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Texas Business Today

Hope Andrade
Commissioner Representing Employers

TEXAS
WORKFORCE SOLUTIONS
* * * * *

How to Prepare for an Unemployment Hearing

- An Employer's Perspective on Workplace Romances • Dismissal for Refusal to Sign a Reprimand •

TWC Celebrates Small Business Week 2014

Each May, organizations across Texas and throughout the nation celebrate Small Business Week to remind everyone of the significant role small businesses play in our economy and our communities.

Although we set aside just one week of the year to recognize and thank them, the truth is, Texas' entrepreneurs and small business owners are working every single day to grow their business, create jobs, drive innovation, and increase our state's global competitiveness.

Commissioner's Corner

Of the nearly 485,000 employers in our great state, 97 percent are small businesses, having 100 employees or less. And in Texas, our small businesses employ about a third of the state's workforce. As you can tell, small business equals big impact.

On May 14, I joined with Texas State Technical College Waco, McLennan College, Central Texas College, Navarro College, and Temple College to show our appreciation to the small business community. These Central Texas colleges, along with many other community and technical colleges throughout the state, have pledged their continued commitment to supporting small businesses in fulfilling their training needs. From El Paso, up to Denison, over to Corpus Christi, and down to Laredo, Texas has a great network of community colleges who understand the importance of small business in their community.

And the Texas Workforce Commission wants each of our small business owners to know that we truly appreciate all you



TWC Commissioner Representing Employers Hope Andrade greets TSTC Waco President Dr. Elton E. Stuckly Jr. during a Small Business Week event at TSTC on May 14, 2014. Photo by Amy Kincheloe/TWC Communications

have done to grow your business and succeed right here in the Lone Star State.

Through our Skills for Small Business program, we partner with small employers and their local community or technical college to provide training for both existing workers and new hires.

And in 2014, our agency has set aside \$1 million in funding to support small businesses with their training needs. We want all small businesses in Texas to know that these training dollars are available and that the Texas Workforce Commission is here to be your partner.

For more information on accessing training for your small business, please contact us at 877-463-1777 or SkillsForSmallBusiness@twc.state.tx.us.

As you may know, I have been a strong advocate for small business ever since my partner and I started our first business over thirty years ago. So I certainly appreciate the ups and the downs that many of you face from

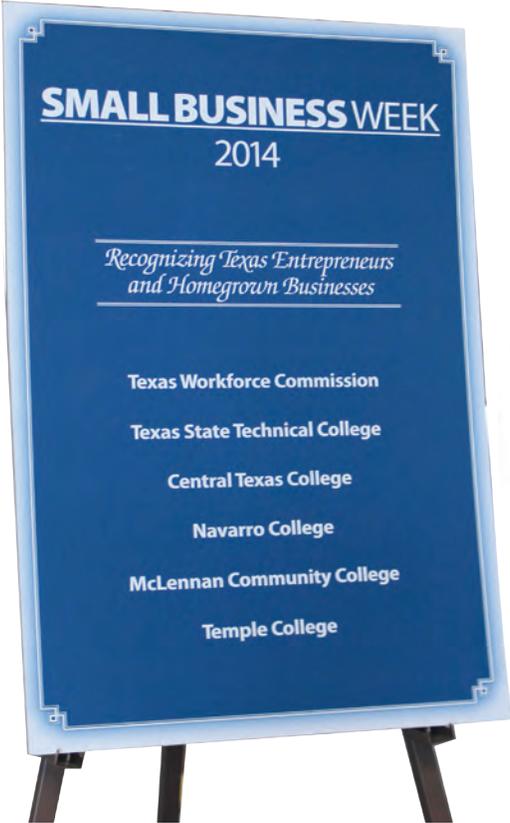
time to time as small business owners. But I can also attest to the tremendous

satisfaction that comes with owning your own business – especially when that business is located in Texas!

