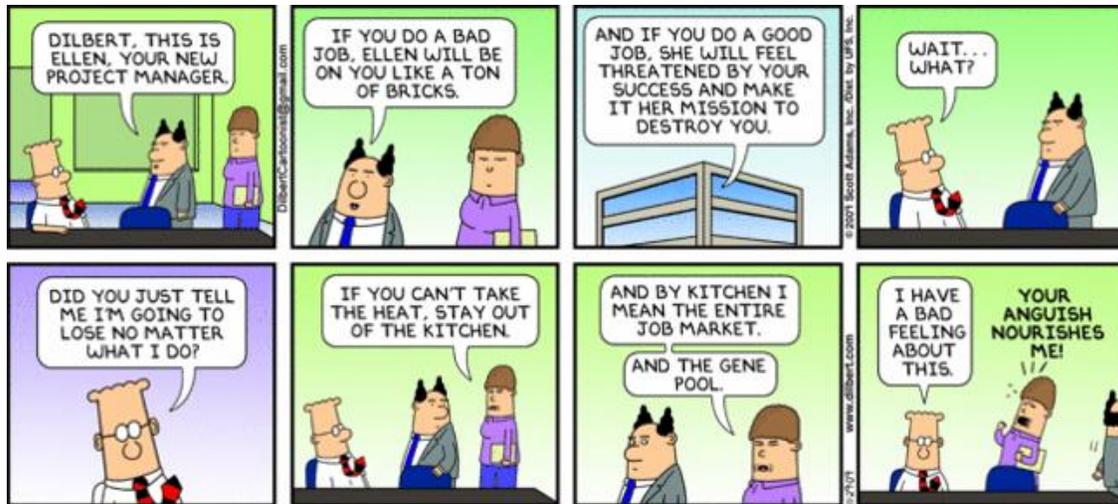


KNOW YOUR RIGHTS

LEGAL UPDATES

RECENT CASE SUMMARIES AND BLOGS



MY BOSS IS MEAN TO ME. THAT'S HARASSMENT, RIGHT?

The short answer? No. Since I've opened my doors in August, I've received several phone calls from employees who were terminated by "mean bosses" who did not like him or her for no apparent reason. Each of these former employees stated their bosses were mean to them and singled him/her out daily. For example, one stated that her boss repeatedly made a comment about her weight while another stated his boss treated him differently because he did his job better than his boss. However, the mere fact that your boss is "mean" to you is not harassment. The law does not provide a remedy for bad jobs, bad bosses, or bad work conditions. Instead, your remedy is to find a new job. It may not be pleasant, but unless it is based on your membership in a protected class such as race, age, gender, disability, religion, or any other protected class set forth in local, state or federal laws, it is not harassment as defined by the law.

The [EEOC](#) provides that "harassment" is unwelcome conduct that is based upon a protected class. Harassment become unlawful where (1) enduring the offensive conduct becomes a condition of continued employment, or (2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level to show harassment under the law. Examples of non-harassment include a boss: (a) favoring another employee; (b) occasionally nitpicking your work; or (c) making comments about your hair or weight. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to a reasonable person.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, name calling, physical assaults or threats, intimidation, ridicule, insults or put-downs, offensive objects or pictures, or interference with work performance. If your boss or co-worker is harassing you because of your membership in a protected class, contact [Law JBH](#) to discuss what options you may have.

CAN MY EMPLOYER MAKE ME WORK MORE THAN 7 DAYS IN A ROW?

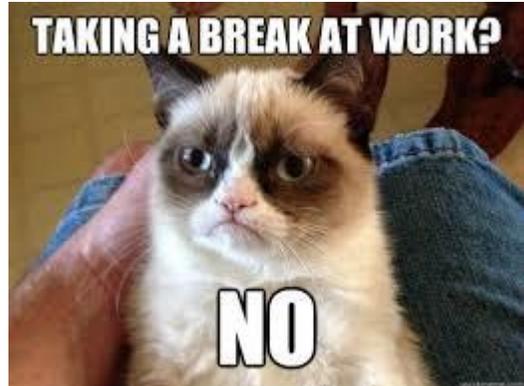
My morning routine includes 10 minutes of me sitting on my bed and thinking of how tired I am



The short answer? Yes. Neither Texas labor law nor the federal Fair Labor Standards Act restricts how many days in a row an adult employee can work or be requested to work. This is referred to as the “unlimited hours rule.” This means an employee could theoretically work for weeks without a day off. Under federal law, employers can require their employees age 16 and older to work unlimited hours per week, as long as they pay them at least minimum wage and overtime as necessary. In the absence of federal requirements, states can implement hour limits and prohibit employers from requiring their employees to work excessive hours.

In Texas, the Texas Labor Code contains maximum hour limitations for certain types of employees. The Texas Labor Code contains a mandatory day of rest requirement for retail employees. Retail employees can work up to six consