Texas Business Today

Third Quarter 2015

Ruth R. Hughs
Commissioner Representing Employers

COMMITTED TO SERVING TEXAS EMPLOYERS

Commissioner's Corner

Committed to Serving Texas Employers

Dear Texas Employer,

My name is Ruth Ruggero Hughs, the Commissioner Representing Employers at the Texas Workforce Commission (TWC). I am proud to serve as the employer representative on the Commission and understand the great responsibility of this position. Prior to being appointed to the Commission, I was in the private practice of law and was also the owner and managing partner of a film production company. I also previously served in the Texas Attorney General's Office as the Director of Defense Litigation managing the civil litigation divisions. During this time, I worked on employment law issues and provided advice to employers on employment matters.

I understand the demands on employers and take great pride in serving as a first line of resources for Texas employers. I appreciate your hard work in trying to run a company successfully, serve your customers, grow your business, and at the same time stay in compliance with seemingly countless statutes and regulations from dozens of government agencies. Your ability to create private sector jobs in Texas is vital to keeping Texas the best state in the country in which to do business.

As the taxpayers who finance the Unemployment Insurance (UI) program, you have a direct interest in how the Commission does its job of administering the system. In fact, your taxes pay 100% of the costs of the UI system, and I intend to do my part to ensure that the agency considers your interests in any action that impacts employers.

I understand the importance of paying close attention to employer-employee issues and the need to engage in preventive measures when problems arise to resolve disputes prior to reaching the litigation stage. For this reason, my office is proud to offer you a variety of beneficial services. We sponsor the Texas Business Conferences (TBCs), a series of employer seminars held each year throughout the state. Employers who attend the seminars learn about state and federal employment laws and the unemployment claim and appeal process. Recently, I had the pleasure of speaking at the TBCs in Waco, San Antonio and Katy, and look forward to the upcoming conference being held in Irving, Texas. In addition, we publish the book *Especially for Texas Employers*, a guidebook with valuable information on Texas and federal employment laws.

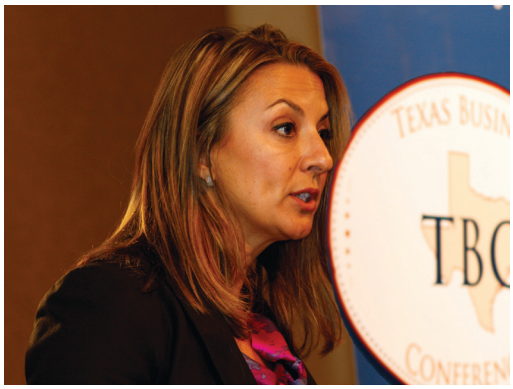
My office stands ready to help you on questions you might have on employer-employee relations. My office manages and maintains an employer hotline where my legal team is available for you Monday – Friday, 8:00 a.m. – 5:00 p.m. to answer any employment law questions you may have and to guide you through the UI process. We hope you will take advantage of this resource by calling our toll-free number at 1-800-832-9394.

This Texas Business Today newsletter is designed to address the employment law concerns that come up most frequently for employers, as well as new issues that are emerging in employment law. We are constantly updating information that is beneficial to our Texas employers.

While serving as the Commissioner Representing Employers for TWC, I hope to be able to meet you in your communities and effectively serve as your advocate on the Commission. I am devoted to supporting economic development and education that develop the skilled workforce that you are demanding. I look forward to working with you to help Texas continue to be the best state in which to do business.

