

TARC Personnel & Finance
Hot Topics in Employment Law
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Alternative Title:
Top Ten Countdown of Mistakes Plaintiffs' Lawyers Love

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Disclaimer

I'm not your lawyer and this presentation is not legal advice.

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Not keeping up with ever-changing employment laws.

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A few examples

- Increase in DOL audits since COVID
- Pregnant Workers' Fairness Act
- Federal Agency Rulemaking – joint employer, non-competes, worker classification, etc.

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Making assumptions about employees' health



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Always engage in & document interactive process

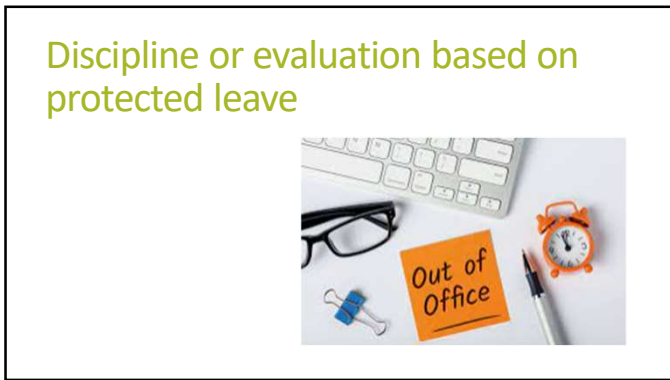
Be careful of leave limits

Don't rely on coworker or client preference

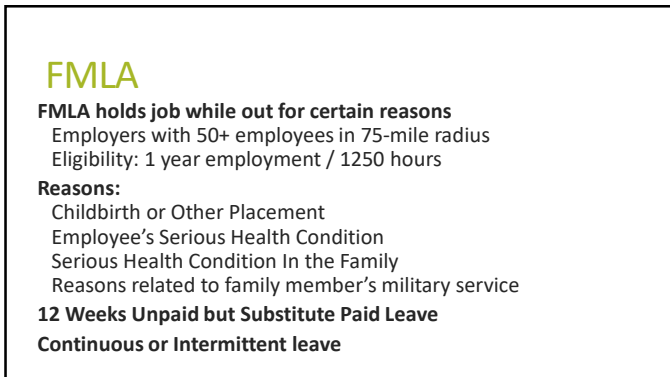
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Compliance depends on supervisors

HR dependent on knowing who is out on qualifying leave

Supervisors must know law and policies

Employees don't need to ask for FMLA to be placed on it

Even if employees have plenty of paid leave and don't want to use up FMLA

HR must send out legal notice within five days

Employees may not be disciplined or evaluated lower because of protected leave

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Inconsistent treatment of employees



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Not treating Mother Mary the same as Joe Slip-'N-Fall


Firing complaining employee for something others have done

Not looking close enough at who is "similarly situated"

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Not hiring or reinstating veterans

USERRA applies to all employers and all employees

Yes, even new employees!

Yes, even those who enlist voluntarily!

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Military Leave

Unpaid Leave, except *may* substitute paid leave
Governmental entities – paid leave too

No length of service requirement – brand new employees get reemployment rights

Reinstatement to same position, upon honorable discharge and return within timeframe

Cannot terminate without cause within six months to one year of return

Covered for five years of leave

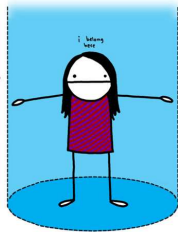
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Not taking “little” harassment and discrimination complaints seriously

MY PERSONAL AREA



Don't stand in it!!

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Focus on Harassment

Not just sexual – other classes combined outnumber sexual

FY2023 EEOC stats: 81K total charges; 25K sex-based

Can be cumulative, can include off-duty behavior

Employer's responsibility – take action reasonably calculated to end harassment

Sexual Harassment

Texas law requires "immediate and appropriate corrective action"
Individual liability for supervisors and managers

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Most hostile work environment claims: **you're not as funny or charming as you think you are**

- Jokes**
- Teasing**
- Forwarding**
- Touching**
- Irritating**

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Adverse action because of protected action
 Lower standard than discrimination claims
 Not just close in time
 NOT a get out of jail free card

Latest round of EEOC FY 2023 data
 Retaliation at record high
 # risen steadily for 25 years
 57% of charges in 2023 (22% in 1997)

Juries buy it, even when underlying claim not good

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Maintain strong “no retaliation” language in policies

Conduct regular training for managers and supervisors
 Cover: policies, practical implications, specific examples

HR involvement in adverse employment actions

Investigate allegations of retaliation

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Not interviewing for competence and fit because of fear about illegal questions

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Interview Red Flags

- Not courteous to your office staff
- Late for interview
- Inappropriate dress/hygiene
- Reveals confidential information about former employer
- Criticizes former employer
- Angry about prior employment
- Knows little about the job applied for

A simple 3D-style illustration of a grey figure holding a red flag on a pole.

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A photograph of three men wearing orange hard hats. The man on the left has his mouth wide open in a shout or surprise. The man in the middle has a neutral, slightly skeptical expression. The man on the right is pointing his finger and has a questioning or explanatory expression.

Hire Good Judgment

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Tweet, tweet, tweet



Connor Riley
@theconnor

Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work.



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The things you can learn just through Googling or Facebook!

- Only Public Pages
- No "Surreptitious Friending"!!
- Don't be tricked – confirm what you find
- Late in the process
- Searcher not decision maker – teach someone else what to look for



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Giving a false reason for an action
(even just to be nice!)



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Documentation doesn't match the explanation
Testimony shows a different real reason
"Pretext" allows presumption of illegal reason
Still the main reason plaintiff's lawyer will take a case

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ANDTHE NUMBER ONE

reason employers get in
trouble . . .

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CALLING ME AFTER THE DEED IS DONE!

We just fired a minority, pregnant, over-40, disabled employee who recently returned from a workers' comp injury

We fired her for complaining that her back still hurt

It was really annoying

Was that ok?

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THANK YOU!

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