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## State Law Update: Texas and Beyond

### Texas Supreme Court Cases



- *City of Madisonville v. Sims* (Tex. 2019), p. 1
  - Is 90 day time period to file suit under the Whistleblower Act jurisdictional?
    - ✦ Sims reported to the police chief that Covington, Sims' boss, was involved in a criminal set-up to gain advantage in a child custody dispute; the chief dismissed the complaint
    - ✦ Sims and Covington also had some bad blood between them
    - ✦ Sims then searched department computers and found an "investigative file" that Covington had been compiling on Sims
    - ✦ Sims was fired for violating the department's computer use policy in July 2012
    - ✦ Sims pursued administrative appeal of his discharge; the hearing was held in April 2014; at hearing, he learned that chief had authorized Covington's investigation of Sims
    - ✦ Sims then sued within 90 days of hearing under Whistleblower Act

## Texas Supreme Court Cases



- *City of Madisonville, cont'd.*
  - Is 90 days jurisdictional?
    - ✦ Yes, statutory prerequisites to suits against governmental entities are jurisdictional
    - ✦ Statute says employee “must sue” within 90 days, a condition precedent
    - ✦ Court rejected Sims’ claim that 90 days ran from administrative hearing at which he learned that the chief had authorized the investigation
    - ✦ Court said that that information gave him no more awareness of the illegal nature of his termination than what he knew at the time he was fired

## Texas Supreme Court Cases



- *North East ISD v. Riou (Tex. 2020), p. 2*
  - Is there a good cause “per se” standard for discharge under the Texas Education Code?
    - ✦ Riou was an elementary school teacher under a continuing contract which entitled her to continued employment absent good cause to terminate
    - ✦ Riou failed to record grades and conduct benchmark testing in her classes
    - ✦ She was terminated and termination was upheld by Commissioner of Education for “good cause per se”
    - ✦ Statute defines “good cause” as “failure to meet the accepted standards of conduct for the professional as generally recognized and applied in similarly situated school districts”

## Texas Supreme Court Cases



- *North East ISD, cont'd.*
  - Is there a good cause “per se” exception in the Education Code?
    - ✦ No “per se” exception: it is not sufficient to terminate for good cause, absent evidence of other school districts’ standards, even when conduct is egregious
    - ✦ But ...
    - ✦ Particularized evidence of what other school districts do is not required, when there are generally applicable standards that are recognized and applied in all school districts
    - ✦ Proper grading and testing is such a standard as it is required throughout the Education Code and federal law

## Texas Supreme Court Cases



- *McAllen Hospitals, L.P. v. Lopez, (Tex. 2019), p. 4*
  - Nurses alleged Hospital breached an implied contract to pay them an annual salary rather than hourly rate and jury awarded damages of \$389,000, which was affirmed by the court of appeals.
  - Nurses were always paid by the hour for hours worked but they claimed that references to an “annual” salary in performance reviews, payroll change forms and Employee Handbook were evidence of implied agreement to pay an annual salary.
  - Texas Supreme Court reversed, holding that there was no implied agreement. The Employee Handbook contained a contractual disclaimer and was not evidence of a contract to pay a certain way, and by virtue of the disclaimer, the reviews also could not serve as evidence.

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