Texas Young Lawyers Association

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Employers Guide to General Employment Law

Employment Law Basics for New Employers

The Texas Young Lawyers Association

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1. Introduction

Every employer should be familiar with employment law. If an employer does not comply with state and federal employment requirements, it risks civil or criminal liability. But the myriad state and federal statutes relating to the hiring, termination, and compensation of employees can be difficult for a new or first-time employer to identify and understand. This handbook is meant to provide a brief overview of the overlapping state and federal requirements so that new or first-time Texas employers can avoid employment disputes with their employees.

This handbook is intended to provide general guidance only and is current as of April 2011. Laws frequently change and this guide is not a substitute for the advice of a lawyer. The Texas Young Lawyers Association hopes, however, that by providing Texas small businesses with a better understanding of their legal rights and remedies, this handbook will help prevent many legal problems from ever arising.

2. Hiring your first employees

2.1 Impermissible bases for making hiring decisions

2.1.1 Title VII

The main federal statute prohibiting job discrimination is Title VII of the Civil Rights Act of 1964. The Equal Employment Opportunity Commission, or EEOC, is the federal agency that enforces Title VII. Title VII prohibits employers from discrimination by setting or changing a person's compensation, terms, conditions, or privileges of employment, based upon that person's race, color, religion, sex, or nationalorigin. Therefore, under Title VII, employers cannot use any of these factors in determining whether to hire (or, for that matter, discipline or terminate) a certain applicant/employee.

The EEOC takes the position that, while there is no Federal law that clearly prohibits an employer from asking about arrest and conviction records, using arrest records as a "screening device" to automatically exclude an applicant because of an arrest is generally a violation of Title VII because this excludes a disproportionate number of minorities from the hiring process. Thus, absent a business justification, an employer may unlawfully discriminate against minority group persons as a class when it uses arrest record information as an absolute measure to prevent a person from being hired. Asking about arrests may be *lawful* if the employer.

- Asks for a legitimate business purpose;
- Uses an applicant's arrest record only as a basis for additional inquiry; and

- Bases any adverse employment decision not just on the arrest record, but on other legitimate, nondiscriminatory reasons discovered after that additional inquiry.

A record of conviction record is different than an arrest record—a person who has been arrested is presumed innocent, but a person with a conviction is not. An employer generally can use an applicant's conviction record if there is a link between the job requirements and a criminal history. Indeed, for certain jobs, an employer who doesn't ask about applicants' arrests or convictions may be liable to other people for negligent hiring or other employment-related claims, so it is critical for an employer to decide whether to ask about arrests or convictions on a job-by-job basis. As with arrest records, an employer should not automatically exclude an applicant because of a conviction without a legitimate business reason: A conviction can be used as a basis for further inquiry, but not as a screening device. A ban on hiring convicted criminals that has a disproportionate effect on minorities must be justified by business necessity.

In addition, the Fair Credit Reporting Act ("FCRA") prohibits employers from requesting credit reports without an applicant's or employee's prior authorization. An employer that relies on credit references in making hiring decisions may run afoul of Title VII if a person's credit-worthiness is not related to the job or necessary to the business.

2.1.2 Americans with Disabilities Act

The Americans with Disabilities Act ("ADA") makes it unlawful for an employer to:

1. limit, segregate, or classify an applicant or employee in a way that adversely affects that person's opportunities or status because of the person's disability;
2 fail to make reasonable accommodations for an otherwise-qualified person's known physical or mental impairments;
3. deny employment opportunities because of a person's need for reasonable accommodation; or
4. use qualification standards, employment tests, or other selection criteria that tend to screen out individuals with disabilities, or fail to use employment tests in a manner that ensures accurate measurements of what the tests purport to measure.

Under the recent Americans with Disabilities Amendments Act ("ADAAA"), there are three ways to bring a disability claim, under an "actual" disability, "record of" disability, or "perceived " disablity. The ADAAA revised the definition of "disability"

to make it broader, easing the burden on employees to prove these types of claims. (See section 4.1.7 for more details).

2.1.3 Age Discrimination in Employment Act

The Age Discrimination in Employment Act ("ADEA") prohibits arbitrary age discrimination against persons 40 years of age and older. The ADEA makes it unlawful for an employer to refuse to hire a person because of that person's age. The ADEA also prohibits employment agencies from referring, failing to refer, or refusing to refer a person for employment; discriminating against a person; or classifying a person on the basis of the person's age.

2.1.4 Genetic Information

The Genetic Information Nondiscrimination Act ("GINA") prohibits employment discrimination based on genetic information.

2.1.5 Texas Commission on Human Rights Act

The Texas Commission on Human Rights Act ("TCHRA") makes most violations of federal employment-discrimination laws also violations of state law.

2.2 Permissible application and interview questions

According to the EEOC, pre-employment questions that express, directly or indirectly, a limitation, specification, or discrimination as to race, color, sex, ethnicity, national origin, religion, age, disability and genetic information are unlawful unless they are based on a legitimate qualification for a job. An employer can ask an applicant such questions as long as the inquiry is made in good faith and for a nondiscriminatory purpose. For example, an employer may ask the applicant to choose from among the titles Mr., Mrs., or Ms.

Under the ADA, an employer can ask only about an applicant's ability to perform specific job duties. An employer may not request an employee's medical records. As long as the applicant can do the job, either with or without a reasonable accommodation, an employer cannot make a hiring decision based on an applicant's disability.

2.3 Negligent hiring and negligent retention

An employer has a duty to use reasonable care in selecting and retaining employees. This duty requires employers to hire and retain only safe and competent employees. An employer breaches this duty when it hires or retains employees that it knows, or should know, are incompetent. This duty belongs to the employer and doesn't depend on an employee's negligence or intentional acts. While an employer is generally liable

when an employee injures someone during the course and scope of the employee's job (see Section 6 below), an employer who negligently hires or retains an employee may be liable even when the employee acts outside his job duties, such as by assaulting or stealing from a customer.

2.4 I-9 (work eligibility requirements)

The Immigration Reform and Control Act made all U.S. employers responsible for verifying the employment eligibility and identity of all employees hired to work in the United States. Employers must complete Employment Eligibility Verification forms (Form I-9) for all employees, including U.S. citizens. Every U.S. employer must have a Form I-9 in its files for each new employee, unless the employee was hired before November 7, 1986, and has been continuously employed by the same employer. Employers do not have to complete Forms I-9 for those people who:

- Provide domestic services in a private household, if those services are provided only sporadically, irregularly, or intermittently;

- Provide services as an independent contractor, such as someone carrying out his own business; or

- Providing services for the employer under a contract, subcontract, or exchange entered into after November 6, 1986. In those cases, the contractor (for example, a temporary employment agency) is the employer for I-9 purposes.

