

2015 Legislative Update for State Agency Employers

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Texas Bills for 2015 – Civil Rights

HB 577 – effective 090115:

- Claims of discrimination by service members on state active duty shall be processed in accordance with military regulations and procedures established for the Texas military forces; and are exempt from the jurisdiction of the Texas Workforce civil rights division.
- A member of Texas Military Forces called to state active duty is subject to the regulations established for continued membership in the specific component including, but not limited to, medical readiness, drug testing, physical fitness, and training requirements.

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Civil Rights - 2

HB 1151 – effective 090115:

- Adds a new Section 21.1065 to prohibit sexual harassment against unpaid interns
- uses the six-part U.S. Department of Labor test for trainees to define "unpaid intern"
- other forms of discrimination against unpaid interns are not addressed (amendments in future years are certainly possible)

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Texas Bills for 2015 – General HR

HB 426 - effective 090115:

- TWC's WorkInTexas.com system must allow applicants for state positions to fill out one application and submit them to multiple agencies at a time
- state agencies must accept applications for posted positions that are submitted that way

HB 786 – effective 090115:

- Reinforces current federal law on reasonable break times for expression of breast milk for public employees
- Public employers must develop a written policy
- Provides no cause of action for a violation

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General HR - 2

HB 910 – effective 010116:

- "open carry" bill – no significant changes from current law regarding concealed carry policies for government buildings

SB 664 – effective 090115:

- employer may discharge an employee upon a reasonable factual belief that the employee falsified military service information in connection with employment in a way that violates the Penal Code (§ 32.54)
- such falsification voids an employment contract
- employee may sue in court for wrongful discharge

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General HR - 3

SB 805 – effective 090115:

- veterans' preference applied in favor of veteran with same or greater qualifications than non-veterans
- 20% veterans employment goal at each state agency
- applies to hiring and layoffs
- denial may be appealed to agency's executive director
- some positions may be reserved for veterans
- each state agency with 500 or more FTEs must appoint a veteran's liaison

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Texas Bills for 2015 – Immigration

SB 374 – effective immediately:

- mandates use of federal E-Verify system by state agencies for all new hires
- TWC must adopt rules to enforce this new law

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Texas Bills for 2015 – Pay / Benefits

HB 445 – effective 090115:

- State agencies must track and report paid military leave balances and leave use for employees who are eligible for military leave

HB 1771 – effective 090115:

- Would permit donations of sick leave in any amount to specified employees in same agencies

SB 550 – effective 090118:

- requires dental support (dental insurance) for a child subject to a child support order

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Texas Bills for 2015 – Regulatory

HB 207 – effective 090115 / SB 1317 – effective immediately:

- redefines voyeurism and improper photography or visual recording
- intended to legislatively overturn a 2014 court decision
- can apply to actions by employers or coworkers in the workplace
- based on victim's reasonable expectation of privacy
- enhanced penalties if the victim is a child

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Regulatory - 2

SB 339 – effective immediately:

- relaxes various controlled-substance laws for medical prescription and use of low-THC cannabis for treatment of certain forms of epilepsy
- prescription and use are tightly controlled
- implications for drug-testing policies

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Texas Bills for 2015 – Unemployment

HB 931 – effective 090115:

- change in waiting-week provision: waiting week is paid if unemployment lasted at least 7 days and claimant has returned to full-time work, or else claimant has exhausted all other available UI benefits for the benefit year

HB 2732 – effective 090115:

- TWC is authorized to participate in the Treasury Offset Program of the IRS in order to collect overpayments
- that would greatly reduce reimbursing employers' liability for reimbursements

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Unemployment - 2

HB 3373 – effective 090115:

- will protect reimbursing employers from reimbursement liability if the work separation was for misconduct connected with the work or was voluntary without good cause connected with the work
- extra cost will be passed on to private taxed employers

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Texas Bills for 2015 – Workers' Comp

HB 1094 – effective 090115:

