Federal and State Employment Laws

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Disclaimer

This training is designed to provide general information about the subject matter covered. Neither TAC nor the trainers are engaged in rendering legal advice. If you need legal advice, TAC recommends that you seek the services of a competent attorney who is familiar with your specific situation.
Liability – The “L” Word

*Employers are paying large $$$ due to charges such as:*

• Wrongful Termination
• Discrimination
• Retaliation
• Other claims (i.e. wrongful hire and harassment)
EEOC Litigation Statistics

2016 EEOC had 91,503 charges filed

- Retaliation is still #1 – 45.9% of claims – highest it has ever been
- Texas has 9,308 charges filed in 2016– more than any other state in the nation
- Record numbers for disability 30.7 for 2016
- EEOC secured $522M from employers
Will Retaliation Claims Increase? Three Recent Supreme Court Cases Say YES!

2009 – Crawford vs Metropolitan Government
• Participating in Investigations

2011 – Thompson vs NA Stainless LP
• Third Party Associative Retaliation

2011 – Kasten vs Saint-Gobain Performance Plastics Corp.
• FLSA Complaints
Liability Control

• Comply with all legislation
  - Federal & State
• Develop employment policies & procedures for your office that are compliant with the Federal and State laws & consistent with your counties policies and procedures.
Liability Control

• Treat all employees consistently and fairly
• Have **specific** and **valid** work-related reasons for actions and decisions
• Document those reasons

**Document, Document, Document!**
The Myth of “At Will”

**Employees can be terminated:**
- At any time
- For any good reason, a bad reason, or no reason
- With or without notice

**EXCEPT:**
- For an illegal reason, or
- Employee has property interest in job (implied contract)
Employment At-Will
TX Common Law

This means all employees of the County are considered to be “At-Will” employees and the employment status shall not be considered a contract of employment or for any specified length of time.
Employment At-Will
TX Common Law

• Also, employment may be terminated with or without cause and with or without notice at any time.

• Nothing in any County manual or any other document or statement should limit the right to terminate employment at-will.
Employment At-Will
TX Common Law

This means the employment relationship may be ended at any time at the will of the County or the will of the employee.
No Elected Official, Appointed Official or Supervisor has the authority to enter into an agreement for employment other than at-will.
Employment At-Will
TX Common Law

Terminations can be based upon:

• Good Reason
• No Reason
• Bad Reason
• With or Without Notice

HOWEVER...
Employment At-Will
TX Common Law

There are *ILLEGAL* reasons for terminations that include:

protected status under Federal or State Laws.
Employment At-Will
TX Common Law

Exercising Legal Rights Such As:

• Filing valid worker’s comp claim
• Whistle blowing
• Filing a wage and hour claim
• Filing a claim with the EEOC
• Witness for another employee
Employment At-Will
TX Common Law

**Property Interest Problems**

- Supervisor guarantees duration of employment
- County has inflexible discipline policy
  - Employee would have the “right” to “due process”
Total EEOC Charges for Texas (2009-2016)

- 2009: 8,748
- 2010: 9,310
- 2011: 9,952
- 2012: 8,929
- 2013: 9,068
- 2014: 8,035
- 2015: 9,539
- 2016: 9,308

Total EEOC Charges for Texas
Federal Laws to Consider

• **Title VII of the Civil Rights Act of 1964**
  
  **Race, Color, Religion, Sex, National Origin**
  
  ✓ Race/Color – skin color, hair texture, facial features  
  Growing claims
  
  ✓ Religion – DOJ took on a case in 2011  
  Sabbath, holidays, prayer
  
  ✓ Sex – Sexual Harassment, Pregnancy, Equal Pay
  
  ✓ National Origin – Birthplace, Accent, Surname
  
  **Exception:** Bona fide occupational qualification (BFOQ)
Federal Laws to Consider

• **Fair Labor Standards Act (FLSA)**
  Covers minimum wage $7.25 as of 7-24-09
  Overtime
  Proper recordkeeping
  Non-exempt vs. Exempt employees
  Child Labor Laws
  Nursing Mothers Break
Federal Laws to Consider

• *Americans With Disabilities Act – Amended 2008 ADAAA*
  Need accurate job descriptions and reasonable accommodations – Don’t have standard “No Light D need the “Interactive Process” for each specific request.
  No Magic Language Required

• *Uniformed Services Employment and Reemployment Rights Act*
  Job protection and reinstatement required
Federal Laws to Consider

- **Pregnancy Discrimination Act**
  Treat pregnancy the same as any other temporary illness
- **Age Discrimination in Employment Act**
  Age protection is 40 and above
  It is your responsibility to get the employee the appropriate forms – No magic language required!
Federal Laws to Consider

• Immigration Reform and Control Act
• Genetic Information Non-Discrimination Act of 2008
• Equal Pay Act of 1963/Lilly Ledbetter Act 2009
• Fair Credit Reporting Act
Texas State Laws

- Texas Whistleblower
- Texas Worker’s Compensation Act
- Texas Unemployment
- Constitutional rights
Questions?
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