Note that it is mandatory for certain employers, such as federal contractors and subcontractors, to use E-verify to ensure their employee's eligibility to legally work in the U.S.

2.5 New-employee reporting requirements

Texas employers must report all newly hired and rehired employees within 20 calendar days of hiring. This is a requirement of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Texas State Directory of New Hires Act. An employer can comply with this requirement by making new-hire reports electronically (online or with magnetic media), at least twice each month, all reports being within 12 to 16 calendar days of each other. The report is made to the Texas Employer New Hire Reporting Operations Center, accessible online at https://portal.cs.oag.state.tx.us/wps/portal/tx/. The Center's toll-free number is 1-800-850-6442. For more information on new hire reporting, visit the TWC website: www.twc.state.tx.us/ui/tax/newhire.html.

3. Hours and Pay

3.1 Fair Labor Standards Act

The Fair Labor Standards Act ("FLSA") establishes minimum wage, overtime pay, record keeping, and child-labor standards.

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3.1.1 Minimum Wage

Beginning on July 24, 2009, the minimum wage under federal law is $7.25 per hour. The minimum wage in Texas is equal to the federal minimum wage.

While it may be simple to determine whether an hourly employee's wage meets the minimum wage, employers may have problems with the FLSA when employees are not paid on a per-hour basis. For example, employees on salary must still be paid at least the minimum wage for all hours worked. To determine whether an employee's salary meets the minimum-wage requirements, the salary is divided by the total number of hours worked in that pay period. If the calculated hourly rate is lower than the minimum wage, the employer must then pay that employee the minimum wage for each hour worked. If the employee is "non-exempt" (see following sections), then the employee must also be paid overtime for any time worked over 40 hours.

3.1.2 Minimum Wage Exemptions

Some employees are exempt from the minimum wage. Employers may be liable for breaking the minimum-wage law if they classify employees as exempt when the employees do not qualify for an exemption. If an employee is misclassified as exempt and works overtime hours, an employer may not face not only liability for unpaid overtime wages; it may also be liable for attorneys' fees and penalties for violating the minimum wage law if the employee's actual hourly rate ends up less than the minimum wage.

3.1.3 Opportunity Wage

One exception to the minimum wage is an "opportunity" wage, which applies to employees younger than 20 years old age during the employees' first 90 consecutive calendar days of employment. The opportunity or "training" wage must be at least $4.25 per hour. In addition, an employer may not fire or reduce the hours of an older employee to make room for the opportunity-wage employee.

3.1.4 Tipped Employees

Employees who receive at least $30.00 per month in tips may be paid a basic hourly wage of no less than $2.13 per hour. If the hourly wage plus tips does not equal or

exceed the minimum wage, the employer must pay the employee the difference. The employer must inform the employee of this fact before the employee starts working. Employers can also violate the minimum-wage law for tipped employees by taking illegal deductions (i.e. for breakages, customer walk-outs, cash register shortages, and illegal tip pools).

3.1.5 Special Employment Certificates

The Department of Labor can issue special certificates permitting employers to pay less than the minimum wage for certain occupations or to certain groups of employees. It issues these certificates to employers who employ:

- Full-time students: The FLSA authorizes special certificates for the sub-minimum wage employment of full-time students in retail or service establishments, agriculture, and institutions of higher education where those students are enrolled;

- Student-learners: A student-learner is someone who received instruction pursuant to a vocational training program at an accredited school, college, or university;

- Apprentices: An "apprentice" is a worker at least 16 years old who is employed to learn a skilled trade through a registered apprenticeship program;

- Learners: Learners are workers who are being trained for an occupation that is not customarily recognized as an apprenticeable trade and for which skill, dexterity and judgment must be learned and who, when initially employed, produces little or nothing of value;

- Handicapped workers: The FLSA authorizes sub-minimum wage certificates for individuals "whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury"; and

- Student-workers: Student workers are generally elementary and secondary school students employed by their schools in various school-related work, such as crosswalk or hall monitors.

3.1.6 Overtime

Employees who do not qualify for an exemption from overtime pay must receive one and one-half times their "regular hourly rate" for all hours worked in excess of 40 hours

in a work week. The regular hourly rate is the straight-time hourly rate at which an employee is paid. The work week is any seven consecutive days selected by the employer. However, the employer must specify in writing the work week used for overtime for purposes and may not change the work week in order to avoid paying overtime in a particular pay period. If an employee works 45 hours in a work week, the employer cannot avoid paying overtime by allowing the employee to work 35 hours the next week, even when on a bi-weekly pay schedule.

The exemptions apply to certain employees who meet definitions established by federal law for "administrative," "executive," and "professional" employees. Before you decide to treat an employee as exempt from overtime pay requirements, you should carefully check resources provided by the Department of Labor and by the Texas Workforce Commission for guidance. For more information on overtime pay requirements and exemptions, visit the overtime-pay section of the Department of Labor website (www.dol.gov/dol/topic/wages/overtimepay.htm) and the "Especially for Texas Employers" website (www.twc.state.tx.us/) and book published by the Texas Workforce Commission.

3.1.7 Fair Labor Standards Act Compliance Requirements

3.1.8 Required Records

Employers must maintain specific records to document compliance with the FLSA's wage requirements. For each employee, the employer must keep information on:

- The employee's personal identifying information:

  (i) full name and social security number;
  (ii) home address;
  (iii) date of birth, if an employee is younger than 19; and
  (iv) sex and occupation.

- Essential wage and hour information including:

  (i) time and day of week when employee's work week begins, hours worked each day and total hours worked each work week;
  (ii) basis on which employee's wages are paid;
  (iii) regular hourly pay rate;
  (iv) total daily or weekly-straight-time earnings;
  (v) total overtime earnings for the work week;

(vi) all additions to or deductions from the employee's wages;
(vii) total wages paid each pay period; and
(viii) date of payment and the pay period covered by the payment.

- Documentation demonstrating the applicability of exemptions, if any are claimed.

Employers may use any timekeeping method they choose.

3.1.9 Record Retention

Employers must preserve these records for at least three years:

- Payroll and other records containing employee information.
- Certificates, agreements, plans, notices, collective bargaining agreements, plans, trusts and employment contracts.
- Sales and purchase records, which are defined as the records reflecting the total dollar volume of sales or business and the total volume of goods purchased or received during such periods.

Employers must preserve these records for at least two years:

- Basic employment and earnings records.
- Wage rate tables.
- Order, shipping, and billing records, which includes all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as all bills of lading and all billings to customers.
- Records of additions to or deductions from wages paid to employees.

3.1.10 Where Records Are To Be Maintained

Employers may keep the required records at the place of employment or at an established central record-keeping office. Records kept in a central record-keeping office must be accessible and made available within 72 hours following notice from the wage and hour administrator.