So to each of our entrepreneurs, our homegrown businesses, and our small employers: Thank you for all of your hard work, dedication, and perseverance. We are proud to have you call Texas home. 🇺🇸

Sincerely,

Hope Andrade
Texas Workforce Commission
Commissioner Representing
Employers



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Cover image: A small business owner works the counter in his coffee shop. iStock/Thinkstock

How to Prepare for an Unemployment Hearing

The Texas Workforce Commission (TWC) Appeal Tribunal Hearing is the employer's best opportunity to prove that it should win an unemployment case. This is particularly important in cases where the employer discharged the former employee who filed a claim for unemployment benefits (claimant), since it is the employer's burden to prove that the employee was discharged for misconduct connected with the work. If the employer does not provide the best evidence possible, the employer faces the possibility of being charged for the unemployment benefits paid to the claimant.

The following tips are for employers on how to best prepare for an appeal hearing. Most of these instructions are contained within the hearing notice, but are often overlooked by busy employers in charge of running a business.

1. Note the date and time of the hearing.

The very first thing you should do when you receive a hearing notice is to make sure you accurately note the date and time of the hearing. Put the reminder on a cell phone, computer calendar, wall calendar, or on a simple paper or Post-it note on your desk. When you create the reminder, make sure it is for the *correct* date and time. Also, if you are located in El Paso or another state, note that the time listed on the hearing notice is always in Central Standard Time and plan accordingly. Remember that you *must* call in within the 30 minutes prior to the hearing start time to notify the hearing officer that you plan to participate in the hearing. Failure to call in on time could result

in you being barred from attending the hearing. If you have an unavoidable conflict, such as pre-arranged travel or even a last-minute illness, then you should notify the hearing officer as soon as possible and request that the hearing be postponed. While postponements are rarely granted, your request will be noted in the claim file and can assist you in reopening the case if you are unable to attend the hearing.

2. Identify the issues to be covered at the hearing.

All hearing notices list the hearing issues on page 3A. If there has been more than one hearing, then the page number listing the issues could be different. Common issues comprise: the job separation, chargeback, timeliness of appeal, and other eligibility issues. You must know the issues that will be covered in the hearing so that you can adequately prepare to present your best case.

3. Examine the documents in the hearing packet.

After you know the issues that will be covered during the hearing, look through the hearing packet to determine if it includes the documents you need to prove your case. Which documents are relevant will depend on the issues covered in the case. For example, if the claimant quit due to a pay discrepancy, then it would be important to submit the employee's time records, pay stubs, and any written notice of resignation. If the relevant documents are not in the hearing notice, then you should immediately gather the documents you need and mail them to both the

hearing officer and the claimant using the addresses printed on the hearing notice. Failure to send the documents to the claimant could result in the hearing officer refusing to enter the documents into evidence. Only those documents that are entered into evidence can be considered when making a decision in the case. Make sure that the documents in the hearing packet and those that you send after receiving the packet are clear and legible. A photograph of the claimant violating a policy does not help your case if the picture is blurry or dark. Similarly, using a highlighter on documents can cause problems during the faxing and copying process. As you prepare for the hearing, mark which documents you want to emphasize or explain so that you can point them out to the hearing officer. Be ready to state who prepared the documents and to explain how the documents help your case.

4. Arrange for witnesses to appear at the hearing.

Firsthand testimony under oath will always be the best evidence. Firsthand witnesses are those individuals who saw, with their own eyes, or heard, with their own ears, the incident that resulted in the job separation. You should make every effort to ensure that the employer's firsthand witnesses are available to testify for a hearing. Notify them in advance of the date and time for a hearing and tell them to be prepared to be available by phone to discuss the case. Beware – the Appeal Tribunal's telephone number can show up as "unavailable" on a caller ID machine, so ensure that your witnesses

know this and answer the telephone anyway for the hearing. If for some reason the firsthand witnesses are not able to participate in a hearing, notify the hearing officer as soon as possible so that you have the best chance at having the hearing moved to a different date. While there is no guarantee that the hearing officer will agree to reschedule the hearing, it never hurts to ask. Also, while an employer can submit written statements from witnesses as evidence, the statements will not carry as much weight as testimony. Many employers are concerned about lost productivity and, therefore, do not arrange for other employees to testify during a hearing. However, keep in mind that your witnesses do not need to be present for the entire hearing. You can request that the hearing officer only call the witnesses when it is their turn to testify. This limits downtime for employees and results in less inconvenience for employees who may be participating in the hearing at a time when they would

not normally be at work.

