

Updates from the Office of the Commissioner Representing Employers

Texas BusinessToday

Aaron S. Demerson
Commissioner Representing Employers

October 2022

Dear Texas Employers,

Welcome to your October issue of *Texas Business Today*! Fall and cooler weather is upon us! Well, at least in the early mornings for now. Let's take this month to enjoy the calm before the busy holiday season...or maybe start some early shopping at your local businesses. Don't forget to always shop and stay local!

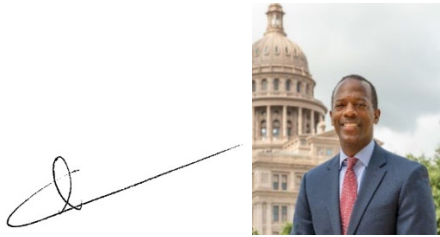
As we move into our final quarter of the year, Texas has continued to see success in our unemployment numbers. For the 10th month in a row, the state has set new employment highs and has an unemployment rate of 4.1%, which is pre-pandemic unemployment levels. Texas employers continue to drive the unprecedented job growth in the Lone Star State and continue to lead the way ensuring Texas is the #1 state for business.

In addition, we have wrapped up our 2022 Texas Conference for Employers employment law series. We ended on a high with a sold-out conference in San Marcos, TX. A huge thanks to all that have made these events successful throughout the year. Be sure to check out our upcoming 2023 locations [HERE](#). We look forward to seeing you in 2023!

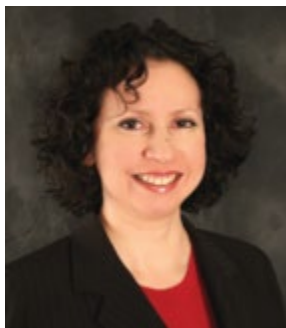
As we look ahead to the end of the year, our office remains committed to ensuring you have the best and most updated information to assist you with successfully operating your business.

Thank you for all that you do!

Let's Continue to Make Progress!



Aaron Demerson
Commissioner Representing Employers
Texas Workforce Commission



Texas is an At-Will State, So I Don't Need a Reason for Firing Someone, Right?

By Elsa Ramos
Legal Counsel to Commissioner Aaron Demerson

It is true that Texas is an “at-will” state. This means that under Texas law, as long as there is no contract or other express agreement that guarantees employment, either the employer or the employee can end the employment relationship at any time, for any reason, with or without advance warning, as long as it is not for an illegal reason or a reason that is protected by law.

For example, firing someone because of their race, religion, national origin, sex, disability, age, genetic information, etc. could result in a claim for illegal discrimination because these traits or characteristics are protected under the law. Employers may also face retaliation claims for discharging employees who were engaged in protected, concerted activity under the National Labor Relations Act, or who filed a worker’s compensation claim. This list is not exhaustive.

More information about reasons for termination that could result in a wrongful discharge claim can be found at this link from the *Texas Guidebook for Employers*: https://www.twc.texas.gov/news/eftw/wrongful_discharge.html

But setting aside specific illegal reasons, employers in Texas can legally terminate employment for any lawful reason and not face liability for wrongful discharge. Some examples of lawful reasons for discharging employees include job performance, policy violations, attendance issues, or business needs.

Neither Texas nor federal law requires employers to provide employees a reason for termination. Because of this, some employers choose not to give a reason at all. But is this a good idea?

Although employers may not face liability for wrongful termination under the at-will doctrine, they may still face an unemployment claim following a job separation. As part of the claim process, employers will be asked why they discharged an employee. Responding with, "I don't need to have a reason," will not help the employer win its case. We all know the truth: **there is always a reason.**

For the employer to prevail in an unemployment claim arising from having fired an employee, the employer would need to prove that the employee was discharged for misconduct connected with the work. Providing an employee a reason for the termination at the time of the job separation, and subsequently giving the same answer when responding to the claim, helps an employer's credibility. If a claimant first learns about the "alleged" reason during the unemployment claim, the claimant can argue that the employer is simply making up or inventing a reason after the fact.



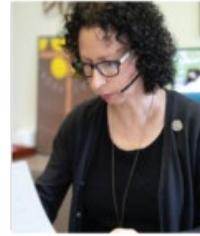
In addition, by not giving employees a reason for their termination, employees are left with a mystery. They will try to figure out why the employer fired them without explanation. Employees may conclude (hopefully in error) that the only thing that makes sense is that they were fired for an illegal reason. This may result in some sort of legal action against the employer—which no employer wants. And please consider, having to defend against such a claim will cost the employer time and money even if the employer prevails in the end.

Bottom line: The at-will doctrine provides Texas employers with a lot of latitude and freedom when it comes to making employment decisions, but it is a good idea to give employees a reason for their termination, even if the employer is not required to provide one.

TEXAS EMPLOYER HOTLINE

1-800-832-9394

Hiring Issues · Medical Leave-Related Laws · Personnel Policies and Handbooks · Independent Contractors and Unemployment Tax Issues · The Unemployment Claims and Appeals Process · Texas and Federal Wage and Hour Laws



Employer Hotline Hours: M-F, 8am-5pm

Information provided by employment law attorneys in the Office of the Commissioner Representing Employers at the Texas Workforce Commission

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