

# Employment Law Reference Center

## HOW TO USE:

- 1) Review the reference center subject matter to find the area of employment law that concerns you and that you wish to inquire about.
- 2) Take note of the reference numbers following the terms you believe to most closely describe the type of law applicable to facts in your case.
- 3) Click the “[Do I Have A Case](#)” button; complete the form; and briefly list the basic facts that occurred in your case, in chronological order with dates.
- 4) Then, simply list the reference numbers you took note of in item number 2 above.
- 5) Send the transmittal to [The Pursley Law Firm](#) and a legal representative will contact you to give you insight regarding your claim and rights.

— A —

### **Abortion**

Refusal to administer, statutory wrongful discharge actions, §3:14.D.7  
Reproductive discrimination, §19:4.G  
Retaliation based on participation or nonparticipation in procedure, §24:6.S

### **Abuse of Process**

Privacy claims resulting from searches and investigations, §28:6.D

### **Addresses and Telephone Numbers**

Department of Labor, Web address, §25:1  
Drug-Free Workplace Act Helpline, §15:2.J.4  
FMLA, Web address, §25:1  
Immigration Control and Reform Act Hotline, §15:2.C.9  
Texas Workers' Compensation Act, Commission's Information Service Center, §15:3.C.6  
Texas Workforce Commission, obtaining wage claim for, §9:5.C.2

### **Advertising**

ADA, language in ad regarding non-discrimination on basis of disabilities, §16:3.C.1  
Diverse pool of applicants, methods for reaching, §6:1.B  
Executive Order 11246, affirmative action requirements for federal government contractors, §15:2.U.5  
Non-discriminatory language in published ads, §6:1.B.2  
Word-of-mouth advertising, §6:1.B.1

### **Affidavit/Declaration**

Summary judgment motions, §41:4.E

### **Affirmative Action**

ADA, no requirement of affirmative action in favor of individuals with disabilities, §21:6.F.2  
ADEA, no prohibition of reverse discrimination, §23:1.B.3  
Contract set-asides, §22:6.C.4  
Dallas City code requiring, §22:5.B.2  
Executive Order 11246, affirmative action for federal government contractors, §§15:2.K, 17:3.I, 22:4.B  
Government contractors' obligations  
Compliance evaluations, §35:6

- Conciliation agreement, §35:6.E
- Confidentiality, §35:6.C
- Enforcement proceedings, §35:6.D
- Selection process, §35:6.B
- Types of evaluations, §35:6.A
- Executive Order 11246, §35:2
  - Coverage, §35:2.A
  - EEO clause in subcontracts, §35:2.B
  - Equal opportunity survey, §35:2.E
  - Posting and notice requirements, §35:2.H
  - Provision of non-segregated facilities, §35:2.I
  - Recordkeeping requirements, §35:2.G
  - Solicitations and advertising, §35:2.C
  - Standard Form 100 / EEO-1 Report, §35:2.F
  - Written Affirmative Action Plan for minorities and women, §35:2.D
- Overview, §35:1
- Rehabilitation Act of 1973, §35:3
  - Complaints of discrimination, §35:3.C
  - Coverage, §35:3.A
  - EEO clause in subcontracts, §35:3.B
  - Invitation to self-identify, §35:3.E
  - Posting and notice requirements, §35:3.G
  - Recordkeeping requirements, §35:3.F
  - Written Affirmative Action Plan for individuals with disabilities, §35:3.D
- Vietnam Era Veterans' Readjustment Assistance Act, §35:4
  - Coverage, §35:4.A
  - EEO clause in subcontracts, §35:4.B
  - Invitation to self-identify, §35:4.D
  - Listing available jobs with state employment agency, §35:4.E
  - Posting and notice requirements, §35:4.H
  - Recordkeeping requirements, §35:4.G
  - VETS-100 Report, §35:4.F
  - Written Affirmative Action Plan for veterans, §35:4.C
- Historical background, §22:6.A
- Judicial responses
  - Expanding affirmative action, §22:6.C.2
  - Restricting affirmative action, §22:6.C.3
  - Standard of review, §22:6.C.1
  - United Steelworkers of America v. Weber*, §22:6.B
- After-Acquired Evidence.** See **Evidence**
- Age Discrimination**
  - ADEA
    - Generally, §17:3.E
    - Administrative procedures, §23:1.C
    - Covered persons and entities, §§23:1.B, 23:1.B.2
    - Disparate impact discrimination, §23:5.A.2
    - Purpose and scope of, §23:1.A
    - Remedies (see Remedies, below)
  - Arbitration, §23:7
  - Child labor. See **Child Labor**
  - Construction of cases and statutes. See **Construction and Interpretation**
  - Early retirement offers, §4:4.A
  - Immunity, Eleventh Amendment, §23:1.B.1
  - Pre-employment inquiries, §6:2.D.1
  - Proof
    - Burden shifting, §23:3.A.1

- Employer's burden of production, §23:3.A.2
- Plaintiff's prima facie case, §23:3.A
- Pretext, §§23:3.A.3.a-23:3.A.3.d
- Recordkeeping requirements of ADEA, §15:2.F
- Remedies
  - ADEA claims, §23:4.A
  - Mitigation of damages, §23:4.D
  - Offsets and deductions, §23:4.C
  - TCHRA claims, §23:4.B
- Statutory affirmative defenses
  - ADEA claims, §23:5.A
  - TCHRA claims, §23:5.B
- TCHRA
  - Administrative procedures, §23:2.C
  - Covered persons and entities, §23:2.B
  - Prohibited conduct, §23:2.A
  - Relationship between TCHRA and ADEA, §23:2.D
  - Remedies, §23:4.B
- Texas Minimum Wage Act, effect of subminimum wages for older workers, §9:2.B.2
- Waiver and settlement, §23:6

### **Agents and Agency**

- Immigration Reform and Control Act (IRCA), persons liable for compliance, §7:2.B.2
- Respondeat superior. See **Respondeat Superior**
- Sexual harassment, §20:4.A.6

### **Agricultural Hazard Communications Protection**

- See also **Hazard Communication**
- Retaliation based on health or safety violation reports, §24:6.O.2
- Statutory wrongful discharge actions, §3:14.D.1

### **AIDS or HIV**

- Association with individual with disability, discrimination based on, §21:7.D
- Off-duty volunteer work, termination for, §24:6.C
- Privacy issues regarding tests, §28:5.C.2
- Test as BFOQ, §3:14.D.17

### **Alcoholic Beverages**

- Child labor laws, §9:7.A.3

### **Alcohol in Workplace.** See **Drugs and Alcohol in Workplace**

### **Alcohol Testing.** See **Drug and Alcohol Tests**

### **Aliens**

- Eligibility for employment. See **Immigration Reform and Control Act (IRCA)**
- National origin discrimination. See **National Origin, Discrimination Based on**

### **Alternative Dispute Resolution (ADR)**

- Arbitration. See **Arbitration**
- Mediation. See **Mediation**
- Texas Commission on Human Rights Act, referral of complaint for ADR, §18:6.D

### **Amendments and Modifications**

- Employment contracts, §2:3.F.4
- Texas Commission on Human Right Act, amendment of complaint relates back, §18:6.B.3

### **Americans With Disabilities Act (ADA)**

- See also **Disability Discrimination; Disabled Persons**
- Generally, §17:3.D
- Confidentiality of medical records, §§15:4.B.1, 21:7.F.4
- Drug use exclusion, §21:4.E
- Employee medical information policies, §16:7
- Interview and hiring checklist, §16:3.C.3

- Medical or psychological examinations
  - Alcohol testing, §6:3.C
  - Policies regarding psychological tests, effect of ADA on, §16:3.E.1
  - Pre-employment exams prohibited, §6:3.B
- Pre-employment inquiries into health or disabilities prohibited, §§6:2.B, 16:3.C.2
- Pregnancy Discrimination Act, §19:4.D.2
- Purpose of, §25:10.A
- Recordkeeping requirements, §§6:5.B, 15:2.G
- Summary judgment motion, §41:8
- Texas Minimum Wage Act, effect of subminimum wages for disabled workers, §9:2.B.2

**Anti-Nepotism.** See **Nepotism**

**Appeals**

- Arbitration awards, §14:3.E
- Employer status under FLSA, §9:1.B.1
- Employment eligibility verification violations, appeal of ALJ's order, §7:2.F.4
- ERISA requirements for group benefits, §2:3.B.3
- Exemption from overtime requirements, standard of review, §9:4.B
- Wage claims, standard of review for Texas Workforce Commission order, §9:5.C.2

**Appearance of Employee.** See **Dress Codes, Grooming, and Hair Style**

**Applications**

- Employment applications
  - ADA, special issues under, §16:3.C.1
  - Disclaimers, §§6:2.A, 6:2.D.6
  - Fraud and after-acquired evidence doctrine, §16:3.B.2
  - Policies regarding disclaimers, unlawful questions, and requirements, §16:3.B.1
  - Recordkeeping requirements, §6:5
  - Requiring applicant to affirm information true and complete, §31:4.F
- Minor filing hardship application for hours restriction exemption, §9:7.A.1
- Social security or disability benefits application, effect on qualified individual with disability assertion, §21:5.D

**Apprenticeship Programs**

- See also **Training**
- Applicant lists, recordkeeping requirements, §6:5.A.1
- Apprenticeship information reports, §15:2.E.2
- Recordkeeping, §15:2.E.3

**Arbitration**

- See also **Mediation**
- Generally, §14:1
- Age discrimination, §23:7
- Chapter 451 claims, §31:4.C
- Collective bargaining provisions, arbitration agreements in, §14:5
- Company policies regarding, §16:14.B
- Employment contracts, arbitration provisions, §§2:3.B.2, 2:3.F.7
- Frequently litigated issue
  - Generally, §14:3
  - Applicability of FAA/TGAA, §14:2.C
  - Consent, §14:4.A
  - Consideration, §14:3.B
    - At-will employment, §14:3.B.1
    - Reciprocal agreements, §14:3.B.2
  - Knowledge and consent, §14:3.A
  - Repudiation/Breach of Contract, §14:3.E
  - Scope of arbitration agreement, §14:3.C
- Judicial Review of Arbitration Decisions, §14:4
- Jury waivers as alternative to, §14:7
- Retaliation based on involvement in, §24:6.P

- Statutory authority
  - Federal Arbitration Act, §14:2.A
  - Texas General Arbitration Act, §14:2.B
- Unconscionability
  - Procedural unconscionability, §14:3.D.1
  - Substantive unconscionability, §14:3.D.2
  - Waffle House* decision, §14:3

#### **Arrest Records**

- See also **Conviction Records**
- Discrimination based on criminal record, §24:6.D
- Policies regarding investigation of, §16:3.D.2
- Pre-employment inquiries, §6:2.D.6
- Pre-employment investigations, §28:5.C.1

#### **Assault and Battery**

- Elements, §30:6.A
- Privacy claims resulting from searches and investigations, §28:6.C
- Respondeat superior issues, §30:6.B

#### **Assignment**

- Inventions and creative works, assignment of, §§32:3.B-32:3.B.1
- Sale or merger, assignment of rights under non-competition agreement, §2:3.F.3

#### **Attendance**

- Essential job function, §21:5.B.1

#### **Attorneys' Fees**

- ADEA claims, §23:4.A.4
- Covenant not to compete, breach of, §32:2.D.5
- Disability discrimination, §21:8
- Discrimination claims under Chapter 451, §31:5.G
- Fee Applications, §18:8.H.1
- Jury service, wrongful discharge for, §24:6.F
- Sex discrimination, §19:2.E
- TCHRA, §18:8.H
- Workplace torts, §30:12.D

#### **At-Will Employment**

- Generally, §1:3.A
- Default rule, effect on written employment contracts, §2:2.A
- Disclaimers to protect. See **Disclaimers**
- Exceptions
  - Public policy exception, *Sabine Pilot* doctrine, §3:11
- Limitations on at-will doctrine
  - Contract law theories, §1:3.B
  - Statutory limitations, §1:3.C
  - Statutory public policy restrictions on at-will employment, §3:14
- Modification of, §§1:3.B.1, 16:2.A
- Notice before at-will termination, §2:3.D.4
- Safeguarding employment at-will relationship, ways to. See **Policies, Policy Manuals,**

#### **and Handbooks**

- Salary/term guarantees, §16:2.A.1
- Wrongful discharge. See **Wrongful Discharge**

#### **Audits**

- Immigration
  - Form I-9, ICE investigations, §7:2.F.1
  - Successors-in-interest, I-9 audit, §7:2.B.3

## **Background Checks**

Arrest records. See **Arrest Records**  
Conviction records. See **Conviction Records**  
Credit reports. See **Credit Reports**  
Criminal history check. See **Criminal History Check**  
Deferred adjudication, §6:2.D.6  
Education. See **Education**  
Negligent hiring. See **Negligence**  
Policies regarding background checks. See **Policies, Policy Manuals, and Handbooks**  
References. See **References**  
Resumes. See **Resumes**  
Staff leasing services, §1:9.A.2

## **Back Pay**

See also **Front Pay**  
ADEA claims, §23:4.A.1  
After-acquired evidence cases, §16:3.B.2  
Constructive discharge, §4:3.B.1  
Discrimination claims under Chapter 451, §31:5.C.1  
Sex discrimination, §19:2.E  
Sexual harassment, §20:5.A  
TCHRA, §18:8.D  
Wrongful discharge, §§3:8.C, 3:8.F, 3:12.B

## **Bankruptcy and Insolvency**

At-will employment, limitations on, §1:4.C.3  
Pre-employment inquiries, §6:2.D.7

## **Benefit Plans**

ADEA recordkeeping requirements, §15:2.F.2  
Disability benefits. See **Disability Benefits**  
Disability discrimination issues, §§21:7.H-21:7.I, 21:7.J  
Employment contract, including benefits in, §2:3.B.3  
ERISA requirements. See **Employee Retirement Income Security Act (ERISA)**  
Health insurance. See **Health Insurance**  
Leaves. See **Leave of Absence**  
Public works contracts, §9:2.C  
Severance benefits. See **Severance Benefits**

## **Bias and Prejudice**

TCHRA proceedings, §18:7.I.2

## **Bids and Bidding**

Public works contracts, minimum wage, §9:2.C

## **Bifurcation**

Discrimination claims under Chapter 451, §§31:2.B, 31:6.E.5  
Punitive damages issue, §30:12.B.5

## **Blacklisting**

References, potential liability, §29:4.E.1  
Restrictions on, §24:6.M

## **Board and Lodging.** See **Meals and Lodging**

## **Bona Fide Occupational Qualification (BFOQ)**

Generally, §17:5.A.4  
Age requirements, §6:2.D.1  
AIDS or HIV test as BFOQ, §3:14.D.17  
Appearance standards, §16:10.C.1  
Gender as BFOQ, §§6:1.B.2, 19:2.D  
Height and weight standards, discrimination based on national origin claims, §24:4.D.2  
National origin, §§24:2.E, 24:4.D.2  
Religion, §§6:2.D.3, 24:5.G.3

TCHRA, BFOQ as affirmative defense, §§17:4.A.4, 24:2.E

**Bonuses**

Performance incentives, negotiating in employment contract, §2:3.B

Time of payment, §9:5.B.2

**Borrowed Employees.** See **Multiple Employer Relationships**

**Breaks**

Policies regarding, §16:6.C.2

**Breast-Feeding**

Discrimination based on, §24:6.J

Policies regarding, §16:8

**Burden of Proof**

See also **Evidence**

Adverse impact, §17:5.C.3

Age discrimination, §§23:3.A.1, 23:4.D

AIDS or HIV test as BFOQ, §3:14.D.17

Covenant not to compete, breach of, §32:2.D.1

Disability discrimination, burdens of proof regarding retaliation, §21:7.K

Discrimination claims under TCHRA, §§24:2.D, 24:3

Disparate treatment, §17:5.A.1

Fair Labor Standards Act, §9:1.C

FMLA violations, §25:8.E

Good cause for termination, §2:3.D.2

Good faith dissatisfaction with employment, §2:3.D.3

Overtime, exempt status, §9:2.B

Qualified individual with disability, §§21:5.A, 21:5.C

Race discrimination under TCHRA, §22:3

Reasonable accommodation, §21:6.B

Sarbanes-Oxley, §33:9.D

Sex discrimination, §§19:2.C, 19:7.E.2

TCHRA, federal burden of proofs, §18:7.H

Whistleblower Act violations, §34:2.C

**Business Necessity**

Age discrimination, §23:5.A

Criminal record, discrimination based on, §24:6.D

Discrimination based on national origin, disparate impact, §§24:3.B, 24:4.E.1

Dress codes, grooming, and hair style, §28:9.I

Language requirements, §24:4.D.2

No-leave policy, effect of Pregnancy Discrimination Act, §19:4.D.1

Race discrimination, §§22:3.B.2, 22:3.B.3

Random drug test, §28:5.C.2

Religious discrimination, §24:5.G.2

TCHRA, business necessity as affirmative defense, §17:4.A.4

Weight policies, §28:9.H

— C —

**Certificates and Certification**

Age certificate to prove minimum age for employment, §§6:2.D.1, 9:7.A.2

Credit reports, certification of disclosure before obtaining, §6:2.D.7

FMLA medical certification and recertification by health care provider, §25:6.C

Minors under 18, I-9 documentation requirements, §7:2.C.1

**Change in Ownership or Control of Company**

Fixed-term employment agreement termination provision on change, §2:3.C.1

Severance benefits, “change in control” clause, §2:3.B.4

Successorship provisions in employment contract, §2:3.F.3

**Chapter 451 Discrimination Claims.** See **Workers' Compensation**

**Child Care**

Criminal history check of child care workers, §§6:2.D.6, 16:3.D.2

Pre-employment inquiries prohibited, §6:2.D.5

**Child Labor**

See also **Minors**

Federal Child Labor Law

Generally, §9:7.B

Hazardous occupations, §9:7.B

Texas Child Labor Law

Generally, §9:7.A.1

Exemptions, §9:7.A.1

Hazardous and special occupations, §9:7.A.3

Restricted hours, §9:7.A.2

**Child Support**

Family law withholding orders. See **Wage Withholding Orders**

Statutory wrongful discharge actions, §3:14.D.16

Wage garnishment. See **Wage Garnishment**

**Choice of Law**

Employment contracts, §2:3.F.1

**Citizenship.** See **Immigration Reform and Control Act (IRCA); National Origin, Discrimination Based on**

**City Ordinances.** See **Local Ordinances**

**Civil Penalties.** See **Penalties**

**Clackamas Case**

Generally, §1:7.B

Effect on employment status tests, §1:7.D

**Class Actions**

Fifth Circuit, §17:6

Gender class action, sex segregation by funneling and promotion tracks, §19:8

Texas Commission on Human Rights Act, single filing rule, §18:6.C.3

**Client Screening**

Conflict Check, §38:4

Declining Representation, §38:3.C

Face-to-face meeting, §38:2

Telephone Interview, §38:1

**COBRA.** See **Health Insurance**

**Cohabitation,** Privacy Issues Regarding, §28:9.F

**Collateral Estoppel**

TCHRA, §18:7.G

**Collective Bargaining Agreement (CBA)**

See also **Labor Unions**

Accommodation conflicts with CBA, §21:6.F.4

Arbitration agreements in CBAs, §14:4

Compensatory time off in lieu of overtime pay, §9:4.F

Discrimination claims under Chapter 451, CBA as defense, §31:5.B

FLSA, relationship to, §9:1.B.4

FMLA information, inclusion in CBA, §25:5.C

Impact of, §25:10.C

Preemption, *Sabine Pilot* claims, §3:11.D.3

Religious accommodation, effect of scheduling changes covered by CBA, §24:5.D.4

**Commissioned Employees**

Exemptions from minimum wage, §9:2.B.6

Time of payment, §9:5.B.2

**Common Law**



Arbitration of state common law employment claims, §2:3.F.7  
Discharge in violation of common law public policy, remedies and defenses to *Sabine Pilot* claim, §3:11  
Employee's duties to employer, §1:4.B  
Employer's duties to employee, §1:4.D  
Invasion of privacy. See **Privacy**  
Negligence claims, common law defenses, §30:3.E  
Protecting business interests, comparison of statutory and common law, §32:1  
Trade secrets protection. See **Trade Secrets**

**Compensation and Compensable Time.** See **Wage and Hour Laws**

**Compensatory Time Off**

Generally, §9:4.F

**Competition and Competitors**

Dating or marriage to competitors, privacy issues, §28:9.F.3  
Non-competition agreement. See **Covenant Not to Compete**

