

Ignorantia Legis Neminem Excusat (Ignorance of the Law is No Excuse)

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Since Roman times, a legal maxim has existed: Ignorance of the Law is No Excuse. Unfortunately for modern employers, the ability to have a working knowledge of the myriad of laws and regulations impacting the workplace has become increasingly difficult. Regardless of the complexity, employers and their management teams should have, at least, a working knowledge of several key laws and/or rules. These laws often impact the complete employment cycle from recruitment, hiring, promotion, discipline, and ultimately to termination (be it voluntary or involuntary).

Discrimination Laws

Employers and their management team should be familiar with the basic discrimination laws governing Texas employers and their workforce.

CIVIL RIGHTS ACT OF 1964

This is the primary Federal law governing employment discrimination. The law covers all employers with at least 15 employees. It protects against discrimination based on race, gender, national origin, and religion. Under this EEOC-enforced law, an employer is not permitted to use any of these factors in making a decision impacting an individual's employment. To learn more about the various types of discrimination prohibited by the laws enforced by EEOC, [click here](#).

AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 (ADEA)

This Federal law makes it illegal for an employer with 20+ employees to discriminate based upon age against an individual who is 40-years-old or older. According to the EEOC's website, the ADEA "... forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment." You should be especially mindful of the provisions of the ADEA in the event

your company is in the process of downsizing. Management should make every effort to document the termination process used to ensure individuals to be laid off is not based on age but on some other objective, non-discriminatory reason. For more about the ADEA, [click here](#).

AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

The ADA is another Federal law that covers employers with 15 or more employees. Recently, it was amended by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). According to the EEOC, ADA disability discrimination occurs "... when an employer ... treats a qualified individual with a disability who is an employee or applicant unfavorably because she has a disability." A claim for violation of the ADA can also arise if an employer treats an applicant or employee less favorably because they have a history of a disability (i.e. refusing to hire an applicant merely because of a prior workers' compensation claim for a back injury). The ADA, as amended, requires an employer to provide a reasonable accommodation to an employee or applicant with a disability, unless doing so would cause significant difficulty or expense for the employer. According to the EEOC, the stated purpose of the ADAAA was to make it clear that "... the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally shall not require extensive analysis." In other words, the EEOC wants employers to spend less time discussing whether an employee has a disability that qualifies for protection under the Act and, instead, spend more time discussing a reasonable accommodation for the employee. For more information regarding the ADA, [click here](#).

TEXAS WORKERS' COMPENSATION ACT

Employers must be mindful of the anti-retaliatory provisions found in the Texas Workers' Compensation Act. In this regard, Sec. 451.001 of the Act provides that a person may not discharge



or in any other manner discriminate against an employee because the employee has filed a workers' compensation claim or hired an attorney to represent the employee in a claim. Workers' compensation retaliation lawsuits are frequently filed in Texas. When an employee is separated, management must be mindful of an employee's history of workers' compensation claims filings and if one has occurred, especially in the recent past, ensure there is adequate documentation substantiating that the employee's separation was on account of something other than their prior workers' compensation claim.

Pay and Benefits

There are several key statutes that all employers should be familiar with that regulate the provision of pay and benefits.

Texas Payday Law governs all private employers doing business in Texas and is enforced by the Texas Workforce Commission (TWC). Unless an employee agrees in writing otherwise, all wages must be paid in cash, negotiable instrument (check), or by electronic transfer of funds. All wages must be delivered to the employee at their regular place of work during working hours, mailed by registered mail or by direct deposit to be received by the employee not later than payday, or to any person authorized in writing by the employee. The law also provides that if an employee is laid off, discharged, fired, or otherwise involuntarily separated from employment, their final pay is due within six (6) calendar days of discharge. If the employee quits, retires, resigns, or otherwise leaves employment voluntarily, their final pay is due on the next regularly-scheduled payday following the effective

date of resignation. Employees must be paid at least once per month.

The Texas Payday Law does not address the issue of rest breaks or meal breaks. According to the TWC's website "... work schedules, including breaks, regular hours and overtime hours, are left to the discretion of the employer and are usually based on the needs of the business." However, if breaks are given, then in accordance with Federal law, in the event they are 20 minutes or less, they must be paid. Lunch breaks—breaks of 30 minutes or longer—where the employee is fully relieved of all duties, do not have to be paid.

Finally, the law makes it clear that no amounts may be deducted from an employee's pay unless the employee has agreed to the deduction in writing or in the event it is ordered by a court of competent jurisdiction, such as in court-ordered child support payments.

Fair Labor Standards Act is a Federal law that essentially establishes that all non-exempt employees are entitled to receive federal minimum wage (currently \$7.25 per hour) as well as overtime pay (time-and-a-half for all hours worked in excess of 40 in a seven-day workweek. An employee cannot waive their right to receive either minimum wage or overtime. Further, private employers cannot offer comp time as a substitute for paid overtime. There are five major "white collar" exemptions to the overtime and minimum wage requirements for executive, administrative, professional, computer professional, and outside sales representative. To read more about the FLSA and the exemptions to its coverage, [click here](#).

The Equal Pay Act is a part of the FLSA, administered and enforced by the EEOC. The Act prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort, and responsibility under similar working conditions. In the event of a complaint, an employer must be able to establish that differences in pay are supported by business-related factors and are not based on gender or other minority characteristics.

Workplace Safety and Health Requirements

Occupational Safety and Health Act of 1970 was created by Congress to “assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education, and assistance.” The Act requires all private-sector employers to:

- Follow all relevant OSHA safety and health standards
- Find and correct safety and health hazards
- Inform employees about chemical hazards through training, labels, alarms, color-coded systems, chemical information sheets, and other methods
- Notify OSHA within eight hours of a workplace fatality or when three or more workers are hospitalized (1-800-321-OSHA [6742])
- Provide required personal protective equipment at no cost to workers
- Keep accurate records of work-related injuries and illnesses
- Post OSHA citations, injury and illness summary data, and the OSHA “Job Safety and Health—It’s The Law” poster in the workplace where workers will see them
- Not discriminate or retaliate against any worker

According to OSHA’s website, OSHA provides a free on-site consultation for small businesses with less than 250 workers at a site and no more than 500 employees nationwide. On-site consultation services are separate from enforcement and do not result in penalties or citations. To locate the OSHA Consultation Office nearest you, visit www.osha.gov or call 1-800-321-OSHA (6742).

The above only scratches the surface of the hundreds of laws regulating the modern workplace; however, these are the laws most frequently applicable to situations arising in the Texas workplace. At a minimum, all members of a company’s management team should be familiar with these laws in order to ensure compliance. It also may help to partner with employment experts, who can help ensure that not only are your employment processes compliant but also see to it that your health care responsibilities are accurately performed.

If you’d like more information about SWBC PEO Services, call **877-704-0454**.