3.1.11 Child Labor Provisions

Child labor is governed under both the FLSA and Texas law. The child's age and the nature of the job are the factors used to determine whether a child may be employed in a particular job. Under Texas law, children under age 14 generally may not be employed at any time except for a few specified exceptions, such as working for their parents in non-hazardous occupations, newspaper delivery, or working in performing arts. Children aged 14-15 can only work in non-hazardous occupations and are limited by the hours they can work per week.

Under Texas law, 14 and 15 year-olds are restricted as follows:

- no more than 8 hours in one day or more than 48 hours in one week.
- on a day that is followed by a school day, the child cannot work between the hours of 10:00 p.m. and 5:00 a.m.
- on days not followed by a school day, the child cannot work between the hours of midnight and 5:00 a.m.
- during the summer recess, the child cannot work between the hours of midnight and 5:00 a.m.

Federal law is more restrictive, limiting the employment of children age 14 and 15 as follows:

- during a non-school day, cannot work more than 8 hours.
- during a non-school week, cannot work more than 40 hours.
- no more than 3 hours on a school day and 18 hours in a school week.
- can only work between the hours of 7:00 a.m. and 7:00 p.m. during the school year, and between 7:00 a.m. and 9:00 p.m. from June 1 to Labor Day.

Minors who are 16 or 17 years old may be employed in a non-agricultural occupation that has not been designated hazardous.

Different rules apply for agricultural occupations. If you are considering hiring a minor to work in an agricultural occupation, you should check the U.S. Department of Labor website or consult a lawyer for guidance.

3.2 Texas Payday Law

The Texas Payday Law applies to all private employers in Texas. It requires employers to pay their employees timely and on a regularly scheduled payday. The Texas Payday Law defines wages as "compensation owed by an employer for: (A) labor or services rendered by an employee, . . . and (B) vacation pay, holiday pay, sick leave pay, parental leave pay, or severance pay owed to an employee under a written agreement with the employer or under a written policy of the employer."

3.2.1 Frequency and Methods of Pay

State and federal laws give employers a great deal of discretion in determining how to pay employees. Once a policy has been set, however, employers must take care to strictly adhere to their policy. The Texas Payday Law requires that employers post notices indicating the paydays in a prominent place in the workplace. The Texas Payday Law requires that employers pay all exempt employees on regularly scheduled paydays at least once a month. Non-exempt employees must be paid at least twice a month and each pay period must contain as nearly as possible an equal number of days. Exempt employees must be paid at least once per month.

3.2.2 Limitations on Wages Paid "In Kind"

An employer can pay an employee in a form other than U.S. currency Only if the employee agrees, in writing, to accept wages in that form. This includes "in kind" payments. An employer may use any agreed upon method of pay as long as the frequency of payments satisfies the conditions listed above.

3.2.3 Final/Severance Pay

If an employee is terminated, an employer must issue the employee's final check within six calendar days of discharge. However, if an employee voluntarily leaves employment, the final pay check is due on the next regularly scheduled payday after the employee's resignation.

Severance pay, which is categorized as a fringe benefit, is paid to an employee on termination based on calculations other than a specific time period. Employers often give severance pay to an employee as recognition for longtime employment. However, an employer has to pay severance only if it promised or otherwise obliged itself to do so.

3.2.4 Deductions From an Employee's Pay

There are limitations on what an employer may deduct from an employee's pay. An employer may not deduct from an employee's pay unless the employer: (1) is ordered

by a court to do so; (2) is authorized to do so by state or federal law; or (3) has written authorization from the employee to deduct part of the wages for a lawful purpose. In certain circumstances, employers violate the law if they take deductions that cause an employee's pay to fall below the minimum wage. Examples of improper deductions include the costs to cover safety equipment; the costs of tools; disciplinary deductions (rule violations, poor work performance, and tardiness); the costs to cover lost or damaged property; certain uniforms; and cash-register shortages that do not constitute theft or another type of misappropriation.

3.2.5 Deductions Allowed Without an Employee's Authorization

Employers do not need written authorization from an employee before taking any of the following deductions from an employee's wages: payroll taxes, including income tax and Federal Insurance Contributions Act ("FICA" or Social Security and Medicare) taxes; child support payments; spousal maintenance orders; bankruptcy garnishments; federal tax levies; and student-loan-wage attachments.

Employers may charge an administrative fee to an employee for some of these deductions. For example, employers may charge a small fee that is set by statute for withholding child support or student-loan-wage attachments. For more information on these fees, see the discussion of "Deductions for Administrative Fees" in the "Especially for Texas Employers" website (www.twc.state.tx.us) and book published by the Texas Workforce Commission.

3.2.6 Deductions Requiring an Employee's Authorization

Employers must receive written authorization from an employee before taking any of the following deductions from an employee's wages: meals, lodging, tips credits, voluntary wage assignments, loans and wage advances, vacation pay advances, uniforms and uniform cleaning costs (under certain circumstances), and cash shortages due to misappropriation.

3.2.7 The Wage Claims Process Before The Texas Workforce Commission

An employee may file a wage claim with the Texas Workforce Commission for violation of the Texas Payday Law. The deadline for an employee to file a wage claim is the 180th day after the date the employee claims the wages became due.

After an employee files a wage claim, the Commission issues a preliminary ruling. If the Commission preliminarily rules against the employee, then the employee may request a hearing to contest that ruling. If the employee doesn't request a contested

hearing, the Commission's preliminary ruling becomes final, and the employee may not seek judicial review of the Commission's decision. Additionally, if the Commission determines the employee brought the wage claim in bad faith, then the Commission may assess an administrative penalty against the employee.

3.2.8 The Texas Workforce Commission Rules Against Employee

If the Commission rules against the employee at a contested hearing, the employee may either request a rehearing or, not later than the 30th day after the Commission mails the final order, ask a court to review of the Commission's determination. In either case, employees must exhaust their administrative remedies before seeking review of a wage claim in court.

3.2.9 The Texas Workforce Commission Rules Against Employer

If the Commission preliminarily rules against the employer, then the Commission orders an employer to pay the unpaid wages or a penalty. If the Commission also determines that the employer denied the employee's wages in bad faith, then the Commission may assess an administrative penalty against the employer. If the Commission rules against the employer and the employer doesn't request a contested hearing, the employer will not be able to ask a court to review of the Commission's determination. If the employer doesn't request a contested hearing, it must pay the unpaid wages within 21 days of the Commission mailing the notice of the final order.

If the Commission rules against the employer at the contested hearing, then the employer may either request a rehearing or, not later than the 30th day after the Commission mails the final order, ask a court to review the Commission's determination. After the employer exhausts its administrative remedies, the employer may seek relief from the employee's wage claim in court. Before a court can review the Commission's final order, the employer must deposit the unpaid wages or penalties in an interest-bearing escrow account with the Commission.