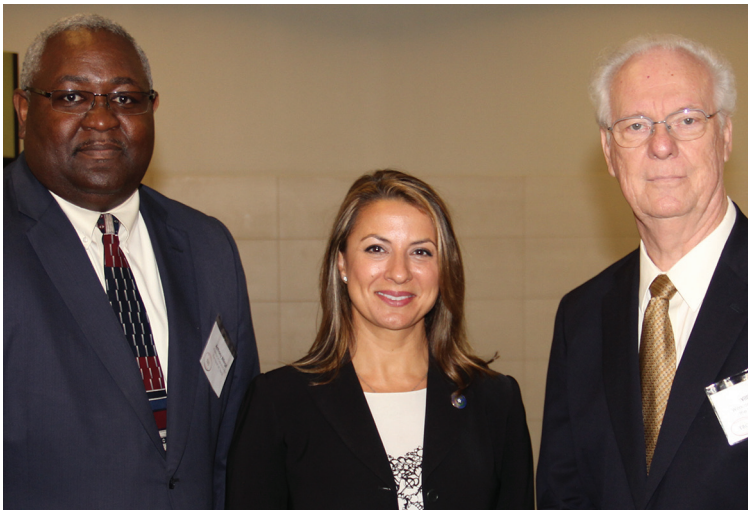
Sincerely,

Ruth R. Hughs
Texas Workforce Commission
Commissioner Representing Employers



Above: Melissa Rojo swearing in Commissioner Ruth R. Hughs.

Commissioner Ruth R. Hughs speaking at the San Antonio Texas Business Conference, August 21, 2015.



Left to right: Anthony Billings, Board–Executive Director of Texas Workforce Solutions Heart of Texas, Commissioner Ruth R. Hughs, Willis Reese, Board–Chair of Texas Workforce Solutions Heart of Texas

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Business and Legal Briefs
New Overtime Exemption Rules

On March 13, 2014, President Obama directed the U.S. Department of Labor (DOL) to update the regulations governing which white-collar workers are exempt from overtime pay. On July 6, 2015, DOL issued a Notice of Proposed Rulemaking (NPRM) outlining the changes it expects to make in the exemption regulations.

The white-collar overtime exemption regulations found in Part 541 (Title 29 of the Code of Federal Regulations) of the wage and hour regulations were last updated in 2004. The main change then was to increase the minimum salary amount to $455/week. Prior to that, Part 541 was last updated in 1975, primarily to provide a minimum salary of $155/week. Based on the NPRM, the most probable effective date for any revisions will be January 1, 2016.

Part 541 is based on Fair Labor Standards Act (FLSA) Section 213(a)(1), which provides that executive, administrative, professional, and outside sales representatives may be exempt from overtime pay, and Section 213(a)(17), providing that top-level computer workers may be exempt as well.

The main changes to Part 541 envisioned in the DOL NPRM are as follows:

- An increase in the minimum salary level to $970/week, which represents approximately the 40th percentile of average salaries paid to full-time salaried employees across all industries in the country;
- Indexing of future salary level increases to inflation, either by a fixed percentile or by indexing to the current consumer price index;
- Inclusion of bonuses in the salary amount, as long as the bonuses are paid at least monthly or more frequently;
- Revision of the duties test to clarify just how much time an employee may spend on non-exempt duties and still qualify as an exempt-level employee.

The new overtime exemption regulations will substantially affect a large number of Texas employers that employ white-collar workers. The change will be particularly felt in lower-wage industries, such as service industries. The greatest impact will be on the restaurant, small retail, and hospitality industries, whose lower-level supervisors and assistant managers tend to be paid on the lower end of the wage scale. Such employees will likely need to be paid overtime in the future, unless the employer handles the issue by hiring additional employees and spreads the excess hours out among more employees, thus avoiding the need to pay overtime.

