

Texas Business Today

Third Quarter 2014

Hope Andrade
Commissioner Representing Employers

TEXAS
WORKFORCE SOLUTIONS

An Employer's Obligation When an Employee Quits

• A Comprehensive Guide to Enforcing Your Policies • Working Interviews •

Committed to Serving Texas Employers

At the Texas Workforce Commission, one of our foundational philosophies is the belief that innovation and partnerships centered on local economic priorities will maximize effectiveness.

And one of the keys to effective workforce development is a strong partnership between industry and educators.

Based on my conversations with businesses all across the state, we have developed a new initiative: the TWC Externship for Teachers Program. Similar to the way internships are designed to give students or industry newcomers on-the-job experience in their field, externships provide teachers and counselors with an inside perspective on business and industry in their communities.

Some of our educators may want the opportunity to visit a modern, high-tech manufacturing facility or work alongside an attorney at a law firm. By participating in our TWC Externship for Teachers Program, middle school and high school teachers and career counselors will gain experience working on-site with a local employer and develop a deeper understanding of skills that businesses require of successful employees. This is just one more tool we can use to ensure that classroom instruction is linked to the workplace realities of the 21st century.

The externship will inform teachers on the skill sets required for a given industry, and teachers can then inform, educate, and guide students to industries that match their interests and their skill sets. Ultimately, the goal is to connect classroom content to the real world and the workplace and to help students

Commissioner's Corner



TWC Commissioner Representing Employers Hope Andrade welcomes attendees to the Texas Business Conference that took place in Kerrville on July 25, 2014. Photo by Charisse Hobson/TWC Conference Planning

understand the academic and technical skills they need to enter in-demand jobs in their communities.

In order to have the biggest statewide impact, we have set up the TWC Externship for Teachers Program to require a local match from employers or school districts. If your business is interested in participating in this initiative, be on the lookout for information from your local Workforce Solutions team. I encourage you to reach out to them to express your interest in the program when it becomes available. You can find your nearest Workforce Solutions office here: www.twc.state.tx.us/dirs/wdas/directory-offices-services.html

As your Commissioner Representing Employers, my goal is to ensure that

every employer in Texas knows about all the resources your state has available to you. My office is committed to serving our Texas employers, and we continue to proactively develop innovative and meaningful initiatives in response to employer feedback and demand. 🇺🇸

Sincerely,

*Hope Andrade
Texas Workforce Commission
Commissioner Representing
Employers*

A Comprehensive Guide to Enforcing Your Policies

Losing an unemployment claim can be frustrating. Sometimes the loss is inevitable because the employee did not do anything wrong. Maybe you had to downsize and laid off some employees in the process. Maybe you let them go simply because they were not fitting in with the rest of your staff. In those cases, Texas employers have to face the hard truth that the law allows employees to receive unemployment benefits because the job separation occurred “through no fault of their own.”

Now imagine what it must feel like to fire someone for violating your policies and then to lose the unemployment claim because you did not adequately prove “misconduct connected with the work.” Maybe it has already happened

to you. If so, then you understand how upsetting it can be to know that your employee broke the rules, but for whatever reason, the case was decided against you. If this sounds like your personal experience, then this article may help to clarify why you lost the claim so that you can be more successful the next time around.

The first step, of course, is to have actual policies in place. As a quick crash course, here are the basics you need to follow in regards to this first step. First, put your policies in writing. Make sure the policies truly reflect the boundaries you are setting. Be clear. Second, have your employees sign and date an acknowledgement form to prove they received them. Third, review

your policies annually. If your policy sounds like it is open to interpretation, change it. If you change your policies, schedule a meeting to discuss your updates with your employees. Give them some advanced notice (how much is up to you) of the meeting, in writing. Once you update them, have them sign a new acknowledgement form. The general idea is that you want to prove you had policies in place and that your employees knew or should have known about them.

The next step is to enforce the policies, which is one of the hardest things for an employer to do for a variety of reasons. Perhaps you

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Cover image: A firefighter raises the American flag in remembrance of September 11. *iStock/Thinkstock*

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have always wanted to run your own business, but you have never been comfortable with confrontation. Your employees might be family members or friends, or you simply do not want to be disliked. You may wish to help your employees in any way that you can. It is very common for employers to decide not to enforce a policy because they feel that the employee deserves a break, even though the policy was fair and the employee clearly broke the rules. In these cases, employers often regret their decision because they lose unemployment claims due to inconsistencies in policy enforcement.

Giving your employees too many chances may sound like a great idea at the time, but it can easily guarantee a loss for you if they file for unemployment. When at a crossroads, ask yourself which hat you should be wearing. As the employer, you will often need to take off your “friend” hat and

put on your “boss” hat. As hard as that might be, it is necessary if you want to stay in control of your business.

