



TEXAS

QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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At-Will Employment

In Texas, the employer/employee relationship is governed by the at-will employment doctrine meaning either party may terminate the relationship at any time, with or without cause, and with or without notice. However, the at-will employment doctrine may be narrowed and restricted if an employee is terminated for their refusal to perform an act that would violate a criminal statute and for which there is a criminal penalty. Further, absent a disclaimer to the contrary, the terms and conditions of an employer's Employment Manual or Handbook may also narrow and restrict the employment-at-will doctrine. *Goodyear Tire and Rubber Co. v. Portilla*, 879 S.W.2d 47 (Tex. 1994).

There are a few narrow exceptions to the employment-at-will doctrine. First, there is an exception when an employee is terminated for the "sole reason that the employee refused to perform an illegal act." *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W.2d 733, 735 (Tex. 1985). There is also an exception for "an employee who demonstrates that the principal reason for discharge was the employer's desire to avoid contributing or paying benefits under the employer's pension fund." *Winters v. Houston Chron. Pub. Co.*, 795 S.W.2d 723, 724 (Tex. 1990). Finally, "an employer cannot retaliate against an employee for reporting violations of the Commission on Human Rights Act." *Id.*

Immigration Verification

Texas places no additional employment verification procedures on private employers beyond Federal I-9 compliance. 40 Tex. Admin. Code § 41.231. There is a requirement to use E-Verify for public employers such as state agencies and institutions of higher education under Texas state laws. 40 Tex. Admin. Code § 843.3.

Drug Testing

The State of Texas does not prohibit the drug testing of employees and has not codified any specific laws addressing such testing. Texas courts have upheld employer-mandated drug testing, including the use of random testing; therefore, employers are not expressly prohibited from discharging at-will employees who test positive on random drug tests. *Jennings v. Minco Tech Labs, Inc.*, 765 S.W.2d 497, 502 (Tex. App.—Austin 1989, writ denied). Under Texas law, employers do not have a legal duty to evaluate an employee's explanation for a positive drug test result, and thus could not be held negligent for failing to investigate an employee's explanation of a positive test. *Quintanilla v. K-Bin, Inc.*, 993 F. Supp. 560 (S.D. Tex. 1998). However, employers should approach drug testing cautiously because it can present substantial hurdles. The Texas Workforce Commission has answered some common questions about workplace drug testing here.

Paid Leave

Jury Duty Leave

It is unlawful for an employer to terminate or take any adverse action against a permanent employee because the employee is on jury duty, including persuading or attempting to persuade a juror to avoid jury service, intimidating, threatening in that respect, or otherwise subjecting an employee to adverse employment action as a result of jury service. (Tex. Civ. Prac. & Rem. Code § 122.001(a)). The State of Texas does not require paid leave for jury duty for private employees. An employee who is injured because of a violation of this chapter is entitled to reinstatement, reasonable attorney's fees, and damages in an amount not less than one year's compensation nor more than an amount equal to five year's compensation at the rate at which the employee was compensated at the time of jury service. (Tex. Civ. Prac. & Rem. Code § 122.002(a), (b)).

School districts also may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against a school district employee because the employee complies with a summons to appear as a juror. (Tex. Educ. Code § 22.006(a)). For each regularly scheduled workday on which a non-salaried employee serves in any phase of jury service, a school district shall pay the employee the employee's normal daily compensation. (*Id.* at (b)). An employee's accumulated personal leave may not be reduced because of the employee's service in compliance with a summons to appear as a juror. (*Id.* at (c)).

Similarly, an employer may not discharge, discipline, or penalize an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. (Tex. Labor Code § 52.051(a)). If the court issued the subpoena that the employer interfered with, then that court may hold the employer in contempt. (*Id.* at (b)).

If a legislative committee or state agency issued the subpoena that the employer interfered with, then that committee or state agency may impose a penalty of up to \$500 on the employer. (*Id.* at (c)). A discharged employee is entitled to reinstatement upon providing the employer notice of the employee's intent to return. (*Id.* at (d)). Any injured employee may recover damages and reasonable attorney's fees. (*Id.* § at (e)).

Voting Leave

The State of Texas requires employers to allow employees to take paid time off for voting on election days unless the employee has at least two consecutive hours to vote outside of the employee's working hours. (Tex. Elec. Code § 276.004). Employers may not subject or threaten to subject an employee to the loss or reduction of wages or another benefit of employment in retaliation for exercising their right to vote. (*Id.* §§ 276.001, 276.004).

Military Leave

Public employees who are members of the Texas military forces, a reserve component of the armed forces, or members of a state or federally-authorized urban search and rescue team, are entitled to a paid leave of absence from their duties on a day on which the person is engaged in training or on duty as ordered or authorized by a proper authority, not to exceed 15 workdays in one fiscal year. Employees subject to this provision may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. (Tex. Gov't Code Ann. § 437.202(a)). Employees covered by this section who are called to state active duty by the governor or another appropriate authority in response to a disaster are entitled to a paid leave of absence if called to active duty during the disaster, not to exceed seven workdays in a fiscal year. (*Id.* at (a-1)).