New Decision on Tipped Employees

Regarding tipped employees, the U.S. Department of Labor takes the position that such employees must be allowed to keep all of their tips, even if they are paid a guaranteed cash wage of at least $7.25/hour. That rule limits employers in the hospitality industry from instituting tip-sharing policies that provide a share of tipped employees' tips to employees in positions that DOL normally does not consider to be in the "tipped employee" category, such as cooks, dishwashers, and managers. However, not all courts agree with that interpretation. In the Ninth Circuit, the tip pooling rules apply only when a tipped employee is paid a cash wage of less than the federal minimum wage. As that court held, "The FLSA does not restrict tip pooling when no tip credit is taken." (See Cumbie v. Woody Woo, Inc., 596 F.3d 577, 582 (9th Cir. 2010).) The 4th Circuit recently agreed with the 9th Circuit on that issue (Trejo v. Ryman Hospitality Properties, Inc., No. 14-cv-1485, 2015 WL 4548259 (4th Cir. July 29, 2015)). The full opinion in the Trejo case may be downloaded in PDF format at **www.ca4.uscourts.gov/Opinions/Published/141485.P.pdf.**

DOL Issues Guidance on Independent Contractors

The U.S. Department of Labor has issued new guidance on how to distinguish between employees and independent contractors. In "Administrator's Interpretation 2015-1: The Application of the Fair Labor Standards Act's 'Suffer or Permit' Standard in the Identification of Employees Who Are Misclassified as Independent Contractors", DOL explains how broad the meaning of "employ" is and sheds further light on the "economic realities" test used by the agency for decades. Under that test, the focus is "on whether the

worker is economically dependent on the employer or in business for him- or herself." The bottom line is that the FLSA and other DOL-enforced laws cover the vast majority of American workers, and the burden is on the employer to show that a worker is not an employee. The new DOL opinion letter is online at **www.dol.gov/whd/workers/Misclassification/AI-2015_1.htm.**

LGBT Legal Developments

- Equal Employment Opportunity Commission (EEOC) has settled its first case brought on behalf of a transgender employee. The employer will pay $150,000 to settle charges that the company treated her adversely due to her transgender status and misrepresented the reason for her termination. The settlement includes a commitment by the employer to train its entire workforce regarding transgender and gender stereotype discrimination. The EEOC's announcement of the settlement are online at **www.eeoc.gov/eeoc/newsroom/release/4-13-15.cfm**.

- On July 15, 2015, the EEOC issued its most definitive ruling yet that Title VII of the Civil Rights Act of 1964 extends protection against sex discrimination to employees and applicants who do not act or present themselves in accordance with established gender stereotypes. In the case of Complainant v. U.S. Department of Transportation (FAA), EEOC Appeal No. 0120133080, the Commission held that "We ... conclude that allegations of discrimination on the basis of sexual orientation necessarily state a claim of discrimination on the basis of sex." The decision itself is on the EEOC website at **www.eeoc.gov/decisions/0120133080.pdf.**

The new overtime exemption regulations will substantially affect a large number of Texas employers that employ white-collar workers.

- EEOC maintains a lengthy list of court decisions in this area of the law at **www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm.**

- The U.S. Supreme Court's recent decision on same-sex marriage in Obergefell v. Hodges (see www.scotusblog.com/case-files/ cases/ obergefell-v-hodges/) will likely have far-reaching effects for employers under various state laws relating to employee benefits and workplace rights. One way that the ruling may affect unemployment claims is in the way that "spouse-leaving" cases will be handled by the Texas Workforce Commission. Under the existing spouse-leaving statute, if a claimant quits to move to another area with his or her spouse, the claimant can be disqualified for a period as short as six weeks, depending upon how much advance notice of resignation the claimant gave. In such cases, the employer's account is protected from chargeback of benefits. No same-sex spouse-leaving cases have arisen yet.

The Lighter Side of HR

For relief from the serious side of employment law, take a look at "31 of the stupidest things ever put on a resume" at **www.hrmorning.com/31-of-the-stupidest-things-ever-put-on-a-resume/**.

William T. (Tommy) Simmons
Senior Legal Counsel to Commissioner Ruth R. Hughs

Obesity as a Disability and Reasonable Accommodation

According to recent statistics, 37% of the American workforce suffers from obesity, and that number is growing. This information has influenced various organizations to recognize obesity as a disease, including the American Medical Association, the Food and Drug Administration, and the World Health Organization. For many employers, the understanding is that excessive weight can contribute to various health complications, leading to absenteeism, lost productivity, and increased medical costs. As a result, employers may not want to accommodate or employ an obese individual in an attempt to avoid the issue altogether.