There are a few other reasons why employers do not enforce the rules, and they are all equally harmful. You might keep an employee on because you are incredibly shorthanded with workers. You might decide not to enforce the rules because it takes up too much time and you are busy enough as it is. You might not even know what the policies are because the handbook is lengthy or was provided to you from an outside source. Essentially, you choose not to enforce your own rules out of convenience. While you may justify not enforcing a policy for any one or all of those reasons, be aware that none of them are acceptable reasons when arguing an unemployment claim. These reasons can only hurt your case. In order to keep the ball in your court, you do not want to do anything that makes your conduct as an employer appear inconsistent.

Such enforcement can lead to disparate treatment of your employees, which can cause mistrust, decreased morale, and a loss of credibility. You can even open yourself up to a discrimination lawsuit. The following errors are very common and can destroy your chances of winning an unemployment claim or a discrimination suit.

1. Do not “counsel” your employees; warn them.

All too often, employers try to “counsel” their employees, which is understandable. You care about your employees deeply and want to give them guidance on how to improve. You may even be a fan of the “compliment sandwich,” where you wedge a criticism in between two compliments in order to keep the employee’s spirits high. While this is a commendable thing to do as a caring person, it can backfire on you as an employer. “Counseling” your employee as opposed to warning



Warn your employee as soon as possible after the policy violation occurs. Employers frequently lose unemployment cases because the incident warranting the reprimand was “too remote in time.” *Photo by iStock/Thinkstock*

them can lead to a quick loss on an unemployment claim. The employer must prove that employees knew they could be fired if they continued to make that mistake. “Counseling” your employees may make them feel like you are guiding them rather than warning them. Therefore, it is vitally important that you use the word “warning” and avoid lax language.

2. Enforce your policies every time to avoid condoning an employee’s actions.

You have policies, but you do not strictly enforce them. This occurs more often when an employer is friends with or related to their employees and it can cause you to lose your case. Do not create a pattern of letting things slide. If you suddenly fire an employee for an action you ignored in the past, it could look like there is another reason (possibly an illegal reason) for firing him. Say what you mean and mean what you say. A final warning should be just that: a final warning. If you give several final warnings, then the employee may not believe that his or her job is really in jeopardy. On the same note, zero tolerance should mean zero tolerance.

3. Do not wait too long to give your employee a warning.

Warn your employee as soon as possible after the policy violation occurs. Employers frequently lose unemployment cases because the incident warranting the reprimand was “too remote in time.” The longer you wait, the more opportunity the employee has to argue that there must have been an alternate reason for receiving the warning. The analysis is on a case-by-case basis. Think of it from the standpoint of what a reasonable person would do. In the past, employers have won unemployment cases by showing that the delay occurred for a logical reason. For example, if you needed time to conduct an internal investigation, or you had no way of contacting the employee until he returned to work, then you may have an acceptable reason for

a delay. If there is any delay, be sure to keep excellent records as to the reason for it in order to justify your actions.

4. Do not apply your policies retroactively.

It can be very tempting to warn your employee for something that you think should be a policy, but you do not yet have an actual policy forbidding the conduct. The logic behind this rule is that it is unfair to warn an employee for violating a policy that he did not know existed at the time of the act. That being said, there are some circumstances where you do not necessarily need a specific written policy in order to discipline your employee because any reasonable person would understand that the conduct was unacceptable. An example of this would include severe criminal activity. Note, however, that in these cases, the employer must be able to prove that such activity actually occurred and that the conduct was connected with the work.

5. Do not pick and choose who you warn.

Sometimes, an employer only reprimands some, but not all, of the employees who violated a policy. The employer can lose all of his credibility in this instance because it suggests favoritism. This is especially common in environments where the employer is either friends or family with the employees. Do not get caught in this trap. Apply your policies fairly and equally to everyone.

6. Conversely, avoid giving “blanket warnings” to all of your employees.

It can be tempting to warn everyone if an employee breaks a rule, but you should never do so. If you do, not only will you have a hard time winning your appeal, but you may also expose yourself to a discrimination lawsuit. Even if you win such a lawsuit, you will spend a considerable amount of time, effort, and money to win your case. Do not give an employee a

warning unless he actually violated your policy.

7. If you have a progressive disciplinary policy, follow it.

Do not skip steps unless your policy clearly allows for it. If the act is so egregious that a reasonable person might expect to lose his job, then your policy may allow you to skip a step and go straight to termination.

8. Do not enforce illegal policies.

If you warn or fire an employee for violating a policy that happens to be illegal, you can lose your unemployment claim and expose yourself to additional liability. For example, the National Labor Relations Act (NLRA) guarantees employees the right to discuss the terms and conditions of their employment freely, whether it be at the office water cooler or online. A blanket policy prohibiting employees from discussing all work matters will likely be an illegal policy. As a general rule, if a red flag goes up in your head as you are writing or reviewing a policy, then it is probably an illegal policy. If you determine the policy is illegal, take it out of your handbook immediately and inform your employees of the change.

