

Texas Business Today

Joe Esparza
Commissioner Representing Employers

October 2024

Texas Employers,

Welcome to the October issue of *Texas Business Today*!

October has been designated by Gov. Greg Abbott as Disabilities Employment Awareness Month, and throughout the month I encourage you to celebrate the many contributions and talents workers with disabilities add to Texas' workforce and economy.

Texas is the number one state for job growth, and our economy continues this momentum year after year. By opening doors to training, apprenticeships, internships, and other work-based learning opportunities, we can help individuals with disabilities develop competitive, marketable, and transferable skills that increase their employability.

Please join me at the 2024 Texas HireAbility Employer Forum and Lex Frieden Employment Awards at Dallas College on October 30, 2024. This event promotes the Texas HireAbility Campaign to raise awareness about the benefits of hiring people with disabilities. You will hear from great speakers and learn about resources for employers to help recruit, hire, and accommodate employees with disabilities with no-cost services.

Register here  www.Bit.ly/TXHA2024

I hope to see you there.



A stylized, handwritten signature of Joe Esparza in black ink.

Joe Esparza
Commissioner Representing Employers
Texas Workforce Commission

Texas Business Minute



[Click here to watch the video](#)



Texas HireAbility Employer Forum & Lex Frieden Employment Awards

Register Now

October 30, 2024

Dallas College - Cedar Valley

Helping Employers Recruit, Retain, &
Accommodate Texans with Disabilities



Register at:
bit.ly/TXHA2024



Important Updates for Employers

By: William T. Simmons
Senior Legal Counsel to Commissioner Esparza

This month, we would like to highlight several important updates in Texas and federal employment laws that will affect many employers.

Unemployment Claims

Effective for initial unemployment claims filed on or after October 6, 2024, the minimum and maximum weekly benefit amounts will be \$74 and \$591 per week, respectively.

New Child Labor and COVID-19 Vaccination Rules Approved for Public Comment

At the Commission meeting on September 17, 2024, the Commissioners approved for publication some important proposed rules for Chapters 817 and 844 of Title 40 of the Texas Administrative Code. The Chapter 817 rules (see <https://www.twc.texas.gov/sites/default/files/ogc/docs/pr-817-child-labor-9-24-twc.pdf>) primarily clarify the authority of TWC's child labor investigators to require employers of workers younger than 18 to document their compliance with child labor laws. The Chapter 844 rules (online at <https://www.twc.texas.gov/sites/default/files/ogc/docs/pr-844-new-covid-mandates-9-24-twc.pdf>) deal with TWC's enforcement powers under Senate Bill 7, passed in late 2023, which prohibits private employers from having or enforcing policies requiring employees to be vaccinated against COVID-19. Since unremedied violations of SB 7 result in a \$50,000 penalty, it will be very important for employers to know what the new law requires. Both rule chapters will be published soon for public comment (e-mail: TWCPolicyComments@twc.texas.gov), and anyone interested in child labor enforcement and COVID-19 vaccination issues should take advantage of the opportunity to comment (the comment period ends on November 4, 2024).

Regarding the new prohibition on COVID-19 vaccination requirements, basic information and a link to an online complaint form are on the TWC website at <https://www.twc.texas.gov/news/covid-19-vaccine-mandate>.

Recent Court Cases Affecting Federal Laws

Salary Test for Exempt Employees

The U.S. Department of Labor is still on track to increase the minimum salary for salaried exempt employees from the current level of \$844/week to \$1128/week on January 1, 2025. Detailed information is available on the DOL website at <https://www.dol.gov/agencies/whd/overtime/rulemaking>.

Although that new rule was declared unenforceable against Texas state agencies (see *State of Texas v. U.S. Dep't of Labor*, No. 4:24-CV-499-SDJ, 2024 U.S. Dist. LEXIS 114902 (E.D. Tex. – June 28, 2024), holding that the new regulation impermissibly emphasized the salary test over the duties test), it remains in effect with respect to other employers.



Two other similar cases are pending in Texas: *Plano Chamber of Commerce, et al. v. Su*, 4:24-CV-468 (E.D. Tex.), involving a coalition of private business groups, and *Flint Avenue, L.L.C. v. DOL*, in the Northern District of Texas; no decisions have been made yet. The most recent appeals court decision is in the case of *Mayfield v. U.S. Department of Labor*, No. 23-50724, 2024 U.S. App. LEXIS 23145, 2024 WL 4142760 (5th Cir. - September 11, 2024), holding that DOL has the statutory authority to establish and update a salary test for the executive, administrative, and

professional (EAP) overtime exemptions. However, this case was based on the 2019 DOL salary rule and not on the 2024 rule.

Non-Competition Agreements

A federal district court in Texas ruled on August 20, 2024 that the FTC ban on non-competition agreements is unlawful and cannot be enforced (*Ryan LLC v. FTC*, 2024 U.S. Dist. LEXIS 148488 (N.D. Tex. – August 20, 2024)). The court’s ruling has nationwide effect. The FTC may appeal or conduct case-by-case enforcement. No matter what, be very careful about non-competition agreements, which are already regulated under Texas law (Section 15.50 of the Business & Commerce Code) – be sure to obtain legal advice before proceeding.

National Labor Relations Board

In the case of *Bertha v. NLRB*, No. 4:24-cv-00798-P (N.D. Tex. – September 16, 2024), the court imposed an injunction putting an NLRB administrative hearing on hold, finding that the employer would “probably prevail” with its argument that the current structure of the National Labor Relations Board is unconstitutional. A similar ruling was issued earlier this summer in another Texas district court case (*Space X v. NLRB*, No. W-24-CV-00203-ADA (W.D. Tex. - July 23, 2024)).

Employers with questions about employment laws may call Commissioner Esparza’s office at 800-832-9394, e-mail his office at employerinfo@twc.texas.gov, or check the free *Texas Guidebook for Employers* at <https://efte.twc.texas.gov>.

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

Texas Business Today is provided to employers free of charge

Texas Business Today is a monthly update devoted to a variety of topics of interest to Texas employers. The views and analyses presented herein do not necessarily represent the policies or the endorsement of the Texas Workforce Commission. Articles containing legal analyses or opinions are intended only as a discussion and overview of the topics presented. Such articles are not intended to be comprehensive legal analyses of every aspect of the topics discussed. Due to the general nature of the discussions provided, this information may not apply in each and every fact situation and should not be acted upon without specific legal advice based on the facts in a particular case.

Connect with the Office of the Commissioner Representing Employers

Email: employerinfo@twc.texas.gov
Mail: Commissioner Representing Employers
101 E. 15th St., Rm 630
Austin, TX 78778