

Third Quarter 2013

Texas Business Today

Hope Andrade
Commissioner Representing Employers

TEXAS
WORKFORCE SOLUTIONS
* * * * *

Is your business looking for skilled employees?

- What is Dot Jobs • North Texas Domestic Partner Benefits Policies •
- How TWC Evaluates a Work Separation Case • WorkInTexas.com 101 •

Is your business looking for skilled employees?

If you have an identified need for training your workforce, the Texas Workforce Commission (TWC) and our partners are here to help. The Skills Development Fund (Skills) provides customized job-training for your

Commissioner's Corner

business. These grants are an innovative partnering opportunity that involve collaboration with your local community or technical college to upgrade the skills of existing employees, as well as provide training for new hires.

Grants are awarded to individual businesses, a consortium of businesses, or a trade union that has recognized a specific training need. Businesses work with college partners to submit proposals, develop curricula, and conduct training. The Skills grant pays for the training, and the college administers the grant.

Earlier this year, in Houston, I announced a Skills grant award to VITAS Healthcare of Texas in partnership with Houston Community College. This grant will train 275 nurses and home health aides in Houston, Dallas, Fort Worth, and San Antonio. By increasing the number of employees with recognized industry certifications, VITAS will ensure quality care for its patients and their families while assisting employees in their professional development.

Last month in San Antonio, I joined TASC, Inc. and Alamo Colleges in announcing their Skills grant partnership. This grant will help train 90 professionals in engineering, technician, security, and software development occupations. This custom training project is designed to meet some of our state's key workforce needs in the increasingly high-demand Information Technology industry.

These are just two examples out of thousands since the program's inception in 1996. Since then, Skills has helped 3,901 employers create 91,998 jobs and upgrade the skills of 194,216 incumbent workers. And there is no reason why your business – and your employees – can't be the next to benefit.

Now, you may be wondering if your small, home-grown business is eligible for these funds. In Texas, we recognize that small businesses are the backbone of a successful Texas economy and a key part of what will propel our state to many future successes. Accordingly, we have dedicated up to \$2 million from the Skills



TWC Commissioner Representing Employers Hope Andrade (left) presents a Skills Development Fund grant check to representatives from Alamo Colleges and TASC Inc. Pictured from left to right are: Commissioner Andrade, TASC Program Director Shane Curtis, TASC Network Systems Administrator Ryan Mullen, Alamo Colleges Chancellor Dr. Bruce Leslie, TASC Information Assurance Security Manager Rhonda Walton and State Senator Leticia Van de Putte. Photo courtesy Alamo Colleges

Development Fund to invest in our small employers. If you have fewer than 100 employees, I encourage you to look into this exceptional opportunity and how it can help your business grow and continue to succeed.

Together, under the Skills program, your business gains a more highly trained workforce, your employees upgrade their skills, and our Texas economy is strengthened. TWC is proud to be your partner. Let's keep working together and investing in human capital so that Texas remains the best state for business.

At TWC, we have an entire team dedicated to advising and assisting you and your partners as you develop a quality proposal. Submissions are accepted year-round. To learn more about Skills grants, please contact the TWC Business Services Team at 877-463-1777 or Skills@twc.state.tx.us. 🇹🇽

Sincerely,

Hope Andrade
Texas Workforce Commission
Commissioner Representing Employers

What is Dot Jobs (.jobs)?

Simply put, .jobs is an easy way to find employment opportunities.

Much like .com, .gov, or .edu, .jobs is a website suffix encompassing tens of thousands of geographic, industry, occupational, and employer-specific micro sites ending in .jobs. Some examples of these include Dallas.jobs, Manufacturing.jobs, Engineering.jobs, IBM.jobs, Continental.jobs, etc.

To use this job search function, simply go to any internet browser and type in [where or what you want].jobs and find it. If searching for a job in Austin, type in Austin.jobs and instantly get a list of available jobs in the Austin area. If searching for an accountant job in Dallas, type in Texasaccounting.jobs to see what is available.

In partnership with the DirectEmployers Association, the Texas Workforce Commission (TWC) has developed some micro sites specifically for Texas jobs, such as Texasmanufacturing.jobs and Texasaerospace.jobs. The job content found on these sites is a combination of jobs listed with WorkInTexas.com and Texas jobs listed with JobCentral.