5. Assistance is available through TWC.

The unemployment appeal process is designed to work without attorney representation. Of course, an employer can choose to have an attorney present during the hearing at their own expense. Employers should contact their local Workforce Solutions office if they need access to a telephone, speaker phone, or fax machine. Be sure to request assistance well in advance of the hearing so that the staff at the local offices can have the equipment available at the time of the hearing.

6. Request interpreters when necessary.

Do not let a language barrier prevent you from having your witnesses attend a hearing. TWC can provide interpreters for a wide variety of languages as long as you notify the hearing officer in advance that you need an interpreter.

Keep in mind that interpreted hearings take longer than hearings without an interpreter. Allow for additional time when preparing to attend an interpreted hearing.

In Conclusion

With adequate preparation, an employer will be able to avoid surprises that can result in losing an unemployment claim. By following the steps above and providing the materials and information necessary to prove your case, the employer will have the best chance at prevailing in an unemployment claim. As always, if you have any questions or concerns regarding an unemployment hearing, or the appeal process in general, please do not hesitate to contact one of Commissioner Andrade's staff attorneys at 1-800-832-9394. 🇹🇽

Sonia J. Luster
Legal Counsel to Commissioner Andrade



After receiving a hearing notice, accurately note the date and time of the hearing. Put the reminder on a cell phone, computer calendar, wall calendar, or on a simple paper or Post-it note on your desk. Photo by iStock/Thinkstock

An Employer's Perspective on Workplace Romances

Most of us have seen it before: two people working together who transition from being co-workers to friends to romantic partners. What happens if the relationship sours and the partnership ends? Or on the opposite end of the spectrum, what happens when the parties expect to live happily ever after and get married? Each of these outcomes has its own set of issues and employers need to be aware of certain pitfalls in order to be prepared to handle problems in the workplace should they arise. Although this list does not include all the issues that could arise from workplace romances, the most common are:

1. Gossip and disruptions to workplace productivity;
2. Favoritism and special treatment; and
3. Sexual harassment.

Employee Gossip

It's human nature for employees to want to share information about their lives and for them to comment on the lives of others. There are few things more interesting than a blossoming romance. However, such relationships can quickly become the subject of gossip, speculation, and rumors around work. Such talk tends to waste time and could quickly interfere with employee efficiency, having a disruptive and negative effect on the work output and efficiency of employees and, consequently, the business as a whole. In addition, depending on the nature of the gossip, it could create a harassing or hostile work environment for employees, even those not directly involved in the relationship.

One way for employers to deal with this issue is by having rules or

policies in place that prohibit or limit unnecessary gossip, as well as other time-wasting activities. Generally, it is up to each employer to decide the appropriate consequences for such violations.

Favoritism and Special Treatment

Even if the workplace relationship does not result in gossip among the staff, the relationship could still disrupt the orderly and efficient workflow of the business if other employees perceive that the relationship has resulted in one of the parties being treated in a more favorable manner based on the romantic nature of the relationship.

Is one party providing a better work schedule, better working conditions, or extra perks to his or her paramour? If so, then the employer has a problem if the same advantages or benefits are not being fairly and consistently offered to other similarly-situated employees. Such behavior can breed resentment and dissatisfaction and have a detrimental and toxic effect on employees and their interactions with each other.

And even if there is no special or favorable treatment resulting from the nature of the relationship, the fact that the relationship exists could give the impression or appearance that favorable treatment is an issue, creating a problem that could still cause difficulties for employers. This appearance of impropriety is especially problematic when the relationship in question involves a superior and a subordinate. You can see how such a relationship, with its imbalance of power, could create a perception problem for employers.

While it is not really feasible to limit or prohibit all possible off-duty contact between employees, employers can set reasonable limits on such relationships if the conduct poses a threat to the employer's interests. Many employers try to limit such relationships by establishing non-fraternization policies. These policies set out the employer's expectations regarding different types of interpersonal relationships between employees, as well as consequences for failing to meet those expectations. For a sample fraternization policy from our employer handbook, *Especially for Texas Employers*, please see www.twc.state.tx.us/news/efte/efte.pdf.