9. Keep adequate records of policy enforcement.

Employers can lose credibility when they appear to be unclear as to the details of the incidents. This is why it is important to warn employees in writing with a third party present. You want proof of exactly what happened in case you need to explain the situation to an outsider for the purposes of an unemployment claim or other lawsuit.

In conclusion, if you follow the above nine policy enforcement rules strictly, you have a much better chance of proving misconduct in an unemployment claim while also keeping other types of potential lawsuits at bay. For a list of sample policies to use (and enforce) in your business, visit texasworkforce.org/news/eft/table_of_contents-az.html 

Velissa Chapa
Legal Counsel to Commissioner Andrade

An Employer's Obligation When an Employee Quits

When an employee resigns, employers frequently wonder about their continuing obligations to the employee. Can the resignation be accepted early? Will doing so change the nature of the separation to a discharge? Is the employee entitled to receive pay throughout the notice period? Fortunately, labor laws and the Texas Workforce Commission (TWC) precedent cases offer guidance for employers in these situations.

Can the employee's resignation be accepted early?

Texas is an "at will" state, which means that unless a law or agreement (such as an employment contract) provides otherwise, either party may modify the terms and conditions of employment or terminate the employment relationship at any time for any reason, with or without notice. So, an employer may accept an employee's resignation early, as long as there is no agreement or contract that prohibits such action.

Will accepting the resignation early change the nature of the separation?

TWC has long recognized that the general expectation in the workplace is that a party will provide two weeks' notice of intent to sever the employment relationship to the other party. As such, during the said two-week period, early acceptance of a resignation or layoff notice will not change the nature of the separation. In other words, if an employee resigns and provides two weeks' notice or less, the employer may accept the resignation at any point during the notice period, including immediately, and the separation will still

be considered a resignation.

On the other hand, when more than two weeks' notice is given and the party receiving the notice initiates a separation prior to the intended effective date, the nature of the separation will depend on the general circumstances in the case. TWC has adopted the following two precedent cases, which distinguish between situations in which the employer accepts the employee's resignation more than two weeks prior to the intended effective date and less than two weeks prior to the intended effective date.

• Appeal No. 87-00697-10-011488: "On November 2, the claimant gave notice of his intent to quit his job in March of the following year. He further advised the employer that, during that time period, he intended to work under a decreased workload and would train only one particular individual to replace him. The employer accepted his resignation effective immediately. *HELD*: Recently adopted Commission policy provides that where a party gives in excess of two weeks' notice of separation and that notice is accepted immediately, the burden of persuasion will normally shift to the party accepting the notice early. As the employer accepted the claimant's notice early here, the separation will be considered a discharge. The burden of establishing that the claimant was discharged for work connected misconduct was found to have been met in that the claimant's actions of giving the employer an ultimatum that he would not perform to his usual standard during his notice period amounted to intentional malfeasance, thus constituting misconduct connected with the work on the claimant's part."

• Appeal No. 96-011165-10-092696: "On or about July 1, 1996, the claimant submitted a written notice of resignation to the employer, informing them that he would be resigning effective August 4, 1996. He intended to go to work for another company at that time. On July 25, 1996, the employer hired a replacement for the claimant, and the claimant's services were no longer needed as of that date. *HELD*: When the moving party gives more than two weeks' notice of an impending separation, and a separation actually occurs within two weeks of the stated effective date of the notice, the original moving party retains the burden of persuasion to establish the nature of the separation as either a voluntary quit or a discharge. The claimant in the instant case retains the burden of persuasion to establish the nature of the separation. This claimant resigned to accept other employment, which is a resignation for personal reasons and not for good cause connected with the work."

These cases illustrate that if the employer accepts the employee's resignation within two weeks of the employee's intended effective resignation date, the separation remains a resignation and the employee bears the burden of proving that he had good cause connected with the work for quitting. However, when an employer accepts the employee's resignation more than two weeks prior to the employee's intended effective resignation date, the nature of the separation is changed to a discharge. In such a case, the employer would bear the burden of establishing that the separation occurred due to misconduct connected with the work. But, there is a caveat to this general rule. When the employer accepts the

resignation more than two weeks early and pays the employee wages throughout the remainder of the notice period, the separation will remain a resignation.

For example, on March 1, an employee tenders his resignation to the employer effective March 31, providing more than two weeks' notice. If the employer accepts the employee's resignation between March 1 and March 17 (i.e., more than two weeks prior to the intended effective resignation date) and does not pay the employee through the notice period, then the separation will be considered a discharge. But, if during the same period, the employer accepts the employee's resignation early and pays the employee through

the notice period, the separation will remain a resignation. Alternatively, if the employer accepts the claimant's resignation on March 18th or later (i.e., two weeks or less prior to the intended effective resignation date), then the separation remains a resignation.