Private employers with 15 or more employees during each working day in each of 20 or more calendar weeks in the current or preceding year are required to provide unpaid military leave to eligible employees. (Tex. Gov't Code Ann. § 437.204; Tex. Labor Code Ann. § 21.002).

Parental Leave

The State of Texas does not require an employer to offer employees parental leave and does not have a state law equivalent to the FMLA.

State employees who have been employed for fewer than 12 months or who worked fewer than 1,250 hours during the 12-month period preceding the beginning of leave are eligible to take an unpaid parental leave of absence not to exceed 12 weeks. The employee must first use all available paid vacation and sick time while taking the leave, and the remainder of the leave is unpaid. This authorized leave begins on the date of the birth of a natural child of the employee or the adoption by or foster care placement with the employee of a child younger than three years of age. (Tex. Gov't Code § 661.913).

Other Leave

The State of Texas does not require employers to offer employees paid vacation or sick leave, but employers may be required to provide employees with vacation pay pursuant to established policy or agreement between employer and employee. Tex. Labor Code Ann. §§ 61.001(7), 61.019.

However, certain cities – such as Austin, Dallas, and San Antonio – have local ordinances enjoined by court orders that mandate paid or earned sick time; employers should check local laws concerning sick leave.

Smoking Laws

The State of Texas does not specifically regulate smoking in the workplace. Notably, however, the State of Texas has criminalized smoking in certain locations, including enclosed movie theaters and public schools. Tex. Pen. Code § 48.01. In addition, certain cities have ordinances banning smoking in certain areas, including public workplaces, restaurants, and bars. Employers should check local laws concerning smoking.

Break Time to Express Milk/Breastfeeding

The State of Texas allows a mother to breastfeed her baby in any location in which the mother is authorized to be. (Tex. Health & Safety Code § 165.002). Public employers must develop a written policy on the expression of breast milk by employees that shall support the practice of expressing milk and make reasonable accommodations for the needs of employees who express milk. Tex. Gov't Code § 619.003.

Further, if a business develops a policy supporting the practice of worksite breastfeeding, then the business may use the designation “mother-friendly” in its promotional materials. The policy must address: (1) work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk; (2) the provision of accessible locations allowing privacy; (3) access nearby to a clean, safe water source and a sink for washing hands and rinsing out any needed breast-pumping equipment; and (4) access to hygienic storage alternatives in the workplace for breast milk storage. Tex. Health & Safety Code § 165.003.

Meal Breaks

The State of Texas does not require mandatory meal breaks or rest periods. Individual cities in Texas, however, may have ordinances requiring breaks during the workday.

Minimum Wage

Subject to certain exceptions, the Texas Minimum Wage Act (Tex. Labor Code § 62.001, *et seq.*) mandates a minimum wage equivalent to the minimum wage set by federal law. For purposes of compliance with the Fair Labor Standards Act (FLSA), the minimum wage is not less than \$7.25 per hour. However, President Biden issued an Executive Order that dictates the minimum wage for workers who are working on federal contracts. As of January 1, 2023, the minimum wage for workers working on covered contracts is \$16.20 per hour, and the minimum wage for tipped workers on covered contracts is \$13.75 per hour. (Department of Labor Final Rule).

Texas law contains special minimum wage restrictions for certain employees, such as service employees who receive tips. Tex. Lab. Code § 62.052.

An employee who is not paid wages as prescribed by this chapter may file a wage claim with the Texas Workforce Commission no later than 180 days after the date the wages became due as payment. *Id.* § 61.051.

Overtime pay standards in Texas follow those set forth in the FLSA. Generally, if an employee works more than 40 hours, they must be compensated at a rate no less than one and one-half times the regular rate of pay at which they are employed. Tex. Gov't Code § 659.015.

Wage Payments

Employers must pay wages to exempt employees at least once a month and non-exempt employees at least twice a month. If wages are paid twice a month, each pay period must consist as nearly as possible of an equal number of days. Tex. Labor Code Ann. § 61.011. At the end of each pay period, an employer shall give each employee a written earnings statement covering the pay period that must be signed by the employer and must show: (1) the employee's name; (2) rate of pay; (3) total amount of pay earned by the employee during the pay period; (4) any deduction made from the employee's pay and the purpose of the deduction; (5) amount of pay after all deductions are made; and (6) total number of hours worked if the employee is paid by the hour or units produced if the employee's pay is computed on a piece rate. This information may be stated on a check voucher or bank draft. Tex. Lab Code § 62.003.