While obesity is not a per-se disability under the law, current trends show that federal agencies and courts are acknowledging obesity as a disability more than ever before. This article will describe how the current landscape may expose an employer to liability and will provide suggestions on how to avoid liability and properly accommodate employees.

According to the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), a disability is "a physical or mental impairment that substantially limits one or more major life activities or bodily functions." Major life activities may include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." There is no bright-line rule to determine if an impairment substantially limits a life activity. Rather, the analysis is on a case-by-case basis.

Given this knowledge, how can an employer conclude that obesity would qualify as a recognized and protected disability? As a starting point, the Equal Employment Opportunity Commission (EEOC) has stated that morbid or severe obesity—defined as having a body weight 100% over the norm—is a recognized impairment, regardless of the cause. Two lawsuits involving morbid obesity as a disability have been brought before the EEOC. In both cases, the employer was required to provide monetary relief to the employee as well as implement new training and reporting requirements.

So what about cases involving "moderate" obesity where impairment is not as apparent? In the past, courts were reluctant to find an impairment unless there was an underlying physiological cause. For example, a physiological disorder such as hypertension—often linked to obesity—would likely constitute an impairment.

However, the ADAAA has influenced courts to determine that obesity can be disabling even without an underlying physiological disorder, thus making it easier to argue discrimination. In addition, mere perception of a disability can trigger protection under the law as well. For this reason, employers should consider whether the employee's obesity is affecting his or her work performance.

Ultimately, employers should recognize that discrimination protection can include obesity. In order to avoid liability, the work for employers begins at the time a job opening exists. Employers should avoid weight requirements in a job posting and avoid assuming an employee is impaired simply due to his or her weight. An employer may also be liable if an individual is not hired out of fear that the weight will lead to an injury and subsequent workers' compensation claim.

Once the individual is employed, employers should pause before taking action to consider whether or not the action is based on facts or mere assumptions. If impairment exists, an employer should reasonably accommodate the employee and take careful notes of everything done to help the employee maintain employment. Some examples of reasonable accommodation include modifications of equipment or devices (for example, larger desks and chairs), and allowing the employee time off for any related medical appointments. If an obese employee requests an accommodation, an employer should attempt to accommodate within reason and analyze the employee's job description before discussing possible accommodations. The necessary accommodations may also change based on the employee's personal limitations.

Employers should also check to ensure that company policy does not discriminate. Wellness programs, for example, may exist to increase the overall health of the workforce. Employers should be careful when designing the program to avoid any conditions that may be discriminatory to obese employees. For example, employers should make the wellness program truly voluntary and avoid penalizing employees for not meeting or following the requirements of the program. This will also help prevent retaliation claims.

Finally, employers should also look out for any ridicule an employee may be experiencing due to his or her obesity and take immediate action and excellent notes on what the employer did to solve the problem.

As it stands, it appears that obesity is on the way to becoming a recognized disability under the law. The safest approach for employers involves recognizing a link between an employee's obesity and his or her work performance. If one exists, employers should reasonably accommodate the employee and keep records of the entire process to ensure they can provide a record of appropriate action taken.

Velissa R. Chapa
Legal Counsel to
Commissioner Ruth R. Hughs

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The Costly Consequences of Misclassification: An Update

Imagine for a moment that you, as an employer, have been accustomed to managing your business in a particular way. Through your careful diligence, you have been able to successfully navigate through recession, surplus, and in-house challenges. For all intents and purposes, all systems are a go. Suddenly, however, you become aware that changes in the law are putting you in the crosshairs of a major financial setback that could total in the millions of dollars.

For companies like Uber, Lyft, and others, this scenario is anything but dreamscape. As a result of an increased emphasis on identifying cases of worker misclassification, tax regulating agencies and courts of law have begun handing down rulings that have profound implications on how employers handle their daily operations. The critical question to ask in these situations is: Has the employer properly classified their worker as an employee or independent contractor?