- Death benefits for a surviving spouse that normally end 104 weeks after the spouse's remarriage will continue for the life of the spouse if the deceased worker was a first responder killed in the line of duty or while providing services as a volunteer

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Texas Bills for 2015 – Workforce

HB 867 - effective immediately:

- establishes the Texas Women Veterans Program as a program of the Texas Veterans Commission

SB 208 - effective 090115 or 090116:

- passes responsibility for vocational rehabilitation programs of DARS to the TWC
- transfers all responsibilities of the Texas Commission on Human Rights to TWC's Civil Rights Division

SB 389 - effective 090115:

- requires placement of military occupational specialty codes on certain notices of state agency employment openings

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How UI Claims Affect Public Employers

- Reimbursing employers do not have tax rates and do not pay quarterly taxes, but are billed quarterly for benefits paid out that are based on wages reported by them during the base periods of claims
- Taxed governmental employers are in a group that has a pooled tax rate – for 2015, that rate is 0.30% (applied to the first \$9000 of each employee's wages during the calendar year)
- Election to be a reimbursing employer is good for two years
- Limited chargeback protection for either group

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Handle UI Claims Properly

- Respond *adequately* and on time
- Furnish relevant information:
 - Firsthand witnesses are critically important
 - Documentation (policies, warnings, logs, etc.)
- Be specific
- Appeal on time, all the way up to the Commission if necessary

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Final Warning

- Do not give a final warning until and unless the company is truly ready to sever ties
- A real final warning lets the employee know:
 - that it is the employee's last chance,
 - that no further chances will be given,
 - and that if the complained-of problem occurs even one more time, the employee will be subject to immediate discharge
- Have the employee sign it (or a witness in the employee's place), and give the employee a copy

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Final Straw?

- If the circumstances allow, consider asking the employee to explain the final incident in his or her own words and handwriting on a blank piece of paper
- This allows both sides one last opportunity to stave off a final work separation
- If the employee supplies what amounts to a written admission of misconduct, that would be relevant in any response to an unemployment claim

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Base Period

Base Period Quarter 1 ✓	Base Period Quarter 2 ✓	Base Period Quarter 3 ✓	Base Period Quarter 4 ✓	Lag Quarter x	Quarter In Progress When Claim Is Filed x
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Benefit Amount

- weekly benefit amount is the high quarter wage amount divided by 25
- min. WBA = \$64; max. WBA = \$465

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Eligibility Conditions

- medically able to work
- actively searching for full-time work
- authorized to work in the U.S. (clmt has to be able to fulfill I-9 requirements)
- file claim forms on time
- engage in reemployment activities as directed

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Types of Work Separations

Voluntary <ul style="list-style-type: none"> - Resignation - Walking off the job - Job abandonment - Retirement - Suspension w/o pay for 3 days or less 	Involuntary <ul style="list-style-type: none"> - Layoff / RIF - Temporary assignment / PRN / on-call, as-needed - Discharge / termination - Mutual agreement - Resignation in lieu of discharge - Unpaid suspension of four days or more
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Qualification

- the claimant must be out of work through no fault of his or her own
- the burden of proof is on the party who initiates the work separation
 - if the claimant quit, the claimant must prove good cause connected with the work for quitting
 - if the claimant was fired or laid off, the employer must prove that the work separation resulted from misconduct connected with the work on the claimant's part

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What Does An Employer Need to Show?

- Voluntary work separation
 - Show how a reasonable employee would not have quit for such a reason
- Involuntary work separation
 - Show that the discharge resulted from a specific act of misconduct connected with the work that happened close in time to the discharge, and
 - That the claimant either knew or should have known that discharge could occur for such a reason.
- Evidence needed: documentation of problems, and firsthand testimony from eyewitnesses

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Excessive Absences

- Excessive absenteeism for avoidable reasons is misconduct
- Medical absences can go either way, depending upon other rules involved, such as giving advance notice of absence
- If the sole problem was excessive medical absences (of the claimant or the claimant's minor child), claimant will most likely not be disqualified, but if the claimant is medically unable to work, that would be an eligibility issue

