

New + Notable

Employment Law Updates & Refreshers for 2026

Texas Association of Regional Councils
Finance and Personnel Association
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Real quick reminder!

Although I am a lawyer, I may not be not YOUR lawyer (yet)

Nothing in this presentation creates an attorney-client relationship and should not be taken as legal advice

You can hire me if you want legal advice 😊

What do you need to know?

- I wish I could cover everything in depth, but today, let's talk about some requested topics:
 - Separation of Employment
 - Labor Law Posters
 - Form I-9 & E-Verify Requirements
- If we're lucky, I'll have time to hit on some other important updates...

Employment Separation

- Terminations
 - Performance
 - Conduct
 - Leave Exhaustion
- Resignations
- RIFs, Layoffs, and At-Will Termination
- How to do the dam* thing

Terminations: Performance

- **Have Clear & Measurable Performance Criteria** ...or at least a job description
- **Coach Early** – Don't let a bad supervisor slide
- **Listen to Employee Explanations – ask, don't act, first**
 - Don't Ignore Medical Issues (FMLA, ADA, PWFA...)
- **Keep Emotion Out of It** – Keep it fact based, no “always” or “never”
- **Be Honest**
- **Set (Achievable) Expectations** – Be specific
- **Document, Document, Document** – Follow up to conversations in writing (email)
- **Be Consistent with Consequences**
 - Don't micromanage or over-scrutinize complainers, but...
 - Also don't be afraid to act!

Terminations: Conduct

- **Have Clear Written Policies on Expectations**
 - Code of Conduct, Anti-Harassment, Ethics, IT Use, Workplace Violence, etc.
- **Address Small Things Early**
- **Listen to Employee Explanations**
 - Conflicting reports – do you need an investigation?
- **Keep Emotion Out of It**
- **Document, Document, Document** – Follow up to conversations in writing (email)
- **Be Honest**
- **Is it a One-and-Done?**
- **Be Consistent with Consequences**

Terminations: Leave Exhaustion

- **Have Clear Written Policies**
 - FMLA, Accommodations, Sick Leave Pool, Leave of Absence, Leave Limits, Exhaustion of Leave
- **Provide Required Notices / Keep Documentation**
- **Keep Employee Updated**
- **Be Consistent** – Don't subjectively give some employees more time than others
- **Approach with Humanity**
 - Employee medical, family medical, other personal circumstances
 - Business need

Resignations

- **Resignation in Lieu of Termination**
 - Constructive Discharge
 - Unemployment – Not voluntary, must show misconduct
- **Voluntary Resignations**
 - Two Weeks Notice?
 - Policy Requirement for leave payout
 - Accept Effective Immediately?
- **Resignation for Cause... uh oh...**
 - Hostile Work Environment / Harassment claims
 - Unsafe Work Conditions
 - Unpaid Wages
 - Substantial Change in Terms (significant reduction in pay / demotion)
 - Unemployment – “such cause, connected with the work, as would lead a reasonable employee who is otherwise interested in remaining employed to nonetheless leave the job.”

RIFs, Layoffs, and At-Will Term

- **Terminology matters**
- **Reduction in Force (RIF) – Permanent elimination of position**
 - Driven by reorganizations or other structural changes
 - How much advance notice?
 - Separation Agreement?
- **Layoff – May be temporary, driven by workload**
 - Layoff implies potential recall if work improves
 - Position usually still exists, just vacant unless/until work or budget increases
- **At-Will Termination - Employers can terminate employees at any time for any reason—or no reason—with or without notice, provided it is not for an illegal purpose**
 - If you have a reason, give it
 - If you don't, the employee will make one up

Separations – How to?

- **Have a Set Process / Procedure / Paperwork**
- **Terminations – Meet with the Employee**
 - Leave Exhaustion may be done through written notice
 - Document reason and meeting
 - Who's there?
- **Resignation**
 - Document it – don't leave it as verbal
 - Transition / training period?
 - Accepted immediately?
- **Collect equipment and log-in information**
- **Cut off access – when, how, who to notify?**
- **Collect belongings – employee or employer?**
- **“Walk out” or Security (exception, not the rule)**

Separations – Why does it matter?

- **Unemployment Claims**

- Eligibility based on unemployment or reduced hours through no fault of your own
 - Layoff – No fault
 - Fired – Misconduct connected with the work
 - Quit – Good cause connected with the work (personal good cause doesn't get there)

- **Discrimination Claims**

- Title VII, ADEA, ADA, USERRA, GINA, PWFA, TCHRA
- Failure to Accommodate – ADA, PWFA, Title VII
- Hostile Work Environment

- **Retaliation Claims**

- Adverse action for (because of) engaging in protected activity
 - Termination is adverse
 - Protected activity are actions protected by law: Requesting accommodation, filing workers compensation, taking protected leave, making a complaint, participating in an investigation, reporting illegal conduct, objecting to discriminatory conduct...

Labor Law Poster Updates – State

- **Reporting Workplace Violence (NEW-ish)**

- Effective September 1, 2023 – Poster required as of January 8, 2024
- Requires notice on how to report workplace violence or suspicious activity to DPS hotline.
- Required in English & Spanish
- I also recommend inclusion in Personnel Policies (supplement, not replacement)
- <https://www.twc.texas.gov/sites/default/files/fdcm/docs/workplace-violence-poster-twc.pdf>

- **Other State Posters & Guidance**

- <https://www.twc.texas.gov/programs/unemployment-tax/posters-workplace>

Labor Law Poster Updates – Federal

- **FLSA Minimum Wage Poster (UPDATED)**
 - Revised April 2023
 - Added Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act) information
 - Reasonable break time
 - Private non-bathroom space
 - Exempt and non-exempt employees
 - Previous poster editions do not meet requirements
 - <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/minwagep.pdf>
- **Other Federal Posters & Guidance**
 - <https://www.dol.gov/general/topics/posters>

Form I-9 and E-Verify Updates

- **Form I-9 – Remind me what that is?**

- U.S. Citizenship and Immigration Services document for employers to verify employee identity and legal work authorization
- Employee fills out Section 1 on first day
- Employer completes Section 2 within 3 days (review of documents)
- Employee must present acceptable ORIGINAL documents from a list
- Subject to ICE audits

Form I-9 and E-Verify Updates

- **E-Verify – Remind me what that is?**

- Internet-based system operated by U.S. Department of Homeland Security (DHS) with Social Security Administration (SSA)
- Allows employers to verify employment eligibility of new hires
- Companion for Form I-9 – compares employee information on Form I-9 against government records to confirm authorization.
- Mandatory for state agencies, universities, and state contractors/subcontractors
- Currently still voluntary for most others (including local government entities)

- **E-Verify+ – Huh?**

- Combines Form I-9 and E-Verify into one digital process
- Still must examine the original documents

Form I-9 and E-Verify Updates

- **Minor Form I-9 updates January 20, 2025 – expiration May 31, 2027**
 - Form I-9 (08/01/23 edition) is now only valid until July 31, 2026 – Employers must update systems to new form before deadline
 - Key April 2, 2025 Updates:
 - Renamed Checkbox from “A noncitizen authorized to work” to “An alien authorized to work”
 - Updated terminology, replacing “gender” with “sex”
 - Reminder – COVID-19 document review flexibility ended in 2023
- **Minor E-Verify and E-Verify+ update**
 - Similar language change from “A noncitizen authorized to work” to “An alien authorized to work”
- **Major E-Verify and E-Verify+ update**
 - New Monitoring Requirement – Employers expected to regularly log into E-Verify to generate a Status Change Report to check if any current employees have had their employee authorization document revoked. Recommended weekly or biweekly
 - Give employees a chance to present other valid work authorization before termination

I-9 Compliance Audits

Consensus that employers should expect to see more I-9 compliance audits

- Strong recommendation to self-audit
- USCIS has excellent resources / explanations for how to correct issues
- ICE audit will begin with Notice of Inspection, requesting records within 3 days
 - Store I-9s separately so you can provide quickly
- 2025 Fine Schedule – significantly increased fines due to inflation adjustments, which are cumulative

ICE Visit Protocol

- Designate on-site employee as liaison for any visits
- Stay calm, request identification and purpose
- “We will comply with all requirements...but I am not authorized to speak for the Department. Please wait while I notify my director.”
 - Determine process for notification – consider multiple options



Access to Office Areas

- Public Areas: ICE agents can enter all public areas
 - Any person who encounters ICE agent in a public space has right to remain silent and request an attorney, and the freedom to leave unless they are being detained
- Private areas
 - ICE agents cannot enter private areas without a valid judicial warrant
 - Consider signs which indicate which areas are private
 - Conduct training for all on this topic

Notice of Inspection



NOTICE OF INSPECTION

[Date]

[Name of Company Official]
[Company Name]
[Company Address]

Dear Sir/Madam:

Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, requires employers to hire only United States citizens and aliens who are authorized to work in the United States. Employers must verify employment eligibility of persons hired after November 6, 1986 using the Employment Eligibility Verification Form I-9.

