

Fourth Quarter 2014

Texas Business Today

Hope Andrade
Commissioner Representing Employers

FINAL PRINT EDITION
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TEXAS WIDE OPEN FOR VETERANS



This is Texas, and It's Wide Open for Veterans

Texas, with a total population of 26.4 million, is proud to be home to more than 1.7 million veterans.

Every fall, we get the opportunity to collectively thank this most important group of citizens, our heroes, on Veterans

Commissioner's Corner

Day. But at the Texas Workforce Commission (TWC), we work to honor our veterans year-round. We believe we must continue to find ways to assist our soldiers as they rejoin the civilian workforce and look for opportunities to provide for their families. At TWC, we have many initiatives that aim to do just that.

Recently, TWC launched the Veteran and Industry Partnership (VIP). This initiative prepares veterans for high-skilled, high-demand jobs and supplies a skilled and ready workforce for some of the state's most high-demand industries: petrochemical, advanced manufacturing, and information technology. We have dedicated \$4.3 million from the Skills Development Fund to establish the initiative, which brings together industry associations, local Workforce Solutions partners, and community colleges to develop training in key industry occupations for veterans.

On November 13, TWC hosted its third annual Hiring Red, White and You! statewide hiring fair in 27 communities throughout the state. These hiring fairs connected Texas veterans and their spouses with Texas employers who value the experience, discipline, and other exceptional qualities inherent to a military background. There was no cost for job seekers or employers to participate.

Among the many benefits of hiring



TWC Commissioner Representing Employers Hope Andrade is interviewed by a U.S. Army soldier before the launch of www.TexasWideOpenForVeterans.com in Killeen on Dec. 3, 2014. Photo by Amy Whitmore/TWC Staff

veterans, the Work Opportunity Tax Credit allows employers to receive up to a \$9,600 tax credit on federal business income or payroll tax benefits when they hire a qualifying veteran.

I am also excited to announce the Texas Wide Open for Veterans campaign. The website www.TexasWideOpenForVeterans.com will recruit veterans to Texas and connect them to Texas employers. In Texas, we value our veterans, and we want to make sure our men and women in uniform know about all of the high-wage, high-demand opportunities in great communities throughout the Lone Star State. TWC worked closely with the Texas Veterans Commission (TVC) on this new tool that will not only serve our men and women in uniform, but will help connect our Texas employers with highly skilled applicants who have

unique strengths due to their military experience.

I encourage everyone to check out this new tool at www.TexasWideOpenForVeterans.com and to read more about it on Page 14.

To our employers, I invite you to take advantage of these resources as you are looking to expand your workforce or grow your business. This is just one of the many ways we can make sure our Texas veterans and military families know how much we value them and their sacrifices. 🇺🇸

Sincerely,

Hope Andrade
Texas Workforce Commission
Commissioner Representing
Employers

Texas Business Today is Going Electronic in 2015!

Please note: This is the final print edition of *Texas Business Today* being mailed to subscribers.

You will no longer receive this publication by mail.

To continue your subscription, please go to www.texasworkforce.org/TexasBusinessToday and enter your email address. This free newsletter will be delivered straight to your inbox every quarter.

We are excited to announce this transition that will add convenience for employers across

Texas as a quick and simple means of communication regarding Employment Law updates from the Texas Workforce Commission Office of the Commissioner Representing Employers.

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Step 2: Enter your email address to subscribe to the electronic newsletter

The content and coverage of *Texas Business Today* will not change. This transition reflects our desire to communicate with our Texas employers in the most convenient and fiscally responsible manner. 🇺🇸

Sincerely,

Hope Andrade
Texas Workforce Commission
Commissioner Representing
Employers

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Cover image: Employment opportunities are wide open for veterans in Texas. iStock/Thinkstock

Managing Communicable Diseases in the Workplace

With recent reports of people contracting the Ebola virus, many Texas employers have become greatly concerned about how the virus may affect the health of employees and the overall flow of business. This fear, however, is not new; Texas has experienced public health concerns before. In the 1980s, AIDS and HIV were on the minds of many, and in the more recent past, the H1N1, H1N5, and swine flu viruses all became the focus of attention.

The presence or threat of communicable diseases in the workplace creates a stressful situation where the employer may wonder how to move forward. Texas employers must maintain business operations in a healthy environment while simultaneously

protecting employee rights. This article will address the legal obligations and risks facing an employer in these situations and will offer guidance on how best to proceed.

The employer should first be aware of the relevant applicable laws. Primarily, federal law requires an employer to guarantee employees a safe workplace. Therefore, the employer must be aware of sound, reliable medical information in order to decide how to best approach a situation of workplace exposure. If the employer reacts without understanding the particular communicable disease, he or she risks liability. Therefore, educating the employer and the workforce are equally important.

The employer should also keep an employee's right to privacy in mind.

