KEMPSMITH LAW

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State Law Update:
Texas and Beyond

Texas Supreme Court Cases

- *Lujan v. Navistar, Inc.* (Tex. April 27, 2018)
  - Not an employment case but addresses an important issue that arises in employment cases: the sham affidavit
  - Holding: Under Rule 166a(c), a trial court may conclude that a party does not raise a genuine issue of material fact by submitting sworn testimony that conflicts with the same witness's prior sworn testimony, unless there is a sufficient explanation for the conflict.

Texas Supreme Court Cases

- *Alamo Heights ISD v. Clark* (Tex. April 6, 2018), p. 2
  - Female P.E. teacher (Clark) claimed harassment by a female co-worker and retaliation
  - Plea to the jurisdiction denied and ultimately appealed to the Texas Supreme Court
  - 6-2 decision; Guzman writing for the majority; Boyd and Lerhmann dissenting; Blacklock did not participate
  - Two issues:
    - Whether there was more than a scintilla evidence of gender-based harassment
    - Whether the jurisdictional facts are limited to the prima face case elements, even if the presumption it raises has been rebutted by evidence attached to the jurisdictional plea

Texas Supreme Court Cases

- *Alamo Heights*, cont'd.
  - Allegations included:
  - Co-worker bullied and harassed her daily
  - Made comments about Clark's breast size
  - Commented how tan Clark's chest was
  - Suggested Clark should hook up with a male coach
  - Talked about her own sex life and showed pictures of her boyfriend's genitals
  - Told dirty jokes to male and female coaches
  - Insulted other coaches
  - Brushed up against Clark
  - Showed nude photographs of men to male and female coaches

Texas Supreme Court Cases

- *Alamo Heights*, cont'd
  - Court, on harassment: "Why matters." Here, no evidence of sexual-desire motivation, no evidence of general hostility to women, no direct comparative evidence of discrimination. TCHRA is not a "strict liability" statute that mandates a finding of sex discrimination on mention of a gender-specific body part.
  - "Taking all of her evidence as true, Clark experienced misery at work that no employee should endure. But it is not an actionable TCHRA violation."
  - Court, on retaliation: jurisdictional inquiry is not limited to the prima facie elements. If a defendant rebuts the inference of discrimination, and the plaintiff fails to raise a fact issue on causation, the plea should be granted.
  - "'Magic words'" are not required . . . . But complaining only of 'harassment,' 'hostile environment,' 'discrimination,' or 'bullying' is not enough."

Texas Supreme Court Cases

- *Community Health Sys. v. Hansen* (Tex. 2017), p. 17
  - Physician had 5 year employment contract but could be terminated without cause if his annual practice losses exceeded $500,000 after third year
  - His employment was terminated at end of third year without cause based on annual practice losses
  - He sued for breach of contract and tortious interference
  - Court: annual practice loss was a condition subsequent, and no reason for termination had to be given – "without cause signifies the reason for termination is irrelevant"
  - No tortious interference claims against individual manager because he was an agent of the corporate employer and his actions were those of the corporation

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