

TEXAS

EMPLOYMENT LAW GUIDE

Federal, state and local governments adopt labor and employment laws to protect the rights, health and compensation of workers.

As a general rule, federal laws supersede state and local laws. However, state and local laws can supplement or provide additional protections to employees and impose additional requirements that employers must follow. When a conflict exists between federal and local requirements, the U.S. Department of Labor instructs employers to follow the law that provides the highest protection or greater benefit to the employee.

This Employment Law Guide provides employers a reference of key state labor and employment laws. Employers can use the content in this guide to learn more about their obligations and liability under state law. When possible, this guide includes direct links to agency guidance and official posters, notices and forms.

Please note that this guide provides a high-level overview of labor and employment standards in the state. Additional requirements may apply or be adopted. Employers are encouraged to consult with knowledgeable legal professionals or to contact state agencies for legal advice, authorized guidance and official interpretations of these or other employer requirements.

TABLE OF CONTENTS

RECRUITMENT AND HIRING	3	DISCRIMINATION	7	RECORDKEEPING REQUIREMENTS	14
Commission on Human Rights Act.....	3	Commission on Human Rights Act.....	7	Apprenticeship Programs	14
Job Advertisements	3	Genetic Information Discrimination.....	8	Child Labor	14
Arrests and Convictions.....	3	Discrimination for Participating in Emergency Evacuation Act.....	8	Discrimination (Fair Employment) Investigation	14
		Compliance Steps for Employers.....	8	Employee Leave Laws	14
EMPLOYEE COMPENSATION AND WAGES	4	WORKPLACE VIOLENCE PREVENTION	9	New Hire Reporting	14
Minimum Wage and Overtime Pay	4	Workplace Violence	9	Unemployment Compensation Law	15
Regular Work Hours	5	Employer Liability in Lawsuits for Intentional Injury	9	Wage and Hour Laws	15
Wage Payment Requirements.....	5	Texas Open and Concealed Carry Law	9	Workers' Compensation	15
Last Payment of Wages	5	Workplace Violence Plan Implementation for Employers	10		
		WORKPLACE SMOKING RESTRICTIONS AND DRUG TESTING	11		
EMPLOYEE LEAVE	6	Where Is Smoking Prohibited?	11		
Jury Duty/Court Attendance Leave.....	6	Drug and Alcohol Testing.....	11		
Military Leave	6				
Voting and Convention Leave.....	6	NOTICES AND POSTERS	13		
Emergency Evacuation Leave.....	6	All Texas Employers.....	13		
Foster Child Leave.....	6	Public Employers	13		
		Employers subject to Specific Laws	13		

RECRUITMENT AND HIRING

COMMISSION ON HUMAN RIGHTS ACT

JOB ADVERTISEMENTS

ARRESTS AND CONVICTIONS

3

3

3

In addition to federal fair employment laws, Texas law prohibits employers from engaging in certain discriminatory employment practices. The following Texas laws provide discrimination protections for employees:

- The Texas Commission on Human Rights Act (CHRA); and
- The Texas Employment Discrimination for Participating in Emergency Evacuation Act.

COMMISSION ON HUMAN RIGHTS ACT

Most of the prohibitions under the CHRA apply to employers that have **15 or more employees** for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. Specifically, the CHRA makes it an unlawful employment practice for these employers to discriminate against any individual based on any of the following:

- Race or color
- Disability
- Religion
- Sex
- National Origin
- Age

As of Sept. 1, 2021, however, **all employers** in the state are prohibited from committing or allowing workplace sexual harassment.

JOB ADVERTISEMENTS

Employers may not print or publish a notice or advertisement for employment that indicates preference, limitation, specification or discrimination based on race, color, disability, religion, sex, national origin or age. An exception may apply if disability, religion, sex, national origin or age as a bona fide occupational qualification.

ARRESTS AND CONVICTIONS

Texas employers may generally access employee and applicant arrest and conviction records, including information related to arrests, charges, prosecutions, convictions, outcomes, and imprisonments. However, employers **may not** disclose criminal history record information unless authorized by law.

EMPLOYEE COMPENSATION AND WAGES

MINIMUM WAGE AND OVERTIME PAY 4

REGULAR WORK HOURS 5

WAGE PAYMENT REQUIREMENTS 5

LAST PAYMENT OF WAGES 5

Federal minimum wage law is governed by the Fair Labor Standards Act (FLSA). The current federal minimum wage rate is \$7.25 per hour for nonexempt employees. The Texas Minimum Wage Act (TMWA) complements federal law and, in some cases, prescribes more stringent or additional requirements for employers. Whenever employers are subject to both state and federal laws, the law that provides the greater protection for the employee applies.

The Labor Law Section of the Texas Workforce Commission (TWC) enforces and investigates minimum wage violation claims.

