

Texas Legislative Update: What Employers Should Know About the 87th Session

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Over its regular and two special sessions, the Texas legislature has passed several bills that are or soon will be in effect and will impact employers' workplace policies and procedures. Additional special legislative sessions yet may be held and, with them, more changes may be on the horizon.

Expansion of Medical Use of Low-THC Cannabis

Measures to legalize recreational marijuana once again failed in the 2021 Texas legislative session. But, in June 2021, Governor Greg Abbott signed into law a modest expansion to the state's medical-use or compassionate-use low-THC cannabis statute. The law took effect on September 1, 2021.

Under prior law, low-THC cannabis could be prescribed only for a very limited number of medical conditions. The new law, [HB 1535](#), adds not only post-traumatic stress disorder, but all forms of cancer to the list of qualifying conditions. It also doubles the amount of permissible THC in low-THC cannabis products from one-half percent to one percent. THC is the psychoactive component of marijuana. While the use of "low-THC cannabis" should not cause a user to feel "high," THC stays in the body for days or weeks and frequent use over time may cause a positive drug test result for marijuana.

Although the Texas statute remains quite restrictive and provides no employment protections to applicants or employees, this expansion significantly broadens the scope of eligible medical conditions. Texas employers should be prepared for a corresponding rise in accommodation requests from users of low-THC cannabis for medical purposes.

More Expansive Sexual Harassment Protections

The Texas legislature has [broadened the scope of protections](#) afforded to victims of workplace sexual harassment in several notable ways. Most importantly, [SB 45](#) and [HB 21](#) amend the Texas Labor Code to allow even small employers (with fewer than 15 employees) to be sued for sexual harassment, to permit sexual harassment claims to be brought against individuals, and to allow administrative charges to be filed for up to 300 days after the alleged conduct. These are significant changes that can be expected to increase the number of sexual harassment claims filed under Texas state law.

New Permitless Carry Law Requires New Signage

As of September 1, 2021, the Firearm Carry Act of 2021 ([HB 1927](#)) allows most Texans over the age of 21 to carry holstered handguns without a permit and without training.

This relaxed standard, however, does not curtail an employer's right to prohibit possession of firearms on its premises, *except* that it remains unlawful for most employers to prohibit employees from keeping a firearm they lawfully possess in their personal, locked vehicles in a company parking area. In addition, possession of firearms on business premises will constitute a criminal misdemeanor if the business has notified the public orally or through

signage that firearms are prohibited on the property. Be aware that this will require new signage under amendments to section 30.05 of the Texas Penal Code.

Broader Remedies for Employees Called to State Military Duty

Texas employers have long been prohibited from discharging an employee because the employee was called to active duty or training with the state military forces, and employers must grant reinstatement without loss of seniority, vacation time, or other benefits. Even so, the only recourse available to employees alleging a violation of the law had been to file a complaint with the Texas Workforce Commission. A new statutory amendment ([SB 484](#)) grants such employees the right to hire a lawyer and file a civil lawsuit. It also generally affords them the same benefits and protections available under the federal Uniformed Services Employment and Reemployment Rights Act and under the Servicemembers Civil Relief Act.

New Human Trafficking Prevention Law for Hotel Employers

Effective January 1, 2022, [HB 390](#) will prohibit an operator of a commercial lodging establishment (defined as a hotel, motel, or similar businesses offering more than 10 rooms to the public for lodging) from disciplining, retaliating against, or otherwise discriminating against an employee for making a good faith report of a suspected act of human trafficking.

Commercial lodging establishments also must post appropriate signage and require all employees to complete an annual human trafficking and awareness program.

COVID-19 Liability Protections

[SB 6](#), the Pandemic Liability Protection Act (PLPA), took effect on June 14, 2021, protecting businesses from liability for injury or death caused by having exposed any individual (whether or not an employee) to a pandemic disease during a pandemic emergency.

The statute does not afford absolute immunity. Claims can still be brought in limited circumstances if the business:

1. Knowingly failed to warn of, or to remediate, a condition it knew was likely to result in exposure; or
2. Knowingly refused to comply with government standards or guidance intended to lower the likelihood of exposure.

The PLPA liability shield will remain in effect until the governor terminates the current COVID-19 pandemic disaster declaration.

Ongoing Efforts to Restrict Vaccine Mandates

As of September 1, 2021, a business in Texas may not require any customer to provide documentation certifying the customer's COVID-19 vaccination as a condition to entry or to receiving services. Businesses that do not comply with this law are not eligible for state-paid grants or contracts. Importantly, this law does not restrict employers from requiring proof of vaccination from *employees* or making vaccination a condition of employment.

Several measures introduced in the current special legislative session propose to extend such restrictions to employers. Until the session ends, the fate of these proposals remains uncertain.

Paid Sick Leave Still Not Required

All bills introduced during the regular legislative session to require private employers to provide employees with paid sick leave have failed, and similar bills pending in the second legislative session have yet to gain traction.

At the local level, city ordinances adopted by Austin, Dallas, and San Antonio that would have required paid sick leave have been thwarted by legal challenges. Therefore, no Texas state or local law currently requires Texas employers to provide paid sick leave. Efforts to pass preemption laws in the most recent legislative sessions, which would prohibit city and county governments from adopting any rule or ordinance requiring employee leave or benefits beyond those required by federal or state law, have stalled for the time being.

Please contact a Jackson Lewis attorney with any questions about these or other Texas employment laws.

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