There is also a version specifically for U.S. military veterans called Veterans.jobs. This site includes a military-to-civilian job skill translator to help service men

and women easily map their Military Occupation Code or Specialty (MOC/S) to civilian jobs. Simply select a military branch and an MOC/S and quickly find available civilian jobs that use those same skills sets. For example:

- (Army) 25B = Information Technology Specialist (Civilian)
- (Navy) 0904 = Critical Care Nurse (Civilian)
- (Marines) 1310 = Civil Engineer (Civilian)
- (Air Force) 3D032 = Network Administrator (Civilian)
- (Coast Guard) 91 = Physician (Civilian)



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Cover image: Businessman working at desk. iStockphoto/Thinkstock

North Texas Domestic Partner Benefits Policies

A challenge facing managers and human resource professionals is determining whether to expand benefits, especially health insurance, beyond employees to other eligible dependents. Immediate family members such as the spouse and/or dependent children of employees are commonly eligible for company sponsored benefits. Among larger companies, unmarried same-sex or opposite-sex domestic partners are more frequently being included as eligible for coverage under employee benefit plans.

Some reasons to provide domestic partner benefits include keeping organizations competitive to retain good employees, increasing diversity, and needing to make the workplace a welcome and safe place for all. Resistance focuses on religious objections, the ambiguity of the definition of domestic partner, and additional costs to provide the benefits.

To ascertain policies affecting gay, lesbian, bisexual, and transgender (GLBT) employees, we describe survey results from human resource (HR) professionals regarding their organization’s non-discrimination policies covering GLBT employees, and the extent to which GLBT employees have access to the same benefits as heterosexual employees.

To find out this information, Malcolm Coco, one of our coauthors, surveyed attendees of the Society for Human Resource Management (SHRM) monthly meetings in Northern Texas. 150 respondents completed the domestic partner benefits survey between April and May of 2008.

Questionnaires from Abilene, Arlington, Brownwood, Fort Worth, Lubbock, Midland/Odessa, San Angelo, and Stephenville, Texas chapters in Texas were obtained. The majority of the sample was human resource managers from companies that had 500 or fewer employees.

RESULTS

Table 1 summarizes the information on company non-discrimination policies. 141 of the respondents’ organizations have non-discrimination policies, with 134 including the protected classes mandated by federal law. Specific to GLBT employees, 46 include sexual orientation, and 28 include gender identity in their policies. Marital status is included in 37 policies. In addition to the protected classes defined by federal law, Texas law includes non-discrimination on the basis of political affiliation and public financial assistance. In

the “Other” category, two respondents claimed their employers were not EEO employers, two were religious organizations able to discriminate on the basis of religion, one respondent’s company policy varied state by state, while one company’s policy included the protected classes in California law, and another included the classes found in Minnesota law.

TABLE 1
Protected Class Policies

Characteristic	Frequency	%
Does your organization have its own employment non-discrimination policy?		
Yes	141	94.0
No	6	4.0
Don’t know	3	2.0
Protected classes included in the policy (check all that apply):		
As mandated by Federal laws	134	89.3
Sexual orientation	46	30.7
Gender identity	28	18.7
Marital status	37	24.7
Public assistance	13	8.7
As mandated by Texas law	5	3.3
Other	7	4.7
Don’t know	5	3.3

The “Other” Category highlights part of the managerial dilemma. A policy of minimal compliance that adheres to federal protected classes, and each individual state’s requirements, can result in potentially 50 different lists of protected classes for companies doing business across states. On the other hand, setting policy broadly to comply with the most inclusive definition of protected classes, such as California, may result in higher benefit costs, and may require more training of personnel to assure compliance and prevent discrimination claims.

Employment Practices

About 90% of the respondents stated that their non-discrimination policy applied to hiring decisions, with

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about 80% being used in layoff/termination decisions, promotions, and pay. 75% said the non-discrimination policy applied to benefits, and about 67% applied to paid leave and Family Medical Leave benefits. Finally, about 49% said the non-discrimination policy applied to the use of other company facilities.

Non-discrimination in Benefits

It is a quirk of the USA system that social goods, such as health insurance and retirement benefits, are a function of one's employment, not citizenship as is the case in most industrialized nations. Reflecting that practice, only 12 of the respondents' companies didn't offer insurance benefits to spouses (recall that "spouse" is defined by the Defense of Marriage Act as a married individual of the opposite sex). Of the 137 respondents' companies, 91.3% offer health/medical insurance for spouses of employees. Contrast that with the 15 companies that offer health/medical insurance for opposite-sex domestic partners of employees, and 18 companies that offer health/medical insurance for same-sex domestic partners of employees. Married spouses also have greater availability of life insurance, dental or vision insurance, retirement benefits, employee discounts, access to Employee Assistance Programs, and other employer provided benefits (see Table 2). By limiting access to group insurance to marital status, many employees are put at a disadvantage in caring

for their significant others. As of February 2013 nine states and the District of Columbia recognize same-sex marriage, making benefits tied to marital status similar for straight or gay couples.