MINIMUM WAGE AND OVERTIME PAY

The TMWA has adopted the federal minimum wage rate of \$7.25 per hour as the state standard.

To calculate an employee's wage rate, an employer may include the cost of meals and lodging that it customarily provides for the employee. However, employers that include the cost of meals and lodging must also report these costs in the employee's earning statements.

Exceptions

Employers (except agricultural employers) may pay wages below the minimum wage rate if they are exempt from contributing to the Texas Unemployment Compensation Fund. In addition, employers are exempt from paying the minimum wage to:

- Bona fide executive, administrative and professional employees;
- Outside sales personnel and collectors paid on commission;
- Closely-related employees (an employer's brother, sister, brother-in-law, sister-in-law, child, spouse, parent, guardian, son-in-law, daughter-in-law or ward);
- Students;
- Dairy farmers;
- Livestock production operation employees (including any activity necessary or useful to the raising of livestock, regardless of the size or type of location);
- Babysitters;
- Domestic employees providing services in or about a private home, including individuals that furnish personal care for a resident of the home;
- Inmates;

- Religious, charitable or nonprofit organization employees;
- Amusement park employees working for a park that operates for up to seven months in a year or earns at least two-thirds of its total income in a six-month period;
- Sheltered workshop employees; and
- Patients or clients of a state mental health facility (after certain requirements are met).

Sheltered workshops are nonprofit charitable organizations engaged in evaluating, training, and providing employment services for disabled individuals. Sheltered workshop employees are exempt from minimum wage laws when the workshop complies with federal regulations.

Students are exempt from minimum wage laws when they are either:

- Under age 20 and are regularly enrolled in a high school, college, university or vocational training program; or
- Under age 21, have a disability, participate in vocational rehabilitation and are part of a cooperative school-work program.

Exemptions do not apply to agricultural workers paid on a piece rate basis.

Tipped Employees

In Texas, a tipped employee is an individual who receives at least \$20 per month in tips.

A tipped employee is entitled to receive wages at the minimum rate, but the employer need only pay him or her \$2.13 per hour as long as this wage rate, when added to the employee's tips, enables the employee to receive total wages at or above the minimum wage rate. The \$5.13 difference between the tip rate and the minimum wage rate is called a tip credit. An employer may use this tip credit only after notifying the employee. The tip credit does not vary for tipped employees who work overtime hours.

Overtime Pay

Overtime pay in Texas follows FLSA regulations. In general, employees are entitled to receive one and one-half times their regular wage rate for work performed during overtime hours. For more information on federal guidelines to calculate overtime wages and for federal exemptions to overtime payments contact Heffernan Insurance Brokers.

Posting Requirement

Employers must display a summary of minimum wage requirements in a conspicuous place where employees normally pass by and can read it. Because Texas law follows federal law, employers must display the FLSA Minimum Wage Poster.

Prohibited Retaliation

Texas law prohibits employers from retaliating against any employee who files a claim for violations of minimum wage laws.

Employers that retaliate with malice or with reckless indifference towards the employee may be liable for unpaid wages, interest on unpaid wages, a punitive fine of between \$50,000 and \$300,000, attorney fees and court costs.

REGULAR WORK HOURS

Texas recognizes the 40-hour workweek (seven consecutive calendar days) as the regular work period and the basis to calculate overtime pay. The hours an employee works during one workweek may not offset the hours worked in previous or future workweeks. However, under federal law employers can modify work-period provisions for certain employees.

Day of Rest for Retail Employees

Retail employers may not require an employee to work on a period the employee has requested to be off duty to attend regular worship services. Retail employers must also accommodate the religious beliefs and practices of their employees, unless they can prove that accommodating religious practices and beliefs would be an “undue hardship” on the operation of their business. In addition, employees working in retail are entitled to at least 24 consecutive hours of time off to rest or worship on the seventh day of each workweek. This time off is in addition to the regular periods of rest allowed during each workday.

Meal and Rest Breaks

Texas generally does not require private employers to provide employees meal or rest breaks. However, retail employers must give employees that work more than 30 hours a week at least 24 consecutive hours to rest or worship every 7 days.

WAGE PAYMENT REQUIREMENTS

The TWC requires employers to pay employee wages in United States currency, with a check or by electronic fund transfer. Employers may pay a portion of an employee’s wages in one form and the rest in another if they have a written agreement with the employee.

Frequency of Payment

The TWC requires employers to pay wages to employees at least semi-monthly (twice per month), unless the employees are exempt under the FLSA. Exempt employees must be paid at least once per month. If employees are paid twice per month, each pay period must have, to the degree possible, an equal number of days.

Employers can determine the dates for their paydays or they can adopt the state’s recommendation of paying employees on the first and the fifteenth day of each month. If an employer does not pay an employee on a designated payday, the employer must pay the employee on another regular business day at the employee’s request.