The Texas Communicable Disease and Prevention Control Act (Act) provides certain protections for those with communicable diseases. The Act requires an employer to comply with official investigations and also protects against the unauthorized disclosure of sensitive communicable disease information. Therefore, an employer should keep any information regarding an employee's health confidential and in a separate employee file. Releasing information either negligently or willfully can result in civil or criminal liability for each separate disclosure.

Discrimination is also a concern. Treating those with suspected exposure to communicable diseases differently may result in a violation of Title VII of the Civil Rights Act, which prohibits



In order to avoid discrimination issues, do not ask current or prospective employees about any medical conditions or if he or she has a communicable disease. If an employee voluntarily discloses private medical information, the employer may privately ask relevant questions related to the employee's symptoms or exposure in order to help determine how the employer can maintain a healthy work environment. Photo by iStock/Thinkstock

discrimination based on race or national origin. For this reason, do not refuse to hire an applicant and do not prevent an employee from reporting to work simply because that person is from or recently visited an affected country.

In the same vein, the Americans with Disabilities Act (ADA)—which applies to employers with 15 or more employees—protects against discrimination based on disability, and having a communicable disease triggers protection under the ADA. For that matter, even treating an employee as if they have a communicable disease also triggers ADA protection. If the ADA applies, the employer must reasonably accommodate the employee unless doing so would create an undue hardship for the company. The burden of proof is on the employer. Therefore, in order to avoid discrimination issues, do not ask current or prospective employees about any medical conditions or if he or she has a communicable disease.

If an employee voluntarily discloses private medical information, the employer may privately ask relevant questions related to the employee's symptoms or exposure in order to help determine how the employer can maintain a healthy work environment. Any medical inquiry must be job-related and must be consistent with business necessity.

Conducting medical examinations may also violate privacy and discrimination laws. For this reason, an employer may only do so if strong, objective evidence exists that the applicant or employee poses a direct threat to the health of the employees. The employer bears the burden in these situations to provide clear and convincing evidence that the question or test was necessary to protect the health environment.

As a preventative measure, many employers may wonder whether they can require vaccinations as a condition of continued employment. Currently, no law specifically prohibits requiring employees to get vaccinated.

However, if your company has 15 or more employees, any employee that claims to have a religious objection to vaccinations will force the employer to determine whether accommodating that employee's religious objection to the vaccination would create an undue hardship for the company. In addition, some employees may actually be harmed by receiving certain vaccinations. In these cases, do not require the employee to receive the vaccination.

Ultimately, the best practice is to educate your employees on the particular vaccine and encourage the employees to get vaccinated. At the very least, educate your employees on the importance of washing their hands thoroughly and often. Any cleaning staff should take extra care in disinfecting the workplace sufficiently.

If an employee is showing sudden symptoms of a communicable disease, you may have him immediately stop working and stop reporting to work. Your policy may require the employee to notify his supervisor and seek prompt medical evaluation and testing. The employee may be required to stay away from work until he is no longer infectious, and you may require the employee to furnish a doctor's note to ensure the employee may return to work. However, an employer should note that more than three days of unpaid leave will result in a work separation under Texas Workforce Commission precedent and the employee may file for unemployment benefits at that time.

If the employee must take time off, the employer must determine how to arrange for the employee's leave. If the Family Medical Leave Act (FMLA) applies to your business, it may be used for infected employees. However, if you send an employee home who is not infected (in situations such as a mandatory quarantine), you may not count the absence against the employee's FMLA leave.

In addition, absent a mandated quarantine, forced leave may result in

a violation under the ADA if no "direct threat" is found. A "direct threat" should be based on objective facts; irrational fears should never influence a decision to require forced leave. Four factors are relevant to determining the existence of a "direct threat:" 1) the duration of risk; 2) the degree of potential harm; 3) the likelihood that harm may happen; and 4) whether or not the harm is imminent. Each case is reviewed individually. Ultimately, do not send an employee home on forced leave unless it is required or the employee poses a direct threat to the health of others.

If an employee is out on leave, the employer must then determine how the employee should be paid for his time off. An hourly employee who misses part or all of a shift due to a communicable disease issue does not have to be paid for the time off, but can apply available paid leave to the time missed, consistent with whatever paid leave policy the employer might have.

A salaried non-exempt employee who misses time from work may use available paid leave to cover the time off, but any salary deduction would have to be authorized by the employee in writing unless the time off comes at the very end of the employment relationship, in which case the final pay may be prorated. A salaried exempt employee may be required to apply available time off to such absences, but absences for medical reasons may result in salary deductions only in full-day increments of time, and only if the employer has a bona fide sick leave pay policy in place.

The following checklist is useful in helping an employer manage a communicable disease situation appropriately:

1. Adopt a clear written policy about the confidentiality of medical information.

Advise employees that the company will maintain the strictest confidence in all

Continued on page 6

Continued from page 5

medical records of an employee with a medical condition. A sample policy is available through our book *Especially for Texas Employers* at the following link:

www.twc.state.tx.us/news/eftc/medical_information_confidentiality_policy.html.

2. Adopt a clear written policy for monitoring and managing those who have been exposed.

Explain that individuals with communicable diseases are individuals entitled to protection under state and federal discrimination laws. Require employees to report infection to the employer. Confirm and verify only the information necessary to act appropriately. Monitor and manage the situation consistent with your policy. Keep any information received confidential in the employee's separate medical file.

3. Adopt a flexible sick-leave policy.

Doing so will make leave arrangements easier for everyone.

4. Educate yourself and your employees on the specific communicable disease at issue.

The type of disease influences the type of action needed. Explain both how the disease is transmitted and how it is not. In anticipation of absenteeism due to a pandemic, you may wish to give your employees a sample survey provided at www.eeoc.gov/facts/pandemic_flu.html#6.

5. Identify the scope of risk before taking action.

Consider the employee's right to privacy as well as discrimination issues. Do not ask illegal questions relating to a prospective or current employee's health.

6. Control office gossip concerning an employee's medical condition to avoid harassment issues.

Warn gossiping employees that any talk about another employee's communicable disease will subject them to severe and immediate disciplinary action and may expose them to civil and criminal liability under Texas law.

7. If someone has had possible exposure and is showing symptoms, call the Texas Department of State Health Services at 800-705-8868 and report confirmed or suspected cases immediately.

8. Call your city or county health department to obtain advice before moving forward.

9. Comply with any investigation to avoid liability.

10. Keep notes on the steps taken to address the situation.

Keep your notes private and confidential. You may need to refer to them later, so be thorough.

11. Call our employer hotline at 800-832-9394 prior to taking any action if you require additional assistance with evaluating your particular situation.

In conclusion, an employer should be careful to avoid acting out of fear when confronted with the issue of communicable diseases in the workplace. The employer must determine how to best maintain an employee's right to a safe workplace while avoiding discrimination and right to privacy issues. Following the above precautions should serve as a useful guide to help mitigate or prevent employer liability. 🇹🇽

William T. Simmons
Senior Legal Counsel to Commissioner Andrade

Velissa R. Chapa
Legal Counsel to Commissioner Andrade



If someone has had possible exposure and is showing symptoms, call the Texas Department of State Health Services at 800-705-8868 and report confirmed or suspected cases immediately. Photo by iStock/Thinkstock

High Performance Award Boosts Misclassification Awareness

Worker misclassification is at the forefront of issues facing employers today. As recent court cases have indicated, the consequences for employers who have improperly classified their workers are staggering. Employers who have misclassified workers as independent contractors can find themselves liable for back taxes and responsible for substantial penalties and interest for each instance of misclassification.

Understandably, this has generated concern among employers who wish to do the right thing and comply with tax reporting procedures and classification laws. The Texas Workforce Commission (TWC) understands the importance of continually raising employer awareness about worker misclassification and the agency's efforts were boosted by an award from the federal government this fall.

On September 15, 2014, the U.S. Department of Labor awarded \$10.2 million to fund worker misclassification enforcement initiatives in 19 different state unemployment insurance programs. The state of Texas received approximately \$1.275 million of these funds to strengthen misclassification detection and prevention procedures. The state used this award to fund two projects that will enhance TWC's ability to educate employers on worker misclassification and combat unemployment insurance fraud.

First, the Unemployment Insurance Worker Misclassification Prevention and Detection project (UIWMPD) will increase the agency's ability to prevent misclassification and identify employers that are at the highest risk of misclassifying workers. In addition to supplementing existing initiatives to combat misclassification, the UIWMPD will streamline tax-auditing procedures by reducing the amount of time spent on employers who already comply to focus

on employers who pose legitimate risks for worker misclassification.

The UIWMPD also serves to buttress existing agency programs relating to worker misclassification. Currently, TWC's AWARE program uses employer information from other state agencies to detect misclassification. Through AWARE, the agency identifies potential audit and outreach candidates and provides them educational materials about misclassification. The new UIWMPD will establish an outreach task force comprised of five tax examiners from each region of the state to train agency staff and educate employers on AWARE and the nuances of worker classification.

Moreover, TWC routinely sends welcome letters encouraging potential employers to register for a tax account number when they register with the Secretary of State, the Texas Comptroller of Public Accounts, and the Internal Revenue Service. The UIWMPD will expand this outreach effort to encompass more businesses and promote voluntary compliance through registration.

The UIWMPD will soon be underway with the development of educational materials to commence in late January 2015. Through this initiative, the agency believes it can make further inroads in education and the prevention of worker misclassification. The project is slated to conclude by September 2016.

The second project TWC will be implementing addresses tax modernization. Specifically, the Tax Modernization Project (TMP) will overhaul the agency's current unemployment tax computing system and replace it with a new and improved version. This will impact the agency's tax database similar to the jump from dial-up to broadband internet.

