

# 2024 Update – Public Employee Issues

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1

## State Employees: Broader/More Restrictive

- 11<sup>th</sup> Amendment Immunity for States
- Congress' 14<sup>th</sup> Amendment authority: must be “congruence and proportionality between injury to be prevented or remedied and means adopted to that end.”
- ~~Age Discrimination In Employment Act~~
- ~~Americans With Disabilities Act~~
- ~~Family and Medical Leave Act (self care)~~
- Immunity for State Employers & Arms Of State Only — NOT Local or County Employers

2

# Ways Around Immunity (Kind Of)

- ADEA, ADA or FMLA Actions OK Against Agency Head in Official Capacity for Prospective Injunctive Relief (Reinstatement), Attorneys Fees and Costs
- Disability Discrimination Claims Under Rehabilitation Act § 504 But (1) Agency Must Receive Federal Funds, and (2) No Emotional Distress Damages
- Can't File TCHRA State Law Claim In Federal Court (Subject To Dismissal) – Must Originate In State Court

3

# Other Immunity For Public Employers:

- ~~Sabine Pilot~~
- ~~Health and Safety Code Section 161.134  
Retaliation For Hospital, Mental Health  
and Treatments Facility Employees~~
- ~~Breach of Contract Against State~~
- Others...

4

# FREE SPEECH IN THE WORKPLACE

- Public employees have First Amendment rights
- But rights can be limited more than public generally
- *Pickering v. Bd. of Educ*, 391 U.S. 561 (1968)
- Balancing test: employee rights are measured against governmental employer's needs
- Does “employee's interest in speech outweigh employer's interest in governmental efficiency?”

5

## Elements Of Free Speech Claims:

1. Adverse employment action?
2. Matter of public concern?
3. Did employee's “interest in speech outweigh employer's interest in governmental efficiency?”
4. Was speech “substantial or motivating factor” for adverse action?

6

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