Sexual Harassment

When people hear the term "sexual harassment," many think about unwelcome sexual overtures, unwanted touching, or the now stereotypical "quid pro quo" harassment in which a superior threatens some adverse action against a subordinate, such as the loss of a job, unless the employee submits to the superior's sexual demands. While this type of sexual harassment unfortunately occurs, a more common type of sexual harassment is that which involves what is known as a hostile work environment.

According to information on the EEOC website (www.eeoc.gov/laws/types/harassment.cfm), "Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. Harassment becomes unlawful where:

1. enduring the offensive conduct becomes a condition of continued employment, or



Office romances can quickly become the subject of gossip, speculation, and rumors around work. Such talk tends to waste time and could quickly interfere with employee efficiency, having a disruptive and negative effect on the work output and efficiency of employees and, consequently, the business as a whole. *Cross Studio/Thinkstock*

2. the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.”

While a hostile work environment can take many forms, sexual harassment seems to be one of the most common ways for such a claim to arise. Three Supreme Court decisions on sexual harassment in 1998 [*Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); and *Oncale v. Sundowner Offshore Services, Inc.*, 524 U.S. 75 (1998)], provided some guidance for employers on this issue. In a section titled HARASSMENT — MINIMIZING LIABILITY in *Especially for Texas Employers*, the key lessons for employers from the Supreme

Court decisions are set forth as follows:

1. Any sexual harassment between any employees can lead to liability, not just a man harassing a woman, or a woman harassing a man, but also a man sexually harassing another man, or a woman sexually harassing another woman.
2. If the harasser is in some kind of superior position in the company compared to the victim of the harassment, and a tangible job action occurs that is unfavorable for the employee, there is no way for the company to escape liability, even if it did not know of the harassment and had no way of knowing about it.
3. If the harasser is in some kind of superior position in the company compared to the victim of the harassment, but no tangible job action

occurs that is unfavorable for the employee, the company can escape liability if it can show that it was not negligent in allowing the harassment to occur.

4. If the harasser is not in a superior position in the company compared to the victim, the company can escape liability if it can show that it was not negligent in allowing the harassment to occur.

You can learn more about minimizing the risk of sexual harassment here: www.twc.state.tx.us/news/eft/harassment_minimizing_liability.html.

How does this type harassment relate to relationships in the workplace? When a romantic relationship in the workplace goes bad, often the parties involved are unable to separate their personal feelings from the professional, and those

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personal feelings may bleed over into the workplace. Such crossover seldom results in pleasant working conditions. If one party suffers an adverse or negative employment action, such as a termination, a failure to be promoted or hired, or a loss of wages, the employer could be liable for the harassment if the “harasser” was a superior and the “victim” a subordinate. In such a case, there would be no way for the employer to escape liability even if the employer was ignorant of the harassment and had no way of knowing about it.

In order to minimize liability for other types of sexual harassment, employers need to implement clear written harassment policies notifying employees that no form of harassment is tolerated. Like with the other policies

mentioned above, make sure to set out the expectations and the disciplinary consequences for violations of the policy and be able to show that employees were made aware of the policies. For a sample harassment policy, please see www.twc.state.tx.us/news/efte/harassment_disrespect.html. Some case studies in sexual harassment are available for review here: www.twc.state.tx.us/news/efte/case_studies_in_sexual_harassment.html.

In addition to setting up policies to help prevent harassment, employers should take prompt and immediate action to correct any harassing behavior when they receive a report or complaint alleging sexual harassment. As usual, all steps taken by employers in addressing the complaint should be documented in writing. If it is not written down, it did not happen. Although following

these steps is no guarantee that an employer will win a harassment claim, an employer who incorporates some of these strategies will be in a much better position to defend itself against a claim.