Documentation Requirements for Domestic Partners

While it is rare for companies to require a copy of a marriage license for employees with opposite-sex partners, some form of affidavit or documentation is typically required for domestic partners (same-sex or opposite-sex) of employees to gain access to benefits. Documentation that companies may use include a marriage license, a civil union license, registration of a domestic partnership from a state, county, or city where available, or instituting a company policy with an affidavit completed and signed by the employee as proof of the domestic partnership.

Table 3 shows the various forms of proof accepted by companies in the survey, with some companies accepting multiple types of documentation.

As of February 2013, in the state of Texas in the public sector, there are three counties (Dallas, El Paso, Travis Counties), five cities (Austin, Dallas, El Paso, Fort Worth, San Antonio,) and one school district (Pflugerville Independent School District) that have health care benefits for domestic partners of city employees.

TABLE 2
Benefits for Employees' Significant Other

Benefits Offered to:	Spouses		Opposite-sex Domestic Partner		Same-sex Domestic Partner	
	Frequency	%	Frequency	%	Frequency	%
None	12	8.0	122	81.3	118	78.7
Health/Medical Insurance	137	91.3	15	10.0	18	12.0
Life Insurance	106	70.7	12	8.0	13	8.7
Dental or Vision Insurance	130	86.7	14	9.3	16	10.7
Retirement	16	10.7	3	2.0	3	2.0
Employee Discounts	37	24.7	4	2.7	6	4.0
Employee Assistance Programs	63	42.0	9	6.0	10	6.7
Other Employer Provided benefits	21	14.0	1	0.7	5	3.3
Don't Know	2	1.3	11	7.3	10	6.7

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TABLE 3
Documentation of Domestic Partnership

Documentation Examples	Frequency	%
No benefits coverage to domestic partners	110	73.3
No documentation required	2	1.3
Employee's signature	4	2.7
A company affidavit signed by both partners	14	9.3
Copies of Receipts of Financial Responsibilities	5	3.3
Proof of local or state domestic partnership registration	6	4.0
Proof of state or civil union or marriage certification	10	6.7
Proof of marriage from any other country	3	2.0
Other (common-law marriage-opposite-sex only)	4	2.7
Don't know/blank	12	8.0

IMPLICATIONS FOR PRACTICE

Even in Texas, a state whose state laws offer few protections for GLBT individuals, some organizations have considered same-sex couple policies and have mentioned sexual orientation in their policies in general. Having such policies should be weighed in terms of legal, ethical, religious, political, and profit considerations.

Organizations that incorporate GLBT policies should consider how to show proof of same-sex domestic relationships. The most common proof is a company affidavit signed by both partners. Organizations should also consider the complications associated with having plants or divisions in various states due to the varied state laws and cultural norms.

CONCLUSION

The survey of 150 members of the northern Texas Society for Human Resource Management members showed that policies for GLBT individuals were not common. Only thirty percent of respondents reported sexual orientation mentioned somewhere in organizational policies. About twelve percent reported health/medical insurance for same-sex domestic partners. The most common way for domestic partners to prove their partnerships was to provide company affidavits signed by both partners. Texas organizations should weigh their pocketbooks, politics, ethics, religious convictions, and laws when considering GLBT-friendly policies.

SPECIAL THANKS

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Malcolm Coco (DPA, Nova Southeastern) is a professor of human resource management at Abilene Christian University and directs the College of Business Administration's internship program. He is certified as a Professional in Human Resource Management (PHR). Dr. Coco is the author of over 50 survey-based articles on management, human resources, and international human resource management.

How TWC Evaluates a Work Separation Case

There are many factors that come into play when considering a person's claim for unemployment insurance (UI) benefits. And while many of them are significant, the basics come down to two factors: 1) the nature of the job separation, and 2) whether an employer will be financially responsible for the claim. The accompanying flowchart traces the general progression of these two factors and can give employers a pretty good indication of whether or not a job separation will result in financial impact to an employer.

