

# Texas Business Today

Joe Esparza  
Commissioner Representing Employers

September 2025

Texas Employers,

Welcome to the September issue of *Texas Business Today*!

The Texas labor market is large and dynamic, with a diverse set of industries spanning the state. With over 660,000 employers and a July job count of just over 14.3 million positions, employers and educators must work together to ensure Texas remains a national leader in career training and industry-driven education.

Incredibly, job ads for middle-skill occupations, which require more education than a high school diploma but less than a four-year degree, represented 44 percent of all live postings in July.

As employers expand or relocate their business in Texas, they want to know their future workforce is trained and ready to support their growth. The big question these businesses are asking is, where is our workforce? My message to employers is this: connect with schools that value work-based learning.

I've been very excited recently to award several Jobs and Education for Texans grants to help schools buy equipment for career and technical education programs. I commend their efforts to pursue these grants and secure industry-aligned equipment. For students, it's a vote of confidence to train on the equipment they will see in the field.

I encourage community colleges and school districts across the state to reach out

to TWC about grant opportunities. Employers, pay attention to these schools – they're the best source for your skilled talent pipeline.

- Joe Esparza, Commissioner Representing Employers



A stylized, handwritten signature of Joe Esparza in black ink.

**Joe Esparza**  
**Commissioner Representing Employers**  
**Texas Workforce Commission**

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## **Texas Business Minute**



[Click here to watch the video](#)

# TEXAS STATE INTERNSHIP CONFERENCE

INTERNSHIPS ARE BIGGER IN TEXAS.

Join us for the Fall 2025 Texas State University **Internship Conference** to connect with students, share your expertise, and discover how to build impactful internship programs.



## EVENT INFORMATION

- 📅 FRIDAY, SEPTEMBER 12
- 🕒 9:00 AM - 2:00 PM
- 📍 LBJ STUDENT CENTER

REGISTER HERE:



<https://forms.office.com/r/UKnXG6zZve?origin=prlink>

**FREE TO ATTEND. BREAKFAST & LUNCH INCLUDED.  
REGISTRATION REQUIRED.**



QUESTIONS? CONTACT US: 512.245.2645 | [internships@txstate.edu](mailto:internships@txstate.edu)



## **Unemployment Claims: Strategies to Combat the “Inability” Argument**

**By: Jikku John**

*Legal Counsel to Commissioner Joe Esparza*

Among the most difficult unemployment insurance cases for an employer to win is one involving a discharge for poor performance, or inability to perform to the employer’s performance expectations. This article provides the basic tools that employers can utilize in unemployment cases involving inability.

### **What constitutes inability in the unemployment context?**

Generally, the employer must show misconduct connected with the work in the case of a discharge to prevail on an unemployment claim. Misconduct under the law is basically something that the claimant did or failed to do that 1) caused a problem for the company, 2) was in violation of a rule, policy, or a law, and 3) was within the claimant’s power to control or avoid.

See. [https://efte.twc.texas.gov/ui\\_law\\_qualification\\_issues.html#dq-mc](https://efte.twc.texas.gov/ui_law_qualification_issues.html#dq-mc). Cases involving inability generally fall under the third prong, in that a claimant cannot be penalized if they were never able to meet the employer’s performance standards. TWC Commission precedent has held that “where a claimant has performed her work to the best of her ability, her inability to meet the employer’s standards or inability to perform the work to the employer’s satisfaction does not constitute misconduct connected with the work.” (Appeals Policy and Precedent Manual, Appeal No. 1456-CA-77). [Unemployment Benefits - Appeals Policy & Precedent Manual- Texas Workforce Commission](#).

### **How to counter an argument involving inability?**

To successfully counter a claim that an employee was unable to perform their job, employers must demonstrate that the employee was previously capable and subsequently experienced a decline in performance. This can be achieved by presenting evidence such as positive performance reviews, salary increases, promotions, and supervisor observations that illustrate the employee's past ability to perform the job satisfactorily. Crucially, the employer must also show that the

employee's performance later fell below this demonstrated capability by providing specific examples like neglecting quality checks, disregarding instructions, or exhibiting excessive absenteeism. The employer needs to establish that job standards remained consistent and within the employee's demonstrated abilities and that any changes to job duties or supervisors were not significant enough to negatively impact performance.

