Dugger Law

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## COMMON EMPLOYER-EMPLOYEE WORKPLACE ISSUES

Although Texas is generally an "at-will" work environment where employers may terminate employees for any reason without warning, there are nevertheless a number of federal laws that impact the scope of the work environment, including termination. As an employer, employee, and potential future employee of a company, it is important to be aware of these various laws and regulations so that an employer does not violate federal law, and so that an employee or future potential employee knows when his or her rights are being violated. In this newsletter, we will briefly review the main components of the following federal laws: (1) Americans with Disabilities Act; (2) Family and Medical Leave Act; (3) Age Discrimination in Employment Act; (4) Pregnancy Discrimination Act; and (5) Fair Labor Standards Act and Overtime Rules.

**Americans with Disabilities Act**

The Americans with Disabilities Act ("ADA") applies to employers with at least fifteen (15) or more employees. It prohibits discrimination against "qualified individuals with disabilities" in all employment practices. Disabilities includes a physical or mental impairment that substantially limits one or more major life activities, including, but not limited to, seeing, hearing, speaking, walking, breathing, bending, lifting, standing, concentrating, learning, caring for oneself, and working.

A qualified individual with disabilities who meets requirements sought by an employer for a position which the employee currently holds, or is applying for, and who can perform the essential functions of the position with or without reasonable accommodation is protected under the ADA. If the qualified individual with disabilities is qualified to perform essential job functions, then the employer must consider whether the individual can perform these functions with a reasonable accommodation. A reasonable accommodation is any modification or adjustment to a job or work environment enabling a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. It includes adjustments to assure that a qualified individual with a disability has rights and privileges equal to those employees without disabilities. An employer is only required to accommodate a known disability of a qualified applicant or employee, but an employer is not required to provide a reasonable accommodation if it places an undue hardship on the business.

The ADA does not require an employer to hire an applicant with a disability over other applicants because the individual has a disability, nor does it require an employer to hire an individual if he or she poses a direct threat to his or her own health or safety, or the health and safety of others. For a more thorough handout concerning the ADA, please contact our office.

**Are my workers employees or contractors?**

Exercising too much control over independent contractors hired to perform work on behalf of the business will likely cause the independent contractors to be deemed employees of the business for legal purposes. Our next newsletter will discuss what distinguishes employees from independent contractors.

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**Family and Medical Leave Act**

The Family and Medical Leave Act ("FMLA") is applicable to employers with at least fifty (50) employees who are employed a minimum of twenty (20) work weeks during the current or previous year within a seventy-five (75) mile radius of the employer's work site. The employer is required to provide its employees (male or female) a maximum of twelve (12) work weeks of unpaid leave within a twelve (12) month time for any one of the following reasons: (i) to provide care for a newborn or a newly adopted child; (ii) to provide for a sick child, spouse or parent with a serious health condition; (iii) to attend to the employee's own serious health condition that renders the employee incapable of performing the functions of his or her job; or (iv) any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is a covered military member on covered active duty. Covered active duty allows twenty six (26) workweeks of leave during a single twelve (12) month period to care for a covered service-member with a serious injury or illness who is the spouse, son, daughter, parent or next of kin to the employee (military caregiver leave). If both spouses work for the same employer, one of the spouses may be required to limit their FMLA leave.

In order to be eligible for the Family and Medical Leave Act, an employee must have worked a minimum of 1250 hours during the twelve (12) month period prior to the leave in certain situations.

All employees on family or medical leave must be reinstated by the employer to the same or an equivalent job position upon returning from the leave. All employee benefits accrued prior to leave must be restored upon returning from the leave unless such benefits are substituted for a period of unpaid FMLA leave. No employee is entitled to the accrual of any seniority or employment benefits during any period of leave. However, any personnel decisions made by the employer during the FMLA leave which would have occurred if the employee had not taken leave may occur while the employee is on leave.

Notice must be provided in writing by the employee to employer prior to the FMLA leave, and various records must be kept by the employer during the employee's FMLA leave. For a more thorough handout concerning the FMLA, please contact our office.