3.2.10 Potential Criminal Penalties Against an Employer

The Texas Payday Law also provides criminal penalties when: (1) the employer, when it hired an employee, intended to avoid payment of wages owed to the employee; and (2) the employer does not pay those wages after a demand to do so. Additionally, Texas law creates criminal penalties when the employer: (1) intends to avoid payment of wages owed to an employee; (2) intends to continue to employ the employee; and (3) does not, after a demand, pay those wages. A violation under this section is a third-degree felony.

4. Treatment of Employees

As mentioned in section 2, several state and federal laws govern the hiring and treatment of employees. Most of these laws have been enacted to prevent workplace discrimination. In addition to these duties to prevent discrimination, employers have additional duties regarding work-related injuries, privacy rights, and safety.

4.1.1 Discrimination & Harassment

Both Texas and federal law prohibit employers from taking adverse actions against an employee based on a "protected" characteristic. Various federal laws define the unlawful reasons for taking or refusing to take an employment action. Some of these laws apply to all employers, while others apply only to employers with at least a particular number of employees. Please refer to **Appendix 1** for a partial list of federal and Texas laws that protect employees, the general scope of the law, and the corresponding number of employees required before the law applies.

4.1.2 Title VII & The Texas Commission on Human Rights Act

Title VII is the federal law with the broadest anti-discrimination scope. Title VII makes it unlawful for employers "to fail or refuse to hire or to discharge . . . any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin." Additionally, an employer may not "limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee" based on the employee belonging to a protected class.

The TCHRA, found in Chapter 21 of The Texas Labor Code, is modeled after Title VII and also addresses discrimination prohibited by the ADA and the ADEA. Accordingly, the TCHRA prohibits employment discrimination based on race, color, religion, sex, national origin, disability, and age. The next sections of this handbook highlight common discrimination and harassment claims causes of action. Discrimination and harassment causes of action may be complex, and an exhaustive discussion of each statute is beyond the scope of this handbook. These next sections therefore describe general issues involved in these claims: race discrimination and harassment, national origin discrimination, sexual discrimination and sexual harassment, religion discrimination, disability discrimination, age discrimination, family medical leave, and retaliation.

4.1.3 Race Discrimination & Harassment

It is illegal for employers to discriminate against an employee or applicant because of his race. Specifically, employers may not hire, fire, promote, compensate, train, or affect any other term or condition of an employee's employment because of race. Additionally, employees may challenge employment policies that unintentionally discriminate against a disproportionate percentage of employees because of their race.

Also, employers must not discriminate against an employee because the employee is involved in an inter-racial relationship. Racial harassment is also illegal. Racial jokes, ethnic slurs, and offensive or derogatory comments based on an employee's race are unlawful if they create a sufficiently hostile or intimidating work environment.

4.1.4 National Origin Discrimination

National-origin discrimination is similar to race discrimination. As with race discrimination, it is illegal for employers to hire, fire, promote, compensate, train, or affect any other term or condition of an employee's employment because of the employee's national origin. Federal law defines national-origin discrimination as "denial of equal employment opportunity because of an individual's, or his or her ancestor's, place of origin; or because an individual has a physical, cultural, or linguistic characteristic of a national origin group."

4.1.5 Sexual Discrimination & Sexual Harassment

Sexual discrimination occurs when employers hire, fire, or otherwise discriminate against an employee because of the employee's sex. Sexual discrimination also encompasses discrimination on the basis of pregnancy, childbirth, or a related medical condition. Generally, to prove a sex-discrimination claim, an employee must belong to a protected class, apply for or be eligible for a job or promotion, be discharged or denied a job or promotion, and see the job or promotion filled by a person of the opposite gender. If the employee establishes these elements, then the employer has the opportunity to show that the employer took the employment action for a legitimate, non-discriminatory reason.

Sexual harassment takes two forms. The first form is "quid pro quo" harassment. This harassment occurs when employers fire, demote, reduce an employee's compensation, or refuse to hire an employee because the employee refused to agree to an unwelcome sexual proposal. The second form of sexual harassment is "hostile work environment" harassment. This occurs when an employer subjects an employee to severe unwelcome sexual harassment such that it alters the employee's conditions of employment and

creates an abusive work environment. For an employee to succeed on this claim, an employer must know of the sexual harassment but refuse to take corrective action. While mere offensive, rude, or boorish comments generally do not constitute hostile work environment sexual harassment, employers should be aware that a very fine line can separate such comments from unlawful harassment.

4.1.6 Religious Discrimination

Both federal and Texas law prohibit discrimination on the basis of an employee's religious practices or beliefs. Religious practices and beliefs "include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views." Additionally, the law protects "personal religious beliefs that are not in the mainstream of religious thought or that are not common to all members of a particular religious group."

As with other forms of discrimination, it is illegal for an employer to hire, fire, or affect an employee's terms or conditions of employment because of the employee's religion. Additionally, an employer may need to make reasonable accommodations for certain religious practices and beliefs, unless the accommodation creates an undue hardship on the employer. For example, to accommodate an employee's religious beliefs, an employer may need to change an employee's job assignment, provide flexible scheduling options, accommodate dress and grooming practices, or modify employment testing.

4.1.7 Disability Discrimination

The "ADA and the TCHRA protect employees from discrimination based on disabilities. The ADA defines disability as "[1] a physical or mental impairment that substantially limits one or more of the major life activities of such individual; [2] a record of such an impairment; or [3] being regarded as having such an impairment." Drug and alcohol addictions, and certain communicable diseases aren't considered disabilities.

It is unlawful for employers to discriminate against a "qualified individual" in regards to applying, hiring, promoting, terminating, compensating, job training, and other employment terms, conditions, or privileges. A qualified individual is an employee who can perform the job's essential functions with or without a reasonable accommodation. As with religious discrimination, if an employee requests an accommodation because of his disability, the employer must make a reasonable accommodation so long as the accommodation doesn't impose an undue hardship on the employer's business operations. Reasonable accommodations may include scheduling accommodations,

providing auxiliary aids and services, reassigning jobs, modifying equipment used at work, or making existing facilities accessible to the disabled employee. A reasonable accommodation creates an undue hardship on an employer when an action requires "significant difficulty or expense" after considering "the nature and cost of the accommodation," the employer's "overall financial resources," the size of the employer, and the employer's type of operation.

The ADAAA—the amendments to the ADA—significantly changed the basis upon which a person can bring a disability claim. For example, mitigating measures affect whether an individual is disabled. Additionally, the definition of "major life activities" was expanded to include "major bodily functions." Ultimately, the ADAAA shifted the focus from whether an individual is disabled under the statute (making that standard lower) to whether the employer offered a reasonable accommodation.