Is an employee entitled to receive wages throughout the notice period?

An employer is not obligated to pay an employee wages during any part of the resignation notice period in which the employee does not perform work, unless an employment agreement provides otherwise. In the absence of an agreement to the contrary, the employer's obligation to pay an

employee ends when the employee stops working for the employer, even if the employer accepts the resignation earlier than the intended effective date of resignation.

For further information on these topics, consult our book *Especially for Texas Employers* at www.twc.state.tx.us/news/eft/types_of_work_separations.html#2-weeknotice, or contact one of Commissioner Andrade's staff attorneys at 1-800-832-9394. 🇹🇽

Sheryl Sarytchoff
Department of Commission Appeals



If an employee resigns and provides two weeks' notice or less, the employer may accept the resignation at any point during the notice period, including immediately, and the separation will still be considered a resignation. *Photo by iStock/Thinkstock*

Working Interviews

Employers know that taking certain steps during the job application and interview process helps ensure that they hire the best and most qualified person for the job. To this end, employers will run background checks, call an applicant's references, confirm prior employment and experience, and test an applicant's physical fitness or skill level. These tools are available for employers and, with few exceptions, can be relied upon in making a hiring decision. Some employers, however, regularly rely on what is known as a "working interview" when making a decision on who to hire.

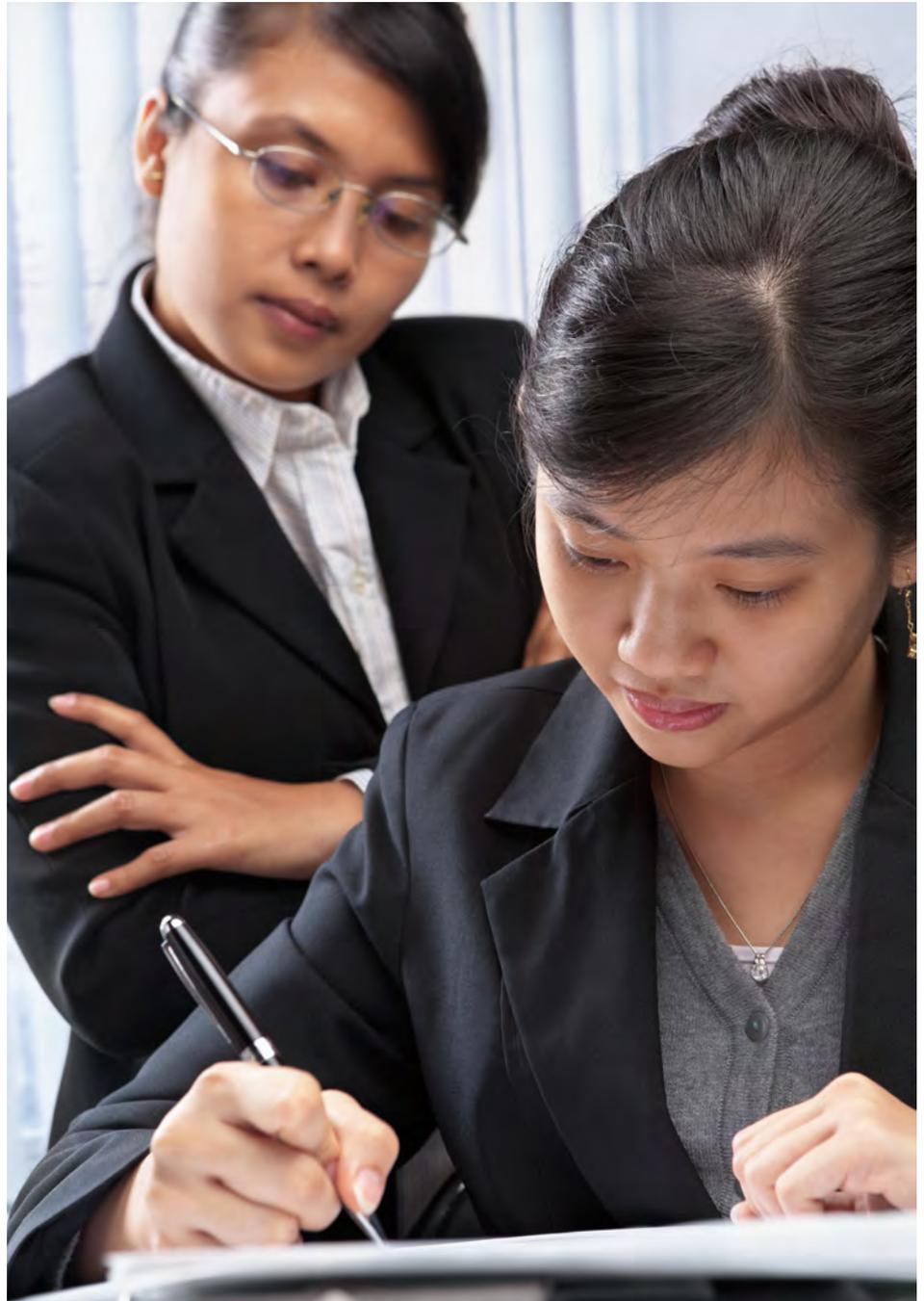
A working interview is much more than an employer simply testing a prospective employee's skill level or physical ability. Usually, a working interview involves the applicant actually performing some of the duties that he or she would be performing if subsequently hired for the job in question. Working interviews can take several forms and can be as short as a couple of hours or as long as several days. Regardless of the length of time, the basic idea is the same: employers want to know if an employee is going to work out.

