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## State Law Update: Texas and Beyond

1

### Texas Supreme Court Cases



- *Mosley v. Tex. Health & Human Servs.* (Tex. May 3, 2019)
  - Employee was listed in the Employee Misconduct Registry as a result of reportable conduct in a group home
  - Employee requested hearing, and ALJ sustained the listing
  - Texas Supreme Court: to have judicial review of an ALJ decision/order, the employee must first file a motion for rehearing with the ALJ
  - And an Agency's misrepresentation of the proper procedures to seek judicial review could violate the employee's due process rights
  - The remedy for no due process is due process

2

## Texas Supreme Court Cases



- *Mercedes-Benz v. Carduco, Inc.* (Tex. Feb. 22, 2019), p.39
  - Not an employment case; claim of fraudulent inducement
  - Company (Carduco) claimed it was orally promised it could move a Mercedes dealership it wanted to acquire from Harlingen to McAllen
  - Asset Purchase Agreement signed by Carduco specifically limited operations to Harlingen
  - Mercedes denied Carduco's request to relocate dealership
  - Jury awarded Carduco over \$112 million in damages on fraud claims
  - Texas Supreme Court: When oral representations are expressly contradicted by written terms of subsequent agreement, a party cannot justifiably rely upon the oral representations for purposes of fraud claim

3

## Texas Supreme Court Cases



- *Glassdoor v. Andra Group* (Tex. 2019), p. 40
  - Former or current employees of Andra posted negative reviews of Andra on Glassdoor site
  - Andra sought presuit deposition to obtain identity of reviewers
  - Glassdoor opposed and filed TCPA Motion to Dismiss
  - Trial court denied motion but limited depositions to 2 posts from 2014
  - Texas Supreme Court: Statute of limitations (one year) had run on defamation suit, so not proper to allow presuit discovery
  - Also, there is no "republishing" for defamation purposes each time a site grants access to a site user. The publication occurred the first time the reviews were posted.

4

## Texas Supreme Court Cases



- *Rohrmoos Venture v. UTSW DVA Healthcare* (Tex. April 26, 2019)
  - Not employment case; attorneys' fees
  - A lease agreement between the parties provided for fee-shifting where the prevailing party would be entitled to reasonable attorneys' fees from the nonprevailing party
  - UTSW was the plaintiff and no damages were awarded to it but it obtained a take-nothing judgment on a counterclaim against it
  - The jury awarded UTSW \$800,000 in attorneys' fees for trial work and conditional fees for appeals; amount of dispute was \$300,000
  - Texas Supreme Court: Testimony by UTSW lawyer of his hourly rate, how much a reasonable amount of hours for the case would be, and why his request was so much higher was insufficient because did not detail time actually spent

5

## Age Discrimination



- *Bell Helicopter v. Burnett* (Fort Worth 2018), p. 1
  - Burnett was terminated 16 days after he turned 40
  - Bell argued that decision was made while Burnett was under 40 but carried out after his birthday
  - Fort Worth Court: A plaintiff must show that his employer discriminated against him because of age (not over 40) and that the plaintiff was at least 40 when the ultimate act of discrimination occurred
  - Texas Supreme Court has requested full briefing

6

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