U.S. Immigration and Customs Enforcement (ICE) regulations require the provision of three days notice prior to conducting a review of an employer's Forms I-9. This letter serves as advance notice that ICE has scheduled a review of your forms for *insert date and time*. You may, however, waive the three-day period, should you wish to do so, by annotating and signing the bottom of this letter and advising this office of your decision.

During the review, *insert name and title of ICE point of contact* will discuss the requirements of the law with you and inspect your Forms I-9. The purpose of this review is to assess your compliance with the provisions of the law. ICE will make every effort to conduct the review of records in a timely manner so as not to impede your normal business routine.

Sincerely,

Insert name
Insert title (GS or above)

I wish to waive the three day notice to which I am entitled by regulation.

(Printed Name)

(Signature)

(Date)

Administrative Subpoena

1. To (Name, Address, City, State, Zip Code)	DEPARTMENT OF HOMELAND SECURITY IMMIGRATION ENFORCEMENT SUBPOENA to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To	
(Title of Proceeding) (File Number, if Applicable)	

By the service of this subpoena upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

- (A) **APPEAR** before the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or U.S. Citizenship and Immigration Services (USCIS) Official named in Block 3 at the place, date, and time specified, to testify and give information relating to the matter indicated in Block 2.
- (B) **PRODUCE** the records (books, papers, or other documents) indicated in Block 4, to the CBP, ICE, or USCIS Official named in Block 3 at the place, date, and time specified.

Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws. Failure to comply with this subpoena may subject you to an order of contempt by a federal District Court, as provided by 8 U.S.C. § 1225(d)(4)(B).

3. (A) CBP, ICE or USCIS Official before whom you are required to appear	(B) Date
Name	
Title	
Address	(C) Time <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Telephone Number	
4. Records required to be produced for inspection	



If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.

5. Authorized Official
(Signature)
(Printed Name)
(Title)
(Date)

- These documents are requests to inspect or produce documents
- Do not give right to enter private areas of building
- ICE must give you 3 days to produce I-9 forms
- Do not produce documents in first visit, do not waive 3-day period, do not proactively agree to provide any documents aside from I-9s
- Subpoenas for other records?
 - Might have objections to release – consult an attorney

Administrative Warrant

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service	
I hereby certify that the Warrant for Arrest of Alien was served by me at _____ (Location)	
on _____ (Name of Alien)	on _____, and the contents of this (Date of Service)
notice were read to him or her in the _____ language. (Language)	
_____ Name and Signature of Officer	_____ Name or Number of Interpreter (if applicable)

- Will say they are from “Department of Homeland Security” or “ICE” and are signed by an immigration officer or judge
- Give ICE the right to arrest or detail individuals suspected of violating immigration laws
- Do not grant the right to enter non-public areas, access employee records, or access private areas to detain individuals without employer consent *

** Recent news about ICE memo saying Administrative Warrants DO authorize forced entry to non-public spaces with a final order of removal. Conflicts with longstanding precedent, but yet to be determined where the Court will land now.*



Judicial
Warrant

UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of
*(Briefly describe the property to be searched
or identify the person by name and address)*

)
)
)
)
)
)

Case No.

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the _____ District of _____
(Identify the person or describe the property to be searched and give its location).

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(Identify the person or describe the property to be seized).*

YOU ARE COMMANDED to execute this warrant on or before _____ *(not to exceed 14 days)*
 in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to _____
(United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*
 for _____ days *(not to exceed 30)* until, the facts justifying, the later specific date of _____.

Date and time issued: _____
Judge's signature

City and state: _____
Printed name and title

- Allows for physical entry into a private areas for access to employee records and individuals for seizure / arrest
- Will have a state or federal court's name at the top, signed by a judge or magistrate
- Should place geographic and temporal limits on search

What else has been going on?

General Comment: New Administration

- More employer-friendly policies
...and case law?
- Shift of resources from enforcement & penalties to education & resources = goal being voluntary compliance and less enforcement
 - Example: DOL opinion letters are back, DOL PAID program
- Revision of recent agency positions (EEOC, FLSA minimum salary, joint employer, etc.)