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Poor Performance Cases

- Inability and incompetence are not misconduct
- Failing to do one's best is misconduct
- Best argument for claimant: "I tried my best – it just wasn't good enough."
- Best tactics for employer: documentation, firsthand testimony, past satisfactory performance, claimant passed up training opportunities, work was too simple to mess up (dishwashing precedent)



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Poor Performance Cases 2

- Employer has to show how the poor performance was within the claimant's power to control
- Too many breaks / breaks too long
- Excessive visiting and other time-wasting with coworkers
- Excessive personal phone calls
- Too much Internet surfing
- Failing to double-check the work for negligent or avoidable mistakes
- Not enough time devoted to job because of avoidable absences or tardiness

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Poor Attitude

- That's not in my job description.
- Why doesn't Joe have to do that?
- Why do you always ask me?
- That's Linda's job.
- You told me to do the other thing first.



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How to Handle a Poor Attitude Case

- Don't start off accusing the claimant of having a "bad attitude".
- Be specific about behavior or conduct that violated a rule or interfered with the work of others.
- Document the warnings that were given.
- Present firsthand testimony from those affected.
- Let the hearing officer independently arrive at the conclusion that the claimant had a bad attitude.

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Thanks for your attendance
and
Good Luck!

Remember the toll-free number:
1-800-832-9394

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www.twc.state.tx.us/news/efte/tocmain2.html
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Significant 2015 Texas Legislation Affecting State Agencies

HB 207	Leach, Jeff (R)	<p>Relating to creating the offense of voyeurism.</p> <p>****Can apply to actions by employers or coworkers in the workplace; based on victim's reasonable expectation of privacy.</p> <p>*051215→Passed the House (141:0:2).</p> <p>*052615→Passed the Senate (31:0).</p> <p>*061715→Signed by the Governor; effective 090115.</p>
HB 426	Howard, Donna (D)	<p>Relating to the acceptance of employment applications through the online system for listing state agency employment openings maintained by the Texas Workforce Commission.</p> <p>****TWC's WorkInTexas.com system must allow applicants for state positions to fill out one application and submit them to multiple agencies at a time; state agencies must accept applications for posted positions that are submitted that way.</p> <p>*042815→Passed the House (143:0:2).</p> <p>*052015→Passed the Senate (31:0).</p> <p>*060115→Signed by the Governor; effective 090115.</p>
HB 445	Raney, John (R)	<p>Relating to providing notice of the availability of paid leave for military service to public officers and employees.</p> <p>****State agencies must track and report paid military leave balances for employees who are eligible for military leave.</p> <p>*042215→Passed the House (144:0:2).</p> <p>*052215→Passed the Senate (31:0).</p> <p>*061615→Signed by the Governor; effective immediately.</p>
HB 577	Flynn, Dan (R)	<p>Relating to pay, benefits and requirements for state active duty service members.</p> <p>****Discrimination claims against service members on state active duty are exempt from TWC's Civil Rights Division jurisdiction, and such claims shall be processed in accordance with military procedures and regulations for Texas armed forces.</p> <p>*041615→Passed the House (146:0:2).</p> <p>*052215→Passed the Senate (31:0).</p> <p>*060915→Signed by the Governor; effective 090115.</p>
HB 786	Walle, Amando (D)	<p>Relating to the right of a public employee to express breast milk in the workplace.</p> <p>****Reinforcing current federal law for public employees.</p> <p>*042715→Passed the House (90:47:1).</p> <p>*052415→Passed the Senate (23:7).</p> <p>*061815→Signed by the Governor; effective 090115.</p>
HB 867	Hernandez, Ana (D)	<p>Relating to the establishment and operation of the Texas Women Veterans Program.</p> <p>****Establishes the TWVP as a program of the Texas Veterans Commission.</p> <p>*051315→Passed the House (122:24:2).</p> <p>*052415→Passed the Senate (29:1).</p> <p>*060415→Signed by the Governor; effective immediately.</p>
HB 910	Phillips, Larry (R)	<p>Relating to the authority of a person who is licensed to carry a handgun to openly carry a holstered handgun.</p> <p>*042015→Passed the House (101:42:1).</p> <p>*052215→Passed the Senate (20:11).</p> <p>*061315→Signed by the Governor; effective 010116.</p>