The Story So Far

Up to this point, startup companies such as Uber, Lyft, and others have flourished by utilizing the '1099' business model. Normally, employers expend a great deal of time and money withholding federal and state payroll taxes, paying unemployment insurance, and adhering to minimum wage and overtime rules. The latter are all expenses associated with workers that are classified as employees. However, those costs do not apply if the worker is treated as an independent contractor. Understandably, this provision of employment law has attracted many employers to treat their workers as independent contractors in order to save on business expenditures and to avoid wage reporting responsibility.

Unfortunately, in order to properly classify a worker as an independent contractor, an employer has to do more than simply apply the label. In fact, agencies like the Internal Revenue Service (IRS), Department of Labor (DOL), and the Texas Workforce Commission (TWC) all use different "contractor tests" to determine whether an employer has properly classified a worker. Similarly, courts of law have drawn from precedent cases to determine whether a worker has been properly given independent contractor status. Generally, businesses have had varying degrees of success in using lax methods of classifying their workers as independent contractors. However, employers would be well advised to note that a complaint to a regulating agency about lax (or, in some cases, blatantly inappropriate) contractor designations can immediately result in an audit, monetary penalties, payment of overtime, and back pay for each instance of misclassification.

Even in situations where the employer does not intend to misclassify and makes a good faith effort in designating their worker as an independent contractor, administrative fines still lurk if the designation does not comport with the law.

The Turning of the Tide

As passionate as an employer might be in defending its rationale for classifying a worker in a particular way, its efforts will be in vain if a regulating agency or court of law share a different opinion. As alluded to earlier, Uber and Lyft are two companies that have used the 1099 business model as the basis for their operations. Recently, both companies have come under fire for potentially misclassifying their workers as independent contractors.

Specifically, Uber has been involved in claims and litigation concerning the classification of its drivers. In Berwick v. Uber Technologies, Inc. (Case No. 11-46739 EK, Order of the California Labor Commissioner), the defendant, Uber, argued that the Plaintiff was not an employee of the company. Uber argued that because the plaintiff could set her own hours, was free to reject any assignment, and was able to work for other providers that she was an independent contractor. The California Labor Commissioner (CLC) disagreed, stating that the plaintiff was an integral part of the defendant's enterprise. In addition, the CLC held that Uber's requirements that the plaintiff maintain her vehicle in a specific way and her need to pass Uber's background checks established a sufficient amount of direction and control to show

Texas boasts a vast amount of employers in the hotbed of misclassification. As a result, Texas employers should be intimately aware of the factors that distinguish employees from independent contractors.

employment. Since the ruling from the CLC, Uber has had their motion for summary judgment (a motion to essentially throw the case out) denied in state court and a jury trial is in the works.

Accordingly, if current trends continue to prevail, companies like Uber may find themselves in a precarious situation. For instance, FedEx has recently agreed to pay over $220 million to settle lawsuits stemming from the company misclassifying its drivers as independent contractors. Moreover, the increased attention to misclassification has had the effect of plaintiff's lawyers re-examining other industries (i.e. construction, health care, education, etc.) where the contractor label could potentially be abused.

What does it mean for Texas Employers?

While the epicenters of these recent misclassification developments have been in California, Texas employers should pay careful attention to the trends coming out of the Golden State for several reasons.

First, the language contained in the California decisions bear a stunning resemblance to the language that Texas uses when determining whether a worker has been properly classified. For instance, in the case of Alexander v. FedEx Ground Package System, Inc., 2014 U.S. App. LEXIS 16585 (9th Cir. Aug. 27, 2014), the defendant, FedEx argued that their drivers ought to be classified as independent contractors. The 9th Circuit disagreed. The court reasoned that FedEx had the "right to control" their drivers and, as a result, formed an employment relationship with them. Texas employers should note that "right to control" is astonishingly similar to "direction and control", a prime factor in Texas for establishing independent contractor status.