Employers must pay bonuses and commissions in a timely manner and abide by any agreement they have made with their employees.

Delivery of Wages

Employers may deliver employee wages in person, via registered mail or by electronic fund transfer, no later than the established payday. Employers may deliver payments to a third party if the employee has authorized the employer in writing to deliver the funds to the identified third party.

If employers chose to deliver wages through electronic fund transfer, employers must notify each affected employee in writing at least 60 days before the first electronic transfer takes place. Employers must also obtain the information required by the employee’s financial institution to complete the transaction.

Deductions and Withholdings

Employers may not withhold or divert any part of an employee’s wages except for a sum that has been ordered by a court of competent jurisdiction, authorized by federal law or authorized by the employee for a lawful purpose.

Earnings Statement

Employers must provide their employees with a written statement of their earnings for the pay period. Employers, or their representatives, must sign the statements. The statements must include:

- The employee’s name;
- The rate of pay;
- The total amount of wages that the employee earned during the pay period;
- The amount and purpose of all deductions made from the employee’s earnings;
- The amount of wages after deductions; and
- The total number of hours the employee worked during the period.

If the employer uses a piece rate instead of an hourly rate to compensate an employee, the employer may show the total number of units produced by the employee instead of the total number of hours worked by the employee.

Posting Requirement

Employers must display payday notices in a conspicuous place where employees can see them. The TWC has provided a model poster that employers can use to satisfy this requirement.

LAST PAYMENT OF WAGES

Employers must pay all wages due to a terminated employee no later than six days after the employee is discharged. Employers must pay any employee who leaves employment voluntarily in full no later than the next regularly scheduled payday.

EMPLOYEE LEAVE

JURY DUTY/COURT ATTENDANCE LEAVE

6

MILITARY LEAVE

6

VOTING AND CONVENTION LEAVE

6

EMERGENCY EVACUATION LEAVE

6

FOSTER CHILD LEAVE

6

Employers may provide their employees with various types of paid or unpaid leave as part of their overall compensation packages, including vacation time, personal leave and sick leave. Employers have some flexibility when it comes to establishing or negotiating employee leave policies. However, federal laws such as the Family and Medical Leave Act (FMLA) require covered employers to provide employees with leave in certain situations.

Please note that the information provided below focuses on statewide laws. Cities, counties and other localities may have enacted ordinances that mandate employers to provide paid sick leave to employees. An employer located in an area with a local paid sick leave law must comply with federal, state and local leave laws, as applicable.

JURY DUTY/COURT ATTENDANCE LEAVE

Employers must provide unpaid leave to employees summoned to jury duty. Job protections apply to employees taking jury duty leave.

Employers may not punish or penalize employees for taking time off from work to comply with a valid subpoena to appear in court.

MILITARY LEAVE

In addition to the Uniformed Services Employment and Reemployment Rights Act (USERRA), Texas law provides the following job protections for state military members:

- Reemployment rights (without loss of time, efficiency rating, vacation time or any benefit of employment) following a period of state military service; and
- The same benefits and protections provided to U.S. military members by USERRA.

VOTING AND CONVENTION LEAVE

Employees may be absent from work for a reasonable amount of time to vote (at least two hours), unless the polls are open for at least two consecutive hours outside of the employee's work hours.

Voting leave is **paid** if the time cuts into the employee's normal working hours. Employers may designate the time the employee will be off to vote, as long as the time is reasonable and sufficient to allow the employee to vote.

Employees may be absent from work to attend a state or local political convention. Convention leave is unpaid.

EMERGENCY EVACUATION LEAVE

Employers cannot discharge or discriminate against employees who leave work to participate in a general public evacuation ordered under an emergency evacuation order. These requirements do not apply to:

- Emergency services personnel (for example, firefighters, police officers and emergency medical technicians), if the employer provides them with adequate emergency shelter; and
- Any person necessary to provide for the safety and well-being of the general public, including any person needed to restore vital services.

FOSTER CHILD LEAVE

Employers with **15 or more** employees that provide leave to care for or otherwise assist employees' sick biological or adopted children must provide the same leave for an employee's foster child, if the child resides in the same household as the employee and is under the conservatorship of the Texas Department of Family and Protective Services.

DISCRIMINATION

COMMISSION ON HUMAN RIGHTS ACT

GENETIC INFORMATION DISCRIMINATION

DISCRIMINATION FOR PARTICIPATING IN EMERGENCY EVACUATION ACT

COMPLIANCE STEPS FOR EMPLOYERS

7

8

8

8

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COMMISSION ON HUMAN RIGHTS ACT

Most of the prohibitions of the Texas Commission on Human Rights Act (CHRA) apply to employers that have **15 or more employees** for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. Specifically, the CHRA makes it an unlawful employment practice for these employers to discriminate against any individual based on any of the following:

- Race or color
- Disability
- Religion
- Sex
- National Origin
- Age

As of Sept. 1, 2021, however, all employers in the state are prohibited from committing or allowing workplace sexual harassment.