The renovation of TWC's tax system has been long overdue. The system

originated in the 1960s and its last update was in the early 1990s. One especially noticeable problem with the existing infrastructure is that the system's current storage method is incompatible with many of the newer fraud detection programs that TWC uses to combat worker misclassification and unemployment insurance fraud. This incompatibility hampers TWC's ability to fully realize the capability of its fraud detection programs. The new project will remedy this by implementing new software that is compatible with the detection programs.

The TMP will also free up manpower currently being spent on sustaining the current out-of-date system. The availability of these resources will result in new government revenue and savings of over \$2.5 million annually. In sum, the TMP will serve as a revolutionary fixture in the TWC's tax computing system.

The project will benefit employers. The refurbished tax system will help the agency more expediently root out incidents of worker misclassification and fraud. Consequently, fewer violations will decrease incidents of tax rate manipulation and result in a more efficient tax system for employers. The project is currently halfway complete with a closeout date in September 2015.

In conclusion, the federal grant given to the state of Texas will allow TWC to implement two new projects that will strengthen the agency's ability to combat worker misclassification. Between the outreach efforts of the UIWMPD and the increased efficiency of TWC's tax system through the TMP, Texas employers will be in a better position to avoid misclassifying workers. 🇺🇸

*Mario R. Hernandez
Legal Counsel to Commissioner Andrade*

Frequently-Asked Questions From Employers – Answered

The following questions were compiled from past Texas Business Conferences around the state and questions from Texas employers on our Employer Hotline.

Q: *Could the employer require all employees to sign a “waiver” releasing the employer from responsibility if the employee knowingly gets in a company vehicle (without a valid driver’s license) and has an accident?*

A: Texas law would certainly allow your company to require employees to sign a form like that, although as a practical matter, it would not be worth much to the company. The main problem is that a waiver would not bind potential plaintiffs in lawsuits that injured parties might file against the company. Anyone injured by an unlicensed driver could still sue the employer, and a release of liability agreement that you have with the employee who caused the accident would be irrelevant to the issue of whether the third party could hold your company liable for damages. Even though the company could have an indemnity provision in the release agreement whereby the unlicensed driver would agree to make your company whole in the event of a lawsuit, your company's ability to enforce such a provision would be extremely limited, since most employees have practically no financial resources to satisfy a court judgment. Thus, the employer would still end up with the primary financial liability in a lawsuit situation. The best way to try to avoid liability is for the company to take measures to prevent unlicensed drivers from operating company vehicles or driving while on company business.

Q: *Is a person who attends orientation, but never works, an employee?*

A: If the orientation is for the purpose of identifying persons interested in applying for work with the company, those attending will not be employees, and the time they spend in such an orientation will not be work time. If the orientation is for someone who has already applied for work and has been accepted as a new hire, the attendee would be an employee, and the time spent in such orientation would be work time. It does not matter that the person does not actually get to the point where he or she performs productive work; what matters is that the person was told that he or she was hired and that attendance at the new-hire orientation was a requirement of the job. Attendance at the orientation would thus be the employee's first duty.

Q: *It seems that TWC notice of application for UI benefits still tells employers that if they do not want to protest, they do not need to respond. However, didn't Texas (and federal) law change on that point—at least to the extent that a failure to respond that results in improper benefit payments will result in penalties/fines over time?*

A: TWC Rule 40 T.A.C. §815.1(3) addresses the new statute imposing chargeback penalties in the event of inadequate claim responses. It defines “adequate response” as “... [a] notification of adverse facts, including any subsequent notification, affecting a claim for benefits . . . [that] gives a reason, supported by facts, directly related to the allegation raised regarding the claimant’s right to benefits.” Subsection (C) of that rule gives two

examples of adequate claim responses, and subsection (D) gives examples of supporting documentation and other evidence. An employer who decides not to protest a claim has nothing to worry about. The new law is based on a very particular kind of scenario: a base period employer gets a claim notice and does a poor job of responding; TWC rules in the claimant's favor; the employer files a timely appeal, does a better job at the appeal hearing, and wins the appeal; and finally, the Appeal Tribunal rules that the employer's initial claim response was inadequate. The first time it happens, there is no chargeback penalty, but it counts as a “strike.” The second time it happens, there is likewise no chargeback penalty, but now there are two strikes. The third time it happens, it is the third strike, and the penalty is imposed. There is no strike in a no-protest situation, since getting a strike depends upon losing first and winning later, and with no protest (or a late protest), the employer has no appeal rights. There is also no strike if the employer gives up after filing a poor response and does not appeal the initial ruling in favor of the claimant.