Second, Texas boasts a vast amount of employers in the hotbed of misclassification. These industries include construction, oil and gas, health care, and educational services. The framework for honing in on instances of improperly classifying workers may have taken place in California, but the shockwaves of those decisions will likely be felt in Texas. As such, Texas employers should be intimately aware of the factors that distinguish employees from independent contractors.

Conclusion

Renewed interest by courts and regulating agencies concerning worker classification should serve as a harbinger to employers that relaxed methods of classification will be highly scrutinized. If it is determined that an employer has a sufficient amount of direction and control over the worker, it will be responsible for any and all benefits that the worker would have received as an employee (i.e. back pay, unpaid overtime, etc.) plus administrative penalties.

While the consequences for misclassification loom large, employers that are well versed in the factors that determine independent contractor status and apply the label judiciously need not worry. For that reason, employers in Texas that exercise learned discretion in classifying their workers will be better insulated from the costly consequences of worker misclassification.

Mario R. Hernandez
Legal Counsel to
Commissioner Ruth R. Hughs

Significant Employment-Related Legislation From the 84th Texas Legislative Session — 2015

BILL #	AUTHOR	SUBJECT MATTER
HB 1151	**Thompson**	Relating to sexual harassment protection for unpaid interns. This bill added a new Section 21.1065 to the Texas Labor Code to prohibit sexual harassment against unpaid interns. The new law uses the six-part DOL test for trainees to define "unpaid intern". *Effective September 1, 2015.*
HB 3547	**Larson**	Relating to a voluntary veterans employment preference for private employers. This bill allows employers to prefer veterans for hiring. *Effective September 1, 2015.*
SB 652	**Schwertner**	Relating to excluding a franchisor as an employer of a franchisee or a franchisee's employees. Under this new law, exclusion of a franchisor as an employer of its franchisees' employees would apply for purposes of discrimination, payday law, state minimum wage, PEO regulations, unemployment, and workers' compensation claims. *Effective September 1, 2015.*

HUMAN RESOURCES – GENERAL

HB 2828	**Phillips**	Relating to the authority of a municipality or county to obtain criminal history record information for certain persons, including employees, independent contractors, and volunteers. This new law facilitates the process for local governments to obtain rel evant criminal history information on employees and job candidates. *Effective September 1, 2015.*
SB 664	**Taylor**	Relating to employment termination for falsification of military record in obtaining employment or employment benefits. An employer may discharge an employee upon a reasonable factual belief that the employee falsified military service information in connection with employment in a way that violates the Penal Code (§ 32.54); such falsification voids an employment contract. An employee fired for such a reason may sue in court for wrongful discharge. *Effective September 1, 2015.*
SB 805	**Campbell**	Relating to the employment of individuals qualified for a veteran's employment preference. For state agencies, a veterans' preference may be applied in favor of veteran with same or greater qualifications than non-veterans; 15%

Continued **SB 805**	**Campbell**	veterans FTE goal; applies to hiring and layoffs; a denial may be appealed to agency's executive director; some positions may be reserved for veterans; each state agency with 500 or more full-time employees must appoint a veteran's liaison; private employers may have an employment preference for veterans if the preference policy is in writing. *Effective September 1, 2015.*

IMMIGRATION – E-VERIFY

SB 374	**Schwertner**	Relating to requiring state agencies to participate in the federal electronic verification of employment authorization program, or E-verify. This new law requires all state agencies to use the E-Verify system to verify the employment eligibility of all candidates for state employment. *Effective immediately.*

