Employment Law

Wednesday, June 26, 2019
8:30–9:30 a.m.

Hon. Velva Price
Travis County District Clerk

Important information about employment law that a clerk should know.
Hon. Velva Price, Travis County District Clerk
Velva Price arrived in Travis County in 1983 to attend the University of Texas School of Law. After graduating in 1986, she represented individuals, governmental entities and corporations throughout Texas. She has been involved in the Travis County community since arriving in Texas. She was the first African-American woman elected president of the Austin Bar Association. She also served as president of the Austin Black Lawyers Association and the Travis County Women Lawyers Association. In addition, she was selected as chair of the City of Austin Minority-Owned and Women-Owned Business Enterprise and Small Business Enterprise Procurement Program Advisory Committee, as well as chair of the Travis County Civil Service Commission for Sheriff’s Office Employees. Price has volunteered for other boards and commissions, including Volunteer Legal Services, Interfaith Action of Central Texas, Texas Supreme Court Grievance Oversight Committee, City of Austin Ethics Review Commission, Austin Community Radio (KAZI 88.7 FM) and David Chapel Missionary Baptist Church Usher Board. As part of a military family, Price lived throughout the U.S. and Europe. Her parents instilled the belief that people are more alike than they are different and that most want to make the world a better place, if given a chance.
Supervisor’s Responsibilities

- Spotting the red flags
  - medical leave
  - on-the-job injuries
  - protected classes
  - first amendment
  - claims and grievances
  - consistency
  - forms
  - documentation

Communication

- Do not substitute email for personal interaction
- Do not forget positive feedback
- Feedback should be direct to avoid misunderstanding
- Inform employee exactly what will happen
- Consider following up with an email
- Consider following up on agreements reached
Documenting Personnel Issues

- Document at every stage
  - Hiring
  - Training
  - Performance
  - Corrective action
  - memo
  - coaching log
  - desk file
  - formal action
  - e-mail

Documentation of Training

- Note when employees are advised of policies
  - have each employee sign acknowledgement
  - keep track of all trainings
  - Verbal, internal and external trainings
  - use sign in sheets verify everyone in attendance signs in

Documentation of Corrective Action

- Keep track of all of corrective action taken
  - Formal and informal

- Keep notes regarding:
  - the facts of the event
  - the employee’s position on the allegations
  - the action taken and
  - make note of any training or follow-up taken
Harassment in the Workplace

What is Harassment?

- Title VII of the Civil Rights Act of 1964 prohibits an employer from discriminating against an employee, or potential employee, on the basis of race, color, religion, sex, or national origin.

Two Types of Harassment

- Quid Pro Quo
- Hostile Work Environment
Severe or Pervasive is not:
- Isolated incident
- Vulgar language
- Offensive utterance
- Flirting
- Innuendoes or jokes
- Must be objectively and subjectively offensive

Negative Actions
When supervisor’s harassment culminates in tangible employment action, such as discharge, demotion, or undesirable re-assignment

Elements of Positive Actions
- Employer must have exercised reasonable care to prevent and correct promptly any harassing behavior
- Employee must have unreasonably failed to take advantage of the preventative or corrective opportunities provided by the employer or to otherwise avoid harm
What Happens at Happy Hour Does not Stay at Happy Hour

THE BASICS

- Family Medical Leave Act
  - 12 weeks of unpaid leave for an eligible person and qualifying event
  - Not in addition to leave accruals
  - May be taken in one extended leave or intermittently if medically required
  - Must provide medical certification
  - Must be reinstated to same position on return
  - Retaliation and interference prohibited

Employee is on FMLA Leave

- Do not allow to work from home
- Do not arbitrarily reassign employee
- Only contact periodically if absolutely necessary
- Look for pattern
- Correcting misconduct is not retaliation
- Document
- If all FMLA is exhausted it cannot be used again until the next 12 month period
Americans with Disabilities Act

