

# Texas State Law Update

C.B. Burns, Kemp Smith LLP

Christopher Benoit, Coyle & Benoit PLLC

1

## Contract Interpretation

*Perthuis v. Baylor Miraca Genetics Lab*  
(Tex. 2022), p. 4

- Employee secured huge sale on behalf of employer and at employer's behest
- Employment agreement said he would get 3.5% commission on net sales
- He notified employer that the contract with customer was ready to be signed
- Employer fired him
- Next day, employer and customer signed contract
- Employer refused to pay commissions
- He sued and jury awarded him \$962,336 in unpaid commissions



2

## Contract Interpretation

*Perthuis v. Baylor Miraca Genetics Lab*  
(Tex. 2022), p. 4

- Houston Court of Appeals reversed
- Texas Supreme Court reversed Houston under the procuring cause doctrine
  - When a valid commission agreement does not state otherwise, commission is owed on sales for which the employee is the procuring cause
  - Did the employee make the sale possible? Did he have a ready, able and willing buyer? Yes, he did.
  - Employer could have avoided it by having language that defined net sales or contained language about post-termination commissions



3

## Chapter 21

*County of El Paso v. Flores*  
(El Paso 2023), p. 7

- Employer sent letter of intent to terminate
- Flores on Nov. 21, 2016 but did not terminate
- Employer sent another letter on
- February 10, 2017 terminating Flores
- Flores filed EEOC charge on July 31, 2017
- Charge was timely because it was within 180 days of the actual termination on February 10, 2017
- Court found sufficient evidence of disability based on heart palpitations and gastritis
- Court also found sufficient evidence of pretext: lack of documentation of misconduct, positive employment reviews until illness and negative comments about impact on department when Flores was out ill



4

## Chapter 21

*Texas Tech Univ. HSC – El Paso v. Flores (El Paso 2022), p. 8*

- Flores was reclassified by University President and filed her first charge and lawsuit alleging age discrimination (Texas Tech ultimately prevailed)
- About a year after her first charge, University President created a new position, Chief of Staff, and Flores applied but was not selected
- She again claimed age discrimination and also retaliation
- El Paso Court of Appeals dismissed retaliation claim but allowed age discrimination claim to go forward; key findings:
  - Evidence included age-related question during her interview by President
  - Younger employee had qualifications that were not identified as preferred
  - Younger employee was encouraged to apply for position in advance because she had expressed desire for career growth



5

## Chapter 21

*EPCWID v. Trevizo (El Paso 2023), p. 9*

- Trevizo had many health conditions but they were not known to District
- 1/17 Trevizo took FMLA because of a blood clot in leg, very little other than that shared with District
- 2/17 returned to work with restriction not to drive, GM told him to improve attitude because at his age, it would be hard to find another job, but was accommodated
- 8/17 fully released to return to work
- 10/18 Trevizo instructed to drive a dump truck for the day that did not have A/C; he refused, saying it made him dizzy and sweaty, and went home instead
- Following Monday, he was terminated for insubordination

### Timeline:

1/2017  
LOA

2/2017

Age related comment

8/2017

Full Release

10/2018  
Fired

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Texas State Law Update

Also available as part of the eCourse

[2023 Labor and Employment Law eConference](#)

First appeared as part of the conference materials for the  
30<sup>th</sup> Annual Labor and Employment Law Conference session  
"State Employment Law Update: Texas and Beyond"