Employers must designate set paydays and conspicuously post notices indicating the same; if they fail to do so, paydays will be the 1st and 15th of each month. Tex. Lab Code § 61.012.

When an employee must receive their final payment is determined by the circumstances under which the employee's employment ended. If an employee is discharged or otherwise involuntarily separated, their final payment must be made within six calendar days of discharge. (Tex. Labor Code 61.014(a)). If the employee quits or otherwise leaves voluntarily, their final payment must be made on the next regularly scheduled payday following the effective date of separation. (*Id.* § 61.014(b)).

Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. The Texas Unemployment Compensation Act is found at Title 4A of the Texas Labor Code. Unemployment benefits are administered by the Texas Workforce Commission and additional information regarding the benefits may be accessed at www.twc.state.tx.us.

The Texas Supreme Court has held that a person may simultaneously receive leave and other benefits under the Family and Medical Leave Act and unemployment benefits under the Texas Labor Code. *Texas Workforce Comm'n v. Wichita Cnty.*, 548 S.W.3d 489, 491 (Tex. 2018).

Workers' Compensation

Workers' compensation insurance is not required for most private employers in Texas. If obtained, the coverage is controlled by and subject to the Texas Workers' Compensation Act (the Act), which is found at Title 5A https://www.lawserver.com/law/state/texas/tx-codes/texas_codes_labor_code_title_5_subtitle_a, of the Texas Labor Code. Tex. Labor Code § 401.001, *et seq.* governs the Workers' Health and Safety, and § 406.001, *et seq.* governs Workers' Compensation Insurance Coverage.

Employees who suffer injuries and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits under the Act. Under the Act, a workplace injury must be immediately reported to the employer; failing to promptly report an injury may result in a denial of benefits. Also, it is unlawful to discriminate against an employee because they have filed a workers' compensation claim or testified in a proceeding under the Act. (Tex. Labor Code § 451.001)

The Act is administered by the Division of Workers Health & Safety of the Texas Workers' Compensation Commission; additional information regarding the Act may be accessed at www.tdi.texas.gov/wc/dwc.

Child Labor/Minimum Age

Subject to certain exceptions, the minimum age for employment in Texas is 14. Tex. Labor Code § 51.011. A child who is 14 or 15 years old may not work more than eight hours in one day or 48 hours in one week. *Id.* § 51.013. There are also certain hour restrictions for children who attend public or private school, including summer school. *Id.* § 51.013(b). Some limitations apply based on the employer's operations.

The exceptions are regulated by the Texas Workforce Commission, which is authorized to, during working hours, inspect a place where there is good reason to believe that a child is employed or has been employed within the last two years, and collect information concerning the employment of a child who works or has worked at that place. Tex. Labor Code. § 51.021. The Commission may require reports, conduct investigations, and take other actions it considers necessary to implement this chapter. *Id.* § 51.024(a).

Gun Laws

A public or private employer may not prohibit an employee who holds a license to carry a handgun, otherwise lawfully possesses a firearm, or lawfully possesses ammunition, from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees. Tex. Labor Code §

52.061. This does not apply to: (1) areas where carrying or otherwise possessing a firearm or ammunition is prohibited by state or federal law; (2) a vehicle owned or leased by a public or private employer and used by the employee in the course and scope of the employee's employment (unless required to do so in the official discharge of the employee's duties); (3) a school district, charter school, or private school; (4) property owned or controlled by a person other than the employer subject to a valid, unexpired oil, gas, or other mineral leases that contain a provision prohibiting the possession of firearms on the property; and (5) property owned or leased by a chemical manufacturer or an oil or gas refiner. Tex. Labor Code § 52.062(a).

An employer may also prohibit an employee from such carrying or possession "on the premises of the employer's business" as defined by Tex. Pen. Code § 46.03(c) of the penal code as a building or portion of a building, **not to include** any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. (Tex. Labor Code § 52.062(b)). Absent gross negligence, a private or public employer is immune from civil liability for personal injury, death, property damage, or any other damages resulting or arising out of an occurrence involving a firearm or ammunition that the employer is required to allow on the employer's property under this subchapter. (Tex. Labor Code § 52.063(a)). Furthermore, the presence of a firearm or ammunition on the employer's property does not, in and of itself, constitute a failure by the employer to provide a safe workplace.

Additional Laws & Regulations

Texas Commission on Human Rights Act

The Act, which may be found at Tex. Labor Code § 21.001, *et seq.*, prohibits workplace discrimination because of race, color, disability, religion, sex (including pregnancy or a related medical condition), national origin, age, and genetic information. The Act also prohibits retaliation against an individual who engages in protected activity under the Act. The Texas Workforce Commission's Civil Rights Division regulates and enforces the Act, much like the Equal Employment Opportunity Commission regulates and enforces federal discrimination laws. Further information regarding the Texas Workforce Commission's Civil Rights Division may be accessed at www.twc.state.tx.us/customers/jsemp/employee-rights-laws.html.