HB 931	Murphy, Jim (R)	<p>Relating to an individual's eligibility to receive unemployment compensation benefits on the individual's waiting period claim.</p> <p>****The waiting week is not paid unless the claimant has received at least two weeks of UI benefits and has been totally or partially unemployed for at least seven consecutive days and has returned to full-time employment; or has exhausted the individual's regular benefits for the current benefit year, other than benefits applicable to the waiting period.</p> <p>*DOL: conforms to federal law.</p> <p>*041615→Passed the House (144:2:2).</p> <p>*051515→Passed the Senate (31:0).</p> <p>*052915→Signed by the Governor; effective 090115.</p>
HB 1094	Geran, Charlie (R)	<p>Relating to workers' compensation death benefit eligibility for certain spouses of first responders killed in the line of duty.</p> <p>****Death benefits for a surviving spouse that normally end 104 weeks after the spouse's remarriage will continue for the life of the spouse if the deceased worker was a first responder killed in the line of duty or while providing services as a volunteer.</p> <p>*050415→Passed the House (137:0:2).</p> <p>*052615→Passed the Senate ().</p> <p>*061915→Signed by the Governor; effective 090115.</p>
HB 1151	Thompson, Senfronia (D)	<p>Relating to sexual harassment protection for unpaid interns.</p> <p>****Adds a new Section 21.1065 to prohibit sexual harassment against unpaid interns; uses the six-part DOL test for trainees to define "unpaid intern"; other forms of discrimination against unpaid interns are not addressed.</p> <p>*031715→Passed the House (146:0:2).</p> <p>*052715→Passed the Senate (31:0).</p> <p>*061915→Signed by the Governor; effective 090115.</p>
HB 1771	Raney, John (R)	<p>Relating to the donation of sick leave by state employees.</p> <p>****Would permit donations of sick leave in any amount to specified employees.</p> <p>*041715→Passed the House (142:1:3).</p> <p>*052015→Passed the Senate (27:3).</p> <p>*061015→Signed by the Governor; effective 090115.</p>
HB 2732	Metcalf, Will (R)	<p>Relating to recovery of covered unemployment compensation debt through participation in the federal Treasury Offset Program.</p> <p>****TWC legislative initiative to participate in the Treasury Offset program of the IRS.</p> <p>*DOL: conforms to federal law.</p> <p>*050415→Passed the House (128:0:1).</p> <p>*052015→Passed the Senate (26:4).</p> <p>*061015→Signed by the Governor; effective 090115.</p>
HB 3373	Miller, Doug (R)	<p>Relating to the liability of reimbursing employers under the Texas Unemployment Compensation Act.</p> <p>****Would create a new Section 205.0125 protecting reimbursing employers from chargebacks if the work separation was for misconduct connected with the work or was voluntary without good cause connected with the work.</p> <p>*DOL: conforms to federal law.</p> <p>*042915→Passed the House (145:0:1).</p> <p>*052615→Passed the Senate (31:0).</p> <p>*061715→Signed by the Governor; effective 090115.</p>
HB 3685	Anderson, Doc (R)	<p>Relating to the employment status of certain individuals engaged in rehabilitative work-training programs.</p> <p>*050515→Passed the House (145:0:1).</p> <p>*052615→Passed the Senate (31:0).</p> <p>*061715→Signed by the Governor; effective 010116.</p>

