daily basis. 🇹🇽



Written warnings are harder for employees to refute. In addition, if written clearly, they help avoid misunderstandings and miscommunication. *iStock/Thinkstock*

*Elsa G. Ramos*  
*Legal Counsel to Commissioner Andrade*

# Your Business Lost an Unemployment Claim, Now What?

Losing an unemployment claim can be upsetting. This is especially true if an employer feels that it has provided all of the necessary evidence to prove that the former employee should be disqualified from receiving benefits. There are many ways an employer can protect its unemployment tax account, even after a claimant has been awarded benefits.

## Don't panic

Always keep in mind that currently, Texas unemployment benefit recipients can receive only 26 weeks of benefits per claim year. That means the benefits are not endless! The claimants are not allowed to receive more than 26 weeks of benefits unless they have returned to work and received sufficient earnings.

Even more importantly, most private employers do not receive a bill from TWC requesting they repay the benefits that their former employee received dollar-for-dollar. Instead, those benefits are used to calculate the employer's new unemployment insurance tax rate. While the amount of increase in the tax rate as a result of the charges varies widely, some employers are pleasantly surprised to find that the increase is smaller than they expected.

However, the employer should still do everything in its power to limit the amount of chargebacks it incurs, and following the suggestions below will help.

## Always Appeal

The first thing that an employer should do if it loses an unemployment claim is appeal prior to the deadline. Remember that there are three levels of appeal at TWC: the Appeal Tribunal, the appeal to the Commission, and the Motion for Rehearing. While the Appeal Tribunal

hearing is the best chance to get evidence into the record, all employers should take advantage of all three opportunities to appeal unfavorable rulings. Even after exhausting your administrative appeal rights within TWC, an employer can file suit in an appropriate civil court. The instructions for doing so are located on decisions issued at the Commission and Motion for Rehearing levels.

Beware – all appeal rights can be lost if the appeal is not filed on time. Therefore, it is very important that the person submitting the appeal keeps proof of a timely submission. For appeals filed by fax, ensure that you keep a confirmation sheet showing not only that the fax was sent to a TWC fax number, but that the fax was successfully transmitted. If the employer files the appeal using TWC's online appeal method, then it should receive a confirmation that the appeal was successful. Print the page containing the confirmation message and keep it for the employer's records. Similarly, it can be a good idea to send appeals to TWC via certified mail, but it is not a requirement. Whenever possible, try to get a receipt from the post office showing that the document was mailed.

## Report New Hires

Texas law requires all employers to submit the identifying information for new employees to the Texas Attorney General's office within 20 days of hire. While the new hire reporting law was initially enacted to make collecting child support easier, the Attorney General's office sends TWC a list of the new hires. The list is then cross-referenced with unemployment benefit recipients to ensure that claimants are properly

reporting work and earnings to TWC. If a claimant has been receiving benefits and not reporting earnings, then he or she may be required to refund the excess benefits received and pay a penalty. This could result in a credit to the employer's account and even a reduction in the unemployment tax rate.

For more information regarding the new hire reporting law, please see: [http://www.twc.state.tx.us/news/efte/new\\_hire\\_reporting\\_requirements.html](http://www.twc.state.tx.us/news/efte/new_hire_reporting_requirements.html).

## Report Refusals of Suitable Work

A refusal of an offer of suitable work by a person receiving unemployment benefits will result in a disqualification from benefits. The disqualification begins the week in which the claimant refused the offer and continues until the claimant returns to work for six weeks or earns six times the claimant's weekly benefit amount. In other words, the claimant will actually have to accept a job and return to work before being eligible for any additional unemployment benefits. Therefore, it is important that employers report the refusal of all offers of work to former employees that the employer knows are receiving unemployment benefits.