4.1.8 Age Discrimination

The ADEA and the TCHRA make it unlawful for employers to discriminate against individuals more than 40 years old. Specifically, it is illegal to hire, fire, promote, compensate, or affect the conditions or terms of employment because of the applicant or employee's age. To succeed on an age discrimination claim, a plaintiff must be over 40, be adversely affected by an employer's actions, and show that age was a determining factor in that employment action. There is no cause of action for "reverse age discrimination." In other words, employees under 40 cannot sue because an employer made an employment decision in favor of an employee over 40.

4.1.9 Family Medical Leave Act

The Family Medical Leave Act ("FMLA") permits eligible employees to take up to 12 weeks of unpaid leave of absence because of the birth of a child, to care for a family member with a serious medical condition, or because the employee's serious medical condition prevents the employee from performing the functions of his or her job. An employee qualifies for FMLA leave if the employee:

- works for a covered employer (generally, an employer with 50 or more employees);
- has maintained employment with the employer for at least 12 months;
- has worked for at least 1250 hours for the employer during the previous 12 months; and

- has worked at a worksite where that employer has 50 or more employees within 75 miles of that site.

Before an employee may take FMLA leave, he must notify the employer of the need for leave, identify a qualifying reason under the FMLA, and state the duration of the leave. If an employee seeks leave for a serious health reason or to care for a family member's serious medical condition, the employer may require that a health care provider certify the need for leave. If the reason for leave is foreseeable, the employee must give the employer 30 days notice.

Employers may require that an employee exhaust vacation time, personal time, sick time, or any other accrued paid leave before using FMLA time. The use of the accrued paid time does not extend the 12-week leave period. During the employee's leave, employers must maintain the employee's health benefits on the same terms as they existed before the employee took leave and employees must pay their portion of the benefits. At the end of the 12 weeks, the employee may return to work in the same or an equivalent position with equivalent benefits and pay as before the employee took leave. On the other hand, if an employee doesn't return to work or is unable to perform his job functions when his leave expires, the employee's job is no longer protected.

Spouses who are employed by the same company are eligible for a combined 12 weeks of leave for a single event. In other words, both employees are eligible for twelve weeks of FMLA leave apiece, but between the two of them, they may take only twelve weeks of leave combined for a single event.

The FMLA was recently revised to also include the following types of leave:

- Leave to Care for a Wounded Service Member: Eligible employees may take up to 26 weeks of leave to care for spouses, children, parents, or next of kin who are service members with serious illnesses or injuries incurred during active duty in the Armed Forces. This leave is available only during one 12-month period and is combined with all other FMLA leaves in that period, resulting in a maximum total leave of 26 weeks. As with all FMLA leaves, the time is unpaid, although employees can be required to use any available accrued paid time off.

- Leave Related to Active Duty or Call to Duty: Eligible employees may take up to 12 weeks of FMLA leave in a 12-month period to deal with any qualifying event that arises from a spouse's, child's, or parent's active duty in the Armed Forces, including an order or call to duty. This leave is not confined to a single 12-month period. The 12 weeks are reduced by leave for any other qualifying FMLA event during the 12-month period.

4.1.10 Retaliation

It is unlawful to retaliate against an employee for participating in a protected activity. Generally, a protected activity includes opposing discriminatory practices or participating in an EEOC or Texas Workforce Commission proceeding. Employers are prohibited from firing, demoting, or harassing employees for filing a discrimination charge. Many employment statutes provide specific prohibitions against employer retaliation. Avoiding retaliation claims is critical because retaliation claims carry a greater potential that a plaintiff may recover punitive damages.

4.1.11 Genetic Information Nondiscrimination Act

Title II of the Genetic Information Nondiscrimination Act ("GINA") prohibits employers from using genetic information in employment; restricts employers from requesting, requiring, or purchasing genetic information; and strictly limits the disclosure of genetic information. The final regulations interpreting this statute took effect January 2011. If an employer acquires an employee's or applicant's genetic information under a permitted circumstance, it must maintain the genetic information as a confidential medical record. Examples of genetic information include but are not limited to: an individual's family medical history; a request for, or receipt of, genetic services; or participation in clinical research that includes genetic services, etc.

Employers who request information related to the FMLA or ADA, for example, should include the specific statutory language that protects them from liability for inadvertent acquisition, explicitly directing health care providers to not provide genetic information, so it is important to consult a lawyer for that language.

4.2 Preventing Discrimination and Harassment

Because of the potential damage, both financial and to the workforce's morale, preventing discrimination or harassment before it begins is crucial. Conducting regular discrimination and harassment prevention training and establishing clear policies prohibiting discrimination and harassment are effective ways of preventing trouble

before it starts. Employers should ensure that each employee acknowledges the company's anti-discrimination and anti-harassment policies. Employers should distribute policies and conduct training when each employee is hired. Once an employer receives a discrimination or harassment complaint, the employer should investigate the complaint and determine whether it needs to discipline the offending employee. Employers should thoroughly document all investigations, evaluations, and disciplinary proceedings, both for their own records and to show their compliance with the law if an employee complains about discrimination or harassment to a court or agency.

4.3 The EEOC & the Texas Workforce Commission

The EEOC administers and enforces the provisions of Title VII—one of many federal laws that prohibits employment discrimination. Before filing a lawsuit against an employer, an employee must file a formal charge with the EEOC or the Texas Workforce Commission. Employees in Texas who file a charge with either the EEOC or the Commission are considered to have asked for relief from both agencies. When an individual files a charge with the EEOC or the Commission, the agency must notify the charging party and the employer within ten days of receiving the charge. An employee must file a charge with the EEOC within 300 days of the last discriminatory act, or with the Commission within 180 days after the last discriminatory act. If the employee doesn't file a charge on time, then the employee loses the right to pursue the claim. The charge must be in writing and must state the facts surrounding the alleged unlawful employment practice. Employees must file a charge under oath.

After the charge is filed, the agency conducts an investigation and issues a cause determination. Before the EEOC or the Commission issues a determination, the parties may participate in alternative dispute resolution. Though not mandatory, alternative dispute resolution such as mediation, conciliation, or arbitration may be an attractive option for employers and empoyees seeking to avoid potential litigation expenses.

If the EEOC determines that there is reasonable cause supporting the employee's complaint, the EEOC must attempt to eliminate the unlawful employment practice through the conciliation process. When the conciliation process is unsuccessful, the EEOC may file a civil lawsuit against the employer. On the other hand, if the EEOC determines that there is no cause to support the employee's complaint, then the EEOC issues a notice of right to file suit. An employee must file the lawsuit within 90 days of receipt of this notice. Similarly, the employee has 60 days to file a civil suit against the employer after the Commission issues a notice of right to file suit letter under state law. An employee who doesn't file a lawsuit on time is at risk of losing

the right to file the lawsuit based on the discrimination contained within the charge.

