

KNOW YOUR RIGHTS

LEGAL UPDATES

RECENT CASE SUMMARIES AND BLOGS



RECOVERY OF EMOTIONAL DISTRESS DAMAGES IN FLSA RETALIATION CLAIMS

The Fair Labor Standards Act (FLSA) establishes minimum wage and overtime protections for many workers in America. Workers who lack work authorization are entitled to minimum wages and overtime pay for hours worked under the FLSA to the same extent as other workers. The FLSA also prohibits retaliation against any person who has filed a complaint with the Department of Labor or an employer (orally or in writing) or cooperated in an FLSA investigation. It is unlawful for an employer to terminate or in any other manner discriminate against workers in retaliation for asserting minimum wage or overtime claims (which can include pay issues such as deductions or tips) or cooperating with an FLSA investigation. Recently, the Fifth Circuit Court of Appeals held that an employee may now recover for emotional distress damages in a retaliation claim asserted under the FLSA. At the same time, the Fifth Circuit held that only an employee can assert an FLSA retaliation claim. *Pineda v. JTCH Apartments, L.L.C.*

HAVE YOU EXPERIENCED RETALIATION IN THE WORKPLACE?

Protection from Discrimination

Protection from discrimination means that an employer cannot retaliate by taking "adverse action" against workers, such as:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denial of benefits
- Failure to hire or rehire
- Intimidation
- Making threats
- Reassignment affecting prospects for promotion
- Reducing pay or hours

State and Federal laws protect individuals from retaliation. An employer may not fire, demote, harass or otherwise retaliate against an individual for submitting a complaint of discrimination, participating in a discrimination proceeding or otherwise opposing discrimination. A complaint of retaliation discrimination must show that you engaged in a protected activity, your employer took an adverse action against you, and there was a direct connection between the protected activity and the adverse action. The Texas Workforce Commission Civil Rights Division outlines how to submit a claim of discrimination and retaliation on their website at

<http://www.twc.state.tx.us/jobseekers/how-submit-employment-discrimination-complaint>



TERMINATED FOR FILING A WORKERS' COMPENSATION CLAIM

Did you injury yourself at work? Did you file a workers' compensation claim? Were you terminated thereafter? If you answered yes to all the above questions, you may have a claim for workers' compensation retaliation. Texas provides protection for Texas workers filing for workers' compensation and those testifying in workers' compensation proceedings from retaliation by employers. Specifically, Section 451.001 of the Texas Labor Code provides that "A person may not discharge or in any other manner discriminate against an employee because the employee has:

1. filed a workers' compensation claim in good faith;
2. hired a workers' compensation lawyer to represent the employee in a claim;
3. instituted or caused to be instituted in good faith a proceeding under [the Texas Workers' Compensation Act]; or
4. testified or is about to testify in a proceeding under [the Texas Workers' Compensation Act]."

Section 451.001 offers protection for employees for many actions they might take involving filing a workers' compensation claim, and may include protection for actions taken prior to filing a claim. Similarly, the law provides protection against many adverse actions an employer might take in retaliation for an employee's filing of a workers' compensation claim.

If your employer terminated you for pursuing workers' compensation benefits or for hiring an attorney to represent you in your workers' compensation claim, you may be able to file a lawsuit in accordance with Texas state law. Contact Juan to schedule a free consultation so that he can determine if your employer violated state law when it terminated you for pursuing your benefits.

EMPLOYEES ALLOWED TO STORE FIREARMS IN VEHICLES WHILE AT WORK



Beginning September 1, 2017, Texas made it easier for individuals to purchase and renew their license to carry a firearm by lowering the costs associated with the license. Passed in May 2017, Senate Bill 16 reduces the price for applying for a license to carry from \$140 to \$40. It also cut the renewal costs from \$70 to \$40. This bill may increase the number of employees who purchase, carry and store a handgun, especially while on an employer's premises. In fact, did you owe a firearm? Did you store it in your vehicle while at work? Did your employer terminated you for doing so? If you answered yes to the above-questions, you may have a claim for wrongful discharge under state law. This is because under Texas law an employer may not prohibit employees from storing lawfully possessed firearms and ammunition in vehicles parked in the employer's parking lot (or garage or other lot provided by the employer). The owner of a firearm or ammunition is permitted to store those items in a locked, privately owned car if the possessor holds a concealed handgun license.