We have barely scratched the surface when it comes to exploring the issues which can arise when employees engage in personal relationships outside of work. And while some relationships between coworkers can grow into friendships or unions that successfully transcend the workplace, employers should still beware. Not all employee relationships end well, and when they do not, it may have a ripple effect which is felt by all employees and which must be addressed by employers in the regular course of business. 🇹🇽

*Elsa G. Ramos
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An employer has a problem if the same advantages or benefits are not being fairly and consistently offered to other similarly-situated employees. Such behavior can breed resentment and dissatisfaction and have a detrimental and toxic effect on employees and their interactions with each other.. iStock/Thinkstock

Firing an Employee for Refusing to Sign a Reprimand: The Basics

Reprimanding employees when they violate one of your policies can be a tough, but necessary, part of the job. If you have been to one of our Texas Business Conferences, you may know that reprimands are a crucial component to challenging an unemployment claim. You may also know that verbal reprimands are not as strong as written reprimands for proving your side. But what you may not know is how to deal with the following problem: *What if an employee refuses to sign the reprimand?* Texas Workforce Commission (TWC) precedent cases supply some guidance; if you follow the suggestions below, you may be able to prove misconduct if you discharge an employee for such a reason.

So how can you, the employer, achieve this? In order to understand how it works, we must begin at the foundation. The following two TWC precedent cases allow for the discharge of an employee for misconduct if he or she refuses to sign a reprimand:

1. Appeal No. 267-CA-77: “The claimant was discharged for refusing to sign a written reprimand [that] was issued because she had taken a 15-minute break, rather than a 5-minute break, as instructed. Under the employer’s policy, the signing of the reprimand was simply an acknowledgement of its receipt and not an admission of guilt. The claimant was advised of this and the fact that refusal to sign the reprimand would subject her to discharge. *HELD: Since the signing of the reprimand was not an admission of guilt, but simply an acknowledgement of its receipt, the claimant’s refusal to sign the reprimand constituted misconduct*

connected with the work.”

2. Appeal No. 86-04275-10-031387: “The claimant was discharged for refusing to sign a written reprimand for an accident in which he felt he was not at fault. The evidence in the record did not clearly establish that the claimant was given notice, prior to being discharged, that he would be discharged if he refused to sign. Also, the claimant was never told he had a right to state on the reprimand form his version of the incident. *HELD: Without clear evidence that the claimant understood the consequences of his refusal to sign the reprimand and was offered an opportunity to rebut the accusation with which he disagreed, his mere refusal to sign a reprimand [that] he felt was unjustified does not rise to the level of misconduct.”*

When read together, the above two precedents can be confusing. After breaking them down, there is one common thread in both precedents, which leads us to the first rule:

Rule 1: Ensure that the employee knows that refusal to sign the reprimand may lead to termination.

The most surefire way to follow this rule, as well as the other rules below, is to have similar language stated on the reprimand itself.

Dissecting the remainder of the text in the precedents is more difficult, as they appear to be at odds with each other. They each provide different requirements for firing an employee for refusal to sign the reprimand. Thus, the safest route is to follow both precedents.

Rule 2: Ensure that the employee knows that signing the reprimand is only an acknowledgement of receipt of the warning, and not an admission of guilt.

Rule 3: Allow the employee to state his or her own version of the incident on the reprimand.

Although you could just wait to see if the employee asks to do this, it is safer to state so on the reprimand to remove any doubt.

The two aforementioned precedents cover those first three rules. However, there are a few other unmentioned rules that may prove extremely helpful.

Rule 4: Read the reprimand aloud to the employee.

This can help prove that the employee knew everything the reprimand said. Understandably, this tip might make an uncomfortable situation even more awkward, but if you can do it, it can only help you.

Rule 5: Have a translated version of your reprimand if your employee primarily speaks a language other than English.

Again, this is not essential to proving misconduct for refusal to sign a reprimand, but it does help guarantee that your employee truly understands what he or she is signing. If it is too difficult to have translated documents, having an interpreter present can solve this problem as well. Just make

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Reprimanding employees when they violate one of your policies can be a tough, but necessary, part of the job. That is a crucial component to fighting the battle against an unemployment claim, but verbal reprimands are not as strong as written reprimands for proving your side. *Wavebreak Media/Thinkstock*

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sure to include that interpreter in the unemployment claim hearing.

Rule 6: Have a witness present every time you issue a reprimand to an employee.

Without a witness, you run the risk of the employee claiming that the signature is inauthentic or that the employee did not truly understand what was happening. Because the employer has the burden of proving misconduct, you

want to avoid a “he said/she said” match where it is your word against that of the employee. A witness can help tip the scales in your favor.