To result in a benefit disqualification, the offered job must be suitable. This means that the job must be similar in job duties, hours, location, and pay to other work that the claimant has done in the past. When calling TWC to report a work refusal, you will need the following information:

- The name and social security number of the claimant;

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A finding of fraud requires the claimant to not only pay back the unearned benefits, but also a new 15% penalty that was added during the last Texas legislative session in 2013. *iStock/Thinkstock*

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- The date of the job offer;
- The offered position's title and job duties;
- The hours and days of work;
- The work location and distance from the claimant's residence;
- The pay rate; and
- Information regarding how the job is similar to the claimant's past work.

### **Report ineligibility issues**

For each week that an unemployment claimant requests benefits, he or she must be physically able and available to work a full-time job.

### **Respond to earnings information requests**

Almost all employers receive this document because the employee was receiving benefits prior to beginning

work for the employer. TWC has now received a copy of the New Hire list from the Attorney General's office and wants to ensure that the claimant has properly reported all earnings. Failure to report earnings from a new job is one of the most common ways that unemployment benefit claimants commit fraud. A finding of fraud requires the claimant to not only pay back the unearned benefits, but also a new 15% penalty that was added during the last Texas legislative session in 2013. When filling out this form online, remember that the employer is supposed to report the wages as they are earned (i.e. when the employee performed the work), not when the employee received payment.

### **In Conclusion**

While being charged for unemployment benefits is not a

welcomed event, there are things that every employer can do that may limit the amount it is charged for those benefits. Remember to immediately report new hires, ineligibility issues, and anything else that could affect a former employee's entitlement to benefits. Please feel free to contact the employer hotline and speak with one of Commissioner Andrade's staff attorneys to discuss any questions regarding how to protect your unemployment insurance tax rate. 🇹🇽

*Sonia J. Luster  
Legal Counsel to Commissioner Andrade*

# Urgent: New Requirement for Unemployment Claim Responses

TWC is preparing to publish a proposed rule (40 T.A.C. § 815.1(3)) for implementation of SB 1537, the new Texas statute that prohibits chargeback protection for employers that have been found to have a “pattern” (at least two confirmed prior occurrences) of late or inadequate claim responses, and that then fail for a third time to submit a timely or adequate response to a claim notice, if they lose the first determination, and then successfully appeal.

The new law’s primary purpose is to help reduce avoidable benefit overpayments. An overpayment of UI benefits results if an employer loses an initial determination and later files a successful appeal in which the claimant is disqualified. Although the claimant must repay the benefits, it may take quite some time to recover the funds in question, and that results in a drain on the unemployment insurance trust fund for Texas. Under the new law, in such a case, the employer will lose the chargeback protection that it would otherwise have, if the employer is found to have made an inadequate or untimely response two or more times in the past.

The proposed rule defines an “adequate” response as one that gives a specific reason for a work separation, along with facts, directly relating to any allegations the employer might raise regarding the claimant’s right to benefits. The rule allows an exception for good cause shown: if “compelling circumstances” beyond the employer’s or its agent’s control prevented the employer from submitting an adequate response, then the chargeback penalty can be avoided. While the rule is not yet in final form, and the Commission has not yet ruled on any cases under the

rule, an example of “good cause” for not furnishing sufficient facts is likely to be a situation in which the claimant was fired for alleged criminal conduct, and the employer was advised by law enforcement authorities to keep quiet about the facts in order to facilitate a proper investigation.

## **Business & Legal Briefs**

The proposed rule actually lists a couple of examples for guidance as to what TWC will consider an adequate response:

- 1.** The claimant was discharged for misconduct connected with his work because he was fighting on the job in violation of written company policy.
- 2.** The claimant abandoned her job when she failed to contact her supervisor in violation of written company policy and previous warnings.

Further guidance is supplied in § 815.1(3)(D) of the draft rule: “A general statement that a worker has been discharged for misconduct connected with the work is inadequate. The allegation may be supported by a summary of the events, which may include facts documenting the specific reason for the worker’s discharge, such as, but not limited to: (i) policies or procedures; (ii) warnings; (iii) performance reviews; (iv) attendance records; (v) complaints; and (vi) witness statements.”