Q: *Currently, we have a policy that says when employees are on call, they are to arrive within one hour of the phone call or within the determined time frame (if for example an employee’s drive time is longer). Our workday in one office is 9 a.m. to 5 p.m. and in another office 9 a.m. to 6 p.m.; and we have told them that they are on call until 3:30 in the afternoon; if they have not heard from us by that time, they will not be called. They also know that they are paid a minimum of 4 hours when they are called in even if*

they worked less than 4 hours. Many employees are complaining that the 3:30 cut off time is illegal and we are holding them “hostage.” I have looked on the TWC website and can’t find an answer to this. Are we violating any labor law?

A: The on-call employees are no more hostages than any other employees who are told to be on call in countless companies across the country. That is a common practice, and as long as your company follows certain guidelines, there is no legal problem with the on-call policy that you have. The longstanding rule for on-call time under the Fair Labor Standards Act (which Texas follows) is that on-call time does not have to be paid, as long as the employee is able to effectively use that time for his/her own purposes. Similarly, the time spent actually responding to calls is work time and must be paid (see www.twc.state.tx.us/news/efte/c_waiting_or_on_call_time.html). To be safe, start paying on-call employees as soon as they receive a call and begin responding, i.e., their clock starts when they get the call and tell their supervisor they are on the way. Their clock stops when they finish the call and return home. Your company should have them maintain complete and accurate records of all such time, on whatever forms your company chooses to use.

Q: *Our company has fewer than 15 employees, and we offer workers’ compensation. Can we decide to no longer offer it? If so, what all needs to be done besides cancelling it?*

A: Texas law gives an employer the right to cease its coverage under a workers’ compensation policy. In such a situation, the employer must file Form DWC-005 with the Division of Workers’ Compensation at the Texas Department of Insurance (TDI) and give a notice of termination of coverage to each affected

employee. All of the instructions for complying with those requirements are found on pages 2 and 3 of the TDI Form DWC-005 at www.tdi.texas.gov/forms/dwc/dwc005nocov.pdf.

Q: *A server has indirectly accused her manager of creating a hostile work environment. The interesting thing is the employee never reported it. Both the general manager and I approached the employee after being mentioned by other employees who were complaining about the general behavior of this manager. I do not know if this is significant, but it seems odd. When I approached this employee, she mentioned that her concern was for other employees that would be hired after she was gone. I have interviewed the manager in regards to all of the allegations against him. He has admitted to pulling apron strings and putting his hand on employee’s backs to move them from one side to another. However, I have not yet discussed these specific allegations from this employee with the manager; at least, not all of them. I have suspended the manager pending the outcome of this investigation. I am thinking I should address these specific allegations with him one by one and give him a chance to respond before I make a final decision regarding his employment? Your thoughts?*

A: If your company's investigation of the allegations indicates that they are true, then the manager's conduct would appear to have been in violation of the company's written harassment policy. Depending upon the seriousness of what is proven to have occurred, the corrective action could range anywhere from a warning (usually written) all the way to termination of employment. However, the company should take care to follow its policy as closely as

possible in that regard. The employee's statements about the reactions of others should raise serious concern at the highest levels of the company. If a sexual harassment claim or lawsuit ends up being filed because management tolerated attitudes like those, and such attitudes contributed toward an environment that fosters future acts of harassment or retaliation, the owners of the company could end up literally losing their company to a successful plaintiff and her attorney. It is that serious – it could be a business-closing event. So, the company should consider investing in an outside HR consultant or law firm to get them to come and hold mandatory harassment training for all of the workers. In addition to the usual wording about what harassment is and why it is wrong, the employees need to get a clear and unequivocal message that treating others with respect, and refraining from committing unwelcome acts of harassing and even creepy behavior, is not an option, and that failing to follow the company policy can, in most cases, lead to immediate termination of employment. The training for managers would go beyond that and would let managers know that they must not only follow the policy themselves, but must also support it and remind employees of it whenever needed. Make compliance with and support of the company policies one of the criteria for raise reviews and performance evaluations. It would probably be a good idea to advise upper management to read some basic EEOC or law firm materials about sexual harassment and what employers are expected to do in such situations. 

*William T. Simmons
Senior Legal Counsel to
Commissioner Andrade*

Highlights from the Texas 2012-2022 Industry and Occupational Employment Projections

The Labor Market and Career Information Department of the Texas Workforce Commission is proud to announce that the Texas and regional 2012-2022 industry and occupational employment projections are now available. Please visit “The Future” at www.tracer2.com to see these latest statistics for the Texas workforce outlook through 2022, in addition to the projections methodology. Discover the