**Complaints**

See also **Grievance Procedures**

ADEA, §23:1.C

Defamation, statements made in criminal complaint, §29:4.D.8

Employer's affirmative duty to investigate, §28:5.B.1

Internal grievance and complaint procedure, §§16:5.D, 16:14.A, 20:6.B

Internal investigations. See **Investigations**

Procedure under Sarbanes-Oxley, §§33:7, 33:10.A

Texas Commission on Human Right Act, complaint under, §§17:4.A.2, 18:6.C

Whistleblower Act violations, failure to initiate internal grievance procedures, §34:3.B

**Computers**

See also **Electronic Surveillance and Wiretapping**

E-mail. See **E-Mail**

Internet Web addresses. See **Addresses and Telephone Numbers**

Privacy and surveillance issues, §28:7.F

Sexual harassment by e-mail or Internet use, §20:4.H

**Confidentiality**

See also **Disclosure**

ADA requirements, §§15:4.B.1, 21:7.F.4

Medical records, §15:4.B

Pre-employment medical or psychological examination, §6:3.B

Privacy issues. See **Privacy**

TCHRA, §§18:4.B.3, 18:6.E.3

Trade secrets. See **Trade Secrets**

Waiver clause in employment contract, §2:3.F.6

**Conflict of Interest**

Dating competitors, privacy issues, §28:9.F.3

Moonlighting, §28:9.D

**Conflicts Check, §38:4**

**Consent**

Arbitration agreements, consent issue, §14:3.A

Defamation, §§29:2.C.2, 29:4.B

Drug test, §28:5.C.2

Employment reference checks, consent to, §16:4.D

Investigations or questioning, employee's consent to, §28:6.A

Job duties, changes in, §2:3.A

Pre-employment drug test, effect of consent if test negligently performed, §6:3.A

References, consent to release of information form, §29:4.D.5

Release of medical records, §28:7.B.2

Sale or merger, employee's consent to assignment of rights under non-competition agreement, §2:3.F.3

TCHRA, consent to disclosure required, §18:6.F

### **Constitutional Law**

Affirmative action. See **Affirmative Action**

Anti-nepotism and no-spouse policies, effect on right to marry, §16:10.A

Discrimination. See **Discrimination**

Due process

Public employee's due process rights on termination, §3:14.C

Punitive damages, §18:8.F.2

National origin discrimination. See **National Origin, Discrimination Based on**

Privacy. See **Privacy**

Race discrimination. See **Race Discrimination**

Religion, discrimination based on. See **Religion, Discrimination Based on**

Sex discrimination. See **Sex Discrimination**

Smoking, §28:9.B

### **Construction and Interpretation**

See also **Words and Phrases**

Affirmative action, *United Steelworkers of America v. Weber*, §22:6.B

After-acquired evidence cases, §16:3.B.2

Age Discrimination in Employment Act

Bona fide executive or high policy-making position, §23:1.B.2.c

Knowing and voluntary waiver, §23:6.A

Reduction in force waiver, §23:6.B

Willful violation, §23:4.A.3

Borrowed employees, §1:8.A

Compensable time

Bona fide meal periods, §9:4.B

Civic duty time, §9:4.H

Compensatory time off in lieu of overtime pay, §9:4.F

Incidental activities, §9:4.A

On-call, standby, and no-leave time, §9:4.C

Travel time, §9:4.D

Constructive discharge

Generally, §4:1

Actual discharge, §4:1

Aggravating circumstances, §4:2.B.1

Atmosphere of harassment or hostility, §4:2.B.1

Intolerable working conditions, §4:2.B.1

Objective versus subjective intent test, §4:2.A

Reasonable person test, §4:2.B

Unconditional offer of reinstatement, §4:3.B.2

Disability discrimination

Adverse employment action, §21:7.K.3

Business necessity, §21:7.B.1

Covered entity, §21:2.A

Direct threat, §21:5.C

Disability, §21:4.A

Disability benefits, parity issue, §21:7.H.2

Disparate impact, §21:7.B

Disparate treatment, §21:7.A.1

EEOC interpretative materials, §21:1.B

Employee, §21:2.C

Employer, §21:2.A

Employment agency, §21:2.A

Essential functions, §21:5.B.1

- Individual liability, §21:2.B
- Job-related criterion, §21:7.B.1
- Labor organization, §21:2.A
- Major life activities, §21:4.B.2
- Mixed motive analysis, §21:7.A.3
- Physical or mental impairment, §21:4.B.1
- Protected activity, §21:7.K.2
- Protected activity discrimination, §21:7.K.4
- Qualification standards, §21:5.C
- Qualified individual with disability, §21:5.A
- Reasonable accommodation, §21:6.A, 21:6.B
- Record of disability, §21:4.C
- Regarded as disability, §21:4.D
- Substantially limits major life activity, §21:4.B.3
- Ultimate employment decisions, §21:7.K.3
- Undue hardship, §21:6.J
- Discrimination
  - Adverse impact, §17:5.C
  - Deferral or non-deferral state, §17:3.C.2
  - Discriminate, §21:7.G
  - Griggs* decision, §17:5.C.2
- Discrimination claims under Chapter 451
  - Texas Mexican Railway Co. Decision*, §31:2.B.1
- Employment contracts
  - Condition subsequent agreement, §2:3.C.3
  - Employment at-will, §2:2.A
  - Fixed-term agreement, §2:3.C.1
  - Good cause, §2:3.D.2
  - Good faith dissatisfaction with performance, §2:3.D.3
  - Incentive compensation, §2:3.B.2
  - Indefinite-term agreement, §2:3.C.2
  - Non-durational limits on termination, §2:3.D.5
  - Offer to hire at fixed weekly, monthly, or annual salary construed as employment contract, §2:3.C.1
  - Renewable agreement, §2:3.C.4
  - Severance benefits, "change in control" clause, §2:3.B.4
- Employment eligibility verification
  - Actively pursuing naturalization, §7:3.B
  - Continuing employment, §7:2.F.3
  - Joint employer determination, §7:3.E.4
  - "Paperwork requirements," §7:2.A
  - Pattern or practice, §7:2.F.4
- Exempt employee, §§2:3.B.1, 9:3.C-9:3.D
- Fair Labor Standards Act
  - Commerce, §9:1.B.2
  - Common business purpose, §9:1.B.3
  - Economic realities test, §9:1.B.1
  - Employer-employee defined, §9:1.B.1
  - Engaged in commerce, §9:1.B.2
  - Enterprise, §9:1.B.3
  - Liquidated damages, §9:1.D.1
  - Overtime exemptions, §9:1.C, 9:3.I
  - Overtime regulations, amendment, §9:3.J
  - Repeated and willful violations, §9:1.D.3
  - Suffer or permit to work, §9:1.B.1
  - Trainee distinguished from employee, §9:2.A.2

- Unified operations or common control, §9:1.B.3
- FMLA
  - Eligible employee, §25:2.C
  - Incapable of self-care, §25:3.C
  - In loco parentis, §25:3.C
  - Parent, §25:3.C
  - Private sector employers, §25:2.B.1
  - Public sector employer, §25:2.B.2
  - Single or integrated employer, §25:2.B.1
  - Son or daughter, §25:3.C
  - Spouse, §25:3.C
  - Workweek, §25:4.C
- Hiring issues
  - Bona fide occupational qualification (BFOQ), §6:1.B.2
  - Direct threat to self or others, prospective employee as, §6:2.C
  - Pretext for age discrimination, rejection of overqualified applicant as, §6:2.D.1
  - Pretext questions, §6:2.D.1
  - Sex referent language, §6:1.B.2
- Joint employment, single integrated enterprise test, §1:8.B.2
- Labor unions, concerted activity, §17:3.H
- Minimum wage
  - Employed directly on the site of work, §9:2.C
  - Maintenance work, §9:2.C
  - Trainee distinguished from employee, §9:2.A.2
- National origin, discrimination based on
  - Broad definition of, §§24:4.A, 24:4.B
  - Disparate impact, §24:3.B
  - Selection criteria, 80-percent rule, §24:3.B
  - Systemic disparate treatment, §24:3.A.3
- Oppressive child labor, §9:7.B
- Overtime, exempt status determination
  - Generally, §§9:3.C-9:3.D, 9:3.I
  - Administrative employees, §9:3.F
  - “Belo contracts”, irregular hours, §9:3.H
  - Duties test, §9:3.D.2
  - Executive employees, §9:3.G
  - Primary duty, §9:3.D.2
  - Professional employee, §9:3.E
  - Salary test, §9:3.D.1
  - Short test versus long test, §9:3.D.3
  - Tacking, §9:3.D.4
  - Workweek, §9:3.D.1
- Payday Law
  - Employer, §9:5.A
  - Wages, §9:5.B.1
- Privacy
  - Autonomy privacy, §28:2.B.2
  - Business use exemption, §28:7.B.2
  - Disclosural privacy, §28:2.B.2
  - Expectation of privacy, §28:4.B
  - Extreme and outrageous investigation, §28:6.B
  - Lawful use, legal activities, or lawful consumable products, §28:9.C
  - Post-incident or accident tests, §28:5.C.2
  - Reasonable suspicion testing, §28:5.C.2
  - Search reasonable under circumstances, §28:4.A
  - Zones of privacy, §28:2.B.2

- Religion, discrimination based on
  - Religious belief, §24:5.C.1
  - Religious practices, §24:5.C.2
  - Undue hardship defense, §24:5.D.4
- Searches, legitimate expectation of privacy, §§28:4.A, 28:4.B
- Sex discrimination
  - Comparable worth, §19:8.A.2
  - Establishment, §19:3.B
  - Factor other than sex, §19:3.C
  - Funneling, §19:8.A.3
  - Glass ceiling, §19:5.G
  - Market forces, §19:3.C
  - Sex plus other protected classification discrimination, §19:5.A
  - Sex segregation, §19:8.A
  - Substantially equal requirement, §19:8.A.1
- Texas Commission on Human Rights Act
  - Attorneys' fees, reasonableness factors, §18:8.H.2
  - Continuing violation doctrine, §18:6.B.4
  - Due process issues in punitive damages, §18:8.F.2
  - Federal statutes and decisions, §18:2.A
  - Huerta* analysis of *Kraus* factors for punitive damages, §18:8.F.2
  - Prevailing party, §18:8.H.1
  - Punitive damages standard, §18:8.F.2
  - Scope of civil action, §18:7.D
  - Single filing rule, §18:6.C.3
  - Statutory caps on punitive damages, §18:8.F.3
- Texas Whistleblower Act
  - Appropriate law enforcement agency, §24:2.B
  - Liberal construction of, §34:1.A.1
  - Report, §34:2.A.1
  - Violation of law, §34:2.A.1
- Wage claims, final order of Texas Workforce Commission, §9:5.C.2
- Wrongful discharge
  - After-acquired evidence, §3:13.D
  - Common law public policy, discharge in violation of, *Sabine Pilot* claims, §3:11
  - Good cause for termination, §3:2.C.1
  - Legitimate business reason defense, §3:13.A
  - Notice, accrual date for statute of limitations, §3:13.B
  - Quasi-contract promissory estoppel claims, independent action versus defensive plea, §3:9.C
  - Satisfaction contract, §3:2.C.2
  - Sole reason requirement, §§3:11.B, 3:11.B.2

### **Constructive Discharge**

- See also **Wrongful Discharge**
- Construction of terms. See **Construction and Interpretation**
- Defining, §4:1
- Early retirement offers, §4:4
- Hostile work environment based on national origin as constructive discharge, §24:4.D.3
- Proof
  - Reasonable person versus subjective intent test, §4:2.A
  - Reasonable person test, §4:2.B
- Remedies
  - Back pay, §4:3.B
  - Monetary damages, §4:3.A
  - Reinstatement, §4:3.B.2

*Sabine Pilot Doctrine*, §4:2.D

Sexual harassment, §§4:2.D, 13:4.C, 20:4.E

### **Contract Labor**

See also **Independent Contractors**

Employment eligibility verification exception, §7:2.F.3

Immigration-related discrimination, joint employer determination, §7:3.E.4

### **Contractors and Subcontractors**

City codes regarding discrimination, §22:5.B

Disability discrimination, Section 503 of Rehabilitation Act prohibiting, §17:3.J

Executive Order 11246

Affirmative action requirements for federal government contractors, §§15:2.K,  
22:4.B

Procedures and remedies under, §17:3.I

Rescission of contract, §22:4.B

Joint employers, §1:8.C

Minimum wage, §2:2.C

### **Contracts**

See also **Employment Contracts**

Affirmative action issues, §22:4.B, 22:6.C.4

At-will doctrine, contract law theories limiting, §1:3.B

"Belo contracts", effect on overtime compensation, §9:3.H.1

Borrowed employees, §1:8.A

Breach, grounds for summary judgment, §41:10.C

Discrimination by contractors in violation of city ordinance, cancellation, effect on  
contract, §22:5.B.2

EEOC and Texas Commission on Human Rights Act, worksharing contracts with,  
§18:4.B

Intentional interference with contract, §20:7.B

Offer letter as binding contract, §16:2.A.1

Satisfaction contracts, §§1:3.B.3, 3:2.C.2

Staff leasing services, §1:9.A.3.a

Statute of frauds. See **Statute of Frauds**

Texas Commission on Human Rights Act and local commissions, cooperative  
agreements with, §18:5.C.4

Tortious interference with contractual relations. See **Tortious Interference with**

### **Contractual Relations**

#### **Conviction Records**

See also **Arrest Records; Criminal History Check**

Negligent hiring, scope of employer's pre-hiring investigation, §6:4.B

Policies regarding investigation of, §16:3.D.2

Pre-employment inquiries, §6:2.D.6

Pre-employment investigations, §28:5.C.1

#### **Copyrights**

Employer's rights in creative works, §32:3.B.1

#### **Corporations**

Age discrimination, parent corporation of employer, §23:1.B.1

Defamation of or by corporation, §§29:2.A.3, 29:2.C.2

#### **Costs**

Disability, accommodation for, §21:6.B

Meals and lodging. See **Meals and Lodging**

Religious accommodation, §24:5.D.4

#### **County Ordinances. See Local Ordinances**

#### **Covenant Not to Compete**

Applicant, determining if bound by covenant, §2:2.D.2

Arbitration clause, §2:3.F.7

- Assignment of rights under non-competition agreement on sale or merger, §2:3.F.3
- Covenants Not to Compete Act
  - Consideration, supported by, §32:2.C
  - Elements of agreement (see Elements of agreement, below)
  - Enforcement and remedies (see Enforcement and remedies, below)
  - Legislative and judicial development of Act, §32:2.A
- Elements of agreement
  - Ancillary to enforceable agreement at time made, §32:2.B.1
  - Duration, §32:2.B.5
  - Geographic scope, §32:2.B.4
  - Legitimate business interest, §32:2.B.2
  - Scope of activity restrained, §32:2.B.3
- Enforcement and remedies
  - Generally, §32:2.D
  - Attorneys' fees and costs, §32:2.D.5
  - Burden of proof on employer, §32:2.D.1
  - Damages, §32:2.D.3
  - Injunctive relief, §32:2.D.2
  - Reformation, §32:2.D.4
- Severability clause in contract, §2:3.F.5
- Severance benefits tied to, §2:3.B.4
- Waiver clause, §2:3.F.6

#### **Credit Reports**

- Fair Credit Reporting Act requirements, §16:3.D.3
- Policies regarding credit history checks, §16:3.D.3
- Pre-employment investigations, §28:5.C.1

#### **Criminal Acts and Penalties**

See also **Penalties**

- Blacklisting, §24:6.M
- Child labor laws, minor working in sexually-oriented commercial activity, §9:7.A.3
- Employee's refusal to perform illegal act, discharge in violation of common law public policy, *Sabine Pilot* claims, §3:11.3
- Staff leasing services, operating without license, §1:9.A.2
- Trade secret misappropriation, §32:3.A.3
- Voting by employee, preventing or retaliating on basis of, §3:14.D.2
- Wage claims, repeated failure to pay wages under Texas Payday Law, §9:5.C.2

#### **Criminal History Check**

See also **Arrest Records; Conviction Records**

- Discrimination based on criminal record, §24:6.D
- Negligent hiring, scope of employer's pre-hiring investigation, §6:4.B
- Policies regarding, §16:3.D.2
- Statutes requiring or authorizing, §§6:2.D.6, 28:5.C.1

— D —

#### **Damages**

- Age discrimination, §23:4
- Attorney's fees, §9:1.D.4
- Constructive discharge, §4:3
- Covenant not to compete, breach of, §32:2.D.3
- Defamation. See **Defamation**
- Disability discrimination, §21:8
- Discharge in violation of common law public policy, *Sabine Pilot* claims, §3:12
- Discrimination claims under Chapter 451, §31:6.C

- Employment contract terminated without good faith dissatisfaction, §2:3.D.3
- Fair Labor Standards Act, liquidated damages, §9:1.D.1
- FMLA violations, §§25:8.D.1-25:8.D.2
- Inventions and creative works, unauthorized use, §32:3.B.2
- Jury service, wrongful discharge for, §24:6.F
- Negligent hiring, §6:4.C
- Notice of termination, damages for failure to give, §2:3.D.4
- Race discrimination, §22:3.D
- Sex discrimination, §§19:2.E, 19:7
- Sexual harassment, §20:5
- TCHRA, §18:8.F
- Trade secret misappropriation, §32:3.A.3
- Whistleblower Act violations, §34:4.A
- Workplace torts, §30:12.A
- Wrongful discharge, §3:8

### **Dating**

- Cohabitation. See **Cohabitation**
- Policies regarding, §16:10.B
- Privacy issues, dating co-workers, subordinates, or competitors, §28:9.F

### **Death**

- Disclosure of medical records for pending action, §28:8.B.2
- Fixed-term employment agreement, termination provision, §2:3.C.1
- Texas Hazard Communication Act, reporting employee death, §15:3.B.4

### **Declaratory Relief**

- Tenure denial cases, §19:5.G
- Texas Commission on Human Rights Act, §18:8.B

### **Deductions from Wages**

- Generally, §9:6
- Garnishment. See **Wage Garnishment**
- Meals and lodging. See **Meals and Lodging**
- Withholding orders. See **Wage Withholding Orders**

### **Defamation**

- Generally, §29:1
- Customers, communications to, §29:4.D.7
- Defamatory statement
  - Defamation *per quod*, §29:2.B.3
  - Defamation *per se*, §29:2.B.2
  - Injurious words required, §29:2.B.1
- Defenses
  - Absolute privilege, §29:4.C
  - Consent or invitation, §29:4.B
  - Duty to provide information, §29:4.E
  - Preemption and deferred to arbitration, §29:4.F
  - Qualified privilege, §29:4.D
  - Truth, §29:4.A
- Elements of claim
  - Corporation, defamation of, §29:2.A.3
  - Defamatory statement (see Defamatory statement, above)
  - Injury to reputation (see Reputation, injury to, below)
  - Libel, injury by, §29:2.A.1
  - Overview, §29:2.A
  - Publication (see Publication, below)
  - Slander, injury by, §29:2.A.2
  - Statute of limitations, §29:2.A.4
- Gossip and rumors, §§29:2.C.2, 29:4.D.3
- Liability of employer, §§13:2.F, 29:3.1



- Malice, overcoming qualified privilege
  - Definition, §29:5.A
  - Proving malice, §§29:5.B, 29:5.C
  - Punitive damages, malice as basis for, §29:5.D
- Publication
  - Communication that is not "publication," §29:2.C.2
  - Defined, §29:2.C.1
  - Self-publication, §29:2.C.3
- References or reference letters, §§16:4.D, 29:4.D.5, 29:4.E
- Reputation, injury to
  - Damages under Section 73.001, §29:2.D.3
  - Measuring damages, §29:2.D.4
  - Presumed damages, defamation *per se*, §29:2.D.1
  - Special damages, defamation *per quod*, §29:2.D.2
- Sexual harassment, accused's action for defamation, §20:7.A