4.4 Workers' Compensation Insurance

Workers' compensation insurance provides coverage for employees who are injured while on the job, have a work-related injury, or die because of a work-related incident. The Texas Workers' Compensation Act is designed to provide employees with access to "prompt, high-quality medical care." Although workers' compensation laws provide benefits to both employers and employees, Texas employers are not required to provide workers' compensation insurance to their employees. If an employer does carry worker's compensation, the employer is also prohibited against retaliating against an employee who has filed a claim.

4.4.1 Employer's Benefits & Responsibilities

The primary benefit to employers of workers' compensation insurance is limiting liability when an employee suffers an injury at work, has a work-related injury, or dies at work. In most cases, an employee cannot recover any damages from an employer for a work-related accidental injury if the employer has workers' compensation insurance.

Employers must report an employee's injury to their insurance carriers within eight days of any of the following three conditions being satisfied: (1) if the injury results in the employee missing more than one day of work; or (2) when the employer has knowledge that the employee has an occupational disease, even if the employee has not missed any work, or (3) the employee dies because of a work-related injury or illness. Additionally, once employers receive notice of an employee's injury, employers may choose to make voluntary medical benefit payments for the employee. The insurance carrier will reimburse the voluntarily paid medical benefits if the insurance carrier determines that the injury is compensable and pays the employee benefits.

4.4.2 Employee's Benefits & Responsibilities

Generally, workers' compensation benefits take four forms.

- Medical benefits: provides required health care resulting from a work-related injury;
- Income benefits: replaces a percentage of an employee's income for an injury that occurred at work or for a work-related injury;
- Burial benefits: assists in the burial of an employee who dies in a work-related incident;

- Death benefits: provides payments to a legal beneficiary because of the death of an employee.

An employee has the following responsibilities in relation to a workers' compensation claim:

- notify his employer within 30 days of his injury and inform the employer that he believes that the injury is related to work;
- follow a health care network's procedures;
- inform a doctor of the cause of the injury and whether the injury is work-related;
- fill out and send all required claim forms to the Division of Workers' Compensation within one year of the work-related injury or when the employee first has knowledge that the injury is work-related;
- provide current and accurate personal information to the Division of Workers' Compensation and the employer's insurance carrier; and
- notify the Division of Workers' Compensation and the employer's insurance carrier whenever the employee's work status changes.

For additional information regarding employer's and employee's benefits and responsibilities under the Texas Workers' Compensation Law, visit the Texas Department of Insurance Division of Workers' Compensation website (www.tdi.state.tx.us/wc/indexwc.html) or consult Chapters 401-506 of the Texas Labor Code.

4.5 Employee's Privacy Rights

Employers have some right to monitor their employees in the workplace. Employers have a legitimate interest in monitoring an employee's productivity levels and to prevent potential liability for an employee's unlawful actions. Accordingly, employers may monitor an employee's telephone use, fax transmissions, voicemail use, internet use, and email communications. Additionally, employers may install surveillance cameras and test employees for drug or alcohol use. Employers should inform their employees that an employee does not have an expectation of privacy in his use of company equipment, facilities, or resources, and that the employee is subject to

monitoring. It is critical that employers maintain a clear and detailed policy relating to the use of company equipment, including telephone, internet, and email.

Employers are required to keep certain information pertaining to an employee private. For example, information about an employee's personal characteristics or family matters is private. Additionally, employers must notify an employee and receive the employee's written authorization before employers can get a consumer credit report relating to an employee. Further, employers should not disclose information containing medical, psychiatric, or psychological records. The Health Insurance Portability and Accountability Act ("HIPAA") may also prevent employers from disclosing certain health information. HIPAA does not create a private cause of action for an employee; nevertheless, it is wise for employers to protect against the wrongful disclosure of an employee's health information. An employer that suspects that an employee is involved in illegal conduct at work, should investigate the suspected conduct, whether it is a claim of sexual harassment, drug or alcohol use, or theft. When investigating an employee, employers should use objective standards, assign the investigation to a supervisor who wasn't involved in the alleged improper activity or who doesn't directly supervise the alleged offender, keep the results of the investigation private, and thoroughly document the investigation. A properly conducted investigation may help avoid an invasion-of-privacy claim from an employee.

4.6 Employer's Duties to Employees

In addition to the protections discussed above, employers have the following additional duties to their employees:

- provide a reasonably safe workplace;
- indemnify the employee for losses incurred on the employer's behalf;
- not engage in conduct that may harm the employee's reputation;
- accurately record the wages the employee earns and timely pay the employee's wages;
- inform the employee about his job duties and risks associated with his job; and
- not to request the employee to engage in unlawful acts.

5. Resignations and Terminations

5.1 Employment At Will

Texas is an "employment-at-will" state. Unless an employee has an employment contract, employers may terminate an employee's employment without cause—provided that the reason is not unlawful. For example, employers may not terminate or take an adverse action against an employee based on the employee's race, sex, religion, national origin, or age. Unless an employee has an employment contract, employers may promote, refuse to promote, demote, or otherwise modify the conditions of an employee's employment for any reason—again, provided that the reason is not unlawful. Similarly, absent an employment contract to the contrary, an employee may choose to quit for any reason.

Generally, Texas law does not require that either the employee or the employer provide advance notice of ending an at-will-employment relationship. If an at-will employee gives advance notice of his separation from the employer, the employer may accept or modify the date of separation, including terminating the employee immediately. Texas law doesn't require that an at-will employee explain his reasons for quitting. Equally, employers are not required to explain the reasons for firing or laying off an at-will employee.

Employers should consider asking a resigning employee to prepare a resignation letter. Often, a resignation letter will include statements that might assist an employer in defending a later-filed lawsuit. Additionally, employers should conduct exit interviews, with a witness present, with employees who resign or are terminated. In addition to allowing an opportunity to discuss the reason for the resignation or termination, an exit interview also provides an opportunity to identify an employee's uncompleted work, to recover any company property that the employee possesses, and to take care of various other "administrative" issues that arise because of the end of the employment relationship. When terminating an employee, an employer should avoid using derogatory or inflammatory expressions to describe the employee. An unhappy employee who is departing may use such derogatory or inflammatory statements as a basis for a defamation claim. Further, an employer should terminate an employee in a private setting, and disclose the reason for an employee's separation only to those individuals with a business reason to know.

5.2 Jury Service, Military Leave, and Voting

5.2.1 Jury Service

Employers aren't required to pay an employee during the time the employee serves on a jury. However both federal and Texas law prevent employers from terminating

permanent employees because of the employee's jury service. An employee is generally entitled to return to the same employment that the employee held when summoned for jury service. Employers that terminate an employee because of jury service will pay the terminated employee's lost wages or benefits and reasonable attorneys' fees.