First, one must determine who initiated the job separation. In simpler terms, was the claimant either fired or laid off? Or did the claimant quit? This is important because the party who initiated the job separation bears the burden of proof in an unemployment claim. If the claimant was fired or laid off – an *involuntary* job separation initiated by the employer – in order for the employer to prevail on the claim and not bear financial responsibility, the employer must prove that the job separation resulted from some form of claimant misconduct connected with the work. If the claimant quit – a *voluntary* job separation initiated by the claimant – in order for the claimant to prevail on the claim and be qualified for the receipt of benefits, the claimant must prove that he quit for a reason that was good cause connected with the work.

Misconduct and good cause connected with the work are related to whether the claimant had any fault in the job separation. Because the unemployment insurance compensation system is based on fault, not need, it's important to determine whether the claimant had any fault in the job separation. If the claimant was discharged for misconduct connected with the work or quit for a reason that was not good cause connected with the work, the claimant will be considered at fault for the job separation and will be disqualified from the receipt of benefits. If the claimant was laid off by the employer due to a lack of work, the claimant would be separated for a reason that is not misconduct connected with the work and would not be at fault in the job separation. In such cases, the claimant will be qualified for benefits.

For involuntary work separations, misconduct is defined as a mismanagement of a position of employment by action or inaction, neglect that jeopardizes the life or property of another, intentional wrongdoing or malfeasance, intentional violation of a law, or violation

of a policy or rule adopted to ensure the orderly work and the safety of employees. Notice that all of these are things that are within a claimant's power to control. Some examples include: insubordination, failure to follow instructions, tardiness, violation of the attendance policies, sleeping on the job and theft.

When determining whether or not a claimant was discharged for misconduct connected with the work, TWC looks at 1) whether the claimant was discharged for a final incident of misconduct – the straw that broke the camel's back – that happened close in time to the discharge, and 2) whether the claimant knew or should have known that he would be discharged for his actions. This is where having a documented disciplinary history, g.i. written warnings, becomes important. Prior warnings acknowledged by the claimant can be used to show that a claimant was put on notice that his job was in jeopardy for certain behavior. Another thing to consider is whether the actions which led to discharge were within the claimant's power to control. Because the claimant's qualification for benefits is based on fault, if the claimant was discharged for actions which were **not** within his power to control, he would most likely be considered not at fault for the discharge and would be qualified for benefits.

For voluntary work separations, good cause connected with the work is defined as such cause, related to the work, as would induce a person who is genuinely interested in retaining work to, nevertheless, leave the job. Some examples include: a 20% or more reduction in pay, failure to get paid for work performed, harassment, and a substantial change to the hiring agreement. Many people quit their jobs due to some dissatisfaction with their working conditions. In these types of cases, in order to establish good cause connected with the work for quitting, an employee is usually required to notify the employer of the basis for his dissatisfaction and to provide the employer an opportunity to remedy the situation. A failure to do so may lead to a finding that the claimant is disqualified from the receipt of benefits.

If after an analysis of the nature of the job separation the claimant is found to be disqualified for benefits, then the employer will not bear financial liability for a claim. However, if it's shown that the claimant should be qualified for benefits because he is out of work through no fault of his own, then in order to determine whether the employer could be liable for a claim, the question

