



STATE LAW UPDATE: TEXAS AND BEYOND
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CHAPTER 21 OF THE TEXAS LABOR CODE

- *Texas Parks & Wildlife v. Gallacher* (Austin 2015) (p. 1)
 - Employee with numerous health conditions, exhausted FMLA and sick leave
 - Requested 2 months of sick leave pool to have open heart surgery
 - Supervisor approved part of the leave
 - Employment was terminated while she was off and approved leave had been exhausted
 - Two months later, she filed for retirement disability benefits, stating her disabilities were permanent and she was mentally/physically incapacitated from gainful employment; statements were corroborated by doctor
 - Holding: not a qualified individual with a disability



CHAPTER 21



- *Rincones v. WHM Custom Services* (Corpus Christi 2015, pet. filed) (p. 2)
 - Employee worked for a subcontractor to Exxon
 - His employment status was changed to inactive after a positive marijuana test
 - He disputed the result and asked for a retest but it was denied; he got his own test, which was negative. He complained about why others who had failed drug tests were allowed to return to work.
 - He sued for national origin discrimination
 - Holding: active not the same as qualified, so prima facie case made
 - ✦ Retaliation claim could proceed, even though Employee did not mention “discrimination” in his complaint. Other employees allowed to return to work were non-Hispanics, so employer should have known what he was claiming.
 - ✦ Also allowed to proceed on pattern and practice of discrimination and self-defamation



CHAPTER 21



- *Houston Methodist v. Ford* (Houston 2015, pet. filed) (p. 3)
 - Rumor that Ford and her supervisor had romantic relationship, both denied
 - Later after supervisor was fired, it was discovered that he had photos of Ford and a love letter to her on his Blackberry
 - Another investigation followed, in which Ford reported that four years earlier, the supervisor had tried to kiss her twice, it was unwelcomed conduct, but they got past it
 - Ford was terminated shortly thereafter and claimed retaliation
 - Jury found in Ford's favor
 - Houston Court: reversed, holding no reasonable belief that two attempted kisses four years before they were reported was actionable sexual harassment



CHAPTER 21



- *Yeh v. Chesloff* (Houston 2015) (p. 4)
 - In Sept. 2009 after her employment ended, Chesloff completed an intake questionnaire at the EEOC, indicating she wanted to talk to the EEOC first before filing a charge
 - On Oct. 28, 2009, she filed a formal charge, claiming sexual harassment, with the last incident occurring March 30, 2009
 - The intake questionnaire was filed 179 days after the alleged harassment; the EEOC charge was filed beyond the 180 day period found in Chapter 21
 - Houston Court: the charge was untimely, and did not relate back to the intake questionnaire, since that document was not a charge and could not be the foundation for a relation back argument



CHAPTER 21



- *Jones v. Frank Kent* (Fort Worth 2015) (p. 5)
 - Jones sued car dealership for age and disability discrimination. Car dealership filed counterclaims against him for fraud related to a bonus scheme
 - Jones claimed counterclaims were unlawful retaliation
 - Fort Worth Court held that there is no cause of action for postemployment retaliation in the filing of a counterclaim
 - No discussion of *Burlington Northern v. White*



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