### **What about a claimant's failure to perform nominal work tasks?**

Another situation involving inability arises when the work is so simple that anyone should be able to perform the job. This argument arises from a longstanding Commission precedent where the claimant, a cafeteria dishwasher, alleged inability after the employer



repeatedly found food particles and mildew on pots and pans after the claimant washed them and returned them to the storage rack. The Commission held that “[w]here the work is not complex, an employee’s failure to pay reasonable attention to simple tasks is misconduct.” (Appeals Policy and Precedent Manual, Appeal No. 96-003785-10-031997). [Unemployment Benefits - Appeals Policy & Precedent Manual- Texas Workforce Commission](#). This argument is less effective with more complex jobs. However, employers can strengthen their position by focusing on specific, straightforward sub-tasks within a more complex role. For instance, simply citing "poor performance" for a salesperson who fails to generate clients is insufficient. However, if the employer can demonstrate that a specific requirement, such as making a certain number of daily calls, was consistently neglected despite warnings, the employer has a much better chance of overcoming the argument of inability.

### **Strategies if the claimant was not a good fit?**

Finally, in situations where it becomes clear early on that an employee is not a good fit, the employer should consider whether it would be in the best interest of the company to sever the employment relationship early, as compared to keeping the employee on, knowing they will not be a good fit. By firing early, the employer limits



the taxable wages paid to the employee and possibly limits a large chargeback resulting from an unemployment claim.

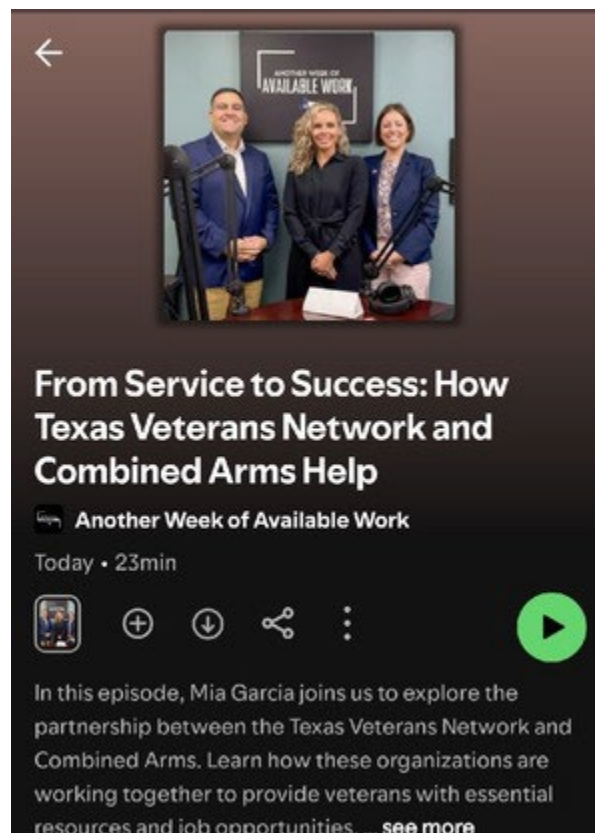
### **Conclusion**

Although inability cases can be difficult to overcome, through asserting an appropriate defense, or effectively managing the job separation, the employer can limit or eliminate the negative consequences arising from a claim of inability.

For questions about this issue, or any other employment-related matters, employers can call our employer hotline at 1-800-832-9394 or email us at: [employerinfo@twc.texas.gov](mailto:employerinfo@twc.texas.gov).

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### **Another Week of Available Work: A Podcast with Commissioner Joe Esparza**



[Click here to listen on Spotify](#)

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# Help Fight Fraud

*A Quick Response to UI Claims Protects Your Business*

When an individual files an unemployment insurance (UI) claim, the Texas Workforce Commission (TWC) notifies the employer. We need you to respond to these notices quickly to help us prevent fraud. This protects your business.

## Response Time Matters



You have 14 days to respond to a UI claim notice, but responding within 48 hours helps us catch fraud fast.

Follow the instructions on the UI claim notice with four ways to respond:

- Online
- Phone
- Mail
- Fax

## Step 1: Respond to the UI Claim



Online



Phone



Mail



Fax

## Protect Your Business



- Save money; avoid unwarranted charges.
- Ensure accurate UI benefit information for decisions.
- Don't miss the 14-day deadline or you may lose the right to appeal the claim decision.

## Step 2: Report Fraud

If the applicant is still working for you and did not file, or never worked for you, notify at [UI Fraud Submission](#). Then respond to the claim at [Employer Response](#).



## Resources

- For more information, visit [Employer Notices](#).
- Sign up to receive notices at [Employer Benefit Services](#).

Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 800-735-2989 (TTY) and 711 (Voice). [twc.texas.gov](http://twc.texas.gov)

# TEXAS EMPLOYER HOTLINE

## 1-800-832-9394

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



**Employer Hotline Hours: M-F, 8am-5pm**

*Information provided by employment law attorneys in the Office of the  
Commissioner Representing Employers at the  
Texas Workforce Commission*

### **Texas Business Today is provided to employers free of charge**

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

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