Prohibited Actions

The following actions are considered unlawful employment practices if they are based on an individual's race, color, disability, religion, sex, national origin or age:

- Failing or refusing to hire, discharging or discriminating in any other manner against an individual in connection with compensation or the terms, conditions or privileges of employment; and
- Limiting, segregating or classifying an employee or applicant in a manner that would deprive him or her of employment opportunities or adversely affect his or her status in any other manner.

The CHRA prohibits discrimination based on an individual's disability only when the discrimination is due to a mental or physical condition that does not impair the individual's ability to reasonably perform a job. An employer must

make reasonable workplace accommodations for a known physical or mental limitation of an otherwise qualified individual with a disability, unless the employer can demonstrate the accommodation would impose an undue hardship on the operation of the business.

“Disability” means a mental or physical impairment that substantially limits at least one major life activity of an individual; a record of such an impairment; or being regarded as having such an impairment. The term does not include:

- A current addiction to the use of alcohol, a drug, an illegal substance, or a federally controlled substance; or
- A currently communicable disease or infection as defined in Section 81.003, Health and Safety Code, or one that is required to be reported under Section 81.041, Health and Safety Code, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of his or her employment.

Sex discrimination includes discrimination based on pregnancy, childbirth or a related medical condition. A woman affected by pregnancy, childbirth or a related medical condition must be treated in the same manner for all employment purposes as an individual not affected by pregnancy, but similar in the ability or inability to work.

Under the CHRA's prohibition against **sexual harassment**, effective Sept. 1, 2021, an employer may be held liable for sexual harassment of an employee if the employer or its agents or supervisors:

- Knew or should have known of the sexual harassment; and
- Failed to take immediate and appropriate corrective action.

The CHRA defines the term “sexual harassment” as an unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:

- Submission to it is explicitly or implicitly made a term or condition of employment;
- Submission to or rejection of it is used as the basis for a decision affecting employment;
- It has the purpose or effect of unreasonably interfering with work performance; or
- It has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

The CHRA also prohibits employers from retaliating or discriminating against any person who opposes a discriminatory practice, makes or files a charge, files a complaint or testifies, or assists or participates in any manner in an investigation, proceeding or hearing.

Employment Training Programs

Employers may not discriminate against an individual because of race, color, disability, religion, sex, national origin or age in the participation in a training or retraining opportunity or program. An employer that controls an apprenticeship, on-the-job training or other training or retraining program must keep records to show nondiscriminatory operation of the program. The [Texas Workforce Commission's Civil Rights Division](#) (CCRD) may request a detailed description of the manner in which individuals are selected to participate.

In regard to admission or participation in a training program, the prohibition against discrimination because of age only applies to discrimination against an individual who is at least 40 years of age, but younger than 56 years of age. In regard to all other employment practices, age discrimination refers to discrimination against an individual 40 years of age or older.

Lawful Exceptions

The CHRA allows employers to apply different standards of compensation or different terms, conditions or privileges of employment under:

- A bona fide seniority system, merit system or employee benefit plan (such as a retirement, pension or insurance plan) that is not a subterfuge to evade the CHRA; or
- A system that measures earnings by quantity or quality or production.

However, a seniority system or employee benefit plan may not require or permit involuntary retirement on the basis of age unless the employee is:

- At least 65 years of age;
- Employed in a bona fide executive or high policy-making position for the two years preceding retirement; and
- Entitled to an immediate, non-forfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan (or a combination of plans of the employee's employer) that equals at least \$27,000.

In addition, an employer may impose a minimum or maximum age requirement for peace officers or fire fighters.

GENETIC INFORMATION DISCRIMINATION

An employer may not fail or refuse to hire, discharge or otherwise discriminate against an individual with respect to compensation or the terms, conditions or privileges of employment:

- On the basis of genetic information concerning the individual; or
- Because of the individual's refusal to submit to a genetic test.

The term “**genetic test**” does not include a blood test, cholesterol test, urine test or other physical test used for a purpose other than determining a genetic or chromosomal variation, composition or alteration in a specific individual.

The CHRA also provides strict rules for keeping genetic information confidential. Failure to keep genetic information confidential can result in a civil penalty of up to \$10,000, plus reasonable attorney's fees and court costs.

Enforcement

The CHRA is enforced by the CCRD. A complaint must be filed with the CCRD by the 180th day after the date of the alleged unlawful employment practice. Effective Dec. 5, 2022, however, a complaint for sexual harassment may be filed within 300 days after the alleged conduct occurred.

At the request of a party or at the direction of the CCRD, a filed complaint may be referred to the CCRD's Office of Alternative Dispute Resolution.