Changes at the EEOC

- Shift in Focus and Policy Changes
 - Emphasis on protecting women from sexual harassment and discrimination, protecting workers from religious bias and harassment, including antisemitism
 - Focus on DEI initiatives under Title VII
- LGBTQ-Related Changes
 - 2020 Supreme Court (*Bostock*) – discrimination based on sexual orientation or gender identity is a violation of Title VII
 - EEOC dropped all *Bostock*-related litigation, picked up by private firms/non-profits
 - Expectation is the same for processing of charges, EXCEPT cases which result in termination

DOL WHD PAID Program

- Unveiled July 24, 2025, by DOL Deputy Secretary Keith Sonderling
- Encourage proactive employer compliance and reduce investigations
- Self-disclose FLSA & FMLA violations; DOL WHD oversees payment, employer gets release for all disclosed violations
- Avoid liquidated damages and penalties if resolved via PAID, not subject to state enforcement
- Eligibility: No recent violations, no current litigation, full disclosure
- If you discover FLSA or FMLA violations, we have another alternative now



Title VII Cases

Title VII prohibits discrimination with respect to terms, conditions, or privileges of employment based on an individual's race, religion, sex or national origin

U.S. SC Case: Ames v. Ohio Department of Youth Services

- Ames, a heterosexual woman, was denied a promotion that was ultimately given to a lesbian woman
 - Also demoted and replaced in her role with a gay man
- Claimed that the Ohio Department of Youth Services discriminated against her because of her sexual orientation
- The Sixth Circuit originally held Ames responsible for an additional evidentiary burden due to her identity as a majority-group plaintiff
- **Takeaway**
 - The Supreme Court determined there should be no difference in evidentiary standards for Title VII claims based on a party's membership in a majority or minority group
 - All employees are entitled to equal protection under Title VII

<http://case.lawmemo.com/us/ames.pdf>

“Reverse” Discrimination

- This has always been the law in Texas and the Fifth Circuit
- This case brought these issues to forefront; we see more discussion now on “reverse” discrimination
- You might see more claims or employee discussion

Hamilton et al. v. Dallas County

- Nine female correctional officers sued the Dallas County Sheriff's Department for sex-based discrimination in their scheduling policy
- The Department allowed men to choose to schedule their days off for any days, including the weekends. The women were not allowed to take off a full weekend
- Prior precedent stated that the rule for a fruitful Title VII claim was that the employee must have suffered an "ultimate employment decision such as hiring, granting leave, discharging, promoting, or compensating"
- The Court of Appeals for the Fifth Circuit determined that this rule ignores key language in the statute stating it is unlawful to "otherwise discriminate against [an employee] with respect to [her] terms, conditions, or privileges of employment"
- **Takeaway**
 - Actionable Title VII claims extend beyond ultimate employment decisions to include any changes to employment terms or privileges resulting from discriminatory intent

Hamilton v. Dall. Cty., 79 F.4th 494 (5th Cir. 2023)

U.S. SC Case: Muldrow v. St. Louis

- Sergeant Jatonya Muldrow was transferred from a specialized plainclothes police unit to a uniformed patrol job
- Her pay and rank remained the same, but she lost the responsibilities, perks, and schedule of her previous position
- She claims the job transfer was due to her being a woman.
- Supreme Court stated that even if a job transfer resulted in the same pay and title, it can still be illegal discrimination if the transfer harms their working conditions
- **Takeaway**
 - Essentially, this case makes it easier for employees to challenge discriminatory job transfers
 - Title VII requires only a “disadvantageous change” in employment. This does not require significant injury or material changes to create a basis for a discrimination claim

Muldrow v. City of St. Louis, Missouri, et al. 601 U.S. (2024).

Overtime Salary Threshold

- DOL issued a final rule raising the exempt salary threshold in tiers from \$35,568 to \$43,888 on July 1, 2024, then to \$58,656 on January 1, 2025, annually.
- Would expand overtime eligibility to millions of currently exempt employees.
- Final rule was vacated by litigation in November 2024, but DOL appealed and may issue a revised rule or push implementation in stages.
- On April 24, 2025, DOL filed to hold pending appeals in abeyance. Allows new administrative time to review their approach to the rule.
- Takeaway – For now, the \$35,568 threshold is back in effect.