According to the above precedents, if you follow the first three rules and your employee refuses to sign the reprimand, your chances of proving that the discharge was for misconduct increase significantly. If you follow all six rules, you are creating an even stronger case. Although following these rules takes some serious time and effort, doing the work now can prevent concerns and

headaches in the future.

For further ideas on how to deal with warnings, see the topics titled “Discipline” and “Refusal to Sign Policies or Warnings” in our book *Especially for Texas Employers* at the following links: www.twc.state.tx.us/news/efte/discipline.html and www.twc.state.tx.us/news/efte/refusal_to_sign.html. 🇹🇽

*Velissa Chapa
Legal Counsel to Commissioner Andrade*

Adoption of Important New Rule for Unemployment Claim Responses

The Texas Workforce Commission (TWC) has adopted a new rule (40 T.A.C. § 815.1(3)) for implementation of SB 1537. This recent Texas statute 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 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 previously.

The newly-adopted 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 TWC 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.

The new 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 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.”

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

EEOC Penalty Announcement

On March 19, 2014, the EEOC announced an increase in the maximum monetary penalty that the agency can impose for failing to post the required EEOC notice of employees’ rights under the Civil Rights Act of 1964 and related statutes enforced by the agency. Effective April 18, 2014, the maximum penalty increased from \$110 per violation to \$210 per violation.

The Minimum Wage Remains \$7.25 per hour for Most Employees

Although President Barack Obama issued an executive order on Feb. 10, 2014, mandating that employees of federal contractors be paid a minimum wage of at least \$10.10 per hour, beginning Jan. 1, 2015, that directive does not apply to employees of companies that are not federal contractors. For most employees, the minimum wage will remain, at least for the time being, at \$7.25 per hour. The full text of the executive order, showing which employers and employees are affected, is online at www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors.

Non-Discrimination Ordinances in Texas Cities

Several larger cities in Texas have adopted ordinances prohibiting discrimination in housing, public services, and/or employment on the basis of an individual’s sexual orientation and/or gender identity. The cities in question are: Arlington, Austin, Brownsville, Dallas, El Paso,

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TWC is in the process of adopting new rules for child labor in Texas. *Kraig Scarbinsky/Thinkstock*

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Fort Worth, Houston, and San Antonio. The ordinances differ in terms of exact prohibitions and specific groups covered. For more details and a geographical chart illustrating the cities involved, see www.texastribune.org/2013/09/18/comparing-nondiscrimination-ordinances/.

More Enforcement Activity from the NLRB

The most recently-announced signals of enforcement activity to come from the National Labor Relations Board (NLRB) are the following invitations for interested parties to submit briefs on various issues:

- Whether it is legal for employers to prohibit any and all non-business

use of company computers, e-mail, and Internet access, since according to the agency, such policies can have a chilling effect on employees' rights under the National Labor Relations Act (NLRA) to get together to discuss their terms and conditions of employment (see www.nlr.gov/news-outreach/news-story/nlr-invites-briefs-employee-use-employers-electronic-communication-systems).

- Whether university athletes are employees and are covered by the NLRA (see www.nlr.gov/news-outreach/news-story/nlr-invites-briefs-issues-northwestern-university-athletes-case).
- Whether the existing joint employer standard needs to be revised, as urged by the union representing employees in a case before the NLRB (see www.nlr.gov/news-outreach/news-story/nlr-invites-briefs-joint-employment-

standard).

In addition to the above initiatives, an NLRB administrative law judge issued a decision in Case No. 19-CA-090932 (see mynlrb.nlr.gov/link/document.aspx/09031d458171835c) holding that an employer may not have a blanket prohibition against employees engaging in photographing or videotaping at the workplace, because such a policy might have a chilling effect on employees exercising their rights under the NLRA.

In view of these and other recent moves by the NLRB, it is more important than ever before to seek advice from qualified employment law counsel regarding workplace policies.