The CCRD may bring a civil action against an employer if it determines there is reasonable cause to believe that the employer engaged in an unlawful employment practice and the CCRD's efforts to resolve the discriminatory practice through conciliation have been unsuccessful.

An individual also has the right to file a civil action against an employer and may intervene in a civil action brought by the CCRD. If a court finds that an employer engaged in an unlawful employment practice, it may:

- Prohibit the employer by injunction from engaging in an unlawful employment practice; and
- Order additional equitable relief as appropriate.

Additional equitable relief may include hiring or reinstating with or without back pay, upgrading an employee with or without pay, admitting to or restoring union membership, reporting on the manner of compliance with the terms of a final order and paying court costs. A court may also award compensatory damages and punitive damages.

DISCRIMINATION FOR PARTICIPATING IN EMERGENCY EVACUATION ACT

An employer with **one or more employees** may not discharge or otherwise discriminate against an employee who leaves his or her place of employment to participate in a general public evacuation ordered under an emergency evacuation order. This rule does not apply to individuals who are employed as emergency services personnel, if the employer provides adequate emergency shelter for those individuals.

An employee who is discharged for participating in an emergency evacuation may be entitled to reinstatement including lost wages and employer-provided benefits.

COMPLIANCE STEPS FOR EMPLOYERS

In general, state employment nondiscrimination laws provide similar, but not identical, protections to employees as the federal employment nondiscrimination laws. For example, state laws may protect different individuals, cover small employers who are not subject to the federal provisions, and/or provide different exemptions from their discrimination prohibitions. Employers should become familiar with how both federal and state laws apply to their employment practices.

In addition, employers can help protect themselves from discrimination claims by creating a work environment that discourages employment discrimination and encourages diversity. To create this type of working environment, employers should consider the following steps:

- Confirm that workplace nondiscrimination policies are complete, accurate and up to date, and that such policies are actually being followed;
- Update the policies as necessary to include a strict “no tolerance” policy for prohibited discrimination, and include information on how employees can report incidents of discrimination to the employer;
- Train managers and supervisors on the updated policies and educate employees regarding employment discrimination, including sexual harassment training; and
- Respond to employee complaints in a timely and professional manner.

WORKPLACE VIOLENCE PREVENTION

WORKPLACE VIOLENCE	9
EMPLOYER LIABILITY IN LAWSUITS FOR INTENTIONAL INJURY	9
TEXAS OPEN AND CONCEALED CARRY LAW	9
WORKPLACE VIOLENCE PLAN IMPLEMENTATION FOR EMPLOYERS	10

The Occupational Safety and Health Act (OSH Act) imposes a general duty on all employers to provide employees with a workplace that is free from hazards. Federal civil rights laws also require employers to keep the workplace free from threats of violence, and state workers' compensation laws hold employers responsible for injuries sustained by employees while performing job-related duties.

In addition to these requirements, Texas law also places a duty on employers to provide employees with a safe workplace.

WORKPLACE VIOLENCE

The National Institute for Occupational Safety and Health (NIOSH) defines workplace violence as "violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty." The Occupational Safety and Health Administration (OSHA) recognizes four different types of workplace violence:

- **Criminal Acts:** Violent acts by people, employees or former employees who enter the workplace with the intention to commit a crime;
- **Customers/Clients/Patients:** Violent acts directed at employees by individuals who enter the employer's premises to obtain some type of service;
- **Co-Worker Conflict:** Violence directed at co-workers, supervisors, or managers by a current or former employee, supervisor, or manager; and
- **Personal:** Violence in the workplace by someone who does not work there, but who is known to, or has a personal relationship with, an employee.

Workplace violence is a particularly prevalent issue in healthcare and social service settings as well as late-night retail establishments.

EMPLOYER LIABILITY IN LAWSUITS FOR INTENTIONAL INJURY

An employee or a deceased employee's survivors may bring a civil lawsuit against an employer, and the employer may be held liable for damages, for actions or omissions that were intended to injure the employee or that involved substantial certainty that the injury would occur.

For example, an employer might deliberately remove an equipment safety guard or deliberately misrepresent a toxic or hazardous substance. In these situations, if an employee is injured as a direct result of the removal or misrepresentation, it is presumed that the injury was caused intentionally.

Texas courts impose further obligations on employers to provide employees with a safe work environment by requiring employers to hire, train and supervise their employees properly. This means that if an employer does not adequately hire, train or supervise its employees, the employer may be sued for negligence and held liable for damages if the employer knew or should have known the employee would subject a coworker, customer or third party to an unreasonable risk of harm.