White v. Construction and Trade Tools

- White worked for JD Russell as a forklift mechanic when he was injured on the job. He subsequently filed a workers' compensation claim
- Upon returning, he received 3 separate violations of the company's hard hat policy
 - On the third violation he was terminated from the company
- White sues for wrongful termination in retaliation for filing a worker's compensation claim, a violation of the Texas Labor Code
- Court determined that White's termination was a result of his violations of the hard hat policy, not his workers' compensation claim
- **Takeaway**
 - Clear evidence of an alternative explanation from terminating an employee can protect an employer from a wrongful termination claim

White v. Construction, No. 05-23-00841-CV, 2024 Tex. App. LEXIS 7945 (Tex. App.—Dallas Nov. 13, 2024, no pet. h.)

Heigel v. MetroHealth System

(at-will employment and wrongful discharge)

- Heigel was hired by MetroHealth as an at will employee with a 90-day probationary period; fired during probationary period
- She had a reputation for identifying compliance issues in the clinics in an “abrasive” and “aggressive” manner
 - After multiple complaints of her “bullying” behavior, her employment was terminated
- Heigel claims she was terminated because she communicated concerns about compliance and regulatory issues
 - Filed suit for wrongful termination and intimidation
- The court determined that Heigel failed to meet the element of a wrongful termination claim, that identifies a specific law or public policy that MetroHealth violated when they terminated her
- **Takeaway**
 - When suing for wrongful termination, a party must indicate which law or public policy their employer violated
 - Without this, wrongful termination claims can be challenged for a lack of any legal basis

[Heigel v. MetroHealth Sys., 2024-Ohio-1471](#)

Public policy wrongful termination?

- One exception to “at will” we don’t talk about as often
- Cause of action for “violating a well-established public policy” even in absence of statute or contract provision
- Examples of employment related public policy:
 - Protection from retaliation for reporting illegal activity or refusing to participate in illegal activities
 - If termination would violate an express agreement, such as a CBA
 - 1994 Tex Sup Ct case found wrongful termination when terminated for violating nepotism policy, but violation had been permitted for 17 years

Personnel Policy Updates

Top 3 Personnel Policy Updates

1. ACCOMMODATIONS POLICY

Pregnant Workers Fairness Act (PWFA)

- We are still seeing some Handbooks that need these updates!
- Effective June 27, 2023
- Applies to employers with 15+ employees
- Requires reasonable accommodation for conditions “related to, affected by, or arising out of” pregnancy, childbirth, and related medical conditions
 - Builds on existing protections under Title VII (Pregnancy Discrimination Act) and ADA
- Interactive process required, like ADA
- Undue hardship standard to deny accommodation, like ADA
- Pregnant employees cannot be required to take leave when another reasonable accommodation is available

FINAL REGULATIONS

Final Regulations were issued on April 15, 2024!

Some things you should know about...

- Phrase “related to, affected by, or arising out of” is interpreted as an inclusive term.
- Definition of “related medical condition” is similarly inclusive
- Unnecessary Delays – amount to denial.
- Limitation on monetary damages for violations if employer made a “good faith effort” to provide a reasonable accommodation.
- <https://www.eeoc.gov/newsroom/eeoc-issues-final-regulation-pregnant-workers-fairness-act>

2. Social Media / Prohibited Applications Policy

- SB 1983 (2023) – Amended Government Code
- Prohibits installation / mandates removal of certain apps on government devices
- Covered Applications – TikTok, any successor app / service developed / provided by ByteDance Limited (or entity owned by ByteDance), or other social media app / service proclaimed by Governor.
- Can prohibit on personal devices used for business
- Action to identify, track, manage, and enforce prohibition
- Director permitted exceptions for law enforcement or implement information security measures
- Policy required as of November 20, 2024!

3. ARTIFICIAL INTELLIGENCE POLICY

Hiring, Acceptable Use, Confidentiality

- Policy about approved and unapproved use of AI
- Lays clear foundation for taking action with misuse
- Considerations
 - Hiring – Screening Candidates?
 - Bias, creating disparate impact – over-reliance on algorithm
 - Lacks transparency and accountability
 - Document criteria, how its used,
 - Open AI Chat GPT – NOT CONFIDENTIAL!
 - AI System Packages – Can they provide confidentiality?

BONUS – PROHIBITED RELATIONSHIPS

- Policy prohibiting certain romantic or intimate relationships
- Chain of command relationships
- Other relationships that create an actual or apparent conflict of interest or disruption
 - Perception of favoritism
 - Undue influence
 - PDA disruption
 - Breakup drama
- Small communities may require creativity

THANK YOU!



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