### **Deferred Adjudication**

- Pre-employment inquiries, §6:2.D.6

### **Defining Employment Relationship**

- At-will employment. See **At-Will Employment**
- Borrowed employees. See **Multiple Employer Relationships**
- Common law duties
  - Generally, §1:4
  - Employee's duties to employer, §1:4.B
  - Employer's duties to employee, §1:4.C
- Employer and employee defined, §1:1.A
- Employment contract. See **Employment Contract**
- Employment status of partners, shareholders, and directors, §1:7
- Formation of employment relationship, §1:3
- Independent contractors. See **Independent Contractors**
- Joint employers. See **Multiple Employer Relationships**
- Modified by statutes, §1:3.C
- Staff leasing services. See **Multiple Employer Relationships**

**Definitions.** See **Construction and Interpretation; Words and Phrases**

### **Demotion**

- Constructive discharge, §4:2.B.1
- Dating policies, demotion of supervisor dating employee, §16:10.B

**Detrimental Reliance.** See **Promissory Estoppel**

**Direct Negligence.** See **Negligence**

### **Directors and Officers**

- Employment contract, indemnification provisions, §2:3.F.9

### **Disability Benefits**

- Application for benefits, effect on qualified individual with disability assertion, §21:5.D
- Discrimination issues affecting benefits, §21:7.H.2
- Summary judgment, grounds for, §41:8.C

### **Disability Discrimination**

- Generally, §17:3.D
- ADA Title III issues, §21:7.I
- Addiction, §21:4.E
- Administrative regulations and agency interpretations
  - EEOC interpretative guidance, §21:1.B.2
  - EEOC regulations, §21:1.B.1
  - EEOC technical assistance manual, §21:1.B.4
  - Other EEOC interpretative materials, §21:1.B.3
  - TCHRA regulations, §21:1.B.5
- Association with individual with disability, §21:7.D

- Benefits, discrimination in
  - Generally, §21:7.H
  - ADA Title III issues, §21:7.I
  - Disability insurance benefit plans, §21:7.H.2
  - Health insurance benefits, §21:7.H.1
- Construction of terms and cases. See **Construction and Interpretation**
- Contractual arrangements, discrimination through, §21:7.G
- Coverage
  - Covered employees, §21:2.C
  - Covered entities, §21:2.A
  - Individual liability, §21:2.B
- Disparate impact, §21:7.B
- Disparate treatment, §21:7.A
- Drug use exclusion, §21:4.E.1
- Enforcement procedures, §21:3
- Existence of disability
  - Actual disability, §21:4.B
  - Defining disability, §21:4.A
  - Exclusions from definition of disability, §21:4.E
  - Experts, use of, §21:4.B.4
  - Major life activities, §21:4.B.2
  - Physical or mental impairment, §21:4.B.1
  - Record of disability, §21:4.C
  - Regarded as disability, §21:4.D
  - Substantially limits major life activities, §21:4.B.3
  - Summary judgment, grounds for, §41:8.A
- Governing statutes
  - ADA, §21:1.A.1
  - Rehabilitation Act of 1973, §21:1.A.2
  - TCHRA, §21:1.A.3
- Harassment, §21:7.C
- Interference, coercion, or intimidation as unlawful, §21:7.L
- Medical examinations and inquiries
  - Confidentiality, §21:7.F.4
  - Drug testing, §21:7.F.5
  - Harm requirement, §21:7.F.6
  - Limitations, application to qualified individuals with disabilities, §21:7.F.2
  - Post-hiring medical exams and inquiries, §21:7.F.3
  - Pre-employment inquiries, §21:7.F.1
- Qualification testing, §21:7.D
- Qualification standards, grounds for summary judgment, §41:8.B.3
- Qualified individual
  - Generally, §21:5
  - Application for social security or other disability benefits, effect of, §21:5.D
  - Attendance and working on site, §21:5.B.2
  - Defined, §21:5.A
  - Essential functions, §21:5.B
  - Refusing reasonable accommodation, §21:5.E
  - Safety issues, direct threat, §21:5.C
- Reasonable accommodation
  - Generally, §17:5.D
  - Accommodation process, §21:6.E
  - Actual disabilities, duty applies to, §21:6.C
  - Burden of proof, §21:6.B
  - Changing accommodation, §21:6.E.3
  - Conflict with non-collectively bargained seniority system, §21:6.H

- Defined, §21:6.A
- Employer exceeding accommodation requirements, effect of, §21:6.G
- Knowledge of limitation from disability, §21:6.D
- Summary judgment, grounds for, §41:8.B.2
- Types of accommodation, §21:6.F
- Undue hardship defense, §21:6.J
- Remedies, §21:8
- Retaliation claims, §21:7.K
- Section 503 of Rehabilitation Act, §17:3.J
- Texas Minimum Wage Act, effect of subminimum wage for workers with disabilities, §9:2.B.2
- Weight policies, §28:9.H

#### **Disabled Persons**

See also **Americans With Disabilities Act (ADA); Disability Discrimination**  
Fixed-term employment agreement, termination provisions on disability, §2:3.B.1  
I-9 documentation requirements, §7:2.C.1

#### **Discharge**

See also **Termination**  
After-acquired evidence cases, §16:3.B.2  
Constructive discharge. See **Constructive Discharge**  
Retaliatory discharge. See **Retaliation**  
Termination policies, §16:17  
Wrongful discharge. See **Wrongful Discharge**

#### **Disciplinary Proceedings**

Cohabitation, disciplinary action for, §28:9.F.1  
Handbook statements reserving right to discipline or terminate, §16:2.B.4  
Off-duty conduct of unionized employees, §28:9.E

#### **Disclaimers**

Application forms

- Conviction records, application disclaimer regarding effect on hiring, §6:2.D.6
- Questions unrelated to position, disclaimer regarding, §6:2.A

Employee handbooks, effect of disclaimers regarding at-will employment, §3:2.B.1  
Indefinite-term employment contract, disclaimer regarding at-will employment, §2:3.C.2  
Offer to hire at fixed-term salary construed as employment contract, disclaimer to avoid, §2:3.C.1  
Safeguarding employment at-will relationship with disclaimer, §16:2.B.1

#### **Disclosure**

See also **Confidentiality**  
Background checks, job ad disclosing intent to conduct, §16:3.D.1  
Credit reports, disclosure requirements, §6:2.D.7  
ERISA disclosure requirements. See **Employee Retirement Income Security Act**

#### **(ERISA)**

Fair Credit Reporting Act requirements, §16:3.D.3  
Genetic information or testing, §§6:3.D, 15:4.C  
Labor-Management Reporting and Disclosure Act, §15:2.L  
Medical records, §28:8.B.2  
Non-disclosure agreements, arbitration clause, §2:3.F.7  
Privacy issues. See **Privacy**  
TCHRA, consent to disclosure required, §18:6.F  
Trade secrets, nondisclosure agreements. See **Trade Secrets**

#### **Discovery**

Budgeting, §40:1.A  
Compelling Discovery

- Attorney's fees, fee agreements, §40:10.I
- Employer financial information, §40:10.G
- Employer policies, procedures, §40:10.E

- Internal studies, §40:10.F
- Investigations, information regarding, §40:10.D
- Medical/psychiatric records, plaintiff's, §40:10.J
- Plaintiff's income, sources of, §40:10.H
- Prior complaints and lawsuits, §40:10.A
- Settlement agreements, §40:10.B
- Similarly situated employee, information regarding, §40:10.C
- Depositions
  - Conduct of
    - Defending, §40:8.E.3
    - Objections, §40:8.E.2
    - Questioning witness, §40:8.E.1
    - Suspending, §40:8.E.4
  - Defendant-employer, deposition of, §40:8.G
  - Economist, deposition of, §40:8.I
  - Key areas of inquiry
    - Corporate Structure and Hierarchy, §40:5.E.11
    - Bias of Experts, §40:5.E.9
    - Criminal Record, §40:5.E.2
    - Damages and Attorney's Fees, §40:5.E.7
    - Identification of Medical Providers, §40:5.E.3
    - Identification of Key Witnesses, §40:5.E.5
    - Other Employees, §40:5.E.10
    - Other Employment, §40:5.E.4
    - Other Income, §40:5.E.6
    - Prior Suits, Claims and Complaints, §40:5.E.1
    - Trial Witnesses and Impeachment Information, §40:5.E.8
  - Medical provider, deposition of, §40:8.H
  - Mental health care provider, deposition of, §40:8.H
  - Notice of, §40:8.C
  - Plaintiff-employee, deposition of, §40:8.F
  - Preparation, §40:8.D
  - Procedural issues, §40:8.B
  - Purpose, §40:8.A
  - Upon written questions, §40:8.J
- Discovery Plan, §40:1.A
- Electronically-stored information
  - Generally, §40:11
  - Spoliation, §40:11.G
- Filing, not required, §40:3.B
- Interrogatories
  - Contention, §40:5.B
  - Format, §40:5.C.2
  - Number, §40:5.C.3
  - Procedure, §40:5.C
  - Responding to
    - Form, §40:5.D.1
    - Objections, §40:5.D.3
    - Timing, §40:5.D.2
  - Scope, §40:5.A
  - Timing, §40:5.C.1
  - Use of responses at Trial, §40:5.D.4
- Mental Examinations of Party, §40:9
- Non-parties, discovery from, §40:2.F
- Physical Examinations of Party, §40:9
- Preserving privileges, §40:2.D.5

- Procedural limits on
  - Discovery Control Plan, §40:2.E.1
  - Federal law, §40:2.E.2
- Requests for Admission
  - Amend or withdraw admission, §40:6.E
  - Drafting tips & tools, §40:6.C
  - Procedural issues, §40:6.B
- Quantity of requests, §40:6.B
  - Responding to requests for admission
    - Bad faith, §40:6.D.3
    - Evasive answers, §40:6.D.3
    - Frivolous objections or quibbling, §40:6.D.3
    - Impermissible responses deemed admissions, §40:6.D.3
    - Objections, §40:6.D.4
    - Permissible responses, §40:6.D.2
    - Preliminary statements, §40:6.D.3
    - Qualified admissions, §40:6.D.3
    - Sanctions, §40:6.D.1
    - Scope and purpose, §40:6.A
    - Signed, not verified, §40:6.D.1
    - Timing, §40:6.D.1
    - Use at trial, §40:6.F
- Requests for Disclosure
  - Federal law, compared, §40:4.F
  - Format, §40:4.B
  - Purpose, §40:4.A
  - Responding to, §40:4.D
  - Timing, §40:4.C
  - Use at Trial, §40:4.E
- Request for Production
  - Corporate structure documents, §40:7.C.3
  - Criminal records, §40:7.C.3
  - Drafting requests for production
    - Reasonable particularity, §40:7.C.1
    - Specify electronic or magnetic data, §40:7.C.1
  - Employment records, §40:7.C.3
  - Expert reports and work product, §40:7.C.3
  - Fee agreements, §40:7.C.3
  - Financial information, §40:7.C.3
  - Impeachment information, §40:7.C.3
  - Investigative records, §40:7.C.3
  - Manuals, handbooks, policies and procedures, §40:7.C.3
  - Medical records, §40:7.C.3
  - Personal files and documents, §40:7.C.3
  - Personnel files, §40:7.C.3
  - Prior suits, claims and complaints, §40:7.C.3
  - Procedural issues, §40:7.B
    - Expenses related to production, §40:7.B
    - In writing, §40:7.B
    - Number, §40:7.B
    - Time and place of production, §40:7.B
    - Timing, §40:7.B
  - Reduction in force documents, §40:7.C.3
  - Responding to request for production
    - Content of response, §40:7.D.2
    - Effect of producing documents, §40:7.D.4

- Format, §40:7.D.1
- Inadvertent disclosure, §40:7.D.5
- Objections to request for production, §40:7.D.3
- Procedural issues, §40:7.D.1
- Timing, §40:7.D.1
- Timing and manner of production, §40:7.D.1
- Resume and applications, §40:7.C.3
- Scope, §40:7.A
- Snap back provision, §40:7.D.5
- Training documents, §40:7.C.3
- Vital statistical information, §40:7.C.3
- Scope of
  - Discoverable Information
    - Contentions, §40:2.C.9
    - Documents and Tangible Things, §40:2.C.1
    - Indemnity and Insuring Agreements, §40:2.C.5
    - Persons With Knowledge of Relevant Facts, §40:2.C.2
    - Potential Parties, §40:2.C.8
    - Settlement Agreements, §40:2.C.6
    - Testifying and Consulting Experts, §40:2.C.4
    - Trial Witnesses, §40:2.C.3
    - Witness Statements, §40:2.C.7
  - General Rule, §40:2.A
  - Liberal discovery generally allowed, §40:2.B
- Service, §40:3.A
- Sexual harassment punitive damages claim, net worth of defendant, §20:5.A
- Sexual harassment. See **Sexual Harassment**
- Substantive limits on
  - "Committee Exception," §40:2.D.2
  - Common Privileges in Employment Litigation, §40:2.D.5
  - Fishing Expeditions, §40:2.D.1
  - Privilege, §40:2.D.5
  - Proportionality, §40:2.D.3
  - Work Product, §40:2.D.4
  - Unit-Level Discovery, §40:2.D.2
- Summaries/Chronologies, §40:1.B
- Supplementation, objections, §40:3.C.2
- Supplementation, responses, §40:3.C.1
- Video camera surveillance recordings for investigation, discovery of, §28:7.E

## **Discrimination**

- ADA. See **Americans With Disabilities Act (ADA)**
- Affirmative action. See **Affirmative Action**
- After-acquired evidence cases, effect of misconduct if employee discharged for discriminatory reason, §16:3.B.2
- Age discrimination. See **Age Discrimination**
- Appearance standards. See **Dress Codes, Grooming, and Hair Style**
- Breast-feeding, discrimination based on, §24:6.J
- Chapter 451 discrimination claims. See **Workers' Compensation**
- Child support orders, discrimination based on, §24:6.I
- Citizenship, discrimination based on. See **Immigration Reform and Control Act (IRCA)**
- Civil Rights Act of 1866, §17:3.A
- Civil Rights Act of 1871, Section 1983 and 1985(3), §17:3.B
- Civil Rights Act of 1991, §17:3.F
- Construction of cases and statutes. See **Construction and Interpretation**
- Constructive discharge, determining if unequal pay supports finding of, §4:2.B.1
- Criminal record, discrimination based on, §24:6.D

Disability discrimination. See **Americans With Disabilities Act (ADA)**; **Disability Discrimination**

Emergency evacuation, discrimination based on, §24:6.H

Equal Pay Act, §17:3.G

Federal Constitutional prohibitions

- Fifth Amendment, §17:2.A
- Fourteenth Amendment, §17:2.B

Federal contractors, Section 503 of Rehabilitation Act, §17:3.J

Federal contractors. See **Contractors and Subcontractors**

Garnishment history. See **Wage Garnishment**

Genetic information, discrimination based on. See **Genetic Testing**

Hiring process. See **Hiring Process**

Historical background, §17:1.A

Immigration-related employment discrimination, §7:3

Investigation of complaints, employer's affirmative duty, §28:5.B.1

Labor unions. See **Labor Unions**

Marital and family status. See **Marital and Family Status**

National origin, discrimination based on. See **National Origin, Discrimination Based On**

Off-duty conduct, discrimination based on, §24:6.C

Pre-employment inquiries, limitations on. See **Hiring Process**

Pregnancy discrimination. See **Sex Discrimination**

Proving discrimination, §17:5

Race discrimination. See **Race Discrimination**

Religion, discrimination based on. See **Religion, Discrimination Based on**

Sex discrimination. See **Sex Discrimination**

Sexual orientation or preference. See **Sexual Orientation or Preference**

Staff leasing services, §1:9.A.4

Subpoena compliance, discrimination based on, §24:6.G

Texas Commission on Human Rights Act. See **Texas Commission on Human Rights Act (TCHRA)**

Title VII of Civil Rights Act of 1964

- Administrative procedures under, §17:3.C.2
- Coverage, §17:3.C.1
- Recordkeeping, §15:2.E
- Remedies, §17:3.C.4
- Theories of discrimination, §17:3.C.3

Union membership or nonmembership, discrimination based on, §24:6.E

Wage withholding orders, discrimination against employee prohibited, §9:6.A.4

Whistleblower protection. See **Whistleblowing (Texas Whistleblower Act)**

Workers' compensation, discrimination claims under Chapter 451. See **Workers' Compensation**

**Compensation**

**Dismissal of Actions**

Texas Commission on Human Rights Act, dismissal of complaint, §§18:6.B, 18:6.G

**Dispute Resolution**

Alternative dispute resolution. See **Alternative Dispute Resolution (ADR)**

ERISA requirements for group benefits, §2:3.B.3

Grievance procedures. See **Grievance Procedures**

Internal investigations. See **Investigations**

Policies regarding, §16:14

**Domestic Services**

Employment eligibility verification exception, §7:2.F.3

**Dress Codes, Grooming, and Hair Style**

See also **Height and Weight Standards**

Policies regarding, §16:10.C

- Generally, §16:10.C.1
- Beards, §16:10.C.3

- Drafting tips to avoid discrimination, §16:10.C.6
- Dress codes, §16:10.C.4
- Hair style, §16:10.C.2
- Sex plus grooming and appearance discrimination, §19:5.A.3
- Weight, §16:10.C.5

- Privacy issues, §28:9.I
- Religious accommodation, §§24:5.D.2, 24:5.D.3.b
- Sexual stereotyping, §19:6.C.2

#### **Drug and Alcohol Tests**

- Defamation claim, defenses to, §29:4.A
- Disability discrimination issues, §21:7.F.5
- FMLA leave for substance abuse treatment, §25:3.F.5
- Policies regarding, §16:10.D.4
- Pre-employment tests, §§6:3.A, 6:3.C
- Privacy issues, §28:5.C.2
- Tort liability for, §30:10.B

#### **Drugs and Alcohol in Workplace**

- Drug-Free Workplace Act, recordkeeping requirements, §15:2.J
- Employer's affirmative duty to investigate, §28:5.B.2
- Policies regarding, §16:10.D
- Religious accommodation, §24:5.D.3
- Tort liability of employer for intoxicated employee's negligence, §30:10.A

— E —

#### **Early Retirement Offers. See Retirement Education**

See also **Schools**

- After-acquired evidence defense, policies regarding education information, §16:3.B.2
- Employee training. See **Training**
- Foreign education or training, discrimination based on national origin claims, §24:4.D.2
- Hazard communication education programs, §15:3.B.2
- Pre-employment inquiries, §6:2.D.4
- Title IX prohibiting sex discrimination, tenure denial cases, §19:5.G

#### **Elections. See Political Activity**

#### **Electronic Surveillance and Wiretapping**

See also **E-Mail**

- Policies and notice regarding, §16:11
- Privacy issues
  - Balancing test, §28:7.A
  - Caller ID, §28:7.D
  - Computer surveillance, §28:7.F
  - Facsimile surveillance, §28:7.G
  - Telephone and voice mail surveillance, §28:7.B
  - Video camera surveillance, §28:7.E
- Sexual harassment by e-mail or Internet, §20:4.H

#### **Eligibility for Employment Verification. See Immigration Reform and Control Act (IRCA)**

#### **E-Mail**

- Sexual harassment by e-mail, §20:4.H.1
- Surveillance
  - Common law, §28:7.C.1
  - Electronic Communications Privacy Act (ECPA), §28:7.C.2
  - Proposed Privacy for Consumers and Workers Act, §28:7.C.3

#### **Emotional Distress**

See also **Intentional Infliction of Emotional Distress**



- Breach of employment contract, §3:12.D
- Defamation *per se*, effect of presumed damages on recovery for mental anguish, §29:2.D.1
- Discrimination claims under Chapter 451, §31:6.D
- Negligent infliction of emotional distress, §30:3.D.3
- Sex discrimination, §19:7.B
- Sexual harassment, §§20:4.E.2, 20:5
- TCHRA, damages for mental anguish, §18:8.F.1
- Wrongful discharge, contract claims, §3:12.D

**Employee Benefits.** See **Benefit Plans**

**Employee Retirement Income Security Act (ERISA)**

- At-will employment, limitations on, §1:3.C.10
- Preemption
  - Sabine Pilot* claims, effect of ERISA, §3:13.C.3
  - State law, broad preemption of, §2:3.B.3
- Severance benefits, §2:3.B.4
- Tort claims, ERISA preemption, §30:11.D
- Worker status, factors to determine, §1:6.B.3