TEXAS OPEN AND CONCEALED CARRY LAW

Texas law allows Texas residents and some residents of other states to obtain a license to carry open or concealed handguns in the state of Texas. Before Jan. 1, 2016, a license extended a person's right to carry only a concealed handgun in places other than the person's own premises or vehicle. As of Jan. 1, 2016, a handgun license grants the holder the right to carry a handgun that is secured in a holster.

However, Texas law prohibits all individuals—including those holding a valid handgun license—from carrying an open or concealed handgun in certain places. Texas law also allows individuals, businesses and other entities to prohibit open or concealed (or both) handgun carrying on their properties by providing notices that meet specific requirements. Certain types of businesses are required to prohibit the carrying of handguns on their premises by providing specific notices.

Regardless of whether handgun carrying is allowed on a particular premises, an employer may not prohibit an employee who holds a license to carry handguns, or who otherwise lawfully possesses firearms or ammunition, from transporting or storing them in his or her privately-owned, locked car on the employer's premises.

Employer Immunity

Texas law provides employers with immunity from civil liability, except in cases of gross negligence, for injury, death, property damage or other damage caused by an incident involving a handgun or ammunition that the employer is required by law to allow on its property.

An employer is not required to patrol, inspect or secure any parking area that the employer provides for employees, or to investigate or confirm an employee's compliance with laws related to possession of a handgun. In addition, the lawful presence of a handgun on an employer's property does not constitute a failure by the employer to provide a safe workplace.

Regardless of whether an employer decides or is required to prohibit weapons on its premises, employers should revise all company policies and their employee handbooks to ensure that their handgun carrying policies are properly conveyed to their employees.

WORKPLACE VIOLENCE PLAN IMPLEMENTATION FOR EMPLOYERS

Although Texas does not have a statute or a regulation explicitly governing workplace violence, employers are still required to take all actions reasonably necessary to ensure a safe workplace and take all steps reasonably necessary to protect the life, health and safety of the employees. Employers may be liable for incidents of workplace violence under both federal and state law for failure to provide employees with a safe workplace.

Employers can create a workplace violence plan to outline policies and processes that can help prevent workplace violence. If an employer elects to have a workplace violence plan, the plan will be most effective if it is tailored to the individual needs and circumstances of the employer. It should take into account the resources available to the employer to enact and maintain the program.

A workplace violence policy may include the following items:

- A statement summarizing the employer's workplace violence policy and its relation to other policies the employer has enacted;
- Standard practices to address workplace violence or threats of violence;
- Designation and training of an incident response team;
- Clearly stated disciplinary procedures designed to prevent violent behavior in the workplace;
- Procedures for workplace violence that will handle all levels of violence;
- Reference to sources outside of the workplace that employees may consult to deal with workplace violence; and
- An effective training program to inform employees of the workplace violence policy.

WORKPLACE SMOKING RESTRICTIONS AND DRUG TESTING

WHERE IS SMOKING PROHIBITED?

11

DRUG AND ALCOHOL TESTING

11

A growing number of states have passed laws requiring employers to prohibit smoking in the workplace. Texas law doesn't specifically address smoking in private workplaces. However, Texas law does prohibit smoking in certain specified places.

WHERE IS SMOKING PROHIBITED?

Under Texas law, smoking is explicitly prohibited in all of the following places:

- Public Primary or secondary schools;
- Elevators;
- Enclosed theaters or movie houses;
- Libraries;
- Museums;
- Hospitals;
- Transit system buses; and
- Intrastate buses, planes or trains which are public places.

Although Texas state law does not specifically address smoking in private workplaces, many localities throughout Texas impose their own smoking bans. Employers should consult the law of the locality where their business is located.

Exemptions

Smoking in prohibited areas is permitted if the person smoking tobacco is:

- Entirely within areas designated for smoking tobacco; or
- A participant in an authorized theatrical performance.

An area designated for smoking tobacco on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane or train.

Compliance

All public places where smoking is prohibited must be equipped with facilities for extinguishing smoking materials, such as ashtrays or other receptacles used for disposing of smoking materials.

In addition, all public places where smoking is prohibited must prominently display a reasonably sized "No Smoking" notice. Signs must note that smoking is prohibited by state law in the public place and an offense is punishable by a fine of up to \$500.

DRUG AND ALCOHOL TESTING

Texas does not have a statute or regulation that specifically addresses workplace drug or alcohol testing by private employers. As a result, most employers may create their own employment policies, programs, procedures or rules on workplace testing.

However, transportation employers in Texas must comply with certain state and federal laws. This Employment Law Summary provides a general overview of the drug testing laws that apply to Texas employers in certain transportation industries.

Texas Law for Transportation Employers

Texas employers in transportation-related industries that are subject to the licensing requirements of the Texas Department of Licensing and Regulation (TDLR), such as vehicle storage facilities and towing companies, must implement the [TDLR Model Drug Testing Policy](#) or an equivalent that is at least as strict. If an employer uses a different policy, it must describe to the TDLR how the independent policy is as strict as the model.