New Child Labor Rules for Texas

TWC is in the process of adopting new rules for child labor in Texas. The new rules add the following definitions for child labor:

- “Business or enterprise operated by a parent or custodian – A parent or custodian who operates a business when exerting active direct control over the operation of the business or enterprise by making day-to-day decisions affecting basic income and work assignments, hiring and firing employees, and exercising direct supervision of the work.”
- “Business or enterprise owned by a parent or custodian – A parent or custodian who owns a business as a sole proprietor, a partner in a partnership, or an officer or member of a corporation.”
- “Casual employment – Employment that is irregular or intermittent and not on a scheduled basis.”
- “Child actor extra – A child under the age of 14 who is employed as an extra without any speaking, singing, or dancing roles, usually in the background of the performance.”
- “Direct supervision of the parent or custodian – A child is employed under the direct supervision of a parent or custodian when the parent or custodian controls, directs, and supervises all activities of the child.”

- “Employee – An individual who is employed by an employer for compensation.”
- “Employer – An entity who employs one or more employees or acts directly or indirectly in the interests of an employer in relation to an employee.”
- “Employment – Any service, including service in interstate commerce, that is performed for compensation or under a contract of hire, whether written, oral, express, or implied.”
- “Executive director – The executive director of the Texas Workforce Commission or the executive director's designee.”
- “Private school – As set forth in Texas Education Code, Chapter 5, a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity.”

The new rules also clarify that the federal child labor rules for children ages 14–17 years of age, found in Part 570 of the U.S. Department of Labor's wage and hour regulations, apply in Texas to Texas employers, even if an employer is not covered by the Fair Labor Standards Act.

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:

- 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

Other conferences will be held in various Texas cities this year and will be posted at www.texasworkforce.org/tbc.

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 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,

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Commissioner Andrade speaks to employers in Austin during a Texas Business Conference on May 30, 2014. Photo by Amy Kincheloe/TWC Communications

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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 for 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)

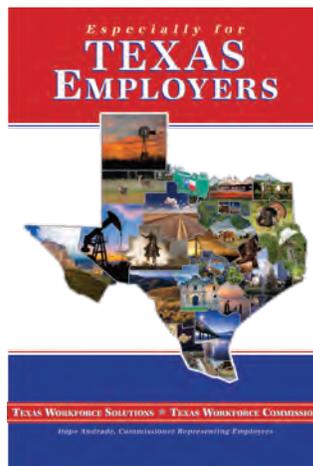
New Edition of Employers' Book is Available

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 www.twc.state.tx.us/news/eft/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 desktop and/or laptop 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 – 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 www.twc.state.tx.us/news/eft/tocmain.html. 



William T. Simmons
Senior Legal Counsel to
Commissioner Andrade

The Sunset Review of the Texas Workforce Commission

The mission and performance of the Texas Workforce Commission are under review by the Legislature as required under the Texas Sunset Act. The Act provides that the Sunset Commission, composed of legislators and public members, periodically evaluate a state agency to determine if the agency is still needed and to explore ways to ensure that the agency's funds are well spent. Based on the recommendations of the Sunset Commission, the Texas Legislature ultimately decides whether an agency continues to operate into the future.

The Sunset review involves three steps. First, Sunset Commission staff will evaluate the Texas Workforce

Commission and issue a report in November 2014 recommending solutions to problems found. A month or so later, the Sunset Commission will meet to hear public testimony on the agency and the recommendations of the Sunset staff. Based on public input and the Sunset staff report, the Sunset Commission will adopt recommendations for the full Legislature to consider when it convenes in January 2015. Please refer to the Sunset Commission website or call the office for updated information on specific dates for these meetings.

Through the Sunset review, every Texan has the opportunity to suggest ways in which the mission and operations of the Texas Workforce Commission can be strengthened. If you

would like to share your ideas about the Commission, please use the comment form on the Sunset Commission website, send an email to the address below, or contact Faye Rencher of the Sunset staff. Suggestions are preferred by August 1, 2014, so they can be fully considered by the Commission staff.

Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711
512/463-1300
Fax: 512/463-0705
Email: sunset@sunset.state.tx.us

Information about the Sunset process, Sunset Commission meetings, and how to receive Sunset Commission updates by email and social media is available at: www.sunsettexas.gov.



TEXAS BUSINESS CONFERENCES

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Please join us for an informative, full-day conference where you will learn the relevant state and federal employment laws that are essential to efficiently managing your business and employees.

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To register, visit www.texasworkforce.org/tbc or for more information call 512-463-6389.

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