

# Texas Business Today

Joe Esparza  
Commissioner Representing Employers  
December 2023

Texas Employers,

Welcome to the December issue of *Texas Business Today*. My name is Joe Esparza and I am the new Commissioner Representing Employers at the Texas Workforce Commission. Prior to this appointment, I served as the Texas Deputy Secretary of State since 2018. In addition, I served as a Senior Appointments Manager in the Office of the Governor, overseeing numerous gubernatorial appointments during Governor Abbott's first term.

I am looking forward to working on behalf of Texas employers, large and small, on employment issues, workforce development, unemployment taxes and claims, and the business and legal climate affecting public and private employers.

In other news, our 2024 Texas Conference for Employers schedule is up and open for registration. We will continue to add more dates and locations throughout the year, so please check back periodically. To review the current list of cities and dates, please visit: [Texas Conference for Employers - Texas Workforce Commission](#)

As we approach 2024, please know that we are always here for you as your number one resource. Do not hesitate to contact me or my office if you need assistance.

Wishing you and your families a very happy holiday season and best wishes for the new year!



A handwritten signature in black ink, appearing to read 'Joe Esparza'.

Joe Esparza  
Commissioner Representing Employers  
Texas Workforce Commission



## **Exclusions from Unemployment Chargebacks: What Are They?**

**By: Mario Hernandez**

Legal Counsel to Commissioner Joe Esparza

Employers in our great state know that unemployment claims arise from all kinds of different job separations. Typically, if a claimant receives unemployment benefits, those benefits are charged back to the taxed employers who have reported “base period wages” for that claimant. This is what is known as a chargeback, and it affects the employer’s unemployment tax rate. A higher unemployment tax rate means that the employer pays more in unemployment taxes. But if a claimant receives unemployment benefits, will it *always* result in a chargeback to the employer’s account?

### **A Quick Note for Reimbursing Employers**

The exclusions from chargebacks that will be discussed will not apply to reimbursing employer accounts. Please see [Texas Labor Code Section 205.0125](#) for the law on the exceptions from a reimbursing employer’s duty to pay a reimbursement.

## **Exclusions from Chargebacks**

The list of exclusions from chargebacks can be found in [Texas Labor Code Section 204.022](#), but this article will focus on those exclusions that tend to come up more frequently in unemployment claims.

### **Separation Caused by a Medically Verifiable Illness**

Sometimes job separations are the result of an employee being out for too many days due to illness. Similarly, job separations can occur for attendance violations that were caused because the claimant needed to care for a sick minor child. For these types of job separations, Section 204.022(a)(5) of the Texas Labor Code may provide chargeback protection for taxed employers.



However, [as noted in our online Texas Guidebook for Employers](#), medical separations could have consequences for employers beyond an unemployment claim. Sometimes employees with medical issues could be protected by laws such as the Americans with Disabilities Act, Family and Medical Leave Act, and Workers' Compensation. Employers should consult with private legal counsel if the employer is thinking of discharging these employees.

### **Separation Caused by the Operation of Federal or State Law**

Chargeback protection is also available to taxed employers for job separations that were necessary to comply with federal or state law. For instance, this type of job separation can arise if a claimant fails to maintain a credential or license that either federal or state law requires to perform the job. Sections 204.022(a)(1) and 204.022(a)(2) of the Texas Labor Code outline these exclusions from chargebacks.

### **Will these Exclusions from Chargebacks be Applied Automatically?**

In short, the answer is no. If the employer's position on an unemployment claim is that the job separation was the result of something that would qualify as an exclusion from chargeback, the employer should not assume the Texas Workforce Commission (TWC) will automatically apply the protection.

Remember, the burden of establishing that any kind of exclusion from chargeback is applicable to an unemployment claim is on the party so claiming the exclusion. In other words, if the employer believes that the job separation was the result of one of the above-mentioned exclusions from chargebacks (or any other) the employer

should clearly state that in its response to the unemployment claim. Remember to respond timely as well!

### **Conclusion**

Sometimes an unemployment claim can result in benefits for the claimant and chargeback protection for the employer. This “pay and protect” scenario can emerge from the employer successfully establishing that the job separation was the result of an exclusion from chargeback found in [Section 204.022 of the Texas Labor Code](#).

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**'Twas the Eve of the Party**

'Twas the eve of the party, and all through the land,  
All employees were stirring the drinks in their hands.

The bosses declared this a booze-free event,  
In hopes of avoiding last year's incidents.

But few had paid heed to instructions this year.  
There were bottles, and mixers, and cases of beer.

Oh no! There goes Bob, mistletoe in his hand.  
He should already know that harassment won't stand.

The women don't think that his antics are cute,  
A repeat of last year may bring us a lawsuit.

Now Susan is stumbling, someone please get her keys!  
She's really impaired. Should we call the police?

She could get arrested for driving like this.  
She needs to stay put. It's not worth the risk.

Or she may hurt others in case of a crash.  
Many lives changed forever in only a flash.

While Susan, as driver, would be held responsible,  
Could the business, as party host, also be liable?

Ignoring instructions this year once again  
May lead us to incidents causing much pain.

Employers and workers, I ask, heed these words.  
A drama-free party is really preferred.

Please know there's a way out of all this - a fix.  
Alcohol and holiday parties don't mix.

# 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**

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