The rule was published on March 21, 2014, and employers will have thirty days thereafter to file written comments about the rule. The Commission could adopt the rule in its final form as early as sometime in the summer of 2014, and it will be enforced for any unemployment claims filed on or

after the rule’s effective date. This is likely to be one of the most important and far-reaching changes ever in the unemployment insurance laws with regard to employers. Thus, it will be essential for an employer to carefully respond to each claim that the employer feels should result in a denial of benefits to the claimant.

## **IRS Tax Announcement**

In early March, 2014, IRS released the following information for employers:

“With April 15th approaching, you can provide your employees important information to help them meet their tax responsibilities. There’s a wealth of information available to help managers navigate the myriad questions employees may pose as they address their tax obligations or correct any errors. The link below leads to a page IRS created to help federal, state, and local government agency employers educate their employees about tax compliance.

The page includes a link to the Outreach Corner, which features articles about taxes that employers can use for internal communication products such as newsletters and intranet websites. There are also links to Widgets, three useful publications, and the IRS YouTube channel.

The updated resources on this Web page will help employers keep their workers informed and educated on IRS products and services, as well as on their personal obligation to file and pay their taxes timely.

Link: <http://www.irs.gov/Individuals/Educating-Your-Employees-About-Tax-Compliance>

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**What this report is about:** This form asks for information about the occupations and wage ranges of the employees described in Item 3 below. Please complete Items 1 through 5 on this page. Next, please provide the information requested beginning on page 1 for the employees who worked during or received pay for the pay period that included the reference date in Item 3, printed directly above your establishment name. The instructions on pages ii and iii explain how to provide the information. Please see our website at <http://www.bls.gov/OES> for more information on the OES Program, including a display of national, state and metropolitan area employment and wage estimates by occupation.

<p><b>1</b> Which of the following options describes the status of the location(s) in Item 3 as of the reference date also printed in Item 3?</p> <p><input type="checkbox"/> Operating: Go to item 2.</p> <p><input type="checkbox"/> Temporarily closed during the reference period: Report data only for employees paid for work during the reference period. If no employees worked for pay, report "0" in section 4 of this page and return the form in the reply envelope provided.</p> <p><input type="checkbox"/> Permanently out of business as of __/__/__: Return the form to the address at the top.</p> <p><input type="checkbox"/> Sold or merged: Enter the new name and address below, then go to item 2.</p> <p>New Name: _____</p> <p>New Address: _____</p>	<p><b>3</b> This form asks for information about the employees described below. Our estimate of employment for these employees appears at the top right corner of the label. <i>Please make any needed address corrections.</i></p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div>		
<p><b>2</b> Our records show that your main products or services are related to those listed below. If they are not, please list your main products or services on the lines provided and continue with the rest of the report.</p> <div style="border: 1px solid black; height: 80px; width: 100%;"></div>	<p><b>4</b> How many employees, <b>both full and part-time</b>, worked at this location(s) during the pay period that included the reference date printed in Item 3?</p> <p>Enter the number here... <input style="width: 50px;" type="text"/></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> <p><b>Include</b></p> <ul style="list-style-type: none"> <li>• Full or part-time paid workers</li> <li>• Workers on paid leave</li> <li>• Workers assigned temporarily to other units</li> <li>• Incorporated firms - paid owners, officers, and staff</li> </ul> </td> <td style="width: 50%; border: none;"> <p><b>Do Not include</b></p> <ul style="list-style-type: none"> <li>• Contractors and temporary agency employees not on your payroll</li> <li>• Unpaid family workers</li> <li>• Workers on unpaid leave</li> <li>• Unincorporated firms - proprietors, owners, and partners</li> <li>• Workers not covered by unemployment insurance</li> </ul> </td> </tr> </table> <p>Do all employees reported above work at one location?  <input type="checkbox"/> Yes    <input type="checkbox"/> No...Enter number of locations <input style="width: 50px;" type="text"/></p>	<p><b>Include</b></p> <ul style="list-style-type: none"> <li>• Full or part-time paid workers</li> <li>• Workers on paid leave</li> <li>• Workers assigned temporarily to other units</li> <li>• Incorporated firms - paid owners, officers, and staff</li> </ul>	<p><b>Do Not include</b></p> <ul style="list-style-type: none"> <li>• Contractors and temporary agency employees not on your payroll</li> <li>• Unpaid family workers</li> <li>• Workers on unpaid leave</li> <li>• Unincorporated firms - proprietors, owners, and partners</li> <li>• Workers not covered by unemployment insurance</li> </ul>
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<p><b>5</b> Please tell us who to contact if we have questions about your data.</p> <p>Name: _____</p> <p>Title: _____</p> <p>Phone: (____) _____ - _____ Ext. _____ Date: _____</p> <p>E-mail address: _____</p>	<p><b>FOR OFFICE USE ONLY</b></p> <div style="border: 1px solid black; height: 50px; width: 100%;"></div>		