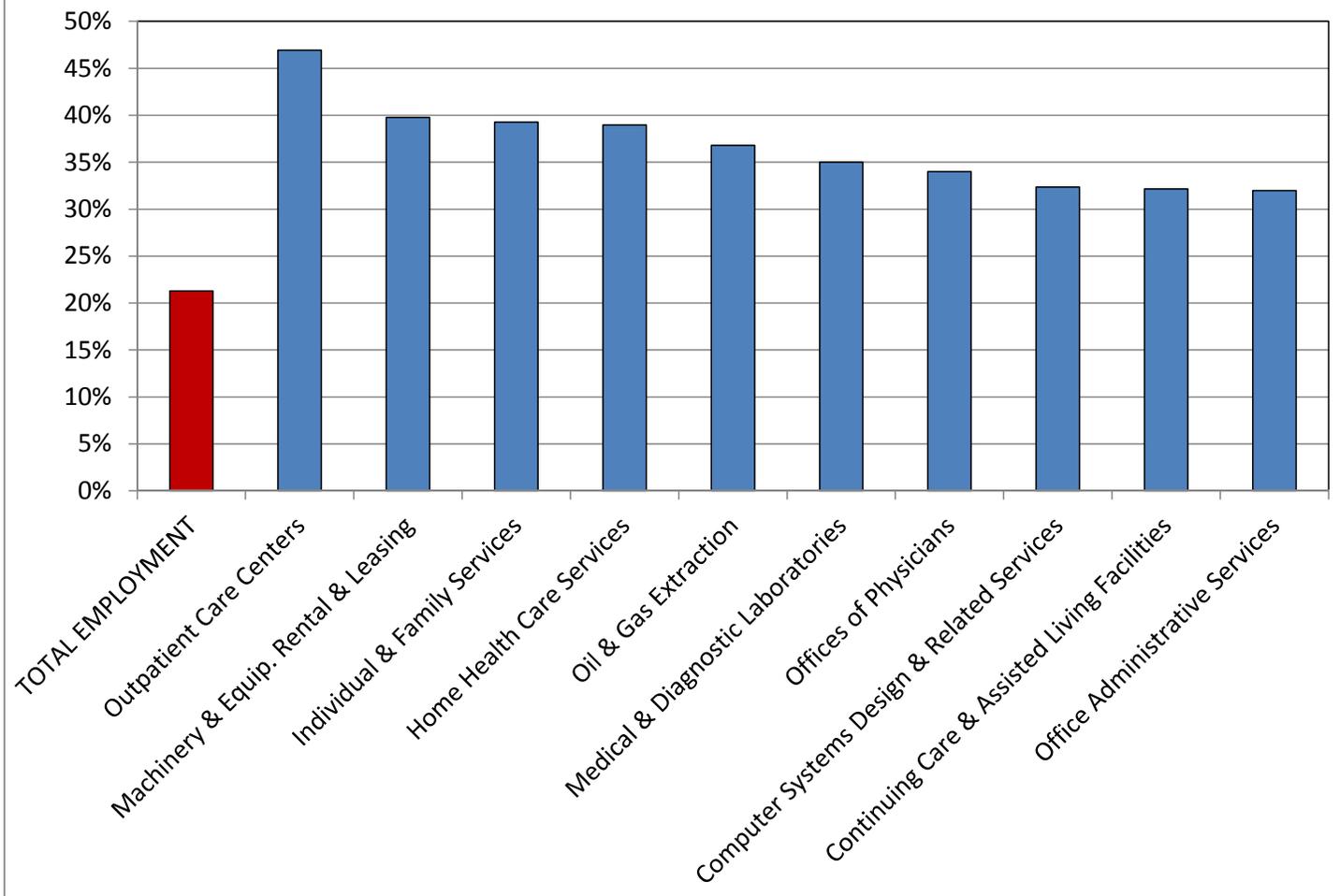
projected fastest growing occupations and the occupations adding the most jobs for Texas or your area. The occupations with the most projected annual average job openings are also available.

The Texas and sub-state 2012-2022 industry and occupational employment projections are produced every two years for a 10-year time frame. These estimates are generated using data

from various U.S. Bureau of Labor Statistics (BLS) programs, including the Quarterly Census of Employment and Wages Program (QCEW), the Current Employment Statistics Program (CES), and the Occupational Employment Statistics Program (OES).

Within the Texas 2012-2022 Industry Employment projections, the fastest growing industry in Texas is expected to be Outpatient Care Centers, with an

Top Ten Fastest Growing Industries in Texas for 2012-2022



industrial employment increase of 46.9 percent by 2022. This industry includes family planning centers, outpatient mental health centers, kidney dialysis centers, and freestanding emergency medical centers. Next, Commercial and Industrial Machinery and Equipment Rental and Leasing is expected to grow by 39.8 percent statewide, followed by Individual and Family Services, with a 39.3 percent growth rate. Six of the top ten fastest growing industries are found in the Health Care and Social Assistance major industry group. The remaining four were represented by the Mining, Quarrying, and Oil and Gas Extraction Industry, the Real Estate and Rental

