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THE TEXAS AT-WILL EMPLOYMENT DOCTRINE & ITS KEY EXCEPTIONS

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I. STATUS OF AT-WILL EMPLOYMENT

The "Employment At-Will Doctrine" means that employment for an indefinite term can be terminated by either the employer or the employee at will and without cause. While application varies from state to state, for more than a century, Texas courts have tightly adhered to this doctrine. Therefore, Texas employees who are not hired for any specific period, absent a statute, public policy, or contract that limits the employer's prerogatives, may be discharged at any time, for any reason, or for no reason at all. *East Line and R.R.R. Co. v. Scott*, 10 S.W. 99, 102 (Tex. 1888); *Maus v. National Living Centers, Inc*., 633 S.W.2d 674 (Tex. App.–Austin 1982, writ ref'd n.r.e.).

Despite the employment-at-will doctrine's long heritage, it has been compromised by the host of exceptions found in federal and state statutory law and one exception in Texas under state common law. In addition, some cities have adopted ordinances further limiting an employer's rights to terminate at will (*e.g*., prohibiting discrimination based upon sexual orientation or gender identity). The number of employees an employer must have before a statutory exception applies varies by statute. In many instances, smaller employers are excluded. In any event, the employment-at-will doctrine is still the rule unless there is a statutory exception or the common law exception that applies.

II. STATE STATUTORY EXCEPTIONS

The following are among the key exceptions to the at-will doctrine created by Texas state law. Not every exception creates a corresponding private right of action to the employee.

A. Texas Commission on Human Rights Act

The Texas Commission on Human Rights Act ("TCHRA") prohibits an employer from discharging or otherwise discriminating against employees or applicants for employment with respect to compensation or the terms and conditions of employment because of race, color, disability, religion, sex, national origin, or age. TEX. LAB. CODE ANN. § 21.051. TEX. LAB. CODE § 21.055 prohibits retaliation against an employee who opposes a discriminatory practice, makes, or files a charge, files a complaint, or testifies, assists, or participates in any manner in an investigation, proceeding, or hearing. The TCHRA is administered by the Texas Workforce Commission–Civil Rights Division ("TWC–CRD") which is empowered to implement the Act and pursue, through judicial process, remedies for violations of the Act. The TWC–CRD is the state parallel to the federal Equal Employment Opportunity Commission ("EEOC") and was created to meet the criteria of a state deferral agency under federal law. In addition to decisions under the TCHRA, Texas courts also look to analogous federal law when resolving disputes brought under the State act. *Specialty Retailers, Inc. v. DeMoranville*, 933 S.W.2d 490, 492 (Tex. 1996).

B. Workers' Compensation Retaliation

Chapter 451 of the TEX. LAB. CODE prohibits an employer from discharging or otherwise discriminating against an employee because the employee, in good faith, instituted a proceeding under the Act, including the filing of a claim for benefits or the hiring of a lawyer to represent the employee in the claim. A Plaintiff need not prove that his pursuit of rights under the Act was the

sole cause for his termination; it is sufficient to show that there exists a "causal connection" between the plaintiff's exercise of statutory rights and the employer's decision to discharge him. *Cont'l Coffee Products v. Cazarez*, 937 S.W.2d 444, 451 (Tex. 1996).

C. Discharge Because of Jury Service

Chapter 122 of the TEX. CIV. PRAC. & REM. CODE prohibits an employer from firing an employee because the employee is called to jury service. TEX. CIV. PRAC. & REM. CODE § 122.001(a) (Vernon l997). This prohibition applies broadly to all employees who report to jury service.

D. Employment of Persons Called to Active Duty

The TEX. GOV'T CODE prohibits a private employer from terminating the employment of an employee who is a member of the state military forces because the employee is ordered to active duty by proper authority during an emergency within the state. Upon return, the employee is generally entitled to return to the same employment held when ordered to active duty provided the employee gave written or actual notice of intent to return to employment. TEX.GOV'T CODE § 431.006(a).

E. Child Support Withholding Order

Section 158.209 of the TEX. FAMILY CODE provides that employer may not use an order or writ of withholding as grounds in whole or part for the refusal to hire or termination of employment or for any other disciplinary action against an employee. If an employer intentionally discharges an employee in violation of this section, the employer continues to be liable to the employee for current wages and other benefits and for reasonable attorney's fees and court costs incurred by the employee in enforcing the employee's rights as provided in this section.

F. Compliance with Subpoena

An employer may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. TEX. LAB. CODE § 52.051(a). If the subpoena to which a violation of § 52.051(a) applies is issued by a court, the employer who committed the violation may be found in contempt by the court issuing the subpoena.

G. Union Membership (Right to Work)

A person may not be denied employment (the "right to work") based on membership or non-membership in a labor union. TEX. LAB. CODE § 101.052. This concept is often confused with the notion of the at-will employment doctrine.

H. Voting Rights

The Election Code prohibits an employer from preventing an employee from attending a county, district, or state political convention as a delegate or retaliating against an employee for doing so. TEX. ELEC. CODE § 161.007. It is unlawful to retaliate against an employee because theemployee voted for a candidate or measure, or against a person who refuses to reveal how he voted. *Id.* § 276.001. Finally, employees must be given time off to vote, unless the polls are open on election day for two consecutive hours outside of the employee's regular working hours. *Id.* § 276.004.

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