If you receive a form that looks like the one above, please complete it and return it to the LMCI department promptly. *Photo courtesy of U.S. Department of Labor*

*Continued from page 11*

Please share these products with your employees to help them understand their tax compliance responsibilities and find the many IRS resources available to accurately file and pay their taxes on time.”

### **New Minimum Wage Requirements for Federal Contractors**

President Obama issued an executive order on February 10, 2014, mandating that employees of federal contractors be paid a minimum wage of at least \$10.10 per hour, beginning January

1, 2015. The new minimum wage for federal contractor employees will also apply to individuals with disabilities who under the current law may be paid a sub-minimum wage under a special certificate from the U.S. Department of Labor (see 29 U.S.C. § 214(c)). For years after 2015, DOL will set the minimum wage for federal contractor employees at a rate equal to the higher of (1) the current rate, or (2) the current rate increased “by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers”, as determined

by the Bureau of Labor Statistics. For tipped employees, the minimum cash wage beginning January 1, 2015 will be \$4.90 per hour, increasable in 95-cent increments each year thereafter until the cash wage reaches 70% of the minimum wage for non-tipped federal contract employees; future increases are automatic in order to maintain the cash wage for tipped employees at that 70% mark. The full text of the executive order is online at <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors>.

## **DOL Makes Additional Guidance Available for Employing Veterans and Individuals with Disabilities**

The U.S. Department of Labor's Employment and Training Administration recently launched a website featuring a comprehensive collection of resources for the employment of veterans. The Veterans' Priority Resource page is at <http://veterans.workforce3one.org/>. DOL's Office of Federal Contract Compliance Programs has made additional FAQs (Frequently-Asked Questions) available at <http://www.dol.gov/ofccp/regs/compliance/vevraa.htm> and <http://www.dol.gov/ofccp/regs/compliance/section503.htm> for federal contractors to consult regarding the new affirmative action guidelines with respect to veterans and individuals with disabilities.

## **Highlight: TWC's Occupational Employment Statistics Program**

In this issue of *Texas Business Today*, we would like to highlight an article from the September 2013 issue of *Texas Labor Market Review* (source: [http://www.tracer2.com/admin/uploadedPublications/2089\\_TLMR-September\\_13.pdf](http://www.tracer2.com/admin/uploadedPublications/2089_TLMR-September_13.pdf)):

The Labor Market and Career Information (LMCI) department of the Texas Workforce Commission (TWC) sends out reports periodically to businesses to help us obtain information about the local economy. Accurate information about your local labor market is an important aspect of your success. In this month's newsletter, we will feature the report for the Occupational Employment Statistics (OES) program.

Data developed through the OES program that TWC conducts jointly with the U.S. Bureau of Labor Statistics are used to assist you in recruiting and hiring your workforce. The OES information is critical in setting competitive wages. Local training

providers and career counselors also use the information to help teens and young adults make informed career decisions.

The LMCI department displays the data in various formats. We invite you to visit our website at [www.texaswages.com](http://www.texaswages.com) to view the latest results of data collection on hundreds of occupations. Use this information to make better business decisions about pay scales, payroll budgets, and wage trends for jobs.