Under the TDLR model, employers must conduct testing at the following times:

- **Pre-employment** – All job applicants who have received a conditional offer of employment must take a drug test before receiving a final offer.
- **Annually** – All employees must complete at least one scheduled drug test every 12 months, beginning on the date of their initial license or renewal.
- **Random Intervals** – Annual random urine drug testing of at least 25 percent of employees is required. Random testing must occur between 15 minutes and two hours after the employee is notified that he or she will be tested.

Before a drug test is administered, employees and applicants must sign a consent form authorizing the test and permitting the release of the test results to a designated medical review officer (MRO), the employer and the TDLR. If an employee or applicant fails or refuses to sign the consent form or submit to testing in a timely manner, an employer may terminate or refuse to hire the individual.

All drug testing must be done using split-specimen urinalysis, and all urine specimens must be collected by a laboratory that is certified and monitored by the federal Department of Health and Human Services (HHS). Tests must be conducted for the following substances:

- Marijuana;
- Cocaine;
- Opiates;
- Amphetamines; and
- Phencyclidine (PCP).

After a sample is provided, an MRO will review, report and store any testing information from the laboratory. Following a positive test result, the MRO will notify the employee or applicant and the employer. Once an employer receives notification of a positive result, the employer must notify the TDLR **within three days**. The employee or applicant who tested positive then has 72 hours to request a confirmation test by another certified laboratory. The employee or applicant must pay for the confirmation test and any return-to-duty or follow-up testing.

If an applicant's confirmation test is positive, the employer may not employ the individual in the type of work that is subject to TDLR licensing. If an employee's confirmation test is positive, the employee must not perform any work that is subject to TDLR licensing and may be subject to disciplinary action up to and including termination.

No disciplinary action may be taken against employees who voluntarily identify themselves as drug users, obtain counseling and rehabilitation and comply with return to duty and follow-up drug testing.

Federal Alcohol and Drug Testing Rules

The FMCSA's alcohol and drug testing rules apply to all employees who operate a commercial motor vehicle in commerce in any state and their employers. For more information on the FMCSA's alcohol and drug testing regulations, visit the [FMCSA website](#).

NOTICES AND POSTERS

ALL TEXAS EMPLOYERS

PUBLIC EMPLOYERS

EMPLOYERS SUBJECT TO SPECIFIC LAWS

13

13

13

This document provides direct links to the workplace posters employers are required to display under state law. These posters, including official translated versions, are created and updated by state agencies. Employers must also comply with all applicable federal posting requirements.

Employers must display required posters in a public place where employees can easily access them. While most posters apply to all employers within the state, some may apply to specific industries or employers. Employers can review each poster description to determine whether they are required to display that particular poster.

ALL TEXAS EMPLOYERS

The following posters are required for all employers in Texas:

- Payday law poster (unless utilizing the combined unemployment and payday law poster below) [English](#) | [Spanish](#)

PUBLIC EMPLOYERS

The following posters are required for public employers in Texas:

- Texas Whistleblower Act poster [English](#)
- Hazard communication notice [English/Spanish](#)
- Job service complaint system notice [English/Spanish](#)

EMPLOYERS SUBJECT TO SPECIFIC LAWS

Employers must display the following posters only if they are affected by the laws, conditions or requirements specified below:

- Combined unemployment and payday law poster: required for employers covered by Texas' unemployment benefits law. [English](#) | [Spanish](#)
- Workers' compensation posters: required for employers that provide workers' compensation for their employees.
- Ombudsman program poster. [English](#) | [Spanish](#)
- Private insurance. [English](#) | [Spanish](#) | [Vietnamese](#)
- Self-insured. [English](#) | [Spanish](#) | [Vietnamese](#)
- Notice of no workers' compensation poster: required for employers that opt out of workers' compensation coverage. [English](#) | [Spanish](#) | [Vietnamese](#)
- Notice regarding certain communicable diseases: required for employers of emergency medical service employees, paramedics, firefighters, law enforcement officers, or correctional officers and state agencies subject to workers' compensation laws. [English](#) | [Spanish](#)

RECORDKEEPING REQUIREMENTS

APPRENTICESHIP PROGRAMS	14
CHILD LABOR	14
DISCRIMINATION (FAIR EMPLOYMENT) INVESTIGATION	14
EMPLOYEE LEAVE LAWS	14
NEW HIRE REPORTING	14
UNEMPLOYMENT COMPENSATION LAW	15
WAGE AND HOUR LAWS	15
WORKERS' COMPENSATION	15

Federal Laws, such as the Federal Insurance Contribution Act, the Fair Labor Standards Act (FLSA), the Equal Pay Act and the Civil Rights Act, impose recordkeeping duties on employers. Texas law also imposes several recordkeeping requirements on employers. These obligations operate in addition to or in conjunction with the federal requirements. This Employment Law Summary provides a general overview of state recordkeeping requirements that apply to most employers in Texas.