To that end, employers implement working interviews for several reasons. Some of the most common include: 1) wanting to know if an applicant can adequately or competently perform the skills that an applicant listed on a resume, 2) wanting to see if an applicant is capable of performing or carrying out the basic duties that the job requires, 3) wanting to see if an applicant can learn new procedures or techniques quickly and effectively, and 4) wanting to see if an applicant will be a good fit with current employees and the employer's work culture.

Many employers believe that because working interviews are used during the hiring process, and happen before a *formal* job offer is made, they are

not considered work and are therefore not compensable. In other words, they believe that the applicants do not need to be paid for their time. Not so.

If an applicant is being asked to perform real work, i.e., work that would normally be performed by an employee, such as answering actual employer



A working interview is much more than an employer simply testing a prospective employee's skill level or physical ability. Usually, a working interview involves the applicant actually performing some of the duties that he or she would be performing if subsequently hired for the job in question. Photo by iStock/Thinkstock

calls, performing procedures on paying customers, or performing work for which the employer will charge a client, then the applicant may be considered an employee and not simply an applicant. If an applicant is performing the duties of an employee, then that applicant would need to be treated as an employee, albeit temporary.

This means several things for employers. First, employers would need to comply with all the paperwork requirements for new employees, such as completing the I-9 and W-2 forms. In addition, employers would need to report these new hires to the Office of the Attorney General of Texas. Furthermore, as new employees, applicants who participated in working interviews would be entitled to be paid for their time. As such, employers would be obligated to comply with the Fair Labor Standards Act and pay wages following the minimum wage requirements for all the time applicants spent performing services for the employer. In addition, payroll taxes

would be due on these wages. This means that employers would be required to add these employees to their quarterly reports and to pay taxes to the Internal Revenue Service as well as the Texas Workforce Commission if applicable.

What happens when the employer decides not to make a formal job offer to the applicant who has just completed the working interview? If the applicant was an employee and is no longer going to continue to provide services for pay because he or she was not the right person for the job, then there is a job separation that must be addressed. What are the ramifications to the employer after a job separation under these circumstances? Can the applicant file for unemployment benefits? The answer is most likely yes. If the applicant is no longer working because he was not a good fit after the working interview, then the applicant will be considered to have been discharged from the last work. And because the job separation will be deemed to have been initiated by the employer, the employer must

prove that the discharge was for misconduct connected with the work in order for the employer to prevail on such a claim. A discharge for any other reason will qualify the claimant for benefits. In cases of separations resulting from the end of a working interview, employers are ill equipped to prove that the separation resulted from an act of misconduct. Most times, these types of separations are considered lay-offs and result in the claimant being qualified for benefits. As such, employers run the risk of being potentially financially responsible for the unemployment claim at some time in the future.

Bottom line: employers may find that working interviews are a valuable tool when looking for that one perfect person for the job. However, they must understand that working interviews establish employment relationships with legal obligations and responsibilities which carry with them consequences. 🇹🇽

*Elsa G. Ramos
Legal Counsel to Commissioner Andrade*



If an applicant is performing the duties of an employee, then that applicant would need to be treated as an employee, albeit temporary. Photo by iStock/Thinkstock

The Health of the Texas Economy

Nearly 70 percent of the Total Nonagricultural jobs in Texas are found within the state's five largest metro areas. As the economies of the Austin-Round Rock-San Marcos, Fort Worth-Arlington, Dallas-Plano-Irving, Houston-Sugar Land-Baytown, and San Antonio-New Braunfels metro areas go, so goes the state of Texas. The chart below displays job recovery in each of Texas' five largest areas indexed from their own pre-downturn employment peak compared to that of the United States (shown with a solid black line). The base point, or index value of 100, is set individually to this peak.

