PRESENTED AT

The University of Texas School of Law
25th Annual Labor and Employment Law Conference

May 9-10, 2019
AT&T Conference Center
Austin, TX

STATE EMPLOYMENT LAW UPDATE: TEXAS AND BEYOND

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I. INTRODUCTION

This article reviews recent and significant employment law cases in Texas over the last year. Employment issues are considered and decided by courts every day, and consequently, the area of employment law is frequently changing and evolving. The goal of this paper is to inform the reader of important developments, changes, and rulings in the area of employment law in order to be better prepared to handle employment issues as they arise.

II. Chapter 21 of the Texas Labor Code

A. Age Discrimination

1. Age discrimination claim viable as long as the employee is forty or older at the time the ultimate act of discrimination occurs: *Bell Helicopter Textron, Inc. v. Burnett*, 552 S.W.3d 901 (Tex. App.—Fort Worth 2018, pet. filed)

Bell Helicopter terminated Burnett's employment on August 20, 2013—sixteen days after his 40th birthday. Bell Helicopter replaced Burnett with a 29-year-old employee. Burnett filed a lawsuit claiming age discrimination. The majority of Burnett's allegations pertained to harsh treatment he received when he was under the age of 40. According to Bell Helicopter, the decision to terminate Burnett was made in July—while Burnett was 39—but not carried out until after he turned 40. After a bench trial, the trial court ruled in favor of Burnett.

The court of appeals affirmed, holding that the Texas Labor Code does not require a plaintiff to prove that the employer discriminated against the employee because the employee was over forty. Rather, the court held, an employee only must show that the employer discriminated because of age and that the employee was at least forty when the ultimate act of discrimination occurred.

The court of appeals also held that the trial court did not abuse its discretion by implicitly finding that Burnett's reinstatement to a position at Bell Helicopter was not feasible, and therefore, an award of front pay was justified. In finding reinstatement not feasible, the court cited to Burnett's testimony that following the termination of his employment, he became significantly distressed and anxious, and that he passed an insurance license examination before agreeing to join his wife's insurance agency. The court held that the trial court could have reasonably relied upon Burnett's physiological injuries and career change in finding reinstatement not feasible.

Furthermore, the court held that the Texas Labor Code's cap on "compensatory damages" does not apply to front pay because front pay is an equitable remedy in lieu of reinstatement.

2. Federal ADEA claims barred by Eleventh Amendment Immunity of States: *Texas A & M AgriLife Extension Services v. Garcia*, 10-18-00094-CV, 2018 WL 4354055 (Tex. App.—Waco Sept. 12, 2018, no pet.)

Garcia sued Texas A & M AgriLife Extension Services ("AgriLife"), a state agency, for discrimination and retaliation under Title VII of the Civil Rights Act of 1964 ("Title VII"), the Americans with Disabilities Act ("ADA"), and the Age Discrimination in Employment Act ("ADEA").

AgriLife filed a plea to the jurisdiction, which the trial court granted as to the ADA claim, but denied the plea as to the ADEA and Title VII claims. AgriLife appealed the trial court's denial only as to Garcia's ADEA claim. On appeal, AgriLife argued that as an agency of the state, it was immune from suit because the Eleventh Amendment to the United States Constitution barred Garcia's federal ADEA claim and the Texas Legislature had not waived the State's sovereign immunity against ADEA claims.

The appellate court agreed, noting that the United States Supreme Court had already held that the ADEA's purported abrogation of the States' sovereign immunity is invalid, and further holding that the State had not voluntarily waived immunity as to the ADEA. The court therefore reversed the trial court's denial of AgriLife's plea to the jurisdiction with respect to Garcia's ADEA claim.

B. Disability Discrimination

1. Employer did not fail to accommodate employee because its determination relied on the restrictions imposed by the employee's doctor, rather than those the employee believed she needed: *Aldine Indep. Sch. Dist. v. Massey*, 01-17-00688-CV, 2018 WL 3117831 (Tex. App.—Houston [1st Dist.] June 26, 2018, no pet.)

Massey worked for the District as a paraprofessional. Her job duties included monitoring student's in the school's computer lab, assisting other faculty and staff with metal detector duty at the beginning of the school day, and monitoring students' behavior during the lunch periods to maintain order. These duties generally required that Massey stand for extended periods of time.

In June 2014, on the second-to-last day of school, Massey suffered a hip fracture while at work after a student pushed her into a door as she attempted to open it. In late August 2014, Massey's treating physician opined that Massey was not ready to return to work. In September, the physician released Massey for work, with the restriction that she perform

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First appeared as part of the conference materials for the
26th Annual Labor and Employment Law Conference session
"State Employment Law Update: Texas and Beyond"