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State Law Update: Texas and Beyond

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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

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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

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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.

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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

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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

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