**Employment Contracts**

- Adhesion contracts, arbitration agreements as, §14:3.D
- Advantages and disadvantages of written contracts, §2:2.C
- Arbitration, §§2:3.B.2, 2:3.F.7
- Attorneys' fees, §2:3.F.10
- Choice of forum, §2:3.F.2
- Choice of law, §2:3.F.1
- Compensation
  - Arbitration provision, §2:3.B.2
  - Base wage, §2:3.B.1
  - Employee benefits, §2:3.B.3
  - Negotiating, §2:3.B
  - Performance incentives and bonuses, §2:3.B.2
  - Severance benefits, §2:3.B.4
- Construction of terms. See **Construction and Interpretation**
- Covenant not to compete. See **Covenant Not to Compete**
- Deductions from employee's wages without consent, void contract, §9:6
- Default rule, employment at-will, §2:2.A
- Duration of
  - Generally, §2:3.C
  - Condition subsequent agreement, §2:3.C.3
  - Fixed-term agreement, §2:3.C.1
  - Indefinite-term agreement, §2:3.C.2
  - Renewable agreement, §2:3.C.4
- Improper termination of contract, §3:6
- Indemnification, §2:3.F.9
- Modification, §2:3.F.4
- Negotiating
  - Parties' bargaining power, §2:2.D.1
  - Prospective employee's ability to contract, limits on, §2:2.D.2
- Noncompetition agreement. See **Covenant Not to Compete**
- Notice, §§2:3.D.4, 2:3.F.8
- Oral agreement, §1:3.B.4
- Position and job duties, §2:3.A
- Satisfaction contracts, §3:2.C.2
- Severability, §2:3.F.5
- Severance benefits, §2:3.B.4
- Statute of frauds. See **Statute of Frauds**

Statutory restrictions

- Generally, §§1:3.C, 2:2.B
- Federal statutes, §2:2.B.1
- Texas statutes, §2:2.B.2

Successors and assigns, §2:3.F.3

Termination

- Generally, §2:3.D
- At-will, §2:3.D.1
- Good cause, examples of, §2:3.D.2
- Non-durational agreement, §2:3.D.5
- Notice or wages in lieu of notice, §2:3.D.4
- Satisfaction clauses, §2:3.D.3

Trade secrets protection, §2:3.E

Waiver, §2:3.F.6

Wrongful discharge contract claims. See **Wrongful Discharge**

**Employment Eligibility Verification.** See **Immigration Reform and Control Act (IRCA)**

**Employment Relationship Defined.** See **Defining Employment Relationship**

**English Language**

- Discrimination based on national origin claims, §24:4.D.2
- English-only policy, §16:18

**Equal Employment Opportunity**

- Ads, adequacy of “equal opportunity employer” phrase, §6:1.B.2
- Policies regarding. See **Policies, Policy Manuals, and Handbooks**

**Equal Employment Opportunity Commission (EEOC)**

- After-acquired evidence cases, §16:3.B.2
- Confidentiality of medical records, EEOC guidelines, §15:4.B.3
- Disability discrimination. See **Disability Discrimination**
- Disability-related inquiries prohibited, §6:1.B.1
- Employee selection procedures, EEOC guidelines on, §6:1.B.1
- Gender, consideration of as bona fide occupational qualification, §6:1.B.2
- National origin discrimination claims, §§7:3.E.1, 24:4.A, 24:4.D.2
- Sex referent language in job ads, EEOC policy, §6:1.B.2
- Texas Commission on Human Rights Act. See **Texas Commission on Human Rights**

**Act (TCHRA)**

**Equal Pay Act**

- Summary judgment, §41:6

**Equitable Relief**

- Disability discrimination, §21:8
- FMLA violations, §25:8.D.3
- Sexual harassment, §20:5.A
- Texas Commission on Human Rights Act, §§18:6.B.4, 18:7.B.2
- Wrongful discharge, damages in quasi-contract promissory estoppel claims, §3:5.E

**ERISA.** See **Employee Retirement Income Security Act (ERISA)**

**Estoppel**

- Application for social security or disability benefits, effect on qualified individual with disability assertion, §21:5.D
- Collateral estoppel. See **Collateral Estoppel**
- Inconsistent enforcement of policies as estoppel, §16:2.B.6
- Promissory estoppel. See **Promissory Estoppel**

**Ethical Dilemmas**

- Attorney-client privilege, §37:2
  - Business advisor, lawyer as, §37:2.C
  - Organizational client, §37:2.B
  - Plaintiff’s charge, §37:2.A
- Ethics policies, Appendix 37-1

Ex parte contact, current employees, §37:6.B

Ex parte contact, former employees, §37:6.C

Joint representation, §37:3

Accepting, §37:3.D

Advantages of, §37:3.A.2

Authority for, §37:3.B

Consent, §37:3.D.2

Disadvantages, §37:3.A.3

Duty to provide defense, §37:3.B.4

Evaluate conflict, §37:3.D.1

Privileges, §37:3.C

Work product, §37:3.C.4

Lawyer as witness, §37:5

Perjury, by witness, §37:4

### **Ethnic Discrimination.** See **National Origin, Discrimination Based on Evidence**

See also **Burden of Proof**

After-acquired evidence

Application fraud, §16:3.B.2

Discharge in violation of public policy, *Sabine Pilot*, §3:8.D

Discrimination claims under Chapter 451, §31:4.F

Sex discrimination, §19:7.E.2

Sexual harassment, §20:8.F

Summary judgment motions, §41:12.B

TCHRA, §18:8.I.3

Age discrimination. See **Age Discrimination**

Constructive discharge. See **Constructive Discharge**

Defamation. See **Defamation**

Discrimination, §17:5

Discrimination claims under Chapter 451, §§31:3.A.4, 31:5.E.1

Early retirement offers, no prima facie evidence of constructive discharge, §4:4.A

Joint employment, §1:6.A.2

National origin, discrimination based on. See **National Origin, Discrimination Based on**

Pregnancy discrimination, §19:4.C

Religion, discrimination based on. See **Religion, Discrimination Based on**

Retention of, §40:7.B.6

Sex segregation, lack of interest defense, §19:8.A.4

Sexual discrimination, §19:2.C

Sexual harassment. See **Sexual Harassment**

Sexual stereotyping, §19:6.B

Summary judgment, §41:4

TCHRA, proof of discrimination, §§18:6.E.1, 18:7.H, 18:7.I.2

Trade secret misappropriation, §32:3.A.3

Video camera surveillance recordings as evidence, §28:7.E

Wage claims, Texas Workforce Commission order, §9:5.C.2

Weight, medical evidence regarding, §28:9.H

Workplace torts, effect of collateral source doctrine, §30:12.F

### **Executives, Administrators, and Professionals**

See also **Key Employees**

ADEA exemption for executives, §23:1.B.2.c

FLSA recordkeeping requirements, §15:2.A.2

Overtime exemption under FLSA, §§2:3.B.1, 9:3.C-9:3.D, 9:3.G

Time for payment of wages, §9:5.B.2

### **Exhaustion of Administrative Remedies**

Discrimination claims under Chapter 451, §31:5.A

Discrimination claims under TCHRA, §24:2.B

TCHRA, §§18:1, 18:6.G, 18:7.A.3

### **Experts**

Disability, existence of, §21:4.B.4

Race discrimination, §22:3.B.3

Sexual stereotyping, §19:6.B.3

## **— F —**

### **Fair Credit Reporting Act**

Applicability to internal investigations, §16:13.A

Policies regarding credit history checks, §16:3.D.3

Pre-employment investigations, §28:5.C.1

Requirements, §16:3.D.3

### **Fair Labor Standards Act (FLSA)**

Base wage, effect of FLSA on, §2:3.B.1

Burdens of proof, §9:1.C

Civil penalties, §9:1.D.1

Commissions. See **Commissioned Employees**

Compensable time. See **Wage and Hour Laws**

Compensatory time off in lieu of overtime, §9:4.F

Construction of terms. See **Construction and Interpretation**

Coverage

Employer-employee relationship, §9:1.B.1

Engaged in commerce, §9:1.B.2

Enterprise defined, §9:1.B.3

Exemptions, §9:1.B.5

Damages, §9:1.D.1

Deductions from wages

Generally, §9:6

Meals, §9:2.A.4

Wage garnishment. See **Wage Garnishment**

Wage withholding orders. See **Wage Withholding Orders**

Equal Pay Act

Procedures and remedies under, §17:3.G

Recordkeeping requirements, §15:2.B

Historical background of FLSA, §9:1.A

Independent contractor and employee test, liabilities for improper classification, §1:5.G

Investigative powers of DOL, §9:1.G

Minimum wage. See **Minimum Wage**

Overtime. See **Overtime**

Policies regarding wage and hour laws. See **Policies, Policy Manuals, and Handbooks**

Recordkeeping, §§9:1.F, 15:2.A

Retaliation, §9:1.E

State law or municipal ordinance, relationship to, §9:1.H

Trainees, §9:2.A.2

Volunteers, §9:1.B.1

Youth, opportunity wage for, §9:2.A.1

### **False Imprisonment**

Customers, §30:8.B

Elements of, §30:8.A

Employees, §30:8.C

Privacy claims resulting from searches and investigations, §28:6.A

### **Family and Medical Leave**

ADA, FMLA and workers' compensation, overlap among, §25:10

At-will employment, FMLA limitations, §1:3.C.7

Confidentiality of medical records relating to FMLA, §15:4.B.2  
Construction and interpretation of case and statutes. See **Construction and**

## **Interpretation**

Covered employees

Private sector employers, §25:2.B.1

Public sector employers, §25:2.B.2

Effective date of FMLA, §25:2.A

Eligible employees, §25:2.C

Enforcement

Burdens of proof, §25:8.E

Civil action by employees, §25:8.B

Damages, §25:8.D.1

DOL action, §25:8.A

Equitable relief, §25:8.D.3

Jury trial, §25:8.D.4

Liquidated damages, defenses to, §25:8.D.2

Statute of limitation, §25:8.C

Entitlement to leave

Adoption or foster care, placement for, §25:3.B

Birth and care of newborn, §25:3.A

Care for family member, §25:3.C

Duration of, §15:3

Employee unable to perform, §25:3.E

Needed to care for family member, §25:3.D

Serious health condition, §25:3.F

Joint employers, §1:8.D.1

Notice requirements, §§15:2.H.5, 25:5.C

Parental leave, relationship between PDA and FMLA, §19:4.E

Policies regarding, §16:9.B

Posting requirements and penalties for violation, §§15:2.H.5, 25:5.A-25:4.B

Pregnancy leave. See **Pregnancy Leave**

Procedures

Employer's confirmation of eligibility and designation of leave, §25:6.B

Key employees, §25:6.E

Maintenance of benefits, §25:6.D

Medical certification and recertification by health care provider, §25:6.C

Requesting leave, §25:6.A

Restoration of job and exceptions to, §25:6.G

Return from leave, §25:6.F

Prohibited acts

Interference with proceedings or inquiries, §25:7.B

Interference with rights, §25:7.A

Investigative authority, §25:7.C

Purpose of FMLA, §§25:1, 25:10.A

Recordkeeping requirements, §§15:2.H, 25:9

Scope of FMLA, §25:1

State employers, immunity, §25:2.B.3

Summary judgment, §41:9

Types of leave and measurement of

Intermittent and reduced leave schedule, §25:4.A

Measuring leave, §25:4.C

Paid versus unpaid leave, §25:4.B

**Family Law Wage Withholding Order.** See **Wage Withholding Orders**

**Family Status.** See **Marital and Family Status**

**Fax**

Privacy and surveillance issue, §28:7.G

**Federal Fair Labor Standards Act.** See **Fair Labor Standards Act (FLSA)**

**Fees.** See **Attorneys' Fees**

**Fiduciaries**

ERISA plans. See **Employee Retirement Income Security Act (ERISA)**

Inventions or creative works, breach of fiduciary duties, §32:3.B.2

**Fines.** See **Penalties**

**Fingerprinting**

Staff leasing services, §1:9.A.2

**Flexible Work Schedules**

Religious accommodation, §§24:5.D.3, 24:5.D.4

**FMLA.** See **Family and Medical Leave**

**Foreign Companies in U.S.**

Discrimination based on national origin claims, effect of treaties on, §24:4.D.1

**Formation of Employment Relationship.** See **Defining Employment Relationship**

**Forum**

Employment contracts, choice of forum clause, §2:3.F.2

**Fraternization**

No fraternization or no-spouse policies, §19:5.B

Policies regarding, §16:10.B

**Fraud and Misrepresentation**

Generally, §30:7

Application fraud, after-acquired evidence doctrine, §16:3.B.2

Prima facie case of fraud, §30:7.A

Proof of negligent misrepresentation, §30:7.B

*Sabine Pilot* doctrine, employee's refusal to falsify records or whistleblowing, §§3:11.C.2, 3:11.C.3

**Fringe Benefits.** See **Benefit Plans**

**Front Pay**

See also **Back Pay**

Against shareholders, Sarbanes-Oxley, §33:4.A.3

ADEA claims, §23:4.A.2

Breach of employment contract, §3:8.D

Discharge in violation of common law public policy, §3:12.C

Discrimination claims under Chapter 451, §31:5.C.2

Sexual harassment, §20:5.A

TCHRA, §18:8.D

Whistleblower Act Violations, §34:4.A

**Future Earnings.** See **Front Pay**

— G —

**Garnishment.** See **Wage Garnishment**

**Gender Discrimination.** See **Sex Discrimination**

**Genetic Testing**

Confidentiality of genetic information, §15:4.C

Disability discrimination, §21:7.F.1

Discrimination based on genetic information, §§6:3.D, 24:6.K

Pre-employment inquiries, §6:3.D

Privacy issues, §28:5.C.2

Statutory wrongful discharge actions, §3:14.D.18

**Good Cause**

Employment at-will relationship, inadvertent modification of, §§16:2.A.2, 16:2.A.3

Severance benefits not payable on termination for good cause, §2:3.B.4

Termination, good cause limitation, §§2:3.C.1, 2:3.C.2, 2:3.D.2, 2:3.D.5

Wrongful discharge, implied good cause provision in contract, §3:2.C.1

### **Good Faith**

Communications made in good faith to persons with legitimate interest, §29:4.D.1

Discrimination claims under Chapter 451, §31:3.A.2

Discrimination claims under TCHRA, good faith reliance on Commission's interpretations or opinions, §24:2.E

Employment contracts, good faith dissatisfaction with performance required for termination, §§2:3.C.1, 2:3.C.2, 2:3.D.3

FLSA, good faith failure to comply with, §9:1.D.1

Pre-employment investigations, proof of good faith effort to hire quality employees, §28:5.C.1

Reasonable accommodation, good faith effort at, §21:8

*Sabine Pilot* doctrine, effect of employee's good faith belief that requested act illegal, §§3:11.C.5, 3:11.E

Whistleblowing report made in good faith, §34:2.A.2

### **Good Faith and Fair Dealing, Implied Covenant of**

Discharge in violation of, §3:10

### **Government Contractors. See Contractors and Subcontractors**

Affirmative action obligations, Ch. 35

### **Grievance Procedures**

See also **Dispute Resolution**

Constructive discharge, grievance procedures to prevent harassment or discrimination claims, §4:2.B.2

Internal grievance and complaint procedure, §§16:5.D, 16:14.A, 20:6.B

Internal investigations. See **Investigations**

Sexual harassment, §16:5.D

### **Grooming. See Dress Codes, Grooming, and Hair Style**

### **Guns in Workplace. See Violence or Weapons in Workplace**

— H —

### **Hair Style. See Dress Codes, Grooming, and Hair Style**

### **Handbooks. See Policies, Policy Manuals, and Handbooks**

### **Handicapped Persons. See Disabled Persons**

### **Harassment**

See also **Sexual Harassment**

Constructive discharge, §4:2.B.1

Disability based harassment, §21:7.C

Employer's affirmative duty to investigate, §28:5.B.1

National origin, hostile work environment based on, elements of claim, §§24:4, 24:4.D.3

Religious harassment, §24:5.F.2

### **Hardship**

Child labor law, filing hardship application, §9:7.A.1

Discrimination claims under TCHRA, undue hardship defense, §§17:4.A.4, 24:2.E

Reasonable accommodation, undue hardship defense, §21:6.J

Religious accommodation, undue hardship defense, §§24:5.D.2, 24:5.D.3, 24:5.D.4, 24:5.G.1

### **Hazard Communication**

See also **Agricultural Hazard Communications Protection**

OSHA Hazard Communication Act, recordkeeping requirements, §15:2.D.4

Texas Hazard Communication Act

Recordkeeping and reporting requirements, §15:3.C

Retaliation based on health or safety violation reports, §24:6.O.2

Statutory wrongful discharge actions, §3:14.D.6

**Hazardous Occupations**

Child labor laws, §§9:7.A.3, 9:7.B

**Health and Safety. See Occupational Health and Safety****Health Care Facilities**

Retaliation based on health or safety violation reports, §24:6.O.4

**Health Care Providers**

FMLA medical certification and recertification by health care provider, §25:6.C

**Health Care Workers**

AIDS or HIV test as BFOQ, §3:14.D.17

Background checks for criminal records, §16:3.D.2

Retaliation based on health or safety violation reports, §24:6.O.4

Statutory wrongful discharge actions, §§3:14.D.7, 3:14.D.13-3:14.D.15

**Health Insurance**

Discrimination, §21:7.H.1

ERISA requirements for group benefits, §2:3.B.3

Health Insurance Portability and Accountability Act (HIPAA), §28:2.C.1.h

Leave policies regarding continuation of coverage, §16:9.H.2

Weight policies of company, §28:9.H

**Hearings**

Summary judgment motions, §41:3.C

Wage claims, Texas Workforce Commission, §9:5.C.2

**Hearsay**

TCHRA, investigative reports by government agencies, §18:7.I.2

**Height and Weight Standards**

Discrimination based on national origin, §24:4.D.2

Policies regarding, §16:10.C.5

Privacy issues, §28:9.H

**Hiring Process**

Advertising jobs. See **Advertising**

Affirmative action. See **Affirmative Action**

Applications. See **Applications**

Background checks. See **Background Checks**

Construction of terms. See **Construction and Interpretation**

Drug tests. See **Drug and Alcohol Tests**

Employment eligibility verification, I-9 paperwork requirements. See **Immigration Reform**

**and Control Act (IRCA)**

Genetic testing. See **Genetic Testing**

Immigration-related employment discrimination, §§7:2.B.4, 7:3

Interviews

Limits on pre-employment questions (see Pre-employment inquiries, below)

Policies regarding interviews, §§16:3.A, 16:3.C.3

Medical or psychological examinations. See **Medical or Psychological Examinations**

Negligent hiring. See **Negligence**

Offer to hire at fixed weekly, monthly, or annual salary construed as employment contract, §2:3.C.1

Physical examinations. See **Medical or Psychological Examinations**

Pre-employment inquiries

Age, §6:2.D.1

Americans With Disabilities Act, §§6:2.B, 16:3.C.3, 21:7.F.1

Arrest, conviction, deferred adjudication, §6:2.D.6

Citizenship, §6:2.D.8

Credit references, §6:2.D.7

Education, §6:2.D.4

Financial condition, §6:2.D.7

Gender concerns, sex discrimination, §19:5.C



- Marital and family status, §6:2.D.5
- Race, §6:2.D.2
- Religion, §§6:2.D.3, 24:5.D.3
- Sexual orientation or preference, §6:2.D.9
- Workers' compensation, §6:2.C

- Pre-employment investigations. See **Investigations**
- Promises to employ, promissory estoppel claims, §3:5
- Recordkeeping, §6:5
- Recruiting goals, §6:1.A
- Reporting, State Directory of New Hires, §15:3.E
- Statutes prohibiting discrimination, §6:1.A

**Homosexuality.** See **Sex Discrimination; Sexual Orientation or Preference**  
**Hours.** See **Wage and Hour Laws**

— I —

**I-9 Paperwork Requirements.** See **Immigration Reform and Control Act (IRCA)**

**Illegal Acts.** See **Criminal Acts**

**Immigration Reform and Control Act (IRCA)**

- Construction of terms. See **Construction and Interpretation**
- Discrimination, prohibited practices, §7:3
- Employment eligibility verification
  - Generally, §7:2.A
  - Compliance, persons and entities liable for, §7:2.B
  - Construction of terms. See **Construction and Interpretation**
  - Defenses, §7:2.F.3
  - Employer associations, exceptions for, §7:2.C.3
  - I-9 form, ICE investigations, §7:2.F.1
  - I-9 paperwork requirements, §7:2.C.1
  - Notice of intent to fine, contesting, §§7:2.F.1, 7:2.F.2
  - Penalties, §7:2.F.4
  - Pilot programs for verification, §7:2.C.4
  - Recordkeeping, §7:2.D
  - Streamlining process, proposed regulations, §7:2.C.2
  - Temporary employment status, re-verification, §7:2.E
- Governing statutes, §7:1
- National origin discrimination. See **National Origin, Discrimination Based On**
- Pre-employment inquiries, §6:2.D.8
- Recordkeeping requirements, §§7:2.B.3, 7:2.D, 15:2.C

