

# Texas Business Today

Aaron S. Demerson  
Commissioner Representing Employers

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## Updates from the Office of the Commissioner Representing Employers

Texas Employers,

Welcome to the August issue of *Texas Business Today*. The Texas economy is just like our weather - RED HOT! The Lone Star State continues to break records in three different areas: labor force size (13,944,600), number of employed (14.4 MIL), and job count (15,039,800)! In addition, thanks to our resilient and dedicated Texas employers, Texas continued to show outsized gains in employment with a 4.0% annual growth from June 2022 to June 2023, compared to the nation's 2.5%. Some might call this bragging...but in Texas, we like to say, "It ain't braggin' if it's true!"

August is a busy month for our Texas Conferences for Employers! We will be in Amarillo on August 11<sup>th</sup>, Horseshoe Bay on August 18<sup>th</sup> and College Station on August 25<sup>th</sup>. We encourage every employer to attend at least one of these conferences every year, since the topics are updated whenever there are new laws, regulations or court cases. Each conference is geared toward small business owners, HR managers and assistants, payroll managers, and anyone responsible for the hiring and managing of employees. For more information and to register, click [HERE](#).

As the summer ends, always remember my office is committed to being a number one resource for Texas employers. Please do not hesitate to contact us if you need assistance.

Let's Continue to Make Progress!



Aaron Demerson  
Commissioner Representing Employers  
Texas Workforce Commission



## **Electronic Surveillance at the Workplace**

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Legal Counsel to Commissioner Aaron Demerson

May it be for safety, or for investigative purposes after a workplace incident, acquiring and preserving the record is critical for an unemployment claim, or even a potential lawsuit. As such, a common question encountered by employers is their rights about electronic surveillance at the workplace. This article seeks to expound on this topic by identifying the nuts and bolts of what an employer should know about electronic surveillance at the workplace.

### **Telephone Surveillance**

Generally, under the business extension exception to the wiretapping statutes, employers can monitor their employees' use of the company phone system to ensure that employees are using the system for its intended purpose. As such, employers have the right to listen in on calls, and even record calls. However, per the Electronic Communications Privacy Act, employers should notify employees and the calling public that such monitoring may be taking place.

See: <https://www.congress.gov/bill/99th-congress/house-bill/4952>

Furthermore, employers should be aware of potential invasion of privacy issues that can arise from monitoring telephone usage. If the employee is discussing matters that are obviously private, the employer should not continue listening after such point. If the employer eavesdrops on a clearly private phone call and hears intimate private details about a person's life that a reasonable person would find offensive, the employer would risk an invasion of privacy lawsuit.

In contrast, if the company had advised its employees that all phone calls, whether business or personal would be monitored, and the employee consents by signing the policy and remaining with the company, then any monitoring would be allowed, and the business extension exception to the wiretapping statutes would not be

relevant. As such, employers should make certain that they enforce a phone-use policy that is reasonable, while simultaneously enforcing such policies in a fair and consistent manner.



### **Recording Devices**

With the evolution of electronic recording devices, employers should stay vigilant about unsuspected recording of conversations at the workplace. In Texas, being a one-party consent state, it is legal to record a conversation without first providing notice and obtaining consent from all parties engaged in the conversation, as long as at least one party to the conversation is aware of the recording and consents. However, under Texas

Law, it is a felony offense to record any communication if no party involved in the conversation has provided consent. See:

<https://statutes.capitol.texas.gov/Docs/PE/htm/PE.16.htm>.

### **Video Surveillance**

Employers in Texas are allowed to install video cameras within the work premises to record activities of their employees, as well as customers or clients. If only video is being recorded, notice and consent are not mandatory. Employers should never place video cameras in locations such as dressing areas or restrooms, where employees have a clear expectation of privacy.

If both video and audio is recorded, the employer is required to provide notice to their employees and obtain written consent. A sample video surveillance policy can be found here. See: [https://efte.twc.texas.gov/video\\_surveillance\\_policy.html](https://efte.twc.texas.gov/video_surveillance_policy.html). For customers or members of the public, employers should post appropriate signs at the entrance to the job site which clearly inform everyone that enters that, by entering, they are subject to being recorded.

### **Conclusion**

For questions about this issue, or any other employment related matters, employers can call our employer hotline at 1-800-832-9394.

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## **Supporting Texas Veterans in the Workforce**

Are you an employer seeking to provide valuable resources and support to your veteran employees in Texas? Look no further! Combined Arms and the Texas Veterans Network are here to help you create a thriving and inclusive workplace for those who have served our nation.

Combined Arms is a non-profit organization dedicated to empowering veterans and their families as they transition from military to civilian life. With a proven track record of success, we connect veterans with the resources they need to thrive in their post-military careers.

Invest in your company's future and support the brave men and women who have served our country. By partnering with Combined Arms, you can access a wide range of resources that can significantly impact your veteran employees' professional growth and overall well-being.

Visit our website at [www.combinedarms.us](http://www.combinedarms.us) or email [mgarcia@combinedarms.us](mailto:mgarcia@combinedarms.us) to learn more about positively impacting the lives of your veteran employees!



**TEXAS HAS 1.6 MILLION VETERANS  
AND HALF ARE IN THE WORKFORCE**

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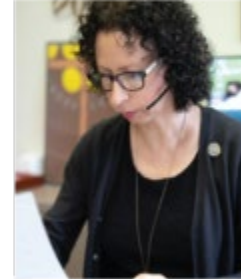
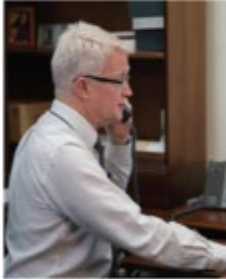
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Visit [www.combinedarms.us](http://www.combinedarms.us) to find out more!

# 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.

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### **Connect with the Office of the Commissioner Representing Employers**

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