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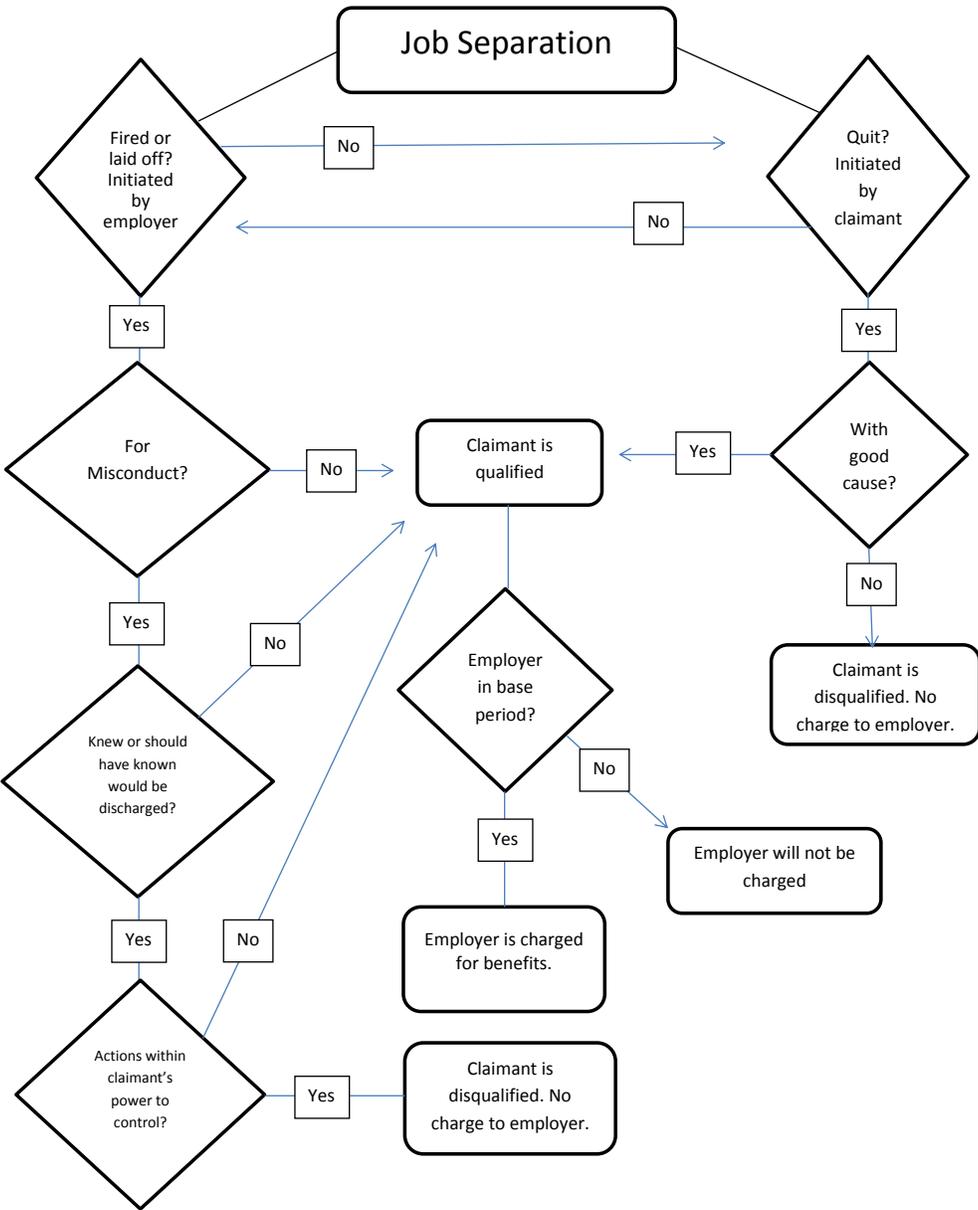
becomes whether or not the employer is a base period employer.

The base period is a period consisting of four calendar quarters (one year) measured from the date the claimant files his initial claim, not from the date of separation. The base period is officially defined as the first four of the last five completed calendar quarters prior to the date of the initial claim. One way to look at it is to take the quarter when the initial claim was filed and to disregard that quarter. Next, also disregard the quarter immediately preceding the quarter when the claim was filed. Finally, go back in time four calendar quarters. That year-long period consisting of the four calendar quarters will be the base period. Only those employers who reported wages for a claimant during the base period will bear

potential financial responsibility for a claim. This means that if the employer did not report base period wages for the claimant, then the employer will not be financially responsible.

While it's true that the flowchart simplifies an unemployment claim by breaking it down into a few component parts, and does not take into account the myriad of other facts and factors that can affect a UI claim, it can be used as a tool to provide employers with a basic understanding of how the nature of the job separation can impact an employer's financial involvement in a claim. 🇹🇽

*Elsa G. Ramos
Legal Counsel to Commissioner Andrade*



TDI-DWC Hosts Educational Sessions on Changes to the OSHA Hazard Communication Standard

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC), is hosting educational sessions entitled *Changes to Hazard Communication Labeling and Safety Data Sheet Format* at its field offices around the state in September, October, and November. This training will assist employers in complying with training requirements associated with recent changes to the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard, which now aligns with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Employers subject to the federal Occupational Safety and Health (OSH) Act must provide training to employees on the new label elements and safety data sheet format by December 1, 2013. OSHA estimates over five million workplaces and 43 million employees are going to be affected by the revised Hazard Communication Standard.

The educational sessions are for all Texas workers' compensation participants, including: employers, employees, employee organizations, risk managers, safety professionals, insurance carriers, health care providers, and attorneys. The free sessions will provide

information on the labeling and safety data sheet format changes to the Hazard Communication Standard, 29 Code of Federal Regulations (CFR) 1910.1200 (also known as the "Right to Know" law), which requires manufacturers of chemicals, employers, and employees to take measures to prevent illness or injury that could occur when working with hazardous materials. Employers not subject to the OSH Act must comply with the Texas Hazard Communication Act, Texas Health and Safety Code, Chapter 502, which references the most current requirements of the OSHA standard.