**Age Discrimination in Employment Act**

The Age Discrimination in Employment Act ("ADEA") is applicable to employers with twenty (20) or more employees who are employed a minimum of twenty (20) or more weeks during the current or previous year. The prohibitions described in the ADEA are limited to individuals who are at least forty (40) years of age who are employees or job applicants.

The following acts are unlawful employment practices and are prohibited by the ADEA:

(i) to fail, refuse to hire, or to discharge any individual or otherwise discriminate against an individual with respect to his or her compensation, terms, conditions or privileges of employment because of such individual's age;

(ii) to limit, segregate, or classify employees in any way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect his or her status as an employee because of such individual's age;

(iii) to reduce the wage rate of any employee in order to comply with the ADEA;

(iv) to discriminate against any employee or applicant for employment because such individual has opposed any practice made unlawful by the ADEA or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under the ADEA; and

(v) to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer indicating any preference, limitation, specification, or discrimination based on age.

There are a number of exemption and exceptions to these rules beyond the scope of this newsletter, but some exemptions or exceptions include the observance of a bona-fide seniority system or where age is a bona-fide occupational qualification reasonably necessary to the normal operation of the particular business. For a more thorough handout concerning the ADEA, please contact our office.

**Pregnancy Discrimination Act**

The Pregnancy Discrimination Act applies to employers with at least fifteen (15) employees. This act prohibits discrimination on the basis of pregnancy, childbirth, or other related medical conditions. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations. An employer cannot refuse to hire a woman because of her pregnancy-related conditions so long as she is able to perform the major functions of the job. Further, an employer cannot refuse to hire a pregnant women because of the company's prejudices against pregnant workers or the prejudices of co-workers, clients or customers.

If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee. For example, by providing modified tasks, alternative assignments, disability leave, or leave without pay. Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy related condition and recovers, her employer may not require her to remain on leave until the baby's birth. An employer may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth. Employers must hold open a job for a pregnancy-related absence the same length of time jobs are held open for employees on sick or disability leave.

For a more thorough handout concerning the Pregnancy Discrimination Act, please contact our office.

**Fair Labor Standards Act and Overtime Rules**

The Fair Labor Standards Act ("FLSA") establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector as well as in Federal, State and local governments. The FLSA applies to all employees of businesses engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the FLSA.

The FLSA requires, in part, that certain employees in the U.S. be paid at least an hourly minimum wage and overtime pay at time and one-half (1.5%) the regular rate of pay after forty (40) hours worked in a workweek, unless a specific exemption applies (exempt employees). While the FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which the FLSA does not regulate, such as: (i) vacation, holiday, severance, or sick pay; (ii) meal or rest periods, holidays off, or vacations; (iii) premium pay for weekend or holiday work; (iv) pay raises or fringe benefits; and (v) a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

Overtime is determined on the number of hours per week worked, not on the basis of how many hours per day are worked. Overtime pay is required for all employees who work in excess of forty (40) hours during a workweek, unless an employee is in a category exempt from the FLSA overtime pay requirements. Each workweek stands alone, and the employer may not average workweeks. Thus, subject to some exceptions, employers may require non-exempt employees to work more than eight (8) hours per day without paying overtime, but must pay overtime for hours worked in excess of forty (40) hours in any one (1) workweek even though the non-exempt employee worked less than forty (40) hours in any preceding or succeeding workweek. Employers in the private sector may not provide compensatory time off in another workweek in lieu of overtime, even if the employee agrees, although the employer may control the number of hours worked in a workweek (i.e., not have employees work during the remainder of the workweek once they have worked forty (40) hours). Overtime being paid to non-exempt hourly employees for hours worked over eight (8) hours per day is not required under the FLSA or Texas law. Overtime is only required to be paid on hours exceeding forty (40) hours per week. However, daily overtime pay can be credited toward weekly overtime pay required by the FLSA.

There are a number of exemptions and exceptions to the FLSA beyond the scope of this newsletter. For a more thorough handout concerning the FLSA, please contact our office.

Please feel free to contact our law office if you have any questions with regard to the above. This newsletter does not substitute for specific legal advice, may not reflect the most current legal developments, and is not intended to create an attorney-client relationship.

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