Additional state and federal recordkeeping requirements may exist for your specific industry. Consult with your local government agencies for more information about recordkeeping requirements that may affect your business. Recordkeeping requirements vary by record type and some records must be maintained longer than others. In general, the Texas Workforce Commission (TWC) recommends that employers keep all employment-related records for seven years.

APPRENTICESHIP PROGRAMS

The TWC requires employers that control an apprenticeship program or an on-the-job training or retraining program to keep a:

- List of applicants for participation in the program;
- Chronology of when each applicant was received into the program; and
- Detailed description of the selection process.

CHILD LABOR

Employers that hire minors must keep a certificate of age in the employee's personnel file. To obtain this certificate, the employer must submit an application, a recent employee photograph and proof of the employee's age, such as a:

- Birth certificate;
- Baptismal certificate showing the date of birth;
- Life insurance policy insuring the life of the child showing the date of birth;
- Passport or certificate of arrival in the United States (can be up to 1 year old); or
- School record or school-census record of the age of the child (certain conditions apply).

DISCRIMINATION (FAIR EMPLOYMENT) INVESTIGATION

Employers are required to keep all records relevant to an employment discrimination investigation for as long as the TWC or a court order requires it. Relevant records include any record that may help determine whether unlawful employment practices have taken place.

EMPLOYEE LEAVE LAWS

Employers are required to track and document employee leaves, whether paid or unpaid, including military deployment, sick leave, jury duty and any other witness or court proceeding leave.

NEW HIRE REPORTING

To reduce the various types of state benefit fraud and to improve the collection of child support, the Texas State Directory of New Hires, a division of the Texas Attorney General's office, requires employers to file a report of all new hire information within 20 days of hire. For this reason, employers must create records containing:

- The employer's federal identification number;
- The employee's name, address and the Social Security number; and
- The employee's first day of paid work.

UNEMPLOYMENT COMPENSATION LAW

Employers must keep true and accurate employment and payroll records for at least four years. Employment and payroll records must contain:

- The name and correct address of the employing unit;
- The name and address of each branch, division or establishment operated, owned or maintained by the employing unit in Texas;
- Any records of ownership or change of ownership of the employing unit;
- The correct address for the employing unit's headquarters;
- The correct mailing address for the employing unit;
- The correct address where TWC representatives can inspect employment and payroll records (if inspection of any records is required outside of the state boundaries, the employing unit is responsible for the costs an inspector may incur to review any records);
- The name and address of each director, officer and any other individual who is authorized to receive subpoenas, legal processes or citations in Texas;
- Each employee's name, address and Social Security number;
- The dates on which each employee performed services for the employer and the state or states in which the services were performed;
- The amount of wages and other remuneration paid to each employee during each separate payroll period and the date of payment; and
- Each employee's status as either full time or part time and the number of hours worked during each payroll period.

WAGE AND HOUR LAWS

Employers must keep records of their employees' hours of work. To satisfy this requirement, employers may use any recordkeeping method as long as it properly records the number of hours each employee worked for each pay period, including overtime work and each employee's earnings. Texas law allows employers to round an employee's work hours if the rounding is insubstantial or insignificant (a few seconds or minutes). Time clock deductions are prohibited. A time clock deduction takes place when an employer deducts wages from an employee's pay or hours of work from an employee's timesheet without the employee's prior, written authorization. Employers who violate this law may face up to \$1,000 in penalties.

WORKERS' COMPENSATION

Employers must maintain a record of each employee injury. This record must be available for inspection at reasonable times. Failure to maintain a record of injuries is an administrative offense, punishable by a fine of up to \$25,000. Texas law allows employers to require individuals to pass a physical examination to show that they are physically capable of performing the duties of the job they will be assigned to perform. In these cases, employers have an obligation to include a transcript of the physical examination conducted by a licensed physician or chiropractor in each employee's permanent record. Self-insured employers must maintain records that allow them to file annual reports with the Texas Department of Insurance's Division of Workers' Compensation.

These records must include:

- Payroll information;
- The number of employee injuries sustained in the three preceding calendar years;
- The amount of benefits paid to injured workers;
- Annual independent financial statements;
- Evidence of sufficient financial ability to meet all workers' compensation obligations; and
- A certified actuary estimate of future liability for compensation.

TEXAS

EMPLOYMENT LAW GUIDE

The materials in this State Employment Law Guide are provided as a general reference resource. The guide is not meant to be exhaustive or construed as providing legal or any other professional service or advice. Additional requirements may apply under federal and local laws. Employers are advised to work with experienced legal counsel to implement policies, practices and procedures necessary for compliance.