

**PRESENTED AT**  
**ESSENTIAL EMPLOYMENT LAW**

August 2, 2019  
Austin, Texas

**THE TEXAS AT-WILL EMPLOYMENT DOCTRINE  
& ITS KEY EXCEPTIONS**  
**Presented by Scott Brutocao**

Presented by Scott Brutocao  
Written by Connie Cornell



1607 West Avenue  
Austin, TX 78701  
sbrutocao@cornellsmithcom  
ccornell@cornellsmith.com  
512.328.1540  
ww.cornellsmith.com

# THE TEXAS AT-WILL EMPLOYMENT DOCTRINE & ITS KEY EXCEPTIONS

## 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

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: The Texas At-Will Employment Doctrine & Its Key Exceptions

First appeared as part of the conference materials for the  
2019 Essential Employment Law: A Practical Course in the Basics session  
"Texas is an "At Will" State... So Why Worry?"