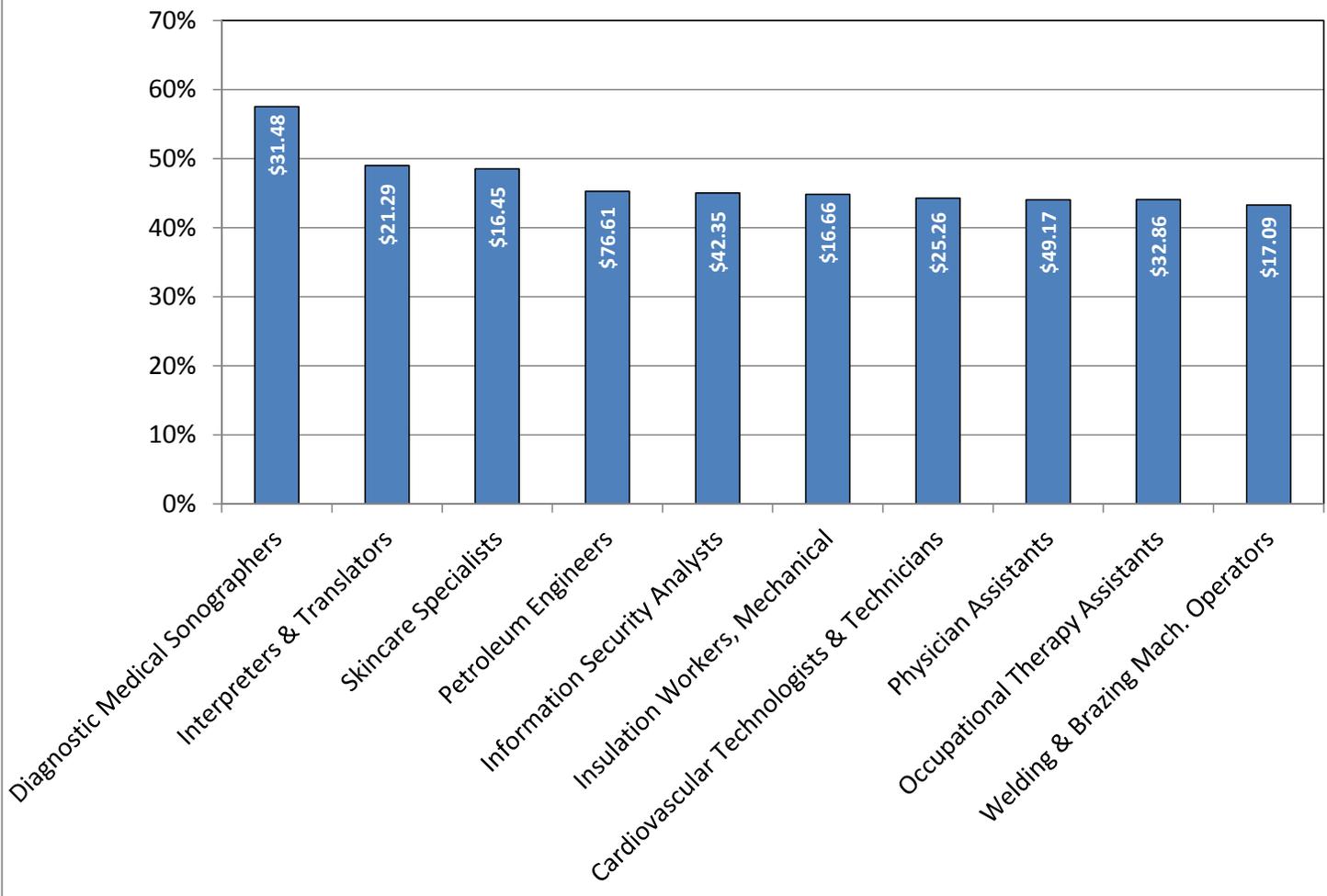
and Leasing Industry, Professional, Scientific, and Technical Services, and Administrative and Support and Waste Management and Remediation Services.

Within the Texas 2012-2022 Occupational Employment projections, the fastest growing occupation in Texas is expected to be Diagnostic Medical Sonographers, with an employment increase of 57.5 percent by 2022. This occupation has an average hourly wage of \$31.48, or an annual wage of \$64,490. Of the top 10 fastest growing occupations, Petroleum Engineers earn the most, with \$76.61 per hour, or \$159,340 per year. This occupation is expected to increase by 45.3 percent

by 2022. The Health Care Practitioners and Health Care Support Personnel occupation group were represented in four of the top 10 fastest growing occupations in Texas. The highest paid health care practitioners in the aforementioned group are Physician Assistants, who earn an average hourly wage of \$49.17, or \$102,260 per year. This occupation is expected to increase 44.1 percent by 2022 🇺🇸

Gabriel Guzman and Dorothy Gattis – Information provided courtesy of the Labor Market and Career Information Department of the Texas Workforce Commission: www.lmci.state.tx.us

Top Ten Fastest Growing Occupations in Texas for 2012-2022



Latest Developments and Legal Updates

Beware of False Employment Scams

The Texas Workforce Commission (TWC) recently issued a warning to job seekers about con artists posing as employers to collect money from applicants in exchange for jobs that do not exist. The scams vary, from demands for money up front to phishing related to identity

Business & Legal Briefs

theft. TWC cautions that a legitimate employer will never ask for money up front as a condition for applying for a job. In addition, job seekers should not give personal or confidential information to an employer before meeting face-to-face. Job contacts via phone, text message, or instant messaging merit caution, unless the job seeker is sure of who is behind the contact. Any suspicious activity or complaints of fraud may be reported to the TWC Fraud and Program Abuse Hotline at

800-252-3642, or via the TWC Reporting Fraud web page at www.twc.state.tx.us/twcinfo/fraud-waste-program-abuse.html.