To register online and for more details on the following educational sessions, visit the TDI-DWC Events and Training Calendar on the TDI website at <http://www.tdi.texas.gov/alert/event/dwceducational.html>.

Abilene	November 12, 2013
Amarillo	September 19, 2013
Austin	October 17, 2013
Beaumont	November 15, 2013
Corpus Christi	October 17, 2013
Dallas	October 10, 2013
Denton	October 17, 2013
El Paso	September 17, 2013
Fort Worth	November 15, 2013
Houston*	November 7, 2013
Laredo	November 1, 2013
Lubbock	November 15, 2013
Lufkin	November 12, 2013
Midland	October 10, 2013
San Angelo	November 14, 2013
San Antonio	October 24, 2013
Tyler	September 12, 2013
Waco	November 21, 2013
Weslaco	October 31, 2013
Wichita Falls	November 14, 2013

*The Houston Educational Session on November 7, 2013, is hosted jointly by the TDI-DWC Houston East and Houston West Offices.



Federal law requires manufacturers of chemicals, employers, and employees to take measures to prevent illness or injury that could occur when working with hazardous materials. *Creatas/Thinkstock*

FOR MORE INFORMATION – Michelle Banks (512) 804-4203 or (media) John Greeley (512) 463-6425; pio@tdi.texas.gov – <http://www.tdi.texas.gov/wc/news/index.html>. 

WorkInTexas.com 101

Chances are if you are a Texas employer, you have seen or heard about WorkInTexas.com (WIT). The following are some frequently asked questions.

What is WorkInTexas.com?

WorkInTexas.com serves employers and job seekers. WIT is designed to meet an employer's needs by matching qualified job seekers with possible job opportunities. Employers can post jobs, search résumés, recruit candidates, and obtain labor market information.

Individuals seeking a job can post their résumé, search job listings (including Texas state agency jobs), obtain employer contact information to apply for jobs, and obtain information about the job market.

WIT reached a major milestone this year when the number of jobs filled through its services surpassed 2 million.

Can any employer post a job on WIT?

Yes, employers looking to hire individuals who will be working in Texas can post a position.

Is it free to post a job on WorkInTexas.com?

Yes, employers can post a job at no cost, 24 hours a day, and seven days a week.

Are employers required by Texas law to post jobs on WorkInTexas.com?

No, private employers are not required to post jobs on the website. However, Texas state agencies are required to post their jobs on the website.

How do I post a job on WorkInTexas.com?

An employer can post a job by creating an account on the WorkInTexas.com website. In order to use WIT, an employer must either have a Federal Employer Identification Number or an unemployment insurance tax account number.

What if I need help posting a job on WIT?

Employers can receive assistance two ways:

- 1) Employers can receive assistance from one

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of our Business Services representatives at a local workforce center. Employers can search for their nearest workforce center by going to www.texasworkforce.org and clicking on “Find Locations” at the top of the screen. Then, enter your Zip Code in the box, choose “Employer Services,” and click on “Search.” See our agency homepage below.

- Employers can also contact their local workforce centers for assistance by sending an e-mail. Simply click on “Contact Us” at www.WorkInTexas.com and a screen should pop-up like the image below:



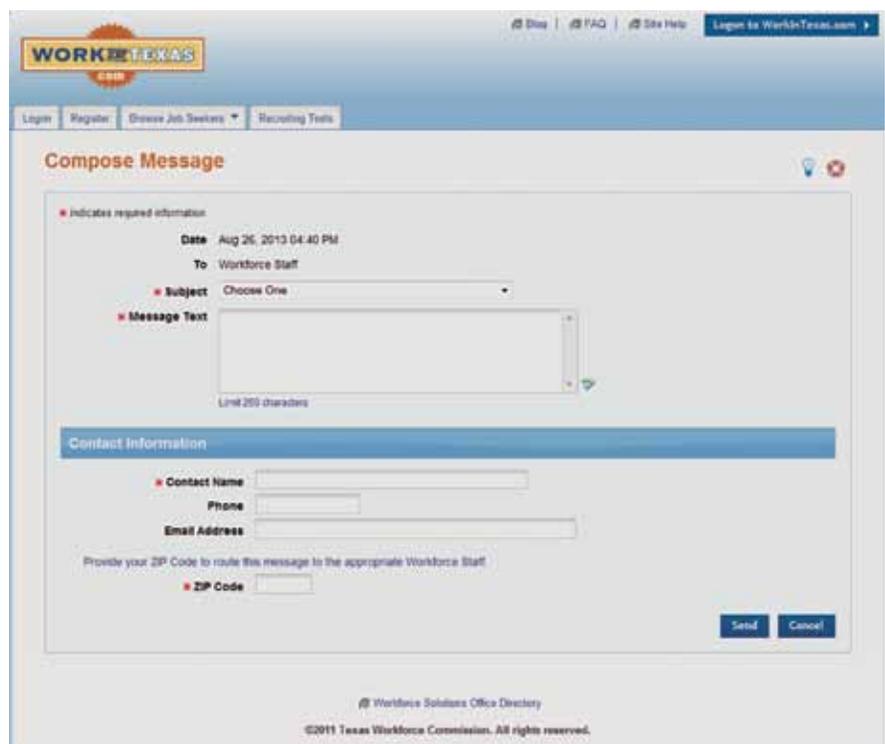
Can I access WIT on my cell phone?