5.2.2 Military Leave

Both federal and Texas law prevent employers from terminating a permanent employee who is a member of the armed forces because the employee is called to training or active duty. Texas law also prevents employers from terminating an employee who is called to active duty in a state emergency. The Uniformed Services Employment and Re-employment Rights Act of 1994 is the federal law that prevents employment discrimination in hiring, promoting, re-employment, termination, and employment benefits based on an employee's military obligations. Generally, this act provides a non-temporary employee who is ordered to serve in the military the right to take an unpaid leave of absence (usually not to exceed five years) and have his employment restored at the conclusion of his military service with accrued seniority. If the employer's circumstances changed while the employee served in the military, such that reemployment is impossible or unreasonable, the employee no longer has the right to re-employment. Employers that terminate an employee because of military service will be liable for the employee's lost wages or benefits and reasonable attorneys' fees.

5.2.3 Voting

Employers must not prevent or retaliate against an employee for voting. In fact, it is a crime for employers to refuse to allow an employee to vote during working hours. (The exception to this is if the polls are open on election day for at least two consecutive hours outside of the employee's working hours.) It is likewise a crime to penalize or threaten to penalize the employee if the employee does leave work to vote under those circumstances. Further, employers cannot retaliate against an employee because the employee voted for a particular candidate or refused to discuss for whom the employee voted. Retaliation includes harming, threatening to harm, or reducing the employee's wages or another benefit of employment. Employers also cannot prevent an employee from attending a political convention.

5.3 Consolidated Omnibus Budget Reconciliation Act of 1985 or "COBRA"

Employers with 20 or more employees that offer health benefits to their employees should understand the obligations under the Consolidated Omnibus Budget

Reconciliation Act of 1985 or "COBRA." When an employee loses health insurance coverage as a result of separation from employment, reduction of hours, and other events, COBRA generally requires, with some exceptions, that the employer give notice to the employee and the employee's spouse of their right to continue health coverage at their own cost under the employer's plan for up to 18 months.

5.4 Handling Inquiries From Potential Employers

Employers should be careful when giving references to businesses considering hiring a former employee. A negative reference that damages a former employee's future employment opportunity may become the basis of a defamation suit. To succeed in a defamation suit, the former employee must prove that the employer's statement was false, defamatory, and published to a third person; and the employer's statement damaged the former employee's reputation. It is a defense to an employee's defamation suit if the employer's statement was true, an opinion, protected by a privilege, or statutorily protected. Despite these defenses, defending a defamation suit may be difficult and costly. Employers, therefore, should consider limiting the information that they give about a former employee.

5.5 Unemployment Insurance

Every state has an "unemployment insurance" program that meets federal guidelines. Generally, an employee who is out of work through no fault of his own may file an unemployment insurance claim. To receive benefits, the employee must meet certain requirements including monetary eligibility, medical ability to work, active searching for full-time work, authorization to work in the United States, and claims filed on time. Employees may not recover unemployment insurance if:

- the employee voluntarily resigned for personal reasons;
- the employee was fired for job-related misconduct; or
- the employee refuses suitable work without good cause.

Because employers' "unemployment tax" is based in large part on the employers' own history of unemployment compensation claims, employers often challenge the applications for unemployment compensation filed by former employees. Employers most often rely upon the "misconduct" ground for requesting that the State deny unemployment compensation. Employers must be careful, however, to distinguish between "misconduct" and poor "performance." Being too slow, not meeting

production or quality standards, and even "incompetence" are reasons that the State classifies as related to performance, and the employee can receive unemployment compensation. By contrast, insubordination, refusal to follow instructions, absenteeism, theft, negligence that places others or property in danger, and sleeping on the job are all reasons that the State classifies as "misconduct." Usually, if an employee cannot do the job, then the reason for termination is performance-related, but if the employee refuses to do the job, then the reason is misconduct.

The unemployment compensation application, determination, and appeals process is beyond the scope of this booklet, but a detailed, easy-to-read summary is provided by the Texas Workforce Commission on its website at http://www.texasworkforce.org/.

6. Protecting Your Business

This section explores ways for employers to protect against liability for their employees' actions. Additionally, it explains some of the different forms of insurance that employers should consider carrying.

6.1 Liability For An Employee's Acts

Employers are liable for an employee's wrongful conduct when the conduct occurs in the course and scope of employment. Generally, if an employee is doing something pursuant to his job duties or at the employer's or a supervisor's direction, the employee is acting within the course and scope of his employment.

6.1.1 Common Situations For Employer's Liability

Employers often face liability claims when an employee is involved in an automobile accident. Usually, a plaintiff will seek to hold an employer liable for the employee's negligence when an accident occurs during a job-related errand. Similarly, employers in construction trades face liability when an employee negligently omits safety procedures that result in another's injury. Even employers in office-based businesses can face liability for an employee's wrongful acts, such as when an accounting firm's employee commits malpractice.

In short, employers face the possibility of liability for their employee's acts. Careful screening of job applicants, thorough training, and adequate supervision are effective means to reduce the possibility of liability. Choosing a "legal entity" for a business may also offer employers protection from catastrophic claims based on an employee's wrongful conduct. For example, corporations and limited liability companies generally limit their owners' liability to the business's assets. Sole proprietors and many partnerships

do not have such limits to their liability. Accordingly, a business owner's personal, non-business assets may be at risk because of an employee's wrongful conduct. In any event, if the owner or co-owner personally participates in the wrongful conduct, then the limited liability will not apply.

Choice of legal entity—such as sole proprietorship, partnership, limited partnership, limited liability company, and corporation—is important not only for liability reasons but also for tax reasons. Speak with a lawyer who specializes in corporate formations to ensure that your business uses the best legal classification.

6.1.2 Different Forms of Business Insurance

Various types of insurance are available to protect employers. It is wise to speak with an insurance agent to learn more about the coverage available and its cost. Comprehensive general liability (also known as "commercial general liability" or "CGL") coverage provides broad protection for employers from a variety of claims. Common examples of claims covered by CGL policies include premises liability (such as slip-and-fall) claims, claims that an employee physically harmed another person, and claims that an employee caused damage to property belonging to another.

While CGL policies offer broad coverage, they usually do not cover claims addressed by more specific policies. Employers may need to purchase a commercial automobile insurance policy if its employees drive a company vehicle or drive during work hours on company business. This policy covers liability to others from motor vehicle accidents involving employees. Employment practices policies cover injuries to an employer's employees. These policies generally focus on non-bodily injuries such as those resulting from sexual or racial harassment and other discrimination claims. Professional liability insurance can protect those businesses—such as accounting firms, financial advisors, law firms, medical firms, and many others—that provide analysis and advice to their customers when that analysis and advice turns out to be wrong. Directors-and-officers insurance provides protection for financial mismanagement claims.

