



Employment Law Truths Every Texas Business Must Know

“At-Will” Employment Does Not Mean Discrimination Suits Won’t Follow

Texas is an employment-at-will state. This means that unless the employer and employee have a contract of employment, either the employer or the employee may terminate the employment relationship at any time, for any reason, or for no reason. However, at-will employment does not mean that employment may be terminated for discriminatory reasons. Discriminatory terminations and other adverse actions such as retaliation or harassment are statutorily prohibited. Therefore, it is imperative that businesses make sure employees know their employment status is “at-will.” However, doing so does not mean that the company will not be drawn into a lawsuit by a former employee.

Anti-discrimination Statutes May Not Apply to Your Business

Listed below are some of the anti-discrimination statutes, the protections they offer, and the number of employees the business must have before the statute applies. A complete listing of federal anti-discrimination statutes may be found at www.eeoc.gov.

Title VII of the Civil Rights Act of 1964, as amended – Title VII prohibits employment discrimination on the basis of race, color, religion, sex, and national origin. The business must have 15 employees before its employees are protected under this statute.

Chapter 21 of the Texas Labor Code – Chapter 21 prohibits employment discrimination on the basis of race, color, religion, sex, national origin, disability, and age. The business must have 15 employees before its employees are protected under this statute.

Americans with Disabilities Act (ADA) – The ADA prohibits employment discrimination on the basis of disability, with disability being defined within the statute and by subsequent case law. The business must have 15 employees before its employees are protected under this statute.

Age Discrimination in Employment Act (ADEA) – The ADEA prohibits discrimination against employees age 40 and older. The business must have 20 employees before its employees are protected under this statute.

Family Medical Leave Act (FMLA) – The FMLA authorizes up to 12 weeks of unpaid leave for employees who work for employers that fall under the act. The business must have 50 employees before its employees are protected under this statute.

Human Resource (HR) Forms and Practices Are the Business's Best Defense

Are the people who conduct interviews of potential employees trained on the proper and legal way to conduct interviews? Are your job applications opening you up to lawsuits? Does your offer letter have adequate protections for the company? Does your business have an accurate, updated Employee Handbook that clearly defines for your employees the policies and procedures of your company? Does the company have written job descriptions? Does the company have a formal, performance appraisal process that is implemented consistently?

All of these HR processes can go a long way in helping to prevent current or former employees from filing lawsuits. Demonstrating to the EEOC, the Texas Workforce Commission, a jury, or a judge that your company is a law-abiding, non-discriminatory employer that consistently and fairly enforces its policies and procedures is the best defense should a lawsuit occur.

HR Processes Don't Offer Protection If They Aren't Followed

Having formal HR processes is the first line of defense, but implementing them and following them consistently is imperative. Being honest and forthright with employees regarding your company's policies and procedures and your expectations regarding their following those rules is your best protection. When rules are violated, act immediately, and honestly document the issue. It may be tempting to "cut someone some slack," but that same employee may not reciprocate when deciding whether or not to file a wrongful termination suit.

It is equally important to conduct performance reviews at least once a year. Performance reviews are not required by law, however, they are a good way to document and track performance, whether good or bad. Again, it is best to be honest. Do not shy away from stating the good job that someone is doing, but do not overstate the quality of his or her work. If performance issues lead to termination of employment, it is best to have documentation of these issues so that the company can demonstrate it had a non-discriminatory reason for terminating employment if a former employee files a wrongful termination suit.