**Immunity,** Eleventh Amendment, §§23:1.B.1, 25:2.B.3

**Implied Covenant of Good Faith and Fair Dealing.** See **Good Faith and Fair Dealing, Implied Covenant of**

**Incentives.** See **Wage and Hour Laws**

**Indemnification**

- Employment contracts, §2:3.F.9

**Independent Contractors**

- See also **Contract Labor**

- Generally, §1:6.A

- Common law tests

- Economic realities and hybrid tests, §1:6.B.4

- Liabilities, §1:6.D.2

- Right to control test, factors considered and application to ERISA cases, §§1:6.B.3., 1:6.C.1

- Employment eligibility verification, §§7:2.B.5, 7:2.F.3

FLSA, test to determine independent contractor classification and liabilities under,  
§1:6.B.2

IRS factors

Test for independent contractor, §1:6.B.1, Appendix 1-1

Multiple employer relationships. See **Multiple Employer Relationships**

TCHRA test for independent contractor and liabilities, §1:6.C.4

Texas Unemployment Compensation Act independent contractor and employee test, duty  
to pay taxes on employees, §1:6.C.2

Texas Workers' Compensation Act independent contractor and employee test, duty to  
pay taxes on employees, §1:6.C.3

**Inferences.** See **Presumptions and Inferences**

**Injunctions**

Covenant not to compete, breach of, §32:2.D.2

Inventions and creative works, remedies for unauthorized use, §32:3.B.2

Jury service, discrimination based on, §24:6.F

Race discrimination, §22:3.D

Sexual harassment, §20:5.A

TCHRA, §§18:7.A.1, 18:8.C

Tenure denial cases, §19:5.G

Trade secret disclosure, §32:3.A.3

Wage claims, §9:5.C.2

**Inspections**

See also **Investigations**

Fair Labor Standards Act, DOL inspections, §9:1.G

Form I-9 records, §§7:2.D, 7:2.F.1

Electronic format, §15:2.C.6

OSHA inspections. See **Occupational Health and Safety**

**Insurance**

Leave policies, continuation of insurance plans, §16:9.H.2

**Intent**

Age discrimination, §23:5.B

Constructive discharge, objective versus subjective intent test, §4:2.A

Tortious interference with contractual relation, §2:2.D.2

Wrongful discharge, extrinsic evidence inadmissible if contract language unambiguous,  
§3:2.A.1

**Intentional Infliction of Emotional Distress**

Generally, §30:4.A

Elements

Generally, §30:4.B

Causation, §30:4.B.4

Extreme and outrageous conduct, §30:4.B.1

Intent or recklessness, §30:4.B.3

Severe emotional distress, §30:4.B.2

Employer Liability, §13:2.E

Privacy claims resulting from searches and investigations, §28:6.B

Summary judgment, grounds for, §41:10.B

**Intentional Interference with Contract**

Sexual harassment, action by accused, §20:7.B

**Interest on Money**

Incentive payment, delay, §2:3.B.2

Prejudgment interest

Discrimination claims under Chapter 451, §31:5.F

FLSA violations, §9:1.D.2

Workplace torts, §30:12.C

TCHRA, §18:8.G

**Internal Investigations.** See **Investigations**

**Internet.** See **Computers**

**Interpretation of Cases and Statutes.** See **Construction and Interpretation**

**Intervention**

Texas Commission on Human Rights Act, §§18:6.C.3, 18:7.A.4

**Interviews.** See **Hiring Process**

**Intoxicated Employee.** See **Drug and Alcohol Tests; Drugs and Alcohol in Workplace**

**Invasion of Privacy.** See **Privacy**

**Inventions and Creative Works**

Employer's rights in, §32:3.B.1

Remedies for unauthorized use, §32:3.B.2

**Investigations**

See also **Inspections**

Computer data, §13:5.C

Consent of employee, §28:6.A

Defamation, effect of qualified privilege on communications made during investigation, §29:4.D.2

Documentation, §33:8.D

Effectiveness, §§13:3, 13:9

Employee representation rights, §13:8

Fair Credit Reporting Act, workplace investigations by outside law firms, §§13:7, 16:13.A

Fair Labor Standards Act, DOL investigative powers, §9:1.G

FMLA non-compliance, DOL investigative authority, §25:7.C

Immigration form I-9, ICE investigations, §7:2.F.1

Intentional infliction of emotional distress, §28:6.B

Internal investigations

Affirmative obligation to investigate wrongdoing or health and safety violations, §§28:5.A, 28:5.B

Employer's separate file for, §15:4.A

Policies regarding, §16:13

Privacy issues. See **Privacy**

Torts resulting from, §13:2.H

Negligent investigations, §13:2.D

Outside investigators, §13:7

Pre-employment investigations

Generally, §28:5.C.1

Applicant for employment, §6:1.A

Arrest records. See **Arrest Records**

Background checks. See **Background Checks**

Conviction records. See **Conviction Records**

Criminal history checks. See **Criminal History Check**

Investigative consumer reports, pre-employment inquiries, §6:2.D.7

Negligent hiring, scope of employer's pre-hiring investigation, §§6:4.B, 16:3.D.1

Privacy issues, §13:2

Privilege issues, §13:6

Process, step-by-step, §13:3

Prospective Client, §38:5

corporate records, §38:5.C

criminal records, §38:5.A

relatives, friends, former employees, §38:5.B

Reasons for, §13:1

*Sabine Pilot* doctrine, investigating legality of requested action, §§3:11.C.5, 3:11.E

Sexual harassment, §13:4

TCHRA and EEOC investigation of charges or complaint, §§18:4.B.2, 18:5.B.2, 18:6.E

Video camera surveillance recordings for investigation, discovery of, §28:7.E

Wage claims, Texas Workforce Commission investigation, §9:5.C.2  
Weingarten rights, §§13:3.F, 13:8

— J —

**Job Descriptions**

Essential functions, §21:5.B.1

**Joinder**

TCHRA, joinder of Commission, §18:8.C.3

**Joint Employers.** See **Multiple Employer Relationships**

**Jurisdiction**

Discrimination under TCHRA, §§17:4.A.2, 24:2.B

EEOC and TCHRA, §§18:4.A, 18:4.B, 18:4.B.4, 18:6.A

**Jury Service**

At-will employment, limitations on, §1:3.C.17

Compensable time issue, §9:4.H

Discrimination based on, §24:6.F

Leave policies, §16:9.F

Statutory wrongful discharge actions, §3:14.D.3

**Jury Trial**

ADEA, §23:1.C

FMLA violations, §25:8.D.4

TCHRA, §18:7.I.3

— K —

**Key Employees**

See also **Executives, Administrators, and Professionals**

Indemnification of executives, §2:3.F.9

Severance benefits, “change in control” clause, §2:3.B.4

Written employment contracts, advantages and disadvantages of, §§2:2.C, 2:2.D.1

— L —

**Labor Code Chapter 451 Discrimination Claims.** See **Workers’ Compensation**

**Labor Management Relations Act (LMRA)**

Preemption, *Sabine Pilot* claims, §3:13.C.1

Tort claims, preemption, §30:11.C

**Labor Unions**

See also **Collective Bargaining Agreement (CBA)**

“Beck” order, §§15:2.O, 35:5

Company policies regarding, §16:12

Concerted activity, employer rules prohibiting, §16:12.E

Deductions from wages, §9:6

Defamation claims, §§29:4.D.9, 29:4.D.10

Discrimination based on union membership or nonmembership, §24:6.E

Insignia, §16:12.D

Joint employers, §1:6.A.2

Labor-Management Reporting and Disclosure Act, §15:2.L

National Labor Relations Act of 1935, protection from discrimination, §17:3.H

No solicitation/no disclosure rules, §16:12.A

Off-duty conduct of unionized employees, §28:9.E

Searches involving unionized employees, §28:4.C

Statutory wrongful discharge actions, §3:14.D.8  
Weingarten rights, employer policy, §16:12.F

**Language Requirements**

Discrimination based on national origin claims, §24:4.D.2  
English-only rules, §16:18

**Law Enforcement Personnel**

Height and weight standards, discrimination based on national origin claims, §24:4.D.2

**Layoffs.** See **Reduction in Force (RIFs)**

**Leave of Absence**

Accommodation of disability, leave as, §21:6.F.3  
Discrimination claims under Chapter 451, neutral enforcement of leave policy, §31:3.B.1  
Family and medical leave. See **Family and Medical Leave**  
Jury or witness duty. See **Jury Service**  
Military duty. See **Military Duty**  
Parental leave, §19:4.E  
Personal leaves, §16:9.G  
Policies regarding leave. See **Polices, Policy Manuals, and Handbooks**  
Pregnancy leave. See **Pregnancy Leave**

**Libel.** See **Defamation**

**Licenses**

Staff leasing services, §1:6.B.2

**Limitation of Actions.** See **Statute of Limitations**

**Liquidated Damages.** See **Damages**

**Local Ordinances**

Marital status, §24:6.A  
National origin, local ordinances prohibiting discrimination based on, §24:4.F.3  
Privacy issues regarding sexual orientation, §28:9.G  
Race discrimination, §22:5.B  
Religious discrimination, local ordinances prohibiting, §24:5.H.3  
Sexual orientation, §24:6.B  
Smoking in workplace, §28:9.B  
TCHRA, municipalities authorized to adopt anti-discrimination ordinances, §17:4.C

**Lodging.** See **Meals and Lodging**

**Lost Wages.** See **Back Pay**

— M —

**Mail**

Privacy issues, §28:8.A  
Wages, payment by mail, §9:5.B.3

**Malice**

Defamation, §29:5  
Negligent hiring, §6:4.C  
Race discrimination, §22:3.D  
TCHRA, §18:8.F.2  
Tortious interference with prospective contract, §30:5.C.2

**Malicious Prosecution**

Generally, §30:9.A  
Burden of proof, §30:9.B  
Privacy claims resulting from searches and investigations, §28:6.D  
Retaliation, §30:9.C

**Marital and Family Status**

Cohabitation. See **Cohabitation**  
Competitors, marriage to, §28:9.F.3

Discrimination based on, §24:6.A  
Extramarital affairs, §§28:9.F.4, 30:3.D.1  
Marriage of employees, selection criteria for determining which employee to terminate, §16:10.A  
Negligent interference with familial relations, §30:3.D.1  
Nepotism. See **Nepotism**  
No-spouse policies, §19:5.B  
Pre-employment inquiries prohibited, §§6:2.D.5, 19:5.C  
Privacy issues, §28:9.F.5  
Relatives. See **Relatives**  
Sex plus parenthood or marital status discrimination, §19:5.A  
Sexual stereotyping, §19:6.C.1  
Unmarried persons, protections for, §28:9.F.5

**Marriage.** See **Marital and Family Status**

**Meals and Lodging**

Deductions for, §§9:2.B.1, 9:6  
Deductions for, FLSA, §9:2.A.4  
Texas Minimum wage, including cost of meals and lodging furnished by employer, §9:2.B.1

**Mediation**

See also **Arbitration**  
Texas Commission on Human Rights Act, referral of complaint to mediation, §§17:4.A.2, 18:6.D

**Medical Insurance.** See **Health Insurance**

**Medical or Psychological Examinations**

AIDS or HIV test, §3:14.D.17  
Disability discrimination. See **Disability Discrimination**  
Genetic testing. See **Genetic Testing**  
Policies regarding psychological tests, §16:3.E.1  
Pre-employment examination, §§6:2.B, 6:3.B  
Privacy issues, psychological and honesty tests, §28:5.C.2

**Medical Records**

Confidentiality, §§15:4.B, 28:8.B.2  
Occupational Health and Safety Act, recordkeeping requirements for medical and exposure records, §15:2.D.3  
Policies regarding, §§16:7, 28:8.B.2  
Privacy issues, §28:8.B.2

**Mental Retardation**

Subminimum wage under Texas Minimum Wage Act, §9:2.B.2  
Wrongful discharge, §3:14.D.12

**Merger.** See **Change in Ownership or Control of Company**

**Military Duty**

At-will employment, limitations on, §1:3.B.18  
Discrimination based on, §24:6.L  
Statutory wrongful discharge actions, §3:14.D.5  
Uniform Services Employment and Re-Employment Rights Act, recordkeeping requirements, §15:2.I.1  
Veterans, reemployment rights, §16:9.C.1

**Minimum Wage**

See also **Wage and Hour Laws**  
Construction of terms. See **Construction and Interpretation**  
Deductions, effect on compensation, §9:6  
Deductions, meals, §9:2.A.4  
Federal minimum wage  
Generally, §9:2.A

- Exemptions, §9:1.B.5
- Tipped employees, §9:2.A.3
- Trainees, §9:2.A.2
- Youth opportunity wage, §9:2.A.1
- Public contracts, Texas prevailing wage rates, §9:2.C
- Texas Minimum Wage Act
  - Exemptions, §9:2.B.6
  - Meals and lodgings, deduction for cost of, §9:2.B.1
  - Penalties, §9:2.B.4
  - Preemption, §9:2.B
  - Subminimum wage, §9:2.B.2
  - Tipped employees, §9:2.B.3
  - Unpaid wages, action to recover, §9:2.B.5

### **Minors**

- Child care. See **Child Care**
- Child labor laws. See **Child Labor**
- Child support. See **Child Support**
- I-9 documentation requirements, §7:2.C.1
- Minimum age for employment, §6:2.D.1
- Minimum wage exemptions under Texas Minimum Wage Act, §9:2.B.6
- Opportunity wage for youth, §9:2.A.1

### **Misappropriation**

- Inventions and creative works, for unauthorized use, §32:3.B.2
- Trade secret, §32:3.A.3

### **Misconduct by Employee**

- After-acquired evidence cases. See **Evidence**
- Fraud and misrepresentation. See **Fraud and Misrepresentation**
- Off-duty conduct, §24:6.C

### **Misrepresentation.** See **Fraud and Misrepresentation**

### **Modifications.** See **Amendments and Modifications**

### **Moonlighting**

- Privacy issues, §28:9.D

### **Motion, summary judgment.** See **Summary Judgment**

### **Multiple Employer Relationships**

- Generally, §1:8
- Borrowed employees, §1:8.A
- FMLA, §§25:2.B.1, 25:6.G.3
- Joint employers, §§1:8.C, 25:2.B.1
- Texas Staff Leasing Act
  - Liability issues, §1:9.A.4
  - Licensing requirement, §1:9.A.2
  - Relationship between leasing company and client company, §1:9.A.3
  - Staff leasing defined, §1:9.A.1

### **Municipal Ordinances.** See **Local Ordinances**

— N —

### **National Origin, Discrimination Based on**

- Generally, §24:4
- Aliens, §24:4.D.1
- Ancestors, national origin of, §24:4.B.1
- Birthplace and language, §24:4.B.1
- Citizenship, §24:4.D.1
- Construction of cases and statutes. See **Construction and Interpretation**
- Defenses

- Bona fide occupational qualification, §24:4.E.2
- Business necessity, §24:4.E.1
- Commission interpretations, reliance on, §24:4.E.3
- Harassment cases, §24:4.E.5
- Mixed motive cases, §24:4.E.4
- Document abuse, §7:3.C.2
- EEOC Guidelines, §24:4.D
- Employer perceptions, §24:4.B.2
- Immigration and Nationality Act, §7:3
- Language requirements, §24:4.D.2
- Other protections
  - County and municipal ordinances, §24:4.F.3
  - Governor's Equal Employment Opportunity Office, §24:4.F.2
  - Texas Constitution, §24:4.F.1
- Proof
  - Defenses (see Defenses, above)
  - Disparate impact, §24:4.D.2
  - Disparate treatment, §24:4.D.1
  - Hostile environment, elements of claim, §24:4.D.3
- Protected subclasses, §24:4.B.1
- Relationships and associations of employee, §24:4.B.3
- TCHRA
  - Generally, §24:1
  - Burden of proof, §§24:2.D, 24:3
  - Defenses, §24:2.D
  - Discrimination models, disparate treatment and disparate impact, §24:3.A
  - Jurisdiction and coverage, §24:2.B
  - Remedies, §24:2.E
  - Scope of TCHRA, §24:2.A
- Unlawful employment practices, §24:4.A

## **Negligence**

- Generally, §30:3.A
- Defenses, §30:3.E
- Drug and alcohol issues
  - Employer's liability for intoxicated employee, §30:10.A
  - Testing, §30:10.B
- Elements of direct negligence claim
  - Generally, §30:3.B
  - Duty and breach of, §30:3.B.1
  - Proximate cause and injury, §30:3.B.2
- Indirect employer negligence. See **Respondent Superior**
- Negligent credentialing, §30:3.C.6
- Negligent entrustment, §30:3.C.4
- Negligent hiring
  - Generally, §6:4.A
  - Arrest records, failing to make inquiry, §6:2.D.6
  - Damages, §6:4.C
  - Defenses, §6:4.D
  - Effect of neutral or no-reference policies on negligent hiring, §16:4.A
  - Elements, §§6:4.B, 30:3.C.1
  - Polices regarding background checks, §16:3.D.1
  - Pre-employment investigations, §28:5.C.1
- Negligent infliction of emotional distress. See **Emotional Distress**
- Negligent interference with familial relations, §30:3.D.1
- Negligent retention, §§16:3.D.1, 28:5.C.1, 30:3.C.3
- Negligent training and supervision, §30:3.C.4



Pre-employment drug test, §6:3.A

### **Nepotism**

See also **Relatives**

Classifying employees by marital status under anti-nepotism policies, §24:6.A

Inconsistent enforcement of anti-nepotism policy as estoppel, §16:2.B.6

Non-enforcement of anti-nepotism rule, effect of, §§1:3.B.3, 2:3.D.5

Policies regarding employment of relatives, §16:10.A

Waiver of anti-nepotism policy, §16:2.A.4

### **New Hires**

Reporting, §§6:6, 15:3.E

### **Non-Competition. See Covenant Not to Compete**

### **Notice and Notification**

Affirmative action program for federal government contractors, notice under Executive order 11246, §15:2.K.5

Application forms

Citizenship or legal aliens, notice that proof of employment eligibility required, §6:2.D.8

Conditional offer of employment, ADA medical history statement, §6:3.B

Arbitration agreements, notice and consent issue, §14:3.A

At-will employment relationship not altered by completion of probation, notice of, §16:2.B.5

Disability, employee's request for accommodation, §21:6.E.1

Discrimination claims under Chapter 451, determining notice for accrual date, §31:4.A

Drug-Free Workplace Act, §15:2.J.3

Electronic surveillance of employees, notice of, §16:11.B.2

Employment contract, notice requirements, §§2:3.D.4, 2:3.F.8

Equal employment opportunity notices, §16:5.B

Fair Credit Reporting Act requirements, §16:3.D.3

Family and Medical Leave Act, notice requirements, §§15:2.H.5, 25:5.C

Immigration form I-9, ICE inspection or warning notice and subsequent notices, §7:2.F.1

Investigative consumer reports, notice of pre-employment inquiries, §6:2.D.7

Jury service, intent to return to employment after, §24:6.F

Labor-Management Reporting and Disclosure Act, §15:2.L

Posting. See **Posting of Notices**

Privacy, employer's notice that workplace is not private, §28:4.B

Religious beliefs, notice to employer of conflict with employment practices, §24:5.E.3

Rights and benefits under USERRA, notice of, §15:2.I.3

*Sabine Pilot* claims, §3:12

TCHRA

Complaint, notice to employer of filing, §18:6.C.4

Dual filing with EEOC, §18:4.B.1

Referral of complaint to mediation, notice of, §18:6.D.1

Right-to-sue notice, §18:6.G

Termination, notice or wages in lieu of notice, §2:3.D.4

Texas Hazard Communication Act, §15:3.B.3

Texas Workers' Compensation Act, §15:3.C.5

Wage and hour laws, notice requirements, §16:6.B

Wage claims, Texas Workforce Commission's notice of preliminary determination order, §9:5.C.2

