

Employment Law Basics

1. Is "at will" employment still rule in Texas? What are exceptions? Is it ever okay to discriminate based on protected characteristic? What is most common claim?
 - a. Title VII
 - b. Pregnancy Discrimination Act
 - c. ADA
 - d. ADEA (for settlement agreements, don't forget OWBPA)
 - e. FMLA
 - f. FLSA
 - g. Equal Pay Act
 - h. NLRA
 - i. Texas Commission on Human Rights Act (TCHRA)
 - j. Texas Whistleblower Act—PUBLIC employee for reporting violation of law to appropriate authority
 - k. *Sabine Pilot* claim—where ONLY reason discharged is for refusal to perform criminal act
 - l. Others: taking time off to vote, attending political convention, jury service, complying with subpoena, military service, making workers' comp claim, refusing to participate in abortion, OHSA, ERISA, WARN, USERRA
2. Many laws governing business apply only to businesses with a minimum number of employees. Are businesses below the threshold number completely unregulated in those areas?
3. Areas of employment law that are governed by common law—apply ONLY if statute does not apply.
 - a. Invasion of privacy
 - b. Defamation
 - c. Intentional infliction of emotional distress
 - d. False imprisonment
 - e. Assault and battery
4. Procedure to preserve most claims
 - a. File at EEOC, Texas Workforce Commission, or local office within 180 days.
 - b. NLRA claim—file at NLRB within 6 months.
 - c. When can you go straight to courthouse? FLSA, Equal Pay Act, FMLA, *Sabine Pilot*, workers' comp retaliation, common law tort claims (2 years); defamation (1 year); Texas Whistleblower Act (90 days).
5. Covenants not to compete
 - a. Consideration—before, trade secrets or confidential information; now, stock options okay.
 - b. Reasonable in time, scope of activity, geographic area.

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6. Hot topics
 - a. Social media—passwords, NLRA—protected speech if term or condition of employment + concerted.
 - b. What is discrimination on the basis of “sex”? Does it include sexual orientation? Transgender or gender identity discrimination?
 - c. Guns in the workplace
 - d. Breastfeeding in the workplace/lactation discrimination
 - e. Arbitration agreements
 - f. Independent contractor v. employee
7. Recent news stories--UT Austin—Bev Kearney, Major Applewhite, and “similarly situated”
8. Resources: Texas Workforce Commission, EEOC, Department of Labor

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