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**STATE OF EMPLOYMENT LAW UPDATE:
TEXAS AND BEYOND**

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STATE EMPLOYMENT LAW UPDATE: TEXAS AND BEYOND

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I. Introduction

This article reviews state court decisions decided in the last year, interpreting Texas state employment laws. The goal of this article is to provide discussion of those cases so that employment law practitioners are up to date on new developments and legal interpretations of employment laws. Please note that this paper does not cover recent cases under the Texas Citizens' Participation Act, since there is a separate topic in the seminar dedicated specifically to that statute and recent decisions under it.

II. Texas Supreme Court Cases

A. Jurisdiction/Whistleblower Claim

***The City of Madisonville v. Sims*, __ S.W.3d __, 2020 WL 1898540 (Tex. April 17, 2020)**

Sims, a police officer, filed a Texas Whistleblower Act claim against the City of Madisonville. The Whistleblower Act provides that an employee has 90 days after he is terminated or after he discovers a violation of the Act through reasonable diligence to file suit.

Sims received tips from confidential informants that his boss, Covington, was planning to plant drugs in Covington's ex-wife's car to gain advantage in an ongoing child custody dispute. Sims also knew that Covington had been terminated for misconduct as a contractor in Iraq, as Sims was in the military detachment involved. Sims told the police chief of the tips regarding the planned set-up, but the chief dismissed the allegations. Sims then searched the police department's computers and discovered that Covington had been compiling an "investigative file" on Sims, including GPS locations, presumably to have him fired. Sims believed this was because of their history in Iraq. Shortly after Sims' discovery of the file, he was "dishonorably discharged" on July 27, 2012, for violating the department's computer use policy – for accessing Covington's computer. He then pursued administrative appeal of his dishonorable discharge. That hearing was held April 17, 2014, and testimony established that the police chief had authorized Covington's investigation of Sims. The hearing examiner ruled in Sims' favor and reclassified his discharge as "honorable." On July 16, 2014, 90 days after the hearing, Sims filed his whistleblower lawsuit, alleging he was fired for reporting the drug-planting scheme. He claimed that he sued within the 90-day deadline because he had not learned until the hearing that the police chief had authorized the investigation of Sims in retaliation for Sims' report against Covington. The City filed a plea to the jurisdiction arguing that Sims failed to establish the waiver of sovereign immunity because his lawsuit was not filed within 90 days of his discharge. The trial court granted the plea. The court of appeals reversed, holding that the 90-day deadline is not jurisdictional but is a statute of limitations that is to be raised as an affirmative defense.

The Texas Supreme Court reversed the appellate court. The Court began its analysis by noting that statutory prerequisites to claims against governmental entities are jurisdictional. *See* Tex. Gov't Code §311.034. "When a statutory prerequisite to suit is not met, 'whether administrative (such as filing a charge of discrimination) or procedural (such as timely filing a lawsuit)' the suit may be properly dismissed for lack of jurisdiction." __ S.W.3d at __ (citation omitted). The Court then turned to the issue of whether the 90-day period, even though a statute of limitations, is jurisdictional and concluded that it clearly was. Noting that an employee "must sue" within 90 days to obtain relief, the Court stated that this requirement was a condition precedent, since it must occur before a right accrues to enforce an obligation. The Court thus held that the 90-day filing deadline is jurisdictional and any claim that fails to meet the deadline is properly disposed of by a jurisdictional plea. With respect to Sims' claim, the Court concluded that he failed to file timely. It rejected his claim that because he only learned that the police chief had authorized the investigation in the April 2014 administrative hearing, his claim was timely. The Court reasoned that that knowledge made Sims "no more aware of the potentially illegal nature of his termination than what he knew at the time he was fired."

B. Good Cause under the Texas Education Code

***North East I.S.D. v. Riou*, __ S.W.3d __, 2020 WL 1492410 (Tex. March 27, 2020)**

This case involves the question of what constitutes "good cause" under the Texas Education Code, by which a school district may terminate a continuing contract with a teacher. The statute defines "good cause" as the "failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in his state." Tex. Ed. Code §21.156(a).

Riou was an elementary school teacher under a continuing contract, which entitled her to continual employment unless the district had good cause to terminate the contract. While she was on FMLA leave, the district discovered that she had failed to record grades and conduct benchmark testing in her classes. As a result, the school board decided to terminate Riou's contract for failure to comply with district policies regarding grading and testing. She challenged her termination through administrative procedures. A hearing examiner found in the district's favor and the school board adopted those findings. She then appealed to the Commissioner of Education who agreed that the district had "good cause per se" to terminate the contract. She next sued in state district court. The trial court reversed the Commissioner's decision, ruling that the good cause determination lacked substantial evidence and the statutory definition of "good cause" did not have a "good cause per se" exception. The appellate court affirmed and the district then appealed to the Texas Supreme Court. The primary issue before the Court was whether there is a "good cause per se" exception to the "good cause" definition, when neither side presented evidence of what is generally accepted in similarly situated school districts. In other words, is it sufficient to terminate a contract for good cause, absent evidence of other school districts' standards, when the conduct is so egregious that no such evidence should be needed? The Court said there is no such exception under the Education Code. However, the Court held that section 21.156(a) does not require particularized evidence, but evidence of a generally applicable standard that is generally recognized and applied in all school districts. Proper grading and testing of students is such a standard, appearing throughout the Education Code as well as federal law. The Court thus held

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