

# Texas Business Today

Joe Esparza  
Commissioner Representing Employers

February 2024

Texas Employers,

Welcome to the February issue of *Texas Business Today*. Texas' labor market reached historic highs in 2023, breaking records in employment growth and civilian labor force. In December, the state's seasonally adjusted job count reached 14,103,300 jobs, an increase of 19,100 over the month—marking 27 consecutive months of new series employment highs. This data showcases how Texas employers continue to grow and thrive as all major industries in the state expanded over the year.

In other news, our Texas Conference for Employers registration is up and running! Whether you are a small business owner, HR manager, payroll manager or simply responsible for the hiring and managing of employees, this conference was created for you! To check out the current list of cities and dates, please visit: [Texas Conference for Employers - Texas Workforce Commission](#)

Lastly, Governor Greg Abbott's Office of Economic Development and Tourism posted the 2024 Governor's Small Business Summit schedule. The Governor's Small Business Summits are in-person events held in different cities across the state. These events are an opportunity to network with other business owners and meet experts who can share timely, relevant, actionable information on a multitude of small business topics. Click [HERE](#) for the full schedule.

Whether you are a small, medium, or large business, you are part of the reason why Texas continues to remain #1 in business. Thank you for all that you do!



A handwritten signature in black ink, appearing to read 'Joe Esparza', with a long horizontal line extending to the right.

Joe Esparza  
Commissioner Representing Employers  
Texas Workforce Commission



## **What's New on the Employment Law Horizon for 2024**

**By: Tommy Simmons**

Senior Legal Counsel to Commissioner Joe Esparza

There are several important legal developments that will be very important for employers in 2024. Employers should be aware of and discuss these issues with their HR staff and legal counsel in order to be prepared:

### **New Prohibition on COVID-19 Vaccination Requirements in Texas**

Effective February 6, 2024, Texas employers in the private sector are prohibited from requiring their employees, job applicants, contractors, or applicants for contract positions to be vaccinated against COVID-19 and from subjecting such individuals to adverse treatment due to their unvaccinated status. Complaints concerning violations of the new law will be reportable to the Texas Workforce Commission, which will investigate and take action. Violations will result in a \$50,000 penalty, but the penalty may be avoidable if the employer takes appropriate remedial action to reverse the effects of the adverse action. The new

law does not apply to employer policies, procedures, or protocols that are unrelated to a person's COVID-19 vaccination status. Certain medical service providers may enforce a reasonable policy requiring unvaccinated employees to wear protective gear based upon the level of risk they may pose to patients, but in the event of a complaint, TWC will consult the Texas Department of State Health Services concerning the reasonableness of such a policy. TWC is currently developing rules to interpret and enforce the new law. All employers are strongly advised to do the following as soon as possible:

- Immediately do away with requirements that anyone who works for the employer or at employer facilities be vaccinated against COVID-19. Since the new law became effective on February 6, 2024, TWC is already in a position to accept complaints.
- Consult with legal experts of their choice concerning the company's potential exposure to liability, and steps that the company can take to minimize such liability.
- Review any COVID-19-vaccine-related personnel actions to discover any adverse actions that resulted from a vaccination policy and determine to what extent the company can undo whatever adverse actions were taken.
- Periodically consult the pending regulations website at TWC (<https://www.twc.texas.gov/agency/laws-rules-policy/rules-adoptions-proposals>) and watch for an announcement about proposed rules being published and public comments being accepted. The public comments may have very significant influence over how TWC ends up enforcing the new law, so it will be essential for interested parties to contribute their thoughts on the matter.

### **Other Important Legal Developments**

- As a result of HB 915 in 2023, employers must post a notice for employees in both English and Spanish letting them know how to report workplace violence. The new poster can be downloaded at no cost from the TWC website at <https://www.twc.texas.gov/sites/default/files/fdcm/docs/workplace-violence-poster-twc.pdf>.
- The U.S. Department of Labor (DOL) published a new rule regarding the "economic realities" test under the Fair Labor Standards Act for whether a worker is an employee or an independent contractor. The rule basically returns the test to the standards applied prior to 2017. For a useful explanation from DOL regarding the economic realities test, see the information at <https://www.dol.gov/agencies/whd/government-contracts/small-entity-compliance-guide#sixFactors>. As outlined in that guidance, the six main factors are the opportunities for profit or loss based on the worker's managerial skill, investments by the worker and the potential employer, degree of permanence of the work relationship, nature and degree of control, extent to which the work performed is an integral part of the

potential employer's business, and the skill and initiative required for the work. The new test also provides that "additional factors that answer the question of whether a worker is economically dependent on an employer may be relevant."

- DOL has also published a proposed rule for public comment regarding an increase in the minimum salary for a salaried exempt employee from the current \$684/week to a new level of \$1059/week (see <https://www.dol.gov/agencies/whd/overtime/rulemaking>). The same proposed rule also sets the salary threshold for "highly-compensated employees" at \$143,988 per year.
- As noted in the September, 2023 issue, DOL has stepped up its enforcement of other wage-related laws, including a prohibition against owners or managers of hospitality industry companies keeping any part of tips given to employees, a requirement that the tip credit can be taken only with respect to tip-producing work (which necessitates meticulous recordkeeping of exactly which duties tipped employees perform and when), and strict enforcement of restrictions on child labor (see <https://www.dol.gov/agencies/whd>).

## 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

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