REGULATORY INTEGRITY – CRIMINAL PENALTIES

HB 207	**Leach**	Relating to creating the offense of voyeurism. This law can apply to actions by employers or coworkers in the workplace and will make it important to make and enforce strict policies against invasion of the privacy of others; a violation is based on the victim's reasonable expectation of privacy. *Effective September 1, 2015.*
SB 339	**Eltife**	Relating to the medical use of low-THC cannabis and the regulation of related organizations and individuals; requiring a dispensing organization to obtain a license to dispense low-THC cannabis and any employee of a dispensing organization to obtain a registration; authorizing fees. Employers may need to revise their substance abuse and drug-testing policies to take medicinal use of marijuana into account. *Effective immediately.*
SB 1317	**Menéndez**	Relating to the prosecution of the offense of invasive visual recording. This bill was intended to legislatively overturn a 2014 court decision involving a person who was prosecuted for improper photography at a public pool. It can apply to actions by employers or coworkers in the workplace. Employers should take this new law into account in any policy affecting invasive photography or video recording of others who have a reasonable expectation of privacy. *Effective immediately.*

UNEMPLOYMENT INSURANCE

HB 931	**Murphy**	Relating to an individual's eligibility to receive unemployment compensation benefits on the individual's waiting period claim. The waiting week is not paid unless the claimant has received at least two weeks' worth of unemployment benefits and has been totally or partially unemployed for at least seven consecutive days and has returned to full-time employment, or has exhausted the individual's

Continued on page 12

Continued **HB 931**	**Murphy**	regular benefits for the current benefit year, other than benefits applicable to the waiting period. *Effective September 1, 2015.*
HB 1251	**Alvarado**	Relating to the transfer of compensation experience for purposes of the Texas Unemployment Compensation Act. In partial acquisition cases, "substantially common ownership does not exist solely because the predecessor employing unit has the right to repossess the part acquired by the successor employing unit in the event of the successor's failure to complete a condition of the acquisition"; if a partial transfer of compensation experience is required under Section 204.083, TWC "shall require the predecessor employer and successor employer to jointly submit, not later than the second anniversary of the date the partial acquisition was completed, information necessary for making the determination"; TWC shall require payroll-related information going back 4 years, or however long the predecessor has been a liable employer, whichever is less; TWC shall notify each new employer of the partial transfer rules and shall include that information on any form dealing with reporting a change in status. *Effective September 1, 2015.*
HB 2732	**Metcalf**	Relating to recovery of covered unemployment compensation debt through participation in the federal Treasury Offset Program. This bill giving TWC legal authority to participate in the Treasury Offset program of the IRS will make it easier to collect benefit overpayments and tax arrearages from claimants and employers. *Effective September 1, 2015.*
HB 3150	**Huberty**	Relating to the calculation of taxable wages paid by a professional employer organization for purposes of the Texas Unemployment Compensation Act. Wage credits taxed to PEO's client or predecessor count toward taxable wage base of PEO in that same year; it also provides that TWC may administer the new law in conformity with FUTA until Legislature meets again. *Effective September 1, 2015.*
HB 3373	**Miller**	Relating to the liability of reimbursing employers under the Texas Unemployment Compensation Act. This bill created a new Section 205.0125 protecting reimbursing employers from chargebacks if the work separation was for misconduct connected with the work or was voluntary without good cause connected with the work. *Effective September 1, 2015.*

WORKERS' COMPENSATION

HB 1094	**Geren**	Relating to workers' compensation death benefit eligibility for certain spouses of first responders killed in the line of duty. Death benefits for a surviving spouse that normally end 104 weeks after the spouse's remarriage will continue for the life of the spouse if the deceased worker was a first responder killed in the line of duty or while providing services as a volunteer. *Effective September 1, 2015.*
HB 1388	**Bohac**	Relating to certain diseases or illnesses suffered by firefighters and emergency medical technicians. This bill provides that rebuttal of the presumption of job-relatedness for a covered injury or death must be based on disclosed evidence of unrelated risk factors, if the injured employee served as a firefighter or emergency medical technician. *Effective immediately.*
HB 2771	**Martinez**	Relating to employment activities of certain emergency response personnel for purposes of the Texas Workers' Compensation Act. The travel of a firefighter or emergency medical personnel en route to an emergency call is considered to be in the course and scope of the firefighter's or emergency medical personnel's employment. *Effective September 1, 2015.*