Legislative Initiatives for 2015

TWC Commissioner Representing Employers Hope Andrade has proposed several employment-related initiatives. In summary, they are:

- Repeal of the “waiting week:” The first week of unemployment benefits would not be paid until the claimant has



Commissioner Representing Employers Hope Andrade has proposed several employment-related initiatives for consideration by the Legislature in 2015 and is working with business and industry groups in Texas to find sponsors for such bills. *Photo by LMPphotography/Thinkstock*

exhausted his or her remaining benefits and is still unemployed.

- **Overpayment reform:** This law would require TWC to end the practice of waiving the repayment of benefits that are overpaid due to agency error.
- **Tax rate reform:** It would become easier for a business to acquire part of an existing business without having to pay an unemployment tax rate based upon the predecessor’s entire claim history.
- **Wage deductions:** This would end the requirement for written authorization for deductions that are already specifically authorized under existing federal law.
- **Employment and training assessment reform:** Restructuring of the Employment and Training Investment Assessment (ETIA) tax to allow TWC to use 100 percent for workforce development, instead of only 15 percent.
- **Rapid response for business recruitment:** TWC could facilitate public-private partnerships to more effectively assist in recruiting businesses to locate in Texas.

Drug Testing in Unemployment Claims

SB 21 enabled TWC to require drug testing of certain claimants as a condition of considering them available for jobs in their field of work. Texas’ implementation of that law has been on hold pending issuance of final regulations by the U.S. Department of Labor (DOL) regarding the kinds of jobs for which drug tests are regularly conducted.

The DOL recently issued a proposed rule that limits testing to claimants for whom suitable work is available only in the following types of jobs: any job that requires drug testing of employees under current state law, occupations requiring employees to carry firearms, airplane flight crews, air traffic controllers, commercial drivers, railroad operating crew members, public transit operators, oil and gas pipeline operation

and maintenance crew members, and maritime workers on commercial vessels.

The comment period was unusually short and scheduled to end on Dec. 8, 2014, but many business groups from around the country offered input. A

final rule is likely within the first half of 2015, and TWC will post information about the status of the rule as soon as it becomes available. 

*William T. Simmons
Senior Legal Counsel to
Commissioner Andrade*



SB 21 enabled TWC to require drug testing of certain claimants as a condition of considering them available for jobs in their field of work. Texas’ implementation of that law has been on hold pending issuance of final regulations by the U.S. Department of Labor (DOL) regarding the kinds of jobs for which drug tests are regularly conducted. Photo by JupiterimagesThinkstock

TexasWideOpenForVeterans.com

Active members of the military and veterans who are considering where to begin their civilian lives can now access a new resource that reveals the many advantages and opportunities awaiting veterans choosing to make the Lone Star State their permanent home. TexasWideOpenForVeterans.com is a newly launched website for veterans and their families with a one-stop opportunity to explore the many reasons for veterans to put down roots in the Lone Star State.

The new website is a joint project developed by the Texas Workforce Commission (TWC), the Texas Veterans Commission (TVC) and Texas.gov to make sure our men and women in uniform know about all of the high-wage, high-demand opportunities in Texas.

TexasWideOpenForVeterans.com will also provide resources for employers who would like to connect with veterans for their hiring needs. The site is a tool for Texas employers who are looking to hire from this unique pool of talented, experienced job seekers. Among the many benefits of hiring veterans, the

Work Opportunity Tax Credit allows employers to receive up to a \$9,600 tax credit on federal business income or payroll tax benefits when they hire a qualifying veteran.

To learn more, follow @TXWOFV on Twitter or like Texas Wide Open For Veterans on Facebook. 🇺🇸



If you're a veteran in Texas, then employers in the **petrochemical, advanced manufacturing and information technology** industries have a simple message:

We Want You!

The Texas Workforce Commission has announced a new initiative, the **Veteran and Industry Partnership**, to help veterans like you get the training you need to find jobs in the **petrochemical, advanced manufacturing and information technology** industries.



For more information, visit: www.texasworkforce.org/vip



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The registration fee is \$99 and is non-refundable. Continuing Education Credit (six hours) is available for CPAs. General Professional Credit is also available.

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