SB 130	West, Royce (D)	<p>Relating to the eligibility of criminal defendants for an order of nondisclosure.</p> <p>****Can affect an employer attempting to do a criminal history background check.</p> <p>*041515→Passed the Senate (31:0).</p> <p>*052115→Passed the House (137:5:2).</p> <p>*062015→Vetoed by the Governor.</p>
SB 208	Campbell, Donna (R)	<p>Relating to the continuation and functions of the Texas Workforce Commission.</p> <p>****TWC Sunset bill.</p> <p>*DOL: conforms to federal law.</p> <p>*051115→Passed the Senate (25:6).</p> <p>*052615→Passed the House (145:0).</p> <p>*061915→Signed by the Governor; effective 090115.</p>
SB 339	Eltife, Kevin (R)	<p>Relating to the medical use of low-THC cannabis and the regulation of related organizations and individuals; requiring a dispensing organization to obtain a license to dispense low-THC cannabis and any employee of a dispensing organization to obtain a registration; authorizing fees.</p> <p>*050715→Passed the Senate (26:5).</p> <p>*051915→Passed the House (108:38:1).</p> <p>*060115→Signed by the Governor; effective immediately.</p>
SB 374	Schwertner, Charles (R)	<p>Relating to requiring state agencies to participate in the federal electronic verification of employment authorization program, or E-verify.</p> <p>*050715→Passed the Senate (20:11).</p> <p>*052615→Passed the House (122:21).</p> <p>*061015→Signed by the Governor; effective immediately.</p>
SB 389	Rodriguez, Jose (D)	<p>Relating to the placement of military occupational specialty codes on certain notices of state agency employment openings.</p> <p>*033015→Passed the Senate (30:0).</p> <p>*051315→Passed the House (139:3:2).</p> <p>*052315→Signed by the Governor; effective 090115.</p>
SB 550	Uresti, Carlos (D)	<p>Relating to requiring dental support for a child subject to a child support order.</p> <p>*050415→Passed the Senate (30:1).</p> <p>*052715→Passed the House (142:2:2).</p> <p>*061915→Signed by the Governor; effective 090118.</p>
SB 653	Eltife, Kevin (R)	<p>Relating to increasing the amount of burial benefits required to be paid by an insurance carrier under the workers' compensation system.</p> <p>*040115→Passed the Senate (29:1).</p> <p>*051815→Passed the House (138:1:1).</p> <p>*052815→Signed by the Governor; effective 090115.</p>
SB 664	Taylor, Van (R)	<p>Relating to employment termination for falsification of military record in obtaining employment or employment benefits.</p> <p>****Employer may discharge an employee upon reasonable factual belief that the employee falsified military service information in connection with employment in a way that violates the Penal Code (§ 32.54); such falsification voids an employment contract; employee may sue in court for wrongful discharge.</p> <p>*032415→Passed the Senate (31:0).</p> <p>*052215→Passed the House (139:0:1).</p> <p>*061515→Signed by the Governor; effective 090115.</p>

SB 805	Campbell, Donna (R)	<p>Relating to the employment of individuals qualified for a veteran's employment preference.</p> <p>****Veterans' preference applied in favor of veteran with same or greater qualifications than non-veterans; 20% veterans hiring goal; applies to hiring and layoffs; denial may be appealed to agency's executive director; some positions may be reserved for veterans; each state agency with 500 or more FTEs must appoint a veteran's liaison; private employers may have an employment preference for veterans if the preference policy is in writing.</p> <p>*033015→Passed the Senate (30:0).</p> <p>*051215→Passed the House (134:11:2).</p> <p>*052815→Signed by the Governor; effective 090115.</p>
SB 1032	Watson, Kirk (D)	<p>Relating to authority for certain state employees to work flexible hours and to work from home or other authorized alternative work sites.</p> <p>*042215→Passed the Senate (22:8).</p> <p>*052515→Passed the House (77:63:1).</p> <p>*062015→Vetoed by the Governor.</p>
SB 1317	Menéndez, Jose (D)	<p>Relating to the prosecution of the offense of invasive visual recording.</p> <p>****Intended to legislatively overturn a 2014 court decision; can apply to actions by employers or coworkers in the workplace; based on victim's reasonable expectation of privacy.</p> <p>*050715→Passed the Senate (31:0).</p> <p>*052715→Passed the House (144:0:2).</p> <p>*061815→Signed by the Governor; effective immediately.</p>

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