- Although “disability” is more strictly defined than “impairment” under FMLA, the two often intersect
- Consider reasonable accommodation requirements upon return
  - Additional leave
  - Modification to job duties
- Respond promptly, document interaction, do not assume anything
- Light-Duty assignments

Disability Red Flags

Indicators of a possible ADA issue:

- Employee reports a disability
- Employee reports to work with an obvious disability, but fails to mention
- Employee’s behavior or performance undergoes drastic change
  - Not sure? Don't hesitate, talk to HR

Disability Red Flags

- Law requires employer and employee to engage in interactive process.
- What reasonable accommodation would allow employee to perform the essential functions of his job?
- Try to avoid accommodating before engaging in the interactive process
- Document the interactive process
- Don't hesitate, go to HR
Pregnancy Discrimination Act

- Prohibits discriminating against female employees or applicants based on pregnancy, birth, or related conditions such as:
  - Treating differently than other employees with other types of medical conditions
  - Calculating maternity leave into years of service in a negative way
  - Firing or refusing to hire an employee for terminating a pregnancy
  - Consider whether pregnancy complications are FMLA qualifying events or disabilities

Relevant Statutes

- Title VII: Prohibits an employer from discriminating against an employee, or potential employee, on the basis of race, color, religion, sex, or national origin
- ADA: Prohibits an employer from discriminating against an employee, or potential employee, on the basis of disability
- FMLA: Provides 12 weeks of protected unpaid leave for qualifying events
- ADEA: Prohibits an employer from discriminating against an employee, or potential employee, on the basis of disability
- Whistleblower: Prohibits personnel action in retaliation for a good faith report of a violation of law

Employment Law Overview

Workers protected because of race, color, sex, national origin, religion, disability, age, military status, gender identity, pregnancy, leave status, among others.

- Also, protected for exercising certain forms of speech or making complaints about violation of law
- Also, protected against retaliation for complaining or participating in an investigation of any of the above
Other Retaliation Statutes

- **Military Service**: Tex. Gov't Code §431.005
- **Voters**: Tex. Elec. Code §161.007, 276.001, 276.004
- **Public Employees for Reporting a Violation of Law**: Tex. Gov't Code §554.002
- **Workers Health & Safety**: Tex. Lab. Code §411.082
- **County Employee Grievances**: Tex. Local Gov't Code §160.006
- **Employee Compliance with a Subpoena**: Tex. Lab. Code §52.051
  ...... And More

Discrimination Red Flags

- Report by coworkers or subordinates of feelings of discrimination or harassment.
  - Don't second guess, go to HR.
  - Don't retaliate against reporter.
  - Supervisor may need to take immediate action during investigation, admin leave or temp assignment.
  - After consulting with HR

Discrimination Red Flags

- Common indicators of a problem
  - Jokes regarding protected classes.
  - Explicit computer images, screen savers, emails, mobile phone photos.
  - Activities during happy hour or other after work events.
    - Problems in these areas may require supervisor intervention.
    - You are never NOT a supervisor
After employee reports discrimination of any protected type or is on FMLA, supervisor’s actions could appear to be retaliatory, these include:
- Disciplinary actions
- Office moves
- Low evaluations
- Change in job duties
- Shift changes
- Transfers
- Leave denials

Do not change the rules for an employee who has reported harassment or discrimination or who takes FMLA.
Do be very careful in enforcement of the rules against that employee.
When in doubt, contact HR.

Recognize red flags (leave for more than 3 days, Monday-Friday leave)
Have supervisors trained in the red flags
Consider and respond to requests promptly
Follow regulations, and be consistent
Don't accept vague information
Keep only those with a "need-to-know" informed
Use your resources (TAC, attorneys, HRMD, DOL and EEOC websites)
Be patient
Document conversations
Personnel Information is Public

- Job performance
- Test scores
- Disciplinary information
- Evaluations
- Salaries
- EEO data

Questions?