



C.B. BURNS
KEMP SMITH LLP

State Law Update: Texas and Beyond

Texas Supreme Court Cases

- *B.C. v. Steak N Shake* (p.2)
 - Employee claimed supervisor unexpectedly attacked her in restroom, attempting to have sex with her
 - No prior sexual advances/conduct
 - Employee sued for common law assault
 - Employer argued claim was preempted by Chapter 21 and was barred since employee had not filed a discrimination charge
 - Trial court granted employer's summary judgment motion and court of appeals affirmed

Texas Supreme Court Cases

- *B.C. v. Steak N Shake, cont'd*
 - Texas Supreme Court reversed
 - “Gravamen” of employee’s complaint was assault, not sexual harassment
 - Single incident, no prior conduct as can be typical in a sexual harassment context
 - When “gravamen” is assault and not sexual harassment, Chapter 21 does not preempt

Texas Supreme Court Cases

- *Green v. Dallas County Schools* (p. 4)
 - Bus monitor took medication for congestive heart failure that increased his need for urination
 - Because there was no time to stop at a restroom, he involuntarily urinated in the bus and then exited the bus to urinate in a bottle
 - He was terminated for inappropriate conduct – the urination episode
 - Supreme Court: incontinence, whether caused by congestive heart failure, medication or otherwise, is a disability

Texas Supreme Court Cases



- *ExxonMobil Pipeline v. Coleman* (p. 21)
 - Coleman was a technician who “gauged tanks” – recording the readings of tanks
 - Supervisors claimed Coleman failed to gauge a tank and then lied about it, prompting his termination
 - Coleman sued company and supervisors for defamation, claiming he had proof he gauged the tank in question
 - Employer and supervisors moved to dismiss under Texas Citizens Participation Act (Texas’ anti-SLAPP law)
 - After motion was rejected by trial court and appellate court, Texas Supreme Court granted review

Texas Supreme Court Cases



- *ExxonMobil Pipeline v. Coleman*, cont’d
 - The TCPA extends First Amendment protections to the citizens of Texas and allows for the dismissal of a lawsuit that is in response to the exercise of the freedom of speech or freedom of association
 - The TCPA requires showing that a lawsuit is made in response to the exercise of the right to “free speech,” which is defined as communications made in connection with matters of public concern
 - Texas Supreme Court held here that communications regarding the failure to gauge a tank were of public concern, as they involved safety issues and thus were protected under the TCPA

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