Insurance companies often hire a lawyer to represent a business that gets sued. If sued, it is critical for employers to inform their insurance agent and insurance company as soon as possible so that the insurance company can meet the deadline to respond to the lawsuit. And, if your business does not have insurance that covers the lawsuit, you should look for attorney lawyer yourself as soon as possible. If the deadline to respond to a lawsuit is missed, your business may owe a judgment without ever having a day in court.

7. Required Postings

The law requires employers to post different notices for their employees. Employers must post information relating to the following employment related issues.

- **Federal Laws:**
    - United States Department of Labor: posters available at www.dol.gov/elaws/posters.htm
        - Fair Labor Standards Act
        - Employee Polygraph Protection Act
        - Family & Medical Leave Act of 1993
        - Occupational Safety & Health Administration ("OSHA") (available at http://www.OSHA.gov)
        - Equal Employment Opportunity Commission ("EEOC") is the Law
        - American With Disabilities Act of 1990
    - **Texas Laws:** posters available online at http://www.tdi.state.tx.us/wx/forms/index.html#employerforms
        - Texas Workers' Compensation Commission:
        - Do or Do Not Carry Workers' Comp Insurance
        - How Employees Can Report Workplace Safety Violations
        - Texas Workforce Commission (available at 512-463-2747):
        - Texas Unemployment Compensation
        - Texas Payday Law

Employers should ensure that these postings are located in a easily visible location and protected from damage.

8. Other Helpful Resources

There are many other helpful resources employers should consult to find more information on employment-related issues.

8.1 "Especially For Texas Employers" From Texas Workforce Commission

The Texas Workforce Commission has assembled an excellent guide for Texas employers. This guide can be read on the Texas Workforce Commission's website at http://www.twc.state.tx.us/news/efte/tocmain.html. Or, you can order a printed copy directly from the Commission by sending an email to employerinfo@twc.state.tx.us and typing "Printed version of Especially for Texas Employers" in the subject line. You may also fax a request for a printed copy to 512-463-3196.

8.2 United States Department Of Labor "Employment Law Guide"

The Department of Labor has also put together a helpful handbook addressing federal employment laws. The handbook covers: employees' wages and hours of work, safety and health standards, health benefits and retirement standards, workplace standards, work authorization for non-U.S. citizens, federal contracts, fringe benefits, working conditions, and equal opportunity. The guide can be read online or downloaded and printed from the Department of Labor's website at: http://www.dol.gov/compliance/guide/index.htm.

8.3 Equal Employment Opportunity Commission

The EEOC's website has a tremendous amount of useful information for employers: http://www.eeoc.gov/. For example, the EEOC's website contains links to relevant federal equal employment opportunity laws and summaries of prohibited discriminatory practices (harassment and retaliation, for example). Additionally, the EEOC's website provides helpful information for a business owner including: steps to follow when an employee files an EEOC charge, state and local agencies and their relation to the EEOC, and lists of other useful resources.

8.4 United States Small Business Association

The Small Business Association website, www.sba.gov, also has useful information for employers.

8.5 Other Useful Websites:

Federal Law

General U.S. government web site:
http://www.fedworld.gov/

U.S. Department of Labor (DOL):
http://www.dol.gov

Occupational Safety & Health Administration (OSHA):
http://www.osha.gov/

Equal Employment Opportunity Commission (EEOC):
http://www.eeoc.gov/

United States Citizenship and Immigration Services (USCIS):
http://uscis.gov/graphics/index.htm

Federal Trade Commission (FTC) – Fair Credit Reporting Act information:
http://www.ftc.gov

Social Security Administration (SSA):
http://www.ssa.gov/employer/ssnv.htm

Internal Revenue Service (IRS):
http://www.irs.gov

Federal Courts:
http://www.uscourts.gov/courtlinks/

U.S. Small Business Administration (Texas):
http://www.sba.gov/tx/

National Labor Relations Board (NLRB):
http://www.nlrb.gov

Texas Law

Texas:
http://www.state.tx.us

Texas State Laws:
http://www.legis.state.tx.us/

Texas State Regulations:
http://www.sos.state.tx.us/tac/index.shtml

Texas Courts:
http://www.courts.state.tx.us

T**exas Department of Insurance:**
http://www.tdi.state.tx.us/commish/smbiz.html

Texas Department of Insurance, Division of Workers' Compensation:
http://www.tdi.state.tx.us/wc/indexwc.html

Texas Department of Licensing and Regulation:
http://www.license.state.tx.us

State of Texas New Hire Program:
https://portal.cs.oag.state.tx.us/wps/portal/employer

Texas Workforce Commission (TWC):
http://www.texasworkforce.org/

Appendix: Various federal and Texas anti-discrimination laws

Law	*General Scope of Law*	*Minimum number of employees*
Federal Discrimination Laws		
Title VII, 42 U.S.C. § 2000e	This law prohibits employment discrimination and harassment based on race, color, religion, sex, and national origin. Title VII also prohibits sexual harassment and pregnancy discrimination.	15
Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621-634	This law prohibits employment discrimination against employees or job applicants who are forty years of age or older. Employers may not hire, fire, promote, layoff, modify compensation, change job assignments, change employment benefits, and job training based on age.	20
Title I of the Americans With Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213	This law prohibits employment discrimination against employees with disabilities.	15
Equal Pay Act of 1990 (EPA), 29 U.S.C. § 206	This law prohibits wage discrimination between men and women in substantially equal jobs within the same establishment.	1+
The Rehabilitation Act of 1973, 29 U.S.C. §§ 791, 793-794a	This law prohibits an employer who receives federal financial assistance from discriminating against an employee based on an employee's disability.	Entities receiving federal funding
Immigration Reform & Control Act, 8 U.S.C. § 1324a-1324; 29 U.S.C. §§ 1802, 1813, 1851	This law prohibits discrimination against employees based on citizenship or the type of a person's lawful immigration status.	4

42 U.S.C. § 1981	This law prohibits discrimination against employees based on race.	1
42 U.S.C. § 1985	This law prohibits an employer from conspiring to interfere with an employee's civil rights.	1
Uniformed Services Employment & Reemployment Rights Act 38 U.S.C. §§ 4301-4334	This law prohibits an employer from discriminating against an employee on the basis of military service and provides various protections to returning service members.	1+
Federal Benefits Laws		
Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461	This law prohibits the improper administration of an employee's benefits.	20
Family Medical Leave Act (FMLA), 29 U.S.C. §§ 2601-2654	This law prohibits employer interfering with family or medical leave rights that the law provides.	50
Texas Discrimination Laws		
Texas Labor Code § 21.001	This law is Texas's equivalent to Title VII and ADA, and ADEA. Accordingly, this law prohibits employment discrimination based on race, color, religion, sex, national origin, age, and disability.	15
Texas Labor Code § 52.051	This law prohibits discriminating against an employee who complies with a subpoena.	1
Texas Labor Code § 451.001	This law prohibits retaliating against an employee who files a worker's compensation charge.	1

NOTES

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