We need your help, however, to develop the occupation and wage data for your community and Texas. Without your support, LMCI becomes limited on the level of data that we are able to publish. Your participation is critical, since businesses like yours are our only source of information. Please know that the information provided by businesses is strictly confidential.

If you receive a form that looks like the one shown on page 12, we would greatly appreciate it if you complete

the form and return it to the LMCI department promptly. The OES staff is available to assist you with any questions as well as help you report your data. Contact them at 1-800-252-3616 or visit [www.bls.gov/respondents/oes](http://www.bls.gov/respondents/oes) for additional questions about the form.

## **Full Schedule of Texas Business Conferences for 2014**

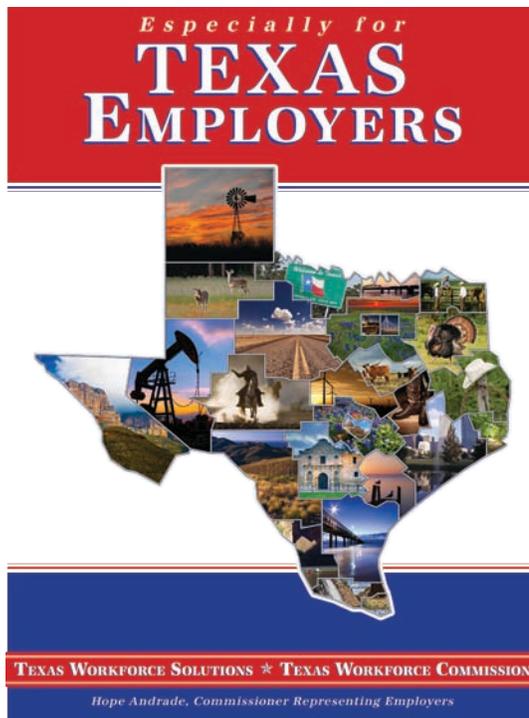
Commissioner Andrade's office is sponsoring a full series of the popular Texas Business Conferences for employers in 2014. Here are the ones happening soon around the state:

- El Paso – May 2, 2014
- San Antonio – May 16, 2014
- Austin – May 30, 2014
- Houston-Humble – June 27, 2014
- Paris – July 11, 2014
- Kerrville – July 25, 2014

*Continued on page 14*



Commissioner Andrade speaks to employers in San Angelo during a Texas Business Conference on March 21. Photo courtesy of Danna Richey



The latest edition of *Especially for Texas Employers* is available now both in print and online. Photo courtesy of TWC Communications

*Continued from page 13*

Many more conferences will be held in various Texas cities this year and will be posted at <http://www.twc.state.tx.us/events.html#tbc> once we confirm the dates and conference locations. The agenda features topics such as hiring issues, employment law updates, personnel policies and handbooks, workers' compensation, independent contractors and unemployment tax issues, the unemployment claim and appeal process, and Texas and federal wage and hour laws. Employers who attend will receive a printed copy of the book *Especially for Texas Employers*, plus a CD with electronic copies of the book in web page and PDF/mobile-ready formats. The CD also features full copies of all of the speakers' presentations, back issues of this newsletter, *Texas Business Today*, going all the way back to 1998, required posters, and copies of official guidance and other materials from Texas and federal agencies that are too numerous to list here. Every employer is strongly encouraged to attend at least one of

these conferences every year, since the topics are updated whenever new laws, regulations, or court cases come out that are important to know about, and being there affords a unique opportunity to ask employment law questions in person of attorneys whose primary duty is helping Texas employers understand and stay in compliance with employment laws. Each conference is geared towards small business owners, HR managers and assistants, payroll managers, and anyone responsible for the hiring and managing of employees. The feedback we get from employers is overwhelmingly positive – here are two recent comments from attendees:

- "I was so impressed by the quality of the speakers, their breadth of knowledge, the availability of qualified staff and attorneys to answer specific questions, and the sheer volume of information that was disseminated. Having attended my share of read-the-PowerPoint-slide-to-you courses, I wasn't sure what to expect, but I can truly say that I was blown away at the

quality of the experience." (Employer attended Grapevine TBC, 2014)

