

MAY 10, 2018

THE TEXAS ANTI-SLAPP STATUTE AND ITS GROWING IMPORTANCE FOR EMPLOYMENT LAWYERS

*The Texas Citizens Participation Act and its Role
in Employment Litigation*

UT Law's 25th Annual Labor & Employment
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THE TEXAS CITIZENS PARTICIPATION ACT (“TCPA”)

- Tex. Civ. Prac. & Rem. Code § 27.001 – 27.011
- “SLAPP” → “Strategic Lawsuits Against Public Participation”
 - Goal to “encourage and safeguard constitutional rights of persons to petition, speak freely, associate freely, and otherwise associate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.” TEX. CIV. PRAC. & REM. CODE § 27.002
- 28 states, Guam, and the District of Columbia have Anti-SLAPP statutes.

TCPA MECHANICS

THE MOTION TO DISMISS

- TCPA Motion must be filed “not later than the 60th day after the date of service of the legal action.”
- Hearing within 60 days of motion (subject to limited exceptions); decision within 30 days of the hearing.



TCPA MECHANICS—CONTINUED

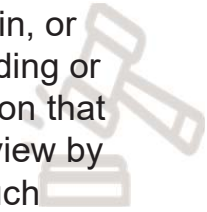
GROUND FOR DISMISSAL

- Movant must show: “the legal action is based on, relates to, or is in response to the [moving] party’s exercise of: (1) the right of free speech; (2) the right to petition; or (3) the right of association.”
- Burden shifts to non-movant to “establish[] by clear and specific evidence a prima facie case for each essential element of the claim in question.”
- The claim will still be dismissed, “if the moving party established by a preponderance of the evidence each essential element of a valid defense to the nonmovant’s claim.”

TCPA MECHANICS—CONTINUED

KEY TERMS

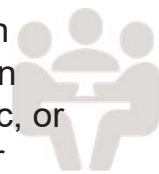
- “**Exercise of the right to petition**” includes a communication in, or pertaining to, a judicial, legislative, or otherwise official proceeding or a public meeting dealing with a public purpose; a communication that is made in connection with an issue under consideration or review by a governmental body, that is reasonably likely to encourage such consideration, or that is reasonably likely to enlist public participation in an effort to effect such consideration; and other similar communications, as defined in the statute.
- “**Exercise of the right of association**” means a communication between individuals who join together to collectively express, promote, pursue, or defend common interests.



TCPA MECHANICS—CONTINUED

KEY TERMS

- “**Exercise of the right of free speech**” means a communication made in connection with a “matter of public concern,” which is an issue related to (a) health or safety; (b) environmental, economic, or community well-being; (c) the government; (d) a public official or public figure; or (e) a good, product, or services in the marketplace.
- A “**communication**” includes the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic.



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