As the chart shows, each metro area, as well as the United States, experienced employment downturns at different

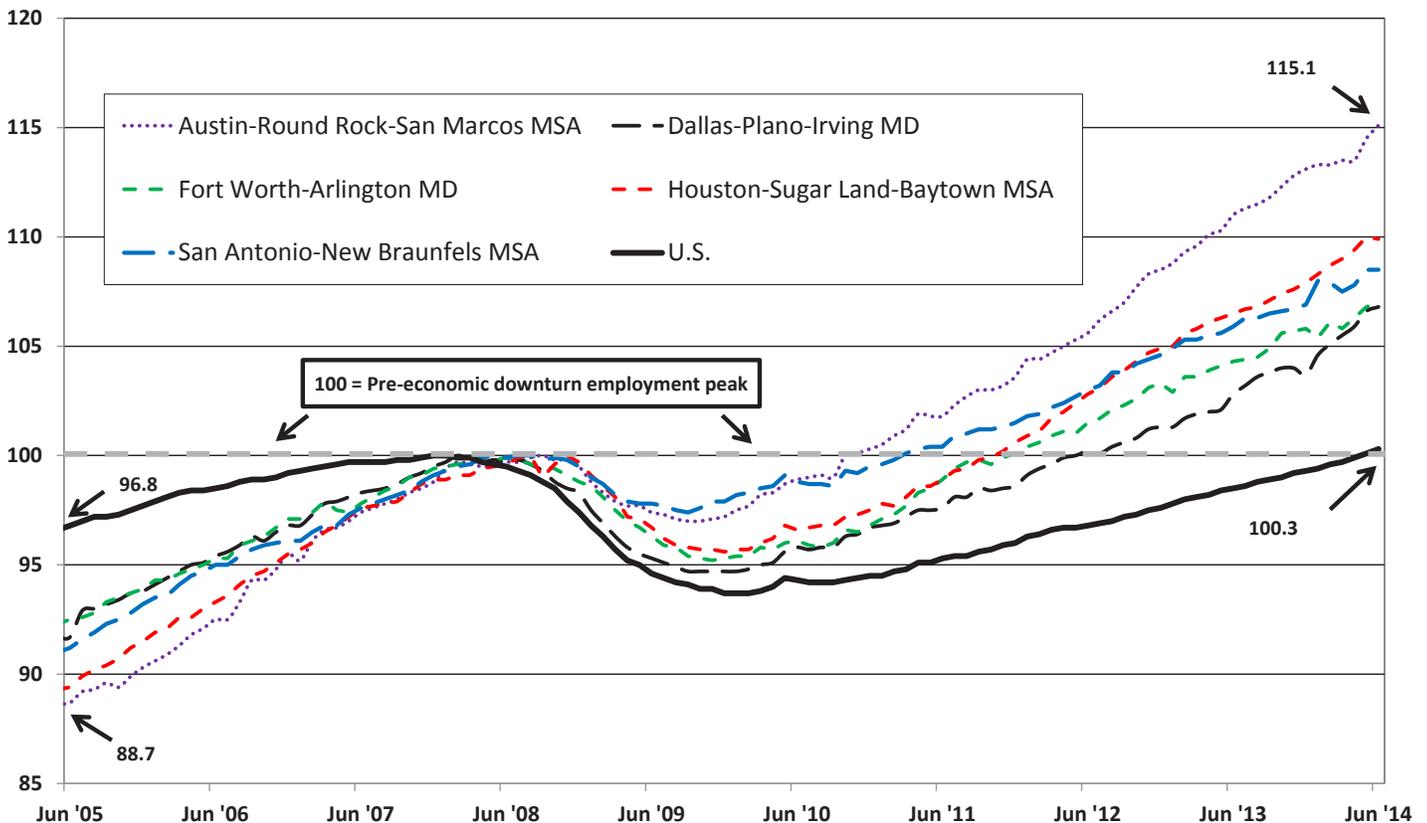
times. The graph also shows that all five metro areas in Texas emerged from their respective labor market downturns much faster than the nation. The Austin-Round Rock-San Marcos MSA was the first major metropolitan area in Texas to pass its previous employment downturn from a base point in September 2008 to an employment index of 100.0 in October 2010. The San Antonio-New Braunfels MSA followed closely with an earlier base point in August 2008 to an index of 100.1 in March 2011. The last metro area in Texas to emerge from the downturn, the Dallas-Plano-Irving area, recovered in May 2012 with an index of 100.0 from a base point in February 2008 – two full years before the United States experienced employment

recovery in May 2014 with an index reading of 100.1.

The data also shows that each of the five Texas metro areas experienced shallower downturns than the United States. The Dallas-Plano-Irving area had the lowest index points of 94.7 from September 2009 through January 2010. The lowest index point for the United States occurred from December 2009 through February 2010 with index values of 93.7. 