- "I want to thank all of the speakers and the material handouts. It was one of the best educational seminars I've attended in years. The information is priceless. I highly recommend this seminar. I will definitely attend again." (Employer attended Brownsville TBC, 2014)

## **New Edition of Employers' Book is Available**

The latest edition of *Especially for Texas Employers*, a free publication of Commissioner Andrade's office for the employers she represents, is available now both in print and online at <http://www.twc.state.tx.us/news/efte/tocmain.html>. That website has links for requesting a printed copy of the book, as well as for accessing the entire book online. There is also a link for downloading a PDF copy of the book, which can be either displayed on a full-size computer or on a mobile device, such as a smartphone, iPad, Android tablet, or one of the popular e-readers available from booksellers. The book has hundreds of topics relating to Texas and federal employment laws, organized into sections according to the four main phases of an employment relationship, i.e., hiring, pay and policies, work separations, and post-employment issues. There is also a section with sample forms and policies. The online edition features small apps that allow employers to estimate unemployment benefits and chargebacks, and how certain chargebacks might affect their unemployment tax rates. The online book also contains an app allowing quick estimates of overtime pay for employees who are paid at two different rates or who receive a fixed salary for fluctuating workweeks. Again, the book's website address is <http://www.twc.state.tx.us/news/efte/tocmain.html>. 

*William T. Simmons  
Senior Legal Counsel to  
Commissioner Andrade*

Please join us for an informative, full-day conference to help you avoid costly pitfalls when operating your business and managing your employees.

We have assembled our best speakers to discuss state and federal legislation, court cases, workforce development, and other matters of ongoing concern to Texas employers.

Topics have been selected based on the hundreds of employer inquiry calls we receive each week, and include such matters as Hiring Issues, Employment Law Updates, Personnel Policies and Handbooks, Workers' Compensation, Independent Contractors and Unemployment Tax Issues, Unemployment Claim and Appeals, and Texas and Federal Wage and Hour Laws.

The registration fee is \$99 and is non-refundable. Seating is limited, so please make your reservations early if you plan to attend.

For more information, contact [www.texasworkforce.org/texasbusinessconference](http://www.texasworkforce.org/texasbusinessconference)

### Upcoming Texas Business Conferences

- El Paso ..... May 2, 2014
- San Antonio ..... May 16, 2014
- Austin ..... May 30, 2014
- Amarillo ..... June 13, 2014
- Humble ..... June 27, 2014
- Paris ..... July 11, 2014
- Kerrville ..... July 25, 2014
- Temple ..... Aug. 8, 2014
- Corpus Christi ..... Aug. 22, 2014\*
- Odessa ..... Sept. 5, 2014\*
- Nacogdoches ..... Sept. 12, 2014
- Fort Worth ..... Sept. 24, 2014

\* These dates are tentative

please print

Location choice:

First name Initial Last name

Name of Company or Firm

Street Address or P. O. Box

City State ZIP Telephone

Company Email

Make checks payable and mail to:

Texas Business Conference • Texas Workforce Commission • 101 E. 15th St., Room 0146  
Austin, Texas 78778-0001

# Texas Business Today

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*Texas Business Today* is a quarterly publication devoted to a variety of topics of interest to Texas employers. The views and analyses presented herein do not necessarily represent the policies or the endorsement of the Texas Workforce Commission. Articles containing legal analyses or opinions are intended only as a discussion and overview of the topics presented. Such articles are not intended to be a comprehensive legal analysis of every aspect of the topics discussed. Due to the general nature of the discussions provided, this information may not apply in each and every fact situation and should not be acted upon without specific legal advice based on the facts in a particular case.

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Commissioner Representing Employers  
101 East 15th Street, Room 630  
Austin, Texas 78778-0001

or else send an email to [employerinfo@twc.state.tx.us](mailto:employerinfo@twc.state.tx.us).

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**Telephone: 800-832-9394 512-463-2826**  
**FAX: 512-463-3196 Website: [www.texasworkforce.org](http://www.texasworkforce.org)**  
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