### **Nursing Homes**

Retaliation based on health or safety violation reports, §24:6.O.3

Statutory wrongful discharge actions, §3:14.D.15

**Obesity.** See **Height and Weight Standards**

**Occupational Health and Safety**

See also **Hazard Communication**

At-will employment, limitations on, §1:3.C.12

Breast-feeding, §16:8

Child labor. See **Child Labor**

Confidentiality of medical records, §28:2.C.1

Disability discrimination, direct threat to safety, §21:5.C

Employer's affirmative duty to investigate, §28:5.B.2

Hazard communication. See **Hazard Communication**

Language requirements not discriminatory in dangerous environment, §24:4.D.2

Prospective employee as direct threat to, §6:2.C

Recordkeeping requirements, §15:2.D

Retaliation based on health or safety violation reports, §24:6.O.2

Safety-sensitive positions and privacy issues

Post-incident or accident tests, §28:5.C.2

Random drug tests, §28:5.C.2

Whistleblowing, retaliatory discharge for, §3:6.D.1

**Off-Duty Conduct**

Cohabitation. See **Cohabitation**

Dating. See **Dating**

Discrimination based on, §24:6.C

Marriage. See **Marital and Family Status**

Moonlighting, §28:9.D

Privacy issues. See **Privacy**

Sexual orientation. See **Sexual Orientation or Preference**

Smoking. See **Smoking**

**Offer Letters**

Employment at-will relationship, inadvertent modification of, §16:2.A.1

Safeguarding employment at-will relationship, §16:2.B.2

**Officers.** See **Directors and Officers**

**Offset**

ADEA claims, §23:4.C

Sex discrimination, deductions from awards, §19:7.E.1

Wrongful discharge, back pay awards offset by earnings, §3:4.G

**Oral Promises**

Employment at-will relationship, inadvertent modification by oral promises, §16:2.A.2

Wrongful discharge, express oral contract claims, §3:3.A.2

**OSHA.** See **Occupational Health and Safety**

**Overtime**

See also **Wage and Hour Laws**

Generally, §9:3.A

Administrative employees, §§9:3.F, 9:3.J.2

Application of FLSA and Texas Payday Law, §2:3.B.1

Burden of proof under FLSA, overtime exemption, §9:1.C

Construction of terms. See **Construction and Interpretation**

Determining exempt status, §§9:3.C-9:3.D

Executive employees, §§9:3.G, 9:3.J.1

Irregular hours

"Belo contracts," §9:3.G.1

Fluctuating work week contract, §9:3.H.2

Joint employers, §1:8.C.3

Policies regarding, §16:6.C.3

Professional employees, §§9:3.E, 9:3.J.3

Public Employers, §9:3.B

Railway Labor Act Exemption, §9:3.I.5  
Regulations, §9:3.J  
Window of correction, §9:3.D.1.c

— P —

**Parental Leave**

Relationship between PDA and FMLA, §19:4.E

**Partnership, Denial of**

Sexual stereotyping, §19:6.B.2  
Title VII sex discrimination claim, §19:5.G

**Patents**

Employer's rights in inventions, §32:3.B.1

**Payment of Wages Act. See Wage and Hour Laws**

**Pay. See Wage and Hour Laws**

**Penalties**

See also **Criminal Acts and Penalties**

Attorney's fees, §9:1.D.4  
Blacklisting, §24:6.M  
Employment eligibility verification requirements of IRCA, violations of, §7:2.F.4  
Federal Fair Labor Standards Act, §9:1.D.3  
FMLA, penalties for violation of posting requirements, §25:4.B  
Fort Worth city codes regarding discrimination, §22:5.B.1  
Immigration and Nationality Act, penalties for retaliation, §7:3.C.4  
Jury service, discrimination based on, §24:6.F  
Staff leasing services, operating without license, §1:9.A.2  
Subpoena compliance, discrimination based on, §24:6.G  
Texas-Bacon Act violations, §9:2.C  
Texas Minimum Wage Act, §9:2.B.4  
Wage claims, Texas Workforce Commission, §9:5.C.2  
Wage withholding orders, §§9:6.A.3-9:6.A.4  
Whistleblower Act violations, §§33:6.C, 34:4.C

**Pension Plans. See Retirement**

**Performance Evaluations**

Constructive discharge, §4:2.B.1  
Defamation issues, qualified privilege, §29:4.D.6  
Policies regarding, §16:15

**Performance Incentives. See Wage and Hour Laws**

**Personnel Files**

Recordkeeping requirements. See **Records and Reports**

**Petitions**

Unpaid wages, verified petition for action to recover under Texas Minimum Wage Act, §9:2.B.5

**Photographs**

Applicants, effect of asking for photograph of, §6:2.D.2

**Physical Examinations. See Medical or Psychological Examinations**

**Physicians**

Retaliation based on health or safety violation reports, §24:6.O.5

**Policies, Policy Manuals, and Handbooks**

Affairs with married co-workers, policy regarding, §28:9.F.4  
After-acquired evidence defense, policies to enhance assertion of, §16:3.B.2  
Alcohol use and testing, §28:5.C.2  
Americans With Disabilities Act  
Advertisements, §16:3.C.1

- Applications, §16:3.C.2
- Employee medical information, §16:7
- Interviews and hiring checklist, §16:3.C.3
- Appearance of employee. See **Dress Codes, Grooming, and Hair Style**
- Arbitration, §§14:3, 16:14.B
- At-will status, effect of employment policies on presumption of, §3:5
- Background checks
  - Credit history, §16:3.D.3
  - Criminal records and convictions, §16:3.D.2
  - Legal issues, overview of, §16:3.D.1
- Breast-feeding policies, §16:8
- Compliance with Sarbanes-Oxley, §33:10.D
- Continuing violation under TCHRA, ongoing discriminatory policy, §18:6.B.4
- Dating and fraternization, §§16:10.B, 19:5.B
- Discrimination under Chapter 451, neutral enforcement of leave policies, §31:3.B.1
- Dispute resolution, §16:14
- Dress codes. See **Dress Codes, Grooming, and Hair Style**
- Drugs and alcohol, §16:10.D
- Electronic monitoring of employees, §16:11.B
- E-mail interception, policies on, §28:7.C.2
- Employee medical information policies, §16:7
- Employment at-will relationship, ways to safeguard
  - Consistency in enforcing policies, §16:2.B.6
  - Disciplinary procedures, §16:2.B.4
  - Disclaimers, §§3:5.B.5, 16:2.B.1
  - Offer letters, §16:2.B.2
  - Probationary periods, §16:2.B.5
  - Terms to avoid, §16:2.B.3
- English-only policies, §16:18
- Equal employment opportunity policies
  - Generally, §16:5.A
  - Essential elements of policy, §16:5.C
  - Posting requirements, §16:5.B
- Fax surveillance, §28:7.G
- FMLA leave policies, inclusion in handbooks or manuals, §25:5.C
- Fraternization (see Dating and fraternization, above)
- Grievance procedures. See **Grievance Procedures**
- Grooming and dress codes. See **Dress Codes, Grooming, and Hair Style**
- Hiring policies
  - ADA, special hiring issues, §16:3.C
  - Applications, §16:3.B
  - Background checks, §16:3.D
  - Employment forms, §16:3.F
  - Interviews, §16:3.A
  - NLRA, special hiring issues, §16:3.G
  - Psychological tests, §16:3.E
- Implied contracts of employment in handbooks or policy manuals, §§1:3.B.3, 3:5.B.1
- Internal grievance and complaint procedure, §16:14.A
- Internal investigations policies, §16:13
- Job orientation, §16:3.F
- Labor union activities, §16:12
- Leave policies
  - Generally, §16:9.A
  - Defining key terms, §16:9.H.1
  - Election leave to attend conventions or to vote, §16:9.E
  - Family and medical leave, §16:9.B

- Forms, §16:9.H.3
- Insurance coverage during leave, §16:9.H.2
- Jury or witness duty, §16:9.F
- Military leave, §16:9.C
- Personal leaves of absence, §16:9.G
- Pregnancy-related leave, §16:9.D
- Medical records, policies limiting access to, §28:8.B.2
- Modifying employment at-will relationship, ways to
  - Conduct inconsistent with policies, §16:2.A.4
  - Employee handbooks, §16:2.A.3
  - Offer letter, §16:2.A.1
  - Oral promises, §16:2.A.2
- No-spouse policy, §19:5.B
- Off-duty conduct, §28:9.A
- Performance evaluation, §16:15
- Privacy, employer's policy that workplace is not private, §28:4.C
- Recordkeeping, §15:5
- References
  - Generally, §16:4.A
  - Consent to employment reference check, §16:4.D
  - Obtaining references, §16:4.C
  - Responding to reference inquiries, §16:4.B
- Relatives, employment of, §16:10.A
- Sexual harassment, policies to prevent and internal complaint procedures, §16:5.D
- Smoking in workplace, §16:11
- Surveillance of employees, §16:11
- Termination policies, §16:17
- Violence or weapons in workplace, §16:16
- Wage and hour law policies
  - Generally, §16:6.A
  - Drafting policy, §16:6.C
  - Notice requirements, §16:6.B

### **Political Activity**

- At-will employment, limitations on, §1:3.C.17
- Conventions, statutory wrongful discharge actions for attending, §3:14.D.4
- Elections, leave policies regarding, §16:9.E.1
- Political affiliations or choices, retaliation based on, §24:6.Q
  - Political participation, retaliation based on, §24:6.R
- Voting. See **Voting**

### **Polygraphs**

- Employee Polygraph Protection Act, §15:2.M
- Privacy issues, §§28:2.B.2, 28:5.C.2

### **Posting of Notices**

- Age Discrimination Employment Act, §15:2.F.4
- Americans With Disabilities Act, §§6:5.B, 15:2.G.3
- Drug-Free Workplace Act, §15:2.J.3
- Electronic surveillance of employees, notice of policy, §16:11.B.2
- Equal employment opportunity notices, §16:5.B
- Executive Order 11246, affirmative action program requirements for federal government contractors, §15:2.K.5
- Fair Labor Standards Act, §15:2.A.7
- Family and Medical Leave Act, §15:2.H.5
- FMLA requirements and penalties, §§25:5.A-25:4.B
- Labor-Management Reporting and Disclosure Act, §15:2.L
- OSHA Hazard Communication Act, §15:2.D.5
- Paydays, notice of, §9:5.B.2

Privacy, employer's notice that workplace is not private, §28:4.B  
Sexual harassment, posting policies to prevent and internal complaint procedures, §16:5.D

Texas Hazard Communication Act, §15:3.B.3  
Texas Unemployment Compensation Act, §15:3.A  
Texas Workers' Compensation Act, §15:3.C.5  
Title VII of Civil Rights Act, §15:2.E.4  
Wage and hour laws, posting notices, §16:6.B

**Pre-Employment Inquiries.** See **Hiring Process**

**Pre-Employment Investigations.** See **Investigations**

### **Preemption**

Discrimination claims under Chapter 451, §31:4.E  
ERISA. See **Employee Retirement Income Security Act (ERISA)**  
FLSA preemption of Texas Minimum Wage Age, §9:2.B  
Immigration-related employment discrimination, Title VII preemption, §7:3.E.1  
Negligent hiring, §6:4.D.2  
*Sabine Pilot* claims, §§3:13.C, 3:13.C.1  
Title VII preempts Title IX, §19:5.G  
Tort claims, federal preemption, §30:11

**Pregnancy Discrimination.** See **Sex Discrimination**

### **Pregnancy Leave**

PDA and ADA, relationship between, §19:4.D.2  
Policies regarding, §16:9.D  
Requirement of ADA and FMLA, §§19:4.A, 19:4.D.1

### **Presumptions and Inferences**

Application for social security or disability benefits, presumption recipient estopped from qualified individual assertion, §21:5.D  
At-will employment, §§2:2.A, 2:3.D.1  
Defamation *per se*, presumed damages, §29:2.D.1  
Discrimination under Chapter 451, §31:4.A.4  
Employment eligibility verification, presumption created by pilot program participation, §7:2.C.4  
English-only rules presumed discriminatory, §24:4.D.2  
Fixed-term employment agreement, presumption of renewal, §2:3.C.1  
Indefinite-term employment contract presumed at-will, §2:3.C.2  
Joint employment, §1:8.C

### **Privacy**

Generally, §28:1  
Bankruptcy Code, §28:2.C  
Claims resulting from searches and investigations  
    Assault and battery, §28:6.C  
    False imprisonment, §28:6.A  
    Intentional infliction of emotional distress, §28:6.B  
    Malicious prosecution and abuse of process, §28:6.D  
Construction of cases and statutes. See **Construction and Interpretation**  
Consumer information, §15:4.D  
Cordless telephones, §28:7.B  
Defending privacy claims  
    Generally, §§13:2, 28:3  
    Consent or waiver, §28:3.B  
    No protected privacy interest, §28:3.A  
    Privileges, §28:3.C  
Electronic surveillance. See **Electronic Surveillance and Wiretapping**  
Fair Credit Reporting Act, §28:2.C  
Immigration Reform and Control Act, §28:2.C  
Internal investigations

- Generally, §28:5.A
- Affirmative obligation to investigate wrongdoing and statutory violations, §28:5.B
- Employee testing, §28:5.C.2
- Pre-employment investigations, §28:5.C.1
- Invasion of privacy
  - Employee information, invasion of privacy claims on disclosure of, §15:4.E
  - Historical background, §28:2.A.1
  - Psychological tests, policies to prevent invasion of privacy, §16:3.E.1
  - Sexual harassment, action by accused, §20:7.D
  - Texas common law recognition of privacy protection, §28:2.A.2
  - Types of invasion of privacy, §§28:2.A.3, 28:5.A
- Lifestyle choices (see Off-duty conduct and lifestyle decisions, below)
- Medical records. See **Medical Records**
- Off-duty conduct and lifestyle decisions
  - Generally, §28:9
  - Dating, marriage, and extramarital affairs, §28:9.F
  - Employer's liability or duty of care, §28:9.A
  - Lawful but dangerous activities and consumable products, §28:9.C
  - Moonlighting, §28:9.D
  - Physical appearance, grooming, hair style, and dress codes, §28:9.I
  - Sexual orientation, §28:9.G
  - Smoking, §28:9.B
  - Union arbitration context, §28:9.E
  - Volunteer work with AIDS and HIV patients, §24:6.C
  - Weight of employee, §28:9.H
- Policies regarding background checks, §16:3.D.1
- References, potential liability, §16:3.D.1
- Searches, §§28:4, 28:6
- Statutory sources of privacy rights
  - Federal statutes, §28:2.C
  - State statutes, §28:2.C.2
  - Texas Constitution, privacy under, §28:2.B.2
  - U.S. Constitution, privacy under, §28:2.B.1
  - U.S. Mail, §28:8.A

### **Privilege**

- Defamation, §§29:2.C.2, 29:2.C.3, 29:4.C, 29:4.D
- Genetic information privileged, §15:4.C
- Medical records, exception to privilege, §28:8.B.2
- Privacy claims, §28:3.C
- Tortious interference claims, §30:5.D.1

### **Probation**

- At-will employment relationship not altered by completion of probation, notice of, §16:2.B.5

### **Promissory Estoppel**

- At-will employment, effect of promissory estoppel doctrine, §1:3.B.5
- Wrongful discharge, quasi-contract promissory estoppel claim, §3:9

### **Promotions**

- Affirmative action, §22:6.C.3
- Constructive discharge, effect of denial of promotion, §4:2.B.1
- FMLA leave, effect on promotion, §25:7.A
- Foreign education or training, denial of promotion based on, §24:4.D.2
- Gender class action, sex segregation by funneling and promotion tracks, §19:8
- Linguistic characteristics, denial of promotion based on, §24:4.D.1
- Privacy issues, effect of extramarital affair on promotion, §28:9.F.4
- Sex discrimination, glass ceiling issue, §19:5.G
- Sexual stereotyping, §§19:6.B.2, 19:6.B.4, 19:6.C.3

### **Protecting Business Interests**

- Comparison of statutory and common law protections, §32:1
- Confidentiality. See **Confidentiality**
- Copyrights. See **Copyrights**
- Noncompetition agreement. See **Covenant Not to Compete**
- Patents. See **Patents**
- Trade secrets. See **Trade Secrets**

### **Psychological Examinations.** See **Medical or Psychological Examinations**

### **Public Employers and Employees**

- Compensatory time off in lieu of overtime pay, §9:4.F
- Dating, marriage, and cohabitation, §28:9.F.1
- Discrimination claims under Chapter 451, §31:3.C
- Military leave, §16:9.C.2
- Pre-employment investigations, §28:5.C.1
- Privacy rights. See **Privacy**
- Searches, §28:4.A
- Whistleblowing. See **Whistleblowing (Texas Whistleblower Act)**
- Wrongful discharge
  - Due process requirements, §3:14.C
  - Quasi-contract promissory estoppel claim, §3:10.D

### **Public Policy**

- Discharge in violation of common law public policy, remedies and defenses to *Sabine Pilot* claims, §§3:11-3:13
- Statutory wrongful discharge actions, §3:14
- TCHRA, Commission's responsibility to protect citizens from discrimination, §18:3.A

### **Public Works Contracts**

- Minimum wages, §9:2.C

### **Punitive Damages**

- ADEA claims, §23:4.A.3
- Defamation, malice as basis for punitive damages, §29:5.D
- Disability discrimination, §21:8
- Discharge in violation of common law public policy, *Sabine Pilot* claims, §3:11.A
- Discrimination claims under Chapter 451, §§31:5.E, 31:5.E.3.b
- Inventions and creative works, unauthorized use, §32:3.B.2
- Race discrimination, §22:3.D
- Sex discrimination, §19:6.G.3
- Sexual harassment, §20:5.A
- TCHRA, §§18:8.F.2, 18:8.F.3
- Trade secret misappropriation, §32:3.A.3
- Whistleblower Act violations, §34:4.B
- Workplace torts, §30:12.B
- Wrongful discharge, contract claim, §3:9.G

— Q —

### **Questions of Law and Fact**

- Defamatory meaning, words capable of, §29:2.B.3
- Employer status under FLSA, §9:1.B.1
- Exemption from overtime requirements, §9:3.B
- Joint employers, §1:8.C
- On-call time, determining if compensable, §9:4.C
- Travel time, compensable time question, §9:4.D



## **Race Discrimination**

Generally, §22:1

Affirmative action. See **Affirmative Action**

Equal Rights Clause of Texas Constitution, §22:2.A

Executive Order 11246, prohibiting discrimination by federal contractors, §22:4.B

Local ordinances, §22:5

Marriage to person of different race, discrimination based on, §24:6.A

Reconstruction statutes, related federal causes of action under, §22:4.A

Sex plus race discrimination, §19:5.A.4

Strict scrutiny standard, §22:2.A.2

TCHRA

Generally, §22:2.B

Defenses, §22:3.A.4

Proving discrimination, disparate treatment and adverse impact, §22:3

## **Railway Labor Act (RLA)**

Defamation claim, preemption by RLA, §29:4.D.9

Preemption, *Sabine Pilot* claims, §3:13.C

Tort claims, preemption, §30:11.C

## **Reasonable Accommodation**

Disability. See **Disability Discrimination**

Religion. See **Religion, Discrimination Based on**

## **Reassignment. See Transfer of Employee**

## **Records and Reports**

ADEA recordkeeping requirements, §15:2.F

Americans With Disabilities Act, §§6:5.B, 15:2.G

Application forms, recordkeeping requirements, §6:5

Arrest records. See **Arrest Records**

“Beck” Order, §§15:2.O, 35:5

Conviction records. See **Conviction Records**

Credit reports. See **Credit Reports**

Criminal history check. See **Criminal History Check**

Drug-Free Workplace Act, recordkeeping requirements, §15:2.J

Employee Information Reports (EEO-1), §15:2.E

Employee Polygraph Protection Act, §15:2.M

Employment eligibility verification, retention of I-9 forms, §§7:2.B.3, 7:2.D

Equal Pay Act, recordkeeping requirements, §15:2.B

ERISA reporting requirements. See **Employee Retirement Income Security Act**

## **(ERISA)**

Executive Order 11246, §15:2.K

Fair Labor Standards Act, recordkeeping requirements, §9:1.F

Family and Medical Leave Act, §§15:2.H, 25:9

Health care workers’ reports, §§3:10.C.13-3:10.C.15

Immigration Reform and Control Act, §§7:2.B.3, 7:2.D, 15:2.C

Labor-Management Reporting and Disclosure Act, §15:2.L

Medical records. See **Medical Records**

New hires, §§6:6, 15:3.E

Occupational Health and Safety Act, §15:2.D

Personnel files

Access to, §15:4.A

Medical records separate from personnel records. See **Medical records**

Privacy issues, §§15:4.E, 28:8.B

Recordkeeping requirements, §35:2.G

*Sabine Pilot* doctrine, employee’s refusal to falsify records or reporting of illegal act, §§3:11.C.2, 3:11.D.1