Spencer Franklin and Gabriel Guzman
 – Information provided courtesy of the Labor Market and Career Information department of the Texas Workforce Commission: www.lmci.state.tx.us

Employment Recovery from Economic Downturn Texas Big 5 MSAs vs U.S. (Seasonally Adjusted, Total Nonfarm, Indexed to Pre-Downturn Peaks)



TWC-BLS: Jun 05-Jun 14 CES Data
 Labor Market & Career Information Department
 Texas Workforce Commission
www.lmci.state.tx.us

Latest Developments and Legal Updates

New Executive Order Expands Discrimination Protection

On July 21, 2014, President Obama expanded prior executive orders 11478 and 11246 to prohibit employment discrimination on the basis of sexual orientation and gender identity toward employees of federal government agencies and federal contractors. The new executive order is online at www.whitehouse.gov/the-press-office/2014/07/21/executive-order-further-amendments-executive-order-11478-equal-employers (sic).

Business & Legal Briefs

New EEOC Guidance

The Equal Employment Opportunity Commission (EEOC) has recently issued the following new guidance for employers:

- How to Comply with the Americans with Disabilities Act (ADA): A Guide for Restaurants and Other Food Service Employers: www.eeoc.gov/facts/restaurant_guide.html
- Enforcement Guidance: Pregnancy Discrimination and Related Issues: www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm
- Questions and Answers about the EEOC's Enforcement Guidance on Pregnancy Discrimination and Related Issues: www.eeoc.gov/laws/guidance/pregnancy_qa.cfm
- Fact Sheet for Small Businesses: Pregnancy Discrimination: www.eeoc.gov/eeoc/publications/pregnancy_factsheet.cfm

Temporary Staffing and ACA Compliance

In his blog *The Recruitment Revolution*, Dan Campbell, 2014 chair



The EEOC has recently issued new guidance for employers regarding pregnancy discrimination. Photo by iStock/Thinkstock

of the American Staffing Association, recently made the following observation about the new health care reform laws: "... A staffing partner also alleviates much of the added logistics and administration of health care reform. To comply with the [Affordable Care Act], employers need to determine whether they meet the 50 or more full-time employee threshold, at which point they are required to offer benefits. Employees who work an average of 30 or more hours a week are considered full-time (this number is currently up for review), and there are different rules for current employees, new hires, seasonal employees, interns and those who go from full-time to part-time and vice versa. ..." For more on that topic, visit talentmgt.com/blogs/7-the-recruitment-revolution/post/leveraging-temporary-staffing-to-tackle-aca-questions

DOL to Consider New Definition of "Spouse" for the FMLA

On June 27, 2014, the U.S. Department of Labor (DOL) issued a

"Notice of Proposed Rulemaking to Revise the Definition of 'Spouse' Under the Family and Medical Leave Act (FMLA)." DOL considers new rules necessary to deal with the implications of the U.S. Supreme Court's ruling in the case of *United States v. Windsor*, which held section 3 of the Defense of Marriage Act unconstitutional. The new rules would presumably amend the definition of "spouse" so that employees in legal same-sex marriages, who also meet the other eligibility criteria, would qualify for FMLA leave, no matter where they live or work. For more information, see the following DOL web page: www.dol.gov/whd/fmla/nprm-spouse/

Penalty Relief IRS Pilot Program for Small Retirement Plans

The IRS announced on May 22, 2014 that it has begun a pilot program to extend relief to small businesses from penalties for not filing certain documents required for reporting retirement plans. The penalties can run up to \$15,000, so small business owners who were not previously aware of the reporting requirements but would like to achieve compliance, should look into this pilot program. More information on how to participate in the program can be found in Revenue Procedure 2014-32. The announcement is on the IRS website at www.irs.gov/uac/Newsroom/Penalty-Relief-Pilot-for-Small-Retirement-Plans-Begins-in-June

Texas: Back in the Black (crude oil, that is)

In June, 2014, the *Dallas Business Journal* featured a report about the considerable growth Texas has recently had in its oil and gas sector. According

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There is so much activity in the Eagle Ford Shale that you can see it from space. NASA Earth Observatory image by Robert Simmon

Continued from page 11

to the article, Texas now “rules the oil and gas world with one-quarter of all drilling rigs on Earth.” See the original article online at www.bizjournals.com/dallas/news/2014/06/27/texas-rules-the-oil-and-gas-world-with-one-quarter.html

For another view of the boom, check out the satellite image of oil and gas exploration activity in South Texas at blogs.scientificamerican.com/plugged-in/2012/12/27/the-eagle-ford-shale-boom-from-space/