Yes. TWC recently launched the mobile-friendly version of WIT. The mobile website now automatically detects mobile phones and tablets to provide quick and convenient access to mobile users.

If you have any suggestions for the WIT team, please go to www.WorkInTexas.com and click on “Tell Us What You Think.”

For more information about WIT, subscribe to the WIT blog here: <http://witsense101.wordpress.com/2013/08/26/job-seeker-or-job-finder/>. 

*Marissa Marquez
Deputy Senior Legal Counsel
to Commissioner Andrade*



Tips for Employers Posting Jobs in WorkInTexas.com

WorkInTexas.com is a job matching site rather than a job lead generation site. We compare job posting requirements and job seeker qualifications in WorkInTexas.com to find good matches. We believe we're providing better customer service by making sure your jobs attract qualified candidates before providing contact information to you or the job seeker. Recruiting can be difficult and expensive and we don't want to waste anyone's time. So, ensuring your job posting is as good and complete as possible is rule #1.

Rule #1 – Take the time. Quality in means quality out, so spend the extra time up front making sure you've included as much detail as possible. The more complete your job posting, the better your matching results will be. And, a good job posting will keep you from missing out on good matches down the road.

Rule #2 – Choose occupations wisely. Job “matching” is based on behind-the-scenes computer logic, but it all boils down to the occupations you choose. The more occupations you select, the more job seekers you'll attract (match) to your job posting, and vice versa.

Rule #3 – Include pay, even if you choose to suppress it from job seeker view. It will narrow your results, and possibly increase the quality of your matches. Also, job matches are based on minimum salary, even if maximum salary is provided, so consider posting the actual salary amount you're willing to pay to ensure better job matches (matches will be restricted if the pay is too low).

Rule #4 – Using “Keywords” can help you reduce the number of job seekers that match with your job posting. Keywords are single words or phrases you can enter to clarify specific qualifications you're looking for, such as computer languages, licenses, or certifications.

Rule #5 – Use “Screening Questions.” These are questions you can add to your posting that job seekers must answer before they contact you or apply. Answers do not limit anyone's ability to apply, but the information does offer you a unique opportunity to pre-screen and evaluate interested applicants.

Rule #6 – View your job posting to see what job seekers will see. This is a great self-test of the quality and completeness of your job opportunity. If it looks short on detail to you, imagine what a job seeker will think. Take the time to go back and enter more information.



When posting your jobs to WorkInTexas.com, spend the extra time up front making sure you've included as much detail as possible. The more complete your job posting, the better your matching results will be. *Digital Vision/Thinkstock*

Rule #7 – Use Site Help. It's our version of a “tutorial” and explains in general terms the major functions in WorkInTexas.com.

If you're looking for Veterans (only)

- All jobs entered in WorkInTexas.com are automatically made available to veterans only for the first two days.
- When posting your job, you can choose to make it available to veterans only for the lifetime of the posting by selecting “Veterans Only – Yes.”
- Veteran applicants who apply for your job will be marked with an American flag icon, indicating that they are eligible U.S. Military Veterans in good standing. 🇺🇸

Helpful Hints for the Holidays

At the end of every year, we receive an increase in the number of employers contacting our office for information on how to handle issues that typically arise during the holiday season. Following are some tips for not only dealing with these issues when they arise, but avoiding the problems all together.

The importance of holiday policies

First, it is best to have a written policy regarding holidays. Remember that the Texas Payday Law will enforce any written policy, and TWC will construe any ambiguities in favor of the employee. Therefore, the policy should be as clear as possible. In the policy, set out the holidays that the company observes, if any, and whether the days off will be paid or unpaid for non-exempt workers. If the business requires essential personnel to work on holidays, then the employer should be clear about what positions are considered essential.