TCHRA, records maintenance requirements, §§15:3.D, 18:5.B.1, 18:6.E.2  
Texas Hazard Communication Act. See **Hazard Communication**  
Texas Unemployment Compensation Act, §15:3.A  
Texas Workers' Compensation Act, §15:3.C  
Title VII of Civil Rights Act of 1964, §15:2.E  
Uniform Services Employment and Re-Employment Rights Act, recordkeeping requirements, §15:2.I.1  
Vietnam Era Veterans' Readjustment Act, §15:2.N

**Recruiting.** See **Hiring Process**

**Reduction in Force (RIFs)**

Age discrimination, §§23:3.C, 23:6.B, 23:6.C.3  
Constructive discharge, §4:2.B.1  
Early retirement offers, §4:4

**Reemployment.** See **Reinstatement**

**References**

See also **Background Checks**  
Blacklisting issues, §29:4.E.1  
Consent to employment reference check, §16:4.D  
Consent to release of information form, §29:4.D.5  
Defamation issues versus duty to disclose information, §§16:4.D, 29:4.D.5, 29:4.E  
Policies regarding. See **Policies, Policy Manuals, and Handbooks**

**Reinstatement**

ADEA claims, §23:4.A.2  
Breach of employment contract, reinstatement unavailable, §3:8.B  
Constructive discharge, §4:3.B.2  
Discharge in violation of common law public policy, §3:12.C  
Discrimination under Chapter 451, §31:5.B  
Jury service, discrimination based on, §24:6.F  
Subpoena compliance, discrimination based on, §24:6.G  
Veterans, reemployment rights, §16:9.C.1

**Relatives**

See also **Marital and Family Status; Nepotism**  
Association with individual with disability, §21:7.D  
Child employed in family business, effect of child labor laws, §9:7.A.1  
Discrimination based on national origin of employee's spouse, §24:4.B.3  
Policies regarding employment of, §16:10.A  
Texas Minimum Wage Law, exemption for employment of family members, §9:2.B.6

**Release**

See also **Consent**  
ADEA claims, §23:6  
Medical records, §28:8.B.2  
Pre-employment drug test, effect of release if test negligently performed, §6:3.A  
References, consent to release of information form, §29:4.D.5

**Religion, Discrimination Based on**

Generally, §24:5  
Construction of cases and statutes. See **Construction and Interpretation**  
Coverage  
    Generally, §24:5.A  
    Activities covered, §24:5.A.2  
    Exemption for religious organizations, scope of, §24:5.A.3  
    Status, determination of, §24:5.A.1  
Defenses, §24:5.G  
Disparate treatment issues, §24:5.F.1  
Other protections  
    County and municipal ordinances, §24:5.H.3  
    Governor's Equal Employment Opportunity Office, §24:5.H.2

- Religious holy days, §24:5.H.4
- Texas Constitution, §24:5.H.1
- Pre-employment inquiries into religious beliefs, §6:2.D.3
- Proof

- Generally, §24:5.E
- Causation, §24:5.E.4
- Nature of beliefs, §24:5.E.2
- Notice to employer, §24:5.E.3
- Sincerity of beliefs, §24:5.E.1

- Protected activity, §24:5.C
- Reasonable accommodation
  - Overview, §24:5.D.1
  - Scope of duty, §24:5.D.2
  - Types of accommodation, §24:5.D.3
  - Undue hardship, §24:5.D.4
- Religious harassment, §24:5.F.2

#### TCHRA

- Generally, §24:1
- Defenses, §24:2.E
- Discrimination models, disparate treatment and disparate impact, §24:3.A
- Federal burden of proof standard, §24:2.D
- Federal law, relationship with, §24:2.C
- Jurisdiction and coverage, §24:2.B
- National origin. See **National Origin, Discrimination Based on**
- Overview of TCHRA, §24:2.A
- Remedies, §24:2.E
- Scope of TCHRA, §24:2.A

- Unlawful employment practices, §24:5.B

#### **Relocation by Employee**

- Promises to employ, promissory estoppel claims, §3:9

#### **Removal**

- Discrimination under Chapter 451, §31:7.C
- TCHRA, §18:7.F

#### **Reputation**

- Defamation. See **Defamation**
- Off-duty conduct affecting business, §24:6.C
- TCHRA, damages for injury to, §18:8.F.1

#### **Resignation**

- Constructive discharge, §4:2
- Dating policies, §16:10.B
- Severance “change in control” clause covering resignation, §2:3.B.4

#### **Res Judicata**

- TCHRA, §18:7.G

#### **Respondent Superior**

- See also **Vicarious Liability**
- Assault and battery, §30:6.B
- Course and scope of employment, §30:2.C
- Employer-employee relationship, §30:2.B
- Negligent hiring. See **Negligence**
- Overview, §30:2.A
- Sexual harassment, §20:4.B.2
- Summary judgment, §41:5.D

#### **Resumes**

- After-acquired evidence doctrine, misrepresentations on resume, §16:3.B.2
- Requiring application form in addition to resume, §6:2.A

#### **Retainer agreement, §38:3.D**

## Retaliation

- Generally, Ch. 26
- Abortion, participation or nonparticipation as basis for retaliation, §§3:14.D.7, 24:6.S
- Accused discriminator, claims by, §26:5
- Adverse employment action, §26:2.C
- After-acquired evidence cases. See **Evidence**
- Arbitration, retaliation for involvement in, §24:6.P
- Causation, §26:2.D
- Counterclaims, as retaliatory, §26:4
- Disability discrimination, retaliation claims, §21:7.K
- Fair Labor Standards Act, retaliation prohibited, §9:1.E
- Health care workers' reports, §§3:14.D.13-3:14.D.15
- Health or safety violation reports, retaliation based on, §24:6.O
- Human resources professionals, claims by, §26:3.A
- Immigration and Nationality Act prohibiting retaliation, §7:3.C.4
- In-house counsel, claims by, §26:3.B
- Labor union activities, §24:6.E
- Malicious prosecution, counterclaim as retaliatory, §30:9.C
- Political affiliations or choices, retaliation based on, §24:6.Q
- Political participation, retaliation based on, §24:6.R
- Prima facie case, §26:2.A
- Protected activity, §26:2.B
- Race discrimination, §22:3.C
- References, potential liability, §16:3.D.1
- Sabine Pilot* doctrine, §§1:4.B.1, §3:6
- Sarbanes-Oxley Act, under, §26:6
- Sex discrimination, §19:2.C
- Sexual harassment complaints, §20:4.D
- Standing to sue, §26:1.C
- Summary judgment, §41:5.D
- TCHRA, claims under
  - Generally, §§17:5.E, 24:6.N
  - Adverse employment actions, §24:6.N.4
  - Burden of proof, §24:6.N.1
  - Causation, §24:6.N.5
  - Protected activity, §24:6.N.2
  - Retaliatory legal actions, §24:6.N.4
  - Unprotected conduct, §24:6.N.3
- Ultimate employment action, §26:2.C.1
- Voting, §16:9.E.3
- Whistleblowing, retaliatory discharge for, §§3:11.D.1, 17:4.B.1

## Retirement

- Early retirement offers as constructive discharge, §§4:2.B.1, 4:4
- ERISA requirements. See **Employee Retirement Income Security Act (ERISA)**
- Mandatory retirement, §23:5.A
- Wrongful discharge, defenses to promise of employment until retirement age, §3:4.B

**Reverse Discrimination.** See **Affirmative Action**

— S —

## ***Sabine Pilot Doctrine***

- Generally, §3:11.A
- Constructive discharge, §4:2.C
- Summary judgment, §41:10.D

**Safety.** See **Occupational Health and Safety**

**Salaries and Compensation.** See **Wage and Hour Laws**

**Sale of Company.** See **Change in Ownership or Control of Company**

**Sales or Solicitation**

Child labor law, §9:7.A.3

**Same Actor Inference**

Age discrimination, defense to, §23:3.A.4.b

Summary judgment, §41:12.A

**Sarbanes-Oxley Act**

Generally, §33:1

Corporate fraud investigations, §§13:1.C, 13:5.A

Document retention requirements, §33:10.C

Employees, §33:3

Employers, §33:2

Litigation, §33:9

**Schools**

See also **Education**

Criminal history check of school workers and security sensitive positions in higher education, §§6:2.D.6, 16:3.D.2

Discrimination based on criminal record, §24:6.D

Sales or solicitations, child labor law, §9:7.A.3

Students, minimum wage exemption, §9:2.B.6

Title IX prohibiting sex discrimination, tenure denial cases, §19:5.G

**Searches**

Fourth Amendment protections, §§28:2.B.1, 28:4

Privacy claims resulting from searches, §28:6

**Security-Sensitive Positions**

Citizenship requirement, §7:3.E.2

Conviction record, pre-employment inquiries, §6:2.D.6

**Self-Employment**

Sales or solicitations, child labor law, §9:7.A.3

**Seniority**

Defense to discrimination claims, §§17:5.A.4, 24:2.E

Marriage of employees, selection criteria for determining which employee to terminate, §16:10.A

Military service, effect on seniority, §16:9.C.1

Religious accommodation, effect of scheduling changes on seniority rights, §24:5.D.4

Sex discrimination, defense to, §19:3.C

**Service of Process and Papers**

Texas Commission on Human Rights Act, service of perfected complaint, §18:6.C.4

**Settlement**

ADEA claims, §23:6

Discrimination claims under Chapter 451, effect of related disability claim settlement, §31:4.H

Employment eligibility verification violations, INS negotiated settlement of penalties, §7:2.F.4

Texas Commission on Human Right Act, approval of settlement after ADR, §18:6.D.4

**Severance Benefits**

EEOC regulations, §23:1.B.2.d

Employment contracts, inclusion in, §2:3.B.4

Sex discrimination damages award, §19:7.E.1

**Sex Discrimination**

Advertising, language used in ads, §6:1.B.2

Anti-nepotism and no-spouse policies, §16:10.A

Appearance standards and dress codes, §16:10.C

Class action issues, §19:8

Construction of cases and statutes. See **Construction and Interpretation**

Damages, §§19:2.E, 19:7

Defense of bona fide occupational qualification, §19:2.D

Equal Pay Act coverage

- Elements of claim and defenses, §19:3
- Procedures and remedies under, §17:3.G

Fetal protection, barring women from job on basis of, §19:4.F

Males, discrimination against, §19:5.D

Marital and family status, pre-employment inquiries as evidence of gender discrimination, §6:2.D.5

Marital status, discrimination based on, §24:6.A

No fraternization or no-spouse policies, §19:5.B

Parental leave, §19:4.E

Pre-employment interviews, gender issues, §19:5.C

Pregnancy discrimination

- Disability and return to work issues, §19:4.D
- Pre-employment inquiries, §19:5.C
- Pregnancy Discrimination Act, §19:4.A
- Proof, §19:4.C
- Sexual stereotyping, §§19:6.C.1, 19:6.C.3
- TCHRA prohibition, §19:4.B

Reproductive discrimination, §19:4.G

- Prescription contraception, §19:4.A

Section 1981 of Civil Rights Act, §19:5.F

Sex plus marriage, parenthood, race, or other protected classification, §19:5.A

Sex segregation in employment, funneling and promotion tracks, §19:8.A.4

Sexual preference, §19:5.E

Sexual stereotyping

- Appearance and grooming standards, §19:6.C.2
- Common stereotypes, §19:6.A
- Glass ceiling cases, §19:6.C.3
- Pre-employment interviews, §19:6.C.1
- Proof of, §19:6.B

Title VII and TCHRA prohibitions

- Generally, §19:1
- Proof, theories of, §19:2.C
- TCHRA, §19:2.B
- Title VII, §19:2.A

Weight standards, §16:10.C.5

## **Sexual Harassment**

Generally, §20:1

Constructive discharge, §§4:2.B.1, 4:2.D, 20:4.E

Customers or vendors, harassment of or by, §20:4.A.6

Damages, §20:5

Dating and fraternization policies, §16:10.B

Defenses

- Challenge plaintiff's prima facie case, §20:6.A
- Employer's prompt and appropriate remedial action, §20:6.C
- Harasser's conduct, employer not responsible for, §20:6.D
- Internal complaint procedure, plaintiff failed to use, §20:6.B

Discovery and evidentiary issues

- After-acquired evidence, §20:8.F
- Harasser, evidence concerning, §20:8.D
- Mental condition and psychological history of plaintiff, §20:8.C
- Other employees, harassment against, §20:8.E
- Past sexual behavior and sexual predisposition of plaintiff, §20:8.A

- Workplace conduct of plaintiff, §20:8.B
- E-mail harassment, §20:4.H.1
- Employer's affirmative duty to investigate, §28:5.B.1
- Governing statutes, regulations, and guidelines
  - EEOC guidelines, §20:2.C
  - TCHRA, §20:2.B
  - Title VII, §20:2.A
- Hostile environment sexual harassment
  - Generally, §20:4.A.1
  - Employer knew or should have known, §20:4.A.6
  - Job performance affected or working conditions altered, severe or pervasive harassment, §20:4.A.5
  - Protected class, §20:4.A.2
  - Sex or gender, harassment based on, §20:4.A.4
  - Unwelcome conduct, §20:4.A.3
- Internet harassment, §20:4.H.2
- Policies to prevent and internal complaint procedures, §16:5.D
- Quid pro quo sexual harassment
  - Elements, §20:4.B.1
  - Employer liability, respondeat superior, §20:4.B.2
- Remedies, §20:5
- Retaliation, §20:4.D
- Rights of accused
  - Generally, §20:7
  - Defamation, §20:7.A
  - Intentional interference with contract, §20:7.B
  - Invasion of privacy, §20:7.D
  - Wrongful discharge, §20:7.C
- Same-sex sexual harassment, §20:4.F
- Sexual favoritism, §20:4.G
- Summary judgment motion, §41:7
- Supervisor's individual liability, §20:4.C
- Supreme Court rulings
  - Burlington Industries, Inc. v. Ellerth*, §20:3.E
  - Clark County School District v. Breeden*, §20:3.G
  - Davis v. Monroe County Bd. of Educ.*, §20:3.F
  - Faragher v. City of Boca Raton*, §20:3.D
  - Gebser v. Lago Vista Indep. Sch. Dist.*, §20:3.F
  - Harris v. Forklift Systems, Inc.*, §20:3.B
  - Meritor Savings Bank, FSB v. Vinson*, §20:3.A
  - National Railroad Passenger Corporation v. Morgan*, §20:3.H
  - Oncala v. Sundowner Offshore Services, Inc.*, §20:3.C
  - Pennsylvania State Police v. Suders*, §20:3.I
- Tangible employment action, §4:2.D
- Sexual Orientation or Preference**
  - Discrimination based on, §24:6.B
  - Pre-employment inquiries, §6:2.D.9
  - Privacy issues, §28:9.G
  - Sex discrimination, §19:5.E
- Sexual Stereotyping.** See **Sex Discrimination**
- Slander.** See **Defamation**
- Smoking**
  - Policies regarding, §16:11
  - Privacy issues, §28:9.B
- Social Security**
  - Application for benefits, effect on qualified individual with disability assertion, §21:5.D

**Sovereign Immunity**

Discrimination claims under Chapter 451, §31:4.G  
Texas Whistleblower Act, §34:3.C

**Specific Performance**

Breach of employment contract, specific performance, §3:8.B

**Spouses.** See **Marital and Family Status****Staff Leasing Services.** See **Multiple Employer Relationships****Standing**

Disability plans, discrimination in, §21:7.H.2

**State Employers,** immunity from FMLA, §25:2.B.3**Statute of Frauds**

At-will relationship, effect of oral promise, §§1:3.B.4, 3:4.A  
Wrongful discharge, §§3:4.B, 3:9.B

**Statute of Limitations**

See also **Time**

Age discrimination, §§23:1.C, 23:2.C

Defamation, §29:2.A.4

Disability discrimination claim, §21:3

Discrimination claims under Chapter 451, §31:4.A

FMLA actions, §25:8.C

*Sabine Pilot* claims, §3:8.B

Summary judgment, §§41:11.C, 41:11.D

TCHRA, timely filing of charges or complaint under, §§18:4.B.2, 18:6, 18:7.B

Title VII, timely filing in deferral or non-deferral state, §17:3.C.2

Unpaid wages, action to recover under Texas Minimum Wage Act, §9:2.B.5

Wage claim, Texas Workforce Commission, §9:5.C.2

Whistleblowing action, §34:3.B

**Statutory Construction.** See **Construction and Interpretation****Stereotyping by Sex.** See **Sex Discrimination****Stress**

Stress-free environment not reasonable accommodation, §21:6.F.2

**Strikes.** See **Labor Unions****Subpoenas and Subpoenas Duces Tecum**

Discrimination based on compliance with subpoena, §24:6.G

Statutory wrongful discharge actions, §3:14.D.10

TCHRA investigation of complaint, §§18:6.E.1, 18:6.E.4

**Substance Abuse.** See **Drug and Alcohol Tests; Drugs and Alcohol in Workplace****Successors-in-Interest**

Employment contract provisions, §2:3.F.3

FMLA and successor employers, §25:2.B.1

Immigration-related practices, successor's liability for predecessor's omissions, §7:2.B.3

**Summary Judgment**

Administrative charge, complaint exceeds scope of, §41:11.B

After-acquired evidence, §41:12.B

Affirmative defense, sexual harassment cases, §41:7.A.2

Age Discrimination in Employment Act (ADEA), §41:5.B

Americans with Disabilities Act (ADA), §41:8

Disability, prima facie case, §41:8.A

Disability benefits (SSDI), §41:8.C

Qualification standards, §41:8.B.3

Qualified individual, §41:8.B

Burden of proof, motion for, §41:2.A

Federal standard, §41:2.A.2

State standard, §41:2.A.1

Continuance, §41:3.D



- Contract, breach of employment, §41:10.C
- Equal Pay Act (EPA), §41:6
- Evidence, §41:4
  - Affidavits, §41:4.E
  - Declarations, §41:4.E
  - Deposition testimony, §41:4.C
  - Discovery responses, §41:4.B
  - Documents, §41:4.D
  - Objections to, §41:4.F
  - Pleadings, §41:4.A
- Family and Medical Leave Act (FMLA), §41:9
  - Employee, as moving party, §41:9.A
  - Employer, as moving party, §41:9.B
- Intentional infliction of emotional distress, §41:10.B
- Legal principles underlying, §41:2
- Limitations
  - Administrative, §41:11.C
  - Statute of, civil complaint, §41:11.D
- Objections to evidence, §41:4.F
- Procedure, §41:3
  - Filing deadlines, federal court, §41:3.B.2
  - Filing deadlines, state court, §41:3.B.1
  - Hearing, federal court, §41:3.C.2
  - Hearing, state court, §41:3.C.1
  - Motion papers, federal court, §41:3.A.2
  - Motion papers, state court, §41:3.A.1
- Reply, §41:2.C
- Response to motion for, §41:2.B
- Retaliation claims
  - Sabine Pilot* claim, §41:10.D
- Same actor inference, §41:12.A
- Sexual harassment, §41:7
  - Co-worker harassment, §41:7.B
  - Constructive discharge, §41:7.A.3
  - Prima facie case, §41:7.A.1
  - Supervisor harassment, §41:7.A
- Texas Commission on Human Rights Act (TCHRA), §41:5.A
- Title VII, §41:5
  - Burden shifting analysis, §41:5.C.1
  - Direct evidence of discrimination, §41:5.C.2
  - Disparate impact, §41:5.E
  - Disparate treatment, §41:5.C
  - Individual liability, §41:11.A
  - Retaliation, §41:5.D
- Workers' compensation retaliation, §41:10.A

## **Supervisors**

- Assault and battery during investigations or searches, §28:6.C
- Constructive discharge, reassignment to work under younger supervisor as, §4:2.B.1
- Dating and fraternization, policies regarding, §16:10.B
- Dating co-worker or subordinate, §28:9.F.2
- Defamation, employer's vicarious liability, §29:3.A
- Electronic monitoring policy, privacy issues, §16:11.B.5
- Employment at-will relationship, inadvertent modification by oral promise, §16:2.A.2
- Negligent training and supervision, §30:3.C.4
- Overtime authorization, §16:6.C.3
- Recordkeeping training, §15:5