More on Worker Classification Issues

The DOL’s Office of Federal Contract

Compliance Programs (OFCCP) has published Frequently-Asked Questions (FAQs) on its website dealing with how federal contractors should analyze their employment relationships to properly distinguish “employees” from “independent contractors” or other types of workers who are not in employment. The FAQs describe what are commonly referred to as the “Darden” factors, derived from the 1992 Supreme Court decision in *Nationwide Mutual Insurance Co. v. Darden* (an Employee Retirement Income Security Act (ERISA) case), and provide examples illustrating their application in determining which workers are employees. The FAQs are online

at www.dol.gov/ofccp/regs/compliance/faqs/Employer-Employee_Relationship.html

Still More from the OFCCP

On August 6, 2014, DOL announced a proposed rule requiring federal contractors or subcontractors with 100 or more employees and who must file EEO-1 reports to begin submitting summary pay data for their employees. The purpose of the proposed rule is to assist DOL in combatting pay discrimination. Details are available on the OFCCP website at www.dol.gov/ofccp/EPR.html 

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

State Unemployment Insurance Headlines: North Carolina

Beginning in summer 2013, North Carolina discontinued its participation in the federal Emergency Unemployment Compensation (EUC) benefits program. At the same time, that state reduced the maximum duration of state unemployment insurance (UI) benefits to a variable period of 12 to 20 weeks, dependent upon the state's unemployment rate, and reduced the maximum weekly benefit amount from \$530/week to \$350/week. Its stated purpose was to focus on job creation and reduce the state's debt from borrowing federal money for UI benefits.

By comparison, Texas offers up

to 26 weeks of state UI benefits and participates in federal EUC benefits under the circumstances provided by law. A few other states have reduced the amount of UI benefits available to unemployed individuals in their states as well. The states that have reduced the duration of UI benefits have said the intent is to encourage unemployed individuals to return to work more quickly. Although opinions differ on the effectiveness of such moves, most business groups point to recent growth in jobs in North Carolina and to reductions in the number of people filing UI claims as proof that the

programs work.

When North Carolina changed its unemployment laws in July 2013, its unemployment rate was 8.1 percent. At the end of the first quarter of 2014, that rate had dropped to 6.7 percent. As well, that state's rate of job creation has increased since the change, as noted in two recent articles in national publications:

- <http://www.forbes.com/sites/patrickgleason/2014/04/07/ui-nc/>
- <http://online.wsj.com/articles/john-hood-north-carolina-got-it-right-on-unemployment-benefits-1404509638>

Feel free to share any opinions you may have on the subject in an email to employerinfo@twc.state.tx.us. 



Beginning in summer 2013, North Carolina discontinued its participation in the federal EUC benefits program. At the same time, that state reduced the maximum duration of state UI benefits to a variable period of 12 to 20 weeks, dependent upon the state's unemployment rate, and reduced the maximum weekly benefit amount from \$530/week to \$350/week.

Photo by iStock/Thinkstock

New TBC Web Companion Available for Employers

Commissioner Andrade's office has released a new resource for employers called "TBC Companion". Online at www.texasworkforce.org/tbcapp, the mobile-friendly web companion is optimized for use on any kind of smartphone or tablet device. While it is primarily intended as an additional resource for employers attending the Texas Business Conference seminars around the state, it has many features that will be useful to any employer.

Under "View A Presentation," employers can view the presentations used by the speakers at the conferences. There is a direct link to the online version of our *Especially for Texas Employers* publication. The "Texas and Federal Websites" section has links to the most useful employment law-related government websites (EEOC, DOL, I-9 form, and IRS among others). Under "What Laws Cover My Company?," employers can determine which Texas and federal employment

laws apply to a company of their size. The "Employment Law Utilities" section features software that allows employers to calculate unemployment

benefits, chargebacks, UI tax rates, and overtime pay. With "Call or Email TWC," employers can email questions directly to Commissioner Andrade's office, call her toll-free employer hotline, and get quick access to TWC websites. Employers are encouraged to take advantage of this newest resource! To access the web companion, visit www.texasworkforce.org/tbcapp or scan the code below:



Commissioner Andrade's office has released a new resource for employers called "TBC Companion". Online at www.texasworkforce.org/tbcapp, the mobile-friendly web companion is optimized for use on any kind of modern smartphone or tablet device.
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TEXAS BUSINESS CONFERENCES EMPLOYMENT LAW UPDATE

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.

We have assembled our best speakers to guide you through ongoing matters of concern to Texas employers and to answer any questions you have regarding your business.

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 Appeal Process, and Texas and Federal Wage and Hour Laws.

The registration fee is \$99 and is non-refundable. Continuing Education Credit (six hours) is available for CPAs. General Professional Credit is also available.

Upcoming 2014 Texas Business Conferences

Odessa Sept. 5, 2014

Nacogdoches Sept. 12, 2014

Fort Worth Sept. 24, 2014

Upcoming 2015 Texas Business Conferences

South Padre Jan. 15-16, 2015*

Marble Falls Feb. 6, 2015*

Beaumont Feb. 27, 2015*

Tyler March 27, 2015*

** These dates are tentative.*

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

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