If you are open on typical holidays, then it is a good idea to include a clause in your holiday policy notifying employees that all requests for time off are subject to management approval and decisions will be made based upon business needs. Such a statement makes it clear that the employer retains the right to refuse the request. Many employers find it easiest to have employees submit vacation requests in writing. The vacation request form should have a place for management to sign indicating that the request is either granted or denied. Having a written form limits the ability of an employee to allege that his request was verbally approved. Also, it is a good idea to have a requirement in your policy stating the deadline for requesting all non-emergency time off (i.e., 2 weeks, or some other stated period, prior to the requested day off). This will allow the employer, as well as other employees, adequate time to prepare for staffing shortages.



If you are open on typical holidays, then it is a good idea to include a clause in your holiday policy notifying employees that all requests for time off are subject to management approval and decisions will be made based upon business needs.

iStockphoto/Thinkstock

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Pay issues related to holidays

There is no Federal or Texas law that requires employers to pay non-exempt (hourly) workers for days that they do not work. There is also no law that requires employers to pay premium pay if an employee works on a holiday. Employees exempt from overtime pay under the Fair Labor Standards Act (FLSA), however, must be paid for holidays unless the employee is off for a full workweek.

Holiday pay for hours not worked should not be used to calculate whether an employee is entitled to overtime pay. Similarly, these hours are not used to calculate whether an employee has worked the 1250 hours required for leave under the Family and Medical Leave Act.

Religious accommodation may be required

There are some instances in which the law may require an employer with 15 or more employees to allow an employee to be off on a religious holiday. When deciding whether to approve requests for time off, employers should be aware that laws prohibiting religious discrimination may require some employees to have certain holidays off to observe religious customs. However, employers can deny an employee a holiday off if allowing the time off would be an undue hardship for the business. Proving the undue hardship would be the employer's burden in a discrimination claim. Therefore, if an employee requests religious accommodation, it is best to consult with a licensed employment law attorney prior to denying the request for time off.

Temporary closures

Many employers use the holiday season, especially the time between Christmas and the New Year, as an opportunity to close the business to allow the owners to take time off. A word of caution is in order if an employer chooses to do this – an employee can file a claim for unemployment benefits due to a temporary closure. Since a closure is initiated by the employer and not the result of any employee misconduct, the employee would most likely be qualified to receive unemployment benefits. As a practical matter, though, the employee will have to be out of work for more than one week in order to receive benefits. Their benefits will stop once they return to work full-time or have earnings that prevent them from being unemployed or partially unemployed.

Seasonal employees

If an employer hires extra employees to handle an increase in business during the holiday season, there are several things the employer should take into consideration. Remember that seasonal employees should be treated the same as all other employees. Employers should complete the required new hire paperwork (I-9, W-4, policy handbook acknowledgment, and so on) for seasonal employees and ensure that the seasonal help is familiar with all of the employer's policies and procedures. Also, all employment laws apply to seasonal workers, including wage and hour laws and anti-discrimination laws. The law does, however, allow the employer to decide whether seasonal employees will receive fringe benefits, such as paid time off, bonuses, and the like. Additionally, current law does not require employers to provide health insurance to seasonal employees.

Many employers are surprised to learn that an understanding that the employment will be temporary does not prevent an employee from being able to file for unemployment benefits. A seasonal employee will have the ability to file a claim as long as he meets the monetary requirements for doing so. After filing a valid claim for benefits, a seasonal employee who is dismissed at the end of the season will most likely be considered laid off due to lack of work and qualified to receive benefits.

While a seasonal employee may be able to receive unemployment benefits, this does not necessarily mean that the employer's account will be charged for those benefits. This is because only employers who have wages reported in the base period of a claim are potentially liable for the unemployment benefits paid out. For more information regarding the base period, please see the following section of *Especially for Texas Employers*: http://www.twc.state.tx.us/news/efte/how_ui_claims_affect_employers.html#dateofinitialclaim.

In conclusion, there are many different employee issues that can arise during the holidays. After reading this article, employers will hopefully have a better understanding of those issues and how to avoid them altogether by having clearly written policies and procedures. Always remember that the attorneys in Commissioner Andrade's office are able to speak to all Texas employers who have questions or concerns at 1-800-832-9394. Happy holidays! 🇹🇽

*Sonia J. Luster
Legal Counsel to Commissioner Andrade*

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