Sexual harassment, policies to prevent and internal complaint procedures, §16:5.D  
Whistleblower Act violation, civil penalties, §34:4.C

**Surveillance of Employees.** See **Electronic Surveillance and Wiretapping**

— T —

**Taking the Case**

Conflicts check, §38:4  
    Large firms, §38:4.C  
    Small firms, §38:4.B  
Face-to-face meeting, §38:2  
    Document review, §38:2.C.4  
    Preliminaries, §38:2.B  
    Process, §38:2.C  
    Purpose, §38:2.A  
Initial interview, §38:1  
    Process, §38:1.B  
    Purpose, §38:1.A  
    Request Documents, §38:1.C.1  
    Traps, §38:1.B.3  
Make decision regarding prospective client, §38:3  
    Assess client, §38:3.B  
    Create temporary file, §38:3.A  
    Decline representation, §38:3.C  
    Retainer agreement, §38:3.D  
Preliminary investigation, §38:5  
    Corporate records, §38:5.C  
    Criminal records, §38:5.A  
    Former employees, §38:5.B  
    Friends, §38:5.B  
    Relatives, §38:5.B  
Retainer agreement, §38:3.D  
Telephone interview, §38:1  
Temporary file, §38:3.A

**Taxes**

Severance benefits, “change in control” clause, §2:3.B.4

**Telephones**

Privacy issues and electronic surveillance. See **Electronic Surveillance and**

**Wiretapping**

Telephone numbers. See **Addresses and Telephone Numbers**

**Termination**

See also **Discharge**  
After-acquired evidence of misconduct. See **Evidence**  
Company policies regarding, §16:17  
Employment contract provisions for. See **Employment Contracts**  
Good cause. See **Good Cause**  
Intentional infliction of emotional distress, termination not extreme and outrageous  
    conduct, §30:4.B.1  
Negligent termination, §30:3.D.2

**Tests**

AIDS or HIV test as BFOQ, §3:14.D.17  
Drug and alcohol tests. See **Drug and Alcohol Tests**  
Genetic testing. See **Genetic Testing**  
Honesty tests, §28:5.C.2  
Polygraphs, §§28:2.B.2, 28:5.C.2

Psychological tests. See **Medical or Psychological Examinations**  
Qualification testing, disability discrimination, §21:7.D  
Religious accommodation, rescheduling test, §24:5.D.3

**Texas Collateral Source Rule**

Wrongful discharge, §3:8.F

**Texas Commission on Human Rights Act (TCHRA)**

Generally, §18:1

Administrative procedures

Generally, §18:6.A

Complaint, requirements, §18:6.C

Discrimination complaint, jurisdictional issues and post-filing procedures,  
§17:4.A.2

Investigation, §18:6.E

Statute of limitations, §18:6.B

Voluntary resolution, §18:6.D

Age discrimination. See **Age Discrimination**

Civil actions

Complainant, action by, §18:7.A.3

Local commission, action by, §18:7.A.2

Scope of, §18:7.D

Texas Commission, action by, §18:7.A.1

Class actions, single filing rule, §18:6.C.3

Collateral estoppel, §18:7.G

Commission's status and authority under TCHRA

Organization, §18:3.B

Powers and duties, §18:3.C

Purpose of, §18:3.A

Compliance, §18:7.J

Construction of terms. See **Construction and Interpretation**

Coverage, §17:4.A.1

Covered entities, §18:6.C.2

Damages (see Remedies, below)

Discrimination based on national origin. See **National Origin, Discrimination Based on**

Discrimination based on religion. See **Religion, Discrimination Based on**

EEOC, Commission's relationship with

Charge filing arrangements, §18:4.B.1

Charge processing responsibilities, division of, §18:4.B.2

EEOC review and acceptance, §18:4.B.5

Exchange of information, §18:4.B.3

Federal funding, §18:4.B.4

Resolution of charges, §18:4.B.4

Statutory relationship, §18:4.A

Worksharing agreements to implement deferral relationship, §§18:4, 18:4.B.4

Exhaustion of administrative remedies, §§18:1, 18:6.G, 18:7.A.3

Federal law correlation and impact on Commission, §18:2

Independent contractor and employee test, liabilities for unlawful employment practice,  
§1:5.F

Intervention, §§18:6.C.3, 18:7.A.4

Jury trial, §18:7.I.3

Local enforcement

Generally, §§17:4.C, 18:5

Local commissions, powers and duties, §18:5.B

Local commissions, relationship to Texas Commission, §18:5.C

Referral of complaints to local commission, §18:5.C.1

National origin, discrimination based on. See **National Origin, Discrimination Based on**

Negligent hiring, TCHRA preemption, §6:4.D.2

Parties, §18:7.C  
Pregnancy discrimination. See **Sex Discrimination**  
Proof of discrimination  
    Generally, §§17:4.A.3, 18:7.H  
    Disparate impact, §18:7.H.2  
    Disparate treatment, §18:7.H.1  
    Mixed motives doctrine, §18:7.H.1  
    Systemic disparate treatment, §18:7.H.1  
Race discrimination. See **Race Discrimination**  
Recordkeeping requirements, §15:3.D  
Religion, discrimination based on. See **Religion, Discrimination Based on**  
Remedies  
    Generally, §§17:4.A.5, 18:8  
    Attorneys' fees, §18:8.H  
    Back pay, §18:8.D  
    Compensatory damages, §§18:7.I.3, 18:8.F.1  
    Declaratory relief, §18:8.B  
    Exclusivity of, §18:8.H.4  
    Injunctive relief, §§18:7.A.1, 18:8.C  
    Interest on judgment, §18:8.G  
    Limitation on remedies, §18:8.I  
    Punitive damages, §§18:7.I.3, 18:8.F.2, 18:8.F.3  
Removal of action, §18:7.F  
Res judicata, §18:7.G  
Retaliation claims. See **Retaliation**  
Sex discrimination. See **Sex Discrimination**  
Sexual harassment. See **Sexual Harassment**  
Statute of limitations, §§18:4.B.2, 18:6, 18:7.B  
Statutory affirmative defenses, §17:4.A.4  
Statutory wrongful discharge actions, §3:14.D.11  
Texas Minimum Wage Act, effect of subminimum wage for older workers or workers with disabilities, §9:2.B.2  
Trial, §18:7.I  
Union members, §18:7.C  
Venue, §18:7.E  
**Texas Payday Law.** See **Wage and Hour Laws**  
**Texas Staff Leasing Act.** See **Multiple Employer Relationships**  
**Texas Workforce Commission**  
    Child labor, §9:7.A  
    Wage claims, §9:5.C.2  
**Third Parties**  
    Sexual harassment of or by third parties, §20:4.A.6  
**Time**  
    See also **Statute of Limitations**  
    Employment contracts, duration of. See **Employment Contracts**  
    Noncompetition agreement, duration of, §32:2.B.5  
    Payment of wages, §9:5.B.2  
**Time Clock**  
    Policies regarding, §16:6.C.6  
**Tips**  
    Minimum wage, crediting tips toward, §§9:2.A.3, 9:2.B.3  
**Title IX**  
    Sex discrimination, tenure cases, §19:5.G  
**Title VII**  
    Anti-nepotism and no-spouse policies, §16:10.A

Applications, recordkeeping requirements, §6:5.A.1  
Arrest record, pre-employment inquiries, §6:2.D.6  
Credit record requirements, §16:3.D.3  
Credit references, pre-employment inquiries, §6:2.D.7  
Discrimination based on nation origin. See **National Origin, Discrimination Based on**  
Employer defined under, §1:2  
Immigration-related employment discrimination, Title VII preemption, §7:3.E.1  
Joint employers, §1:6.A.2  
Race discrimination. See **Race Discrimination**  
Religion, discrimination based on. See **Religion, Discrimination, based on**  
Religious beliefs, limitations on pre-employment inquiries, §6:2.D.3  
Reporting and recordkeeping requirements, §15:2.E  
Sex discrimination. See **Sex Discrimination**  
Sex referent language in jobs ads, §6:2.A  
Sexual harassment. See **Sexual Harassment**  
Summary judgment motion, §41:5

### **Tools and Equipments**

Deductions from wages, §9:6

### **Tortious Interference with Contractual Relations**

Generally, §30:5.A  
Defenses, §30:5.D  
Elements of cause of action, effect of pre-existing agreements on employment contract, §2:2.D.2  
Existing contract, §30:5.B  
Pre-employment drug test, effect of release if test negligently performed, §6:3.A  
Prospective contract, §30:5.C  
Third party interference with employment contract, §§3:3.C, 30:5.D.2

### **Torts**

Generally, §30:2  
Assault and battery. See **Assault and Battery**  
Attorneys' fees, §30:12.D  
Collateral source doctrine, §30:12.F  
Defenses of federal preemption and state law preclusion, §30:11  
False imprisonment. See **False Imprisonment**  
Fraud and misrepresentation. See **Fraud and Misrepresentation**  
Indirect employer negligence. See **Respondeat Superior**  
Intentional infliction of emotional distress. See **Intentional Infliction of Emotional**

### **Distress**

Malicious prosecution. See **Malicious Prosecution**  
Mitigate, duty to, §30:12.E  
Negligence. See **Negligence**  
Prejudgment interest, §30:12.C  
Remedies, §30:12  
Tortious interference with contractual relations. See **Tortious Interference with**

### **Contractual Relations**

Workers' Compensation exclusive remedy clause, §30:11.B

### **Trade Secrets**

Definitions, §32:1.A.1  
Employment contracts, trade secrets protection, §2:3.E  
Nondisclosure or confidentiality agreements, §32:3.A.2  
Remedies for disclosure, §32:3.A.3

### **Training**

See also **Apprenticeship Programs**  
Compensable time issue for employees in training classes, §9:4.D  
Electronic monitoring policy, privacy issues, §16:11.B.5  
Foreign education or training, discrimination based on national origin claims, §24:4.D.2

Minimum wage requirements, effect of trainee status, §9:2.A.2  
Negligent training and supervision, §30:3.C.3  
Recordkeeping, training in, §15:5

**Transfer of Employee**

Accommodation of disability, transfer as, §21:6.F.2  
Constructive discharge, §4:2.B.1

**Travel**

Compensable time issue, §9:4.D

— U —

**Undue Hardship.** See **Hardship**

**Unemployment Compensation**

Discharge in violation of common law public policy, *Sabine Pilot* claims, §3:11.D.2  
Independent contractor and employee test, duty to pay taxes on employees, §1:6.C.2  
Reporting and recordkeeping requirements, §15:3.A  
Staff leasing services, §1:6.B.3  
Texas Unemployment Compensation Act, §15:3.A  
Wrongful discharge, back pay awards offset by unemployment compensation earnings, §3:12.F

**Uniforms**

Deductions from wages, §9:6

**Unions.** See **Labor Unions**

**Unmarried Persons**

See also **Marital and Family Status**  
Cohabitation. See **Cohabitation**  
Pre-employment questions, sex discrimination, §19:5.C  
Privacy issues, §28:9.F.5

— V —

**Venue**

TCHRA, §18:7.E  
Texas Whistleblower Act, §34:1.B

**Verification of Eligibility for Employment.** See **Immigration Reform and Control Act (IRCA)**

**Veterans.** See **Military Duty**

**Vicarious Liability**

See also **Respondeat Superior**  
Defamatory statements, employer's vicarious liability, §29:3  
Negligent hiring. See **Negligence**  
Supervisor dating co-worker or subordinate, §28:9.F.2

**Video Camera Surveillance**

Privacy issues, §28:7.E

**Violence or Weapons in Workplace**

Background check, §16:3.D.1  
Policies regarding, §16:16

**Voice Mail Surveillance.** See **Electronic Surveillance and Wiretapping**

**Void or Voidable Actions**

Contract requiring deductions from employee's wages without consent as void, §9:6

**Volunteer Work**

Termination for off-duty volunteer work, §24:6.C  
Not employment for FLSA purposes, §9:1.B.1

**Voting**

See also **Political Activity**  
Civic duty time, §9:4.H  
Leave policies, §16:9.E.2  
Statutory wrongful discharge actions, §3:14.D.2

— W —

**Wage and Hour Laws**

Base wage, §2:3.B.1  
Child labor laws. See **Child Labor**  
Commissions. See **Commissioned Employees**  
Compensable time  
    Generally, §9:4  
    Construction of terms. See **Construction and Interpretation**  
    Meal periods, §9:4.B  
    On-call time, §9:4.C  
    Training classes, §9:4.E  
    Travel time, §9:4.D  
    Vacation and sick leave, §9:4.G  
Compensatory time off, §9:4.F  
Deductions from wages. See **Deductions from Wages**  
Discrimination on basis of pay, determining if constructive discharge, §4:2.B.1  
Employment contracts, compensation issues. See **Employment Contracts**  
Equal Pay Act  
    Procedures and remedies under, §17:3.G  
    Recordkeeping requirements, §15:2.B  
Exemption from overtime provisions, §2:3.B.1  
Fair Labor Standards Act. See **Fair Labor Standards Act**  
Flexible work schedules, religious accommodation, §24:5.D.3  
Joint employers, §1:6.A.2  
Military service, effect on compensation, §16:9.C.1  
Minimum wage. See **Minimum Wage**  
Overtime. See **Overtime**  
Payment under Texas Payday Law  
    Generally, §9:5.A  
    Choice of remedies for nonpayment, §9:5.C.1  
    Manner of payment, §9:5.B.3  
    Time of payment, §9:5.B.2  
    Wages defined, §9:5.B.1  
Performance evaluations. See **Performance Evaluations**  
Performance incentives, negotiating in employment contract, §2:3.B  
Policies regarding, §16:6  
Promotions. See **Promotions**  
Sex discrimination. See **Sex Discrimination**  
Termination, pay in lieu of notice, §3:2.C.3  
Wage claims, §9:5.C

**Wage Garnishment**

Generally, §9:6.B  
At-will employment, limitations on, §1:3.C.16  
Discrimination on basis of garnishment history prohibited, §6:2.D.7  
Pre-employment inquiries into garnishment history, §6:2.D.7

**Wage Withholding Orders**

At-will employment, limitations on, §1:3.C.16  
Family law withholding orders  
    Discrimination, §§9:6.A.4, 24:6.I

Employer's responsibilities to withhold, §9:6.A.2

Penalties, §9:6.A.3

Sources of, §9:6.A.1

Wrongful discharge of employee, §3:10.C.16

#### **Waiver**

ADEA claims, §23:6

Employment contracts, §2:3.F.6

TCHRA, Commission's waiver of exclusive jurisdiction, §18:4.B.2

**Weapons in Workplace.** See **Violence or Weapons in Workplace**

**Web Addresses.** See **Addresses and Telephone Numbers**

**Weight.** See **Height and Weight Standards**

#### **Weingarten Rights**

Employer policies, §16:12.F

Internal investigations, §§13:3.F, 13:8

#### **Whistleblowing (Texas Whistleblower Act)**

Generally, §34:1.A

Construction of cases and terms. See **Construction and Interpretation**

Damages and liability, §34:4

Defenses, §34:3

Elements of action, §34:2

Goals of Act, §34:1.A.1

Protection of, §§17:4.B.1, 26:6, 33:4.A.4

Remedies, §33:6

Sarbanes-Oxley Act, §26:6, Ch. 33

*Sabine Pilot* doctrine, §3:11.D.1

Scope of coverage, §34:1.A.2

Statute of limitations, §34:3.B

Statutory wrongful discharge actions, §3:14.B

Hospital employees, §3:14.D.14

Venue, §34:1.B

**Wiretapping.** See **Electronic Surveillance and Wiretapping**

**Withholding Orders.** See **Wage Withholding Orders**

#### **Words and Phrases**

See also **Construction and Interpretation**

Adhesion contracts, §14:3.D

Age Discrimination in Employment Act, Employer, §23:1.B.1

Base wage, §2:3.B.1

Blacklisting, §24:6.M

Confidential information, §32:3.A.1

Consumer reports, §§16:3.D.3, 28:5.B.1

Credit report, §6:2.D.7

Deferral agency, §18:4.A

Deferred adjudication, §6:2.D.6

Disposable earning, §9:6.A.2

Dual filing, §18:4.B.1

Employee, §1:1.A

Employer, §1:1.A

Employers, §24:2.B

Exempt organization, §9:7.A.3

Front pay, §3:8.D

Genetic information, §6:3.D

Genetic test, §6:3.D

Hire, §7:2.B.1

Illegal act, §3:11.B.3

Immigration



- Actual knowledge, §7:2.A
- Citizen attestation program, §7:2.C.3
- Constructive knowledge, §7:2.A
- Employee, §7:2.B.1
- Knowledge, §7:2.A
- Protected individuals, §7:3.B
- Successor-in-interest employer, §7:2.B.3
- Unauthorized alien, §§7:2.A, 7:3.A
- Investigative consumer report, §6:2.D.7
- Malice, §6:4.C
- Promissory estoppel, §1:3.B.5
- Respondeat superior, §6:4.A
- Sabine Pilot* doctrine, §3:11
- Severance benefits, §2:3.B.4
- Slander, §29:2.A.2
- Staff leasing services, §1:9.A.1
- Trade secrets, §32:3.A.1

### **Workers' Compensation**

- ADA, FMLA and, overlap among, §25:10
- After-acquired evidence cases, §§16:3.B.2, 31:4.F
- Borrowed employees, §1:8.A
- Child employees, §9:7.A.3
- Discrimination under Chapter 451
  - Generally, §§17:4.B.2, 31:1
  - Affirmative defenses, §31:4
  - Bifurcation, §31:6.D
  - Construction of terms. See **Construction and Interpretation**
  - Elements of cause of action, §31:3
  - Employer-employee relationship, §31:2.A
  - Remedies, §§31:4.D, 31:5
  - Removal, §31:7.C
  - State and local government employers, §31:2.B.2
  - Subscribers versus non-subscribers, §31:7
  - Summary judgment, grounds for, §41:10.A
  - Wrongful discharge, §3:14.A
- Drug abuse prevention policy, §16:10.D.3
- Exclusive remedy clause, §30:11.B
- Health or safety violation reports, protections of Workers' Compensation Act, §24:6.O.1
- Independent contractor and employee test, duty to pay taxes on employees, §1:6.C.1
- Joint employers, §1:8.C.1
- Negligent hiring, workers' compensation preemption, §6:4.D.2
- Pre-employment inquiries, §6:2.C
- Purpose of, §25:10.A
- Staff leasing services, §1:9.A.3.b
- Texas Workers' Compensation Act, recordkeeping and reporting requirements, §15:3.C

**Workplace Health and Safety.** See **Occupational Health and Safety**

**Workplace Torts.** See **Torts**

**Wrongdoing by Employee.** See **Misconduct by Employee**

### **Wrongful Discharge**

- See also **Constructive Discharge**
- Generally, §3:1.A
- After-acquired evidence cases, §§3:13.D, 16:3.B.2
- At-will doctrine and exceptions to, §3:1.B
- Construction of terms. See **Construction and Interpretation**
- Damages, §§3:8, 3:12.A
- Damages in contract claims, §3:8

- Express oral contract claims, §3:3.A
- Express written contract claims, §3:2.A.1
- Implied contracts of employment
  - Generally, §3:5
  - Handbooks or policy manuals, §§3:5.B.1-3:5.B.5
  - Other written sources, implied contracts based on, §§3:2.B, 3:5.C
  - Prospective employment, implied promise of, §3:5.C.1
  - Unwritten employer practices or context, §3:5.C.2
- Improper termination of employment contract, §3:10
- Internal investigation of, §13:2.G
- Jury service, §24:6.F
- Mitigate, failure to as affirmative defense, §3:8.H
- Public policy, discharge in violation of common law, *Sabine Pilot* claim, remedies and defenses, §3:11
- Quasi-contract, promissory estoppel claims, §§1:3.B.5, 3:8.G
- Right to discharge, contractual limits on
  - Good cause, §3:2.C.1
  - Notice limitations, §3:2.C.3
  - Public employee's right to due process, §3:14.C
  - Satisfaction contracts, §3:2.C.2
- Sexual harassment, action by accused, §20:7.C
- Statutory wrongful discharge actions, §3:14
- Third party interference with employment contract, §3:7
- Whistleblower, §33:5