Voluntary Veteran's Preference Employment Policy

A private employer may adopt a policy that gives preferences in employment decisions regarding hiring, promotion, or retention to a veteran over another qualified applicant or employee. The policy must be in writing and must be applied reasonably and in good faith in all aspects of hiring, promotion, or retention. The employer may require appropriate documentation from a veteran for them to be eligible for the preference. Granting a preference does not violate Chapter 21, which is the Texas Commission on Human Rights Act. Tex. Labor Code §§ 23.001-23.003.

Retail Employer

A retail employer may not require an employee to work seven consecutive days in a business that sells merchandise at retail. Tex. Labor Code § 52.001(a). The employer may not deny an employee at least one period of 24 consecutive hours of time off for rest or worship in each seven-day period. *Id.* § 52.001(b). This time off is in addition to regular periods of rest allowed during each day worked.

The employer "shall accommodate the religious beliefs and practices of an employee unless the employer can demonstrate that to do so would constitute an undue hardship on the conduct of the employer's business." (*Id.* § 52.001(c)). The employer "may not require an employee to work" during a time the employee requests to be off to attend one regular worship service a week. *Id.*

Disclosure of Employee Information and Blacklisting

An employer cannot blacklist or cause an employee to be blacklisted or conspire to prevent an employee from procuring employment. (Tex. Labor Code § 52.031). "Blacklist" means to place in a book or list, or publish the name of an employee of an individual, firm, company, or corporation who was discharged or who voluntarily left employment, intending to prevent the employee from engaging in or securing employment of any kind with any other person, in either a public or private capacity." *Id.*

A corporation may, however, provide a written, truthful statement of the reason for discharge. *Id.* § 52.031(d). The statement may not be used as a cause of action for a civil or criminal action for libel against the person who furnishes the statement. *Id.* Similarly, it is the intent of the legislature that an employer who makes a disclosure based on information obtained by that employer, that any employer would reasonably believe to be true, should be immune from civil liability for that disclosure. (Tex. Labor Code § 103.001). Therefore, an employer may disclose information about a current or former employee at the request of the employee or the prospective employer. *Id.* § 103.003(a). An employer may not disclose information about a licensed nurse or licensed vocational nurse that relates to conduct protected by Section 301. *Id.* §103.003(b).

Medical Marijuana

Texas law authorizes the use of medical marijuana; however, smoking is not a permissible medical use. Tex. Health & Safety §§ 487.001-487.201; 37 Tex. Admin. Code §§ 12.1-12.61; Tex. Occ. Code Ann. § 169.001(4).

Texas employers are not required to accommodate onsite medical marijuana use and may establish drug-free work policies. Employers can adopt a policy prohibiting the employment of an individual who currently uses or possesses a controlled substance, including marijuana, other than the use or possession of a drug taken under the supervision of a licensed health care professional or any other use or possession authorized by the Controlled Substances Act or any other federal or state law. Tex. Labor Code § 21.120.

Polygraph Testing

Federal law significantly limits the use of polygraph testing by employers. Although there is an exception for polygraph testing involving peace officers, there is no state statutory limit on polygraph testing. Tex. Gov't Code § 614.063. Notwithstanding the exceptions, a peace officer may not be suspended, discharged, or subjected to any other form of employment discrimination by the organization employing or appointing the peace officer because the peace officer refuses to submit to a polygraph examination. Tex. Gov't Code § 614.063(a).

CROWN Act

The Creating a Respectful and Open World for Natural Hair Act (CROWN Act) prohibits an employer, labor union, or employment agency from adopting or enforcing a dress or grooming policy that discriminates against a hair texture or protective hairstyle commonly or historically associated with race. The CROWN Act further amends the Labor Code by defining "discrimination because of race or on the basis of race" to include discrimination because of or on the basis of an employee's hair texture or protective hairstyle commonly or historically associated with race. For the purposes of the CROWN Act, a "protective hairstyle" includes braids, locks, and twists.

Emergency Evacuation Employment Discrimination

Texas law prohibits all employers from discharging or discriminating against an employee who leaves work to participate in a general public evacuation ordered under an emergency evacuation order. (Tex. Labor Code § 22.002). This law covers all employees except emergency services personnel (if the employer provides them with adequate emergency shelter) and any person necessary to provide for the safety and well-being of the general public (including any person needed to restore vital services). (Tex. Labor Code § 22.004).

Discriminatory Leave Policy Regarding Foster Children

Texas law provides that if an employer provides leave for an employee to care for or otherwise assist with the employee's sick biological or adopted child, the employer must provide leave on the same terms for any foster child who resides in the same household as the employee and is under the conservatorship of the Department of Family and Protective Services. (Tex. Labor Code § 21.0595).