

American Staffing Association

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TEXAS

Employment Law Workbook Addendum (Update on legislation enacted from Jan. 1–Dec. 31, 2013)

Topics

I. Discrimination

No new laws or regulations enacted in 2012 or 2013.

II. Pre-Employment Inquiry Guidelines

National criminal history checks are now required for all driver's education instructors (HB 2678, TX Educ. Code § 1001, effective Sept. 1, 2013).

Among other changes, a new law requires that home and community support service agencies immediately discharge any employees whose criminal background checks reveal certain enumerated convictions (SB 223, Health and Safety Code § 250.001, effective Sept. 1, 2011).

The list of convictions that bar employment at facilities serving the elderly or persons with disabilities was expanded (HB 2609, Health and Safety Code § 250.006(a), effective Sept. 1, 2011).

No new laws or regulations enacted in 2012 or 2013.

III. Family and Medical Leave

Penalties and legal remedies increased for members of a state military force who are terminated because they were ordered to training or denied a return to the same employment after a release from duty. An employer's defense that its circumstances changed during the employee's absence making re-employment impossible or unreasonable is no longer available. However, employer may still present evidence that the employee was terminated for lawful reason (FIB 1178, TX Gov't Code § 431, effective June 17, 2011).

No new laws or regulations enacted in 2012 or 2013.

IV. Wage and Hour Laws

No new laws or regulations enacted in 2012 or 2013.

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V. Drug Testing

No new laws or regulations enacted in 2012 or 2013.

VI. Noncompete and Other Employment Agreements

The Texas Supreme Court held that a covenant not to compete signed by a current employee in consideration for stock options is not unenforceable since the consideration was reasonably related to the company's interest in protecting its goodwill (*Marsh USA v. Cook*, No. 09-0558, June 24, 2011).

No new laws or regulations enacted in 2012 or 2013.

VII. Workplace Safety

Employers may not prohibit employees from storing lawfully possessed firearms or ammunition in their locked, privately owned vehicles in employer-provided parking areas (SB 321, TX Lab. Code § 52.061, effective Sept. 1, 2011).

No new laws or regulations enacted in 2012 or 2013.

VIII. Workers' Compensation

No new laws or regulations enacted in 2012 or 2013.

Miscellaneous

The state amended the new hire reporting requirements to require (no longer an option) an employee's date of hire (34 Tex. Reg. 2151, effective Sept. 7, 2011).

Employer who receives child support order or notice must provide the sender specific information by first-class mail no later than the 40th (formerly the 30th) day after the date the employer receives the notice or order (H. 1674, TX § 154.187, effective Sept. 1, 2011).

Employers now have safe harbor from penalties and interest for employee misclassification under the Unemployment Compensation Act as long as they have reasonably relied on either a determination from the Commission or a Texas court (HB 2579, effective Sept. 1, 2011).