LOCAL NEWS – SAN ANTONIO

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT ADDS SEXUAL ORIENTATION AND GENDER IDENTITY TO NON-DISCRIMINATION RULES



The San Antonio Independent School District now protects employees and students who are being discriminated against based on sexual orientation, gender identity, or gender expression. This is a huge step in the right direction and hopefully other employers, cities, and the State of Texas soon follows. Until then, remember Law JBH will fight to protect individuals who believe they have been discriminated, harassed, or retaliated against based on the sex, gender, national origin, age, disability, or any other protected class afforded to them by federal, state, or local ordinances. For more information about these rules please click on the link below.

<https://www.sacurrent.com/the-daily/archives/2017/08/22/saisd-adds-sexual-orientation-and-gender-identity-to-non-discrimination-rules>

LOCAL NEWS – WHARTON

HOW TO RECEIVE COMPENSATION BECAUSE YOUR EMPLOYER CLOSED BECAUSE OF HURRICANE HARVEY

TWC is accepting applications for Disaster Unemployment Assistance because of severe weather. Individuals who live in, work in, or travel through these the following counties can apply online (ui.texasworkforce.org) or by calling a TWC Tele-Center Monday through Friday between 8 a.m. and 5 p.m. at 800-939-6631: Aransas, Bee, Brazoria, Calhoun, Chambers, Fort Bend, Galveston, Goliad, Harris, Jackson, Kieberg, Liberty, Matagorda, Nueces, Refugio, San Patricio, Victoria and Wharton Counties. Applications must be submitted by September 27, 2017.

TEXAS NEWS

SEVERAL NEW LAWS WENT INTO EFFECT BEGINNING SEPTEMBER 1, 2017



Below is a list detailing a few of the new laws that went into effect:

1. No Texting and Driving in Texas

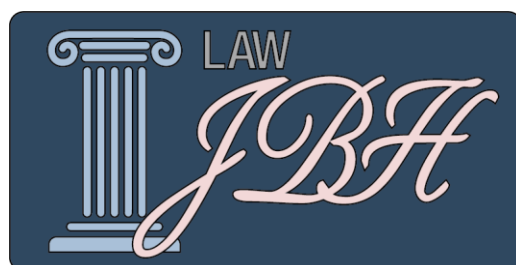
As of September 1, 2017, Texas prohibits drivers on public roads from using a wireless communication device (i.e., a cell phone) to read, write, or send an electronic message while operating a motor vehicle. Texting and driving in Texas will be punishable by a fine of \$25-\$99, which raises to \$100-\$200 for any subsequent offenses. The law also states that if a car accident caused by texting and driving results in the death or serious bodily injury of another person, the offender can be charged with a Class A misdemeanor punishable by a fine not to exceed \$4,000 and confinement in jail for a term not to exceed one year.

2. Children Left in Hot Vehicles

The law states that a person who, by force or otherwise, enters a motor vehicle for the purpose of removing a vulnerable individual (i.e., a child) from the vehicle is immune from civil liability for damages resulting from that entry or removal. Essentially, they cannot be sued for damages if they had good faith and reasonable belief, based on the known circumstances, that entry into the motor vehicle is necessary to avoid imminent harm to the individual.

3. Submitting Wage Claims Online

An employee who is not paid wages they are legally owed is now allowed to file a claim electronically (as opposed to in person, by mail, or by fax) with the Texas Workforce Commission. For those individuals who were not compensated for performing work during the events of Hurricane Harvey, you should file a claim with the TWC for those wages. For those individuals who could not work because of Hurricane Harvey, you should contact TWC to seek unemployment benefits for the time your employer was closed.



FOR MORE INFORMATION PLEASE VISIT:

WWW.LAWJBH.COM

WWW.FACEBOOK.COM/LAWJBH

WWW.TWITTER.COM/LAWJBHTX

OR

CONTACT ATTORNEY JUAN HERNANDEZ AT 210-504-8619