WORKFORCE DEVELOPMENT

HB 867	**Hernandez**	Relating to the establishment and operation of the Texas Women Veterans Program. This bill establishes the TWVP as a program of the Texas Veterans Commission and is intended to assist women veterans in becoming reemployed in the private sector after their military service. *Effective immediately.*
SB 208	**Campbell**	Relating to the continuation and functions of the Texas Workforce Commission. This TWC Sunset bill continued TWC in operation through 2027. *Effective September 1, 2015.*
SB 389	**Rodriguez**	Relating to the placement of military occupational specialty codes on certain notices of state agency employment openings. This bill will make it easier for veterans' military skills to be matched with civilian job openings. *Effective September 1, 2015.*
SB 1351	**Hinojosa**	Relating to transferring to the Texas Workforce Commission certain duties of the comptroller related to the Jobs and Education for Texans Grant Program. *Effective September 1, 2015.*

William T. (Tommy) Simmons
Senior Legal Counsel to Commissioner Ruth R. Hughs

'Twas the Eve of the Party

If you have stepped into a craft and hobby store lately, or perhaps just driven across town and noticed some new businesses or billboards related to haunted houses and costumes, you know that the holidays are upon us. We all know that the holiday season no longer starts in November, but begins much earlier than that. And that means that many companies and workers will start to plan their holiday parties. These could range from having a costume contest at work, or a staff get-together to watch a football game, to organizing a full-fledged Thanksgiving dinner with all the trimmings, or the traditional office/work Christmas party that many films and TV shows have immortalized. These parties are an opportunity for co-workers to relax and get to know each other in a more informal setting.

However, staff parties can also be fraught with danger for both employees and employers. Often, when inhibitions are reduced, employees may display poor judgment, may engage in behavior which could be interpreted as sexual harassment, and may even end up in jail, or worse. Below is a cautionary tale to remind everyone that if they choose to celebrate the holidays with their co-workers, that they do so prudently.

'Twas the eve of the party,
and all through the land,
All employees were stirring
the drinks in their hands.

The bosses declared this
a booze free event,
In hopes of avoiding
last year's incidents.

But few had paid heed
to instructions this year.
There were bottles,
and mixers, and cases of beer.

Did someone say Joe
was removing his jeans?
He was seen on his way
to the copy machines.

The last thing that anyone
here wants to see,
Are digital scans
of his anatomy.

Oh no! There goes Bob
with a mistletoe sprig.
Someone stop him before
he ends up in the brig.

The women don't think
that his antics are cute,
A repeat of last year
will result in a lawsuit.

Now Susan is stumbling,
someone please get her keys!
She's really impaired.
Should we call the police?

An arrest in her state,
would be bad enough,
But losing her job, too,
now that would be tough.

She could easily lose
control of her car,
For driving as drunk
as if leaving a bar.

And what if she crashes?
That would be such a shame.
If someone gets hurt,
is the company to blame?

While Susan, as driver,
would, of course, be responsible,
The business, as party host,
could also be liable.

Ignoring instructions
this year once again
Resulted in incidents
causing much pain.

But we heard there's a way
out of all this – a fix.
Alcohol and holiday
parties don't mix.

Elsa G. Ramos

Legal Counsel to
Commissioner Ruth R. Hughs

Texas Business Conferences
Employment Law Update

Attend a Texas Business Conference near you!

Stay tuned for a list of 2016 conference locations.
texasworkforce.org/tbc

Please join us for an informative, full-day conference where you will learn the relevant state and federal employment laws that are essential to efficiently managing your business and employees.

We have assembled our best speakers to guide you through ongoing matters of concern to Texas employers and to answer any questions you have regarding your business.

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Right- William T. Simmons –Senior Legal Counsel to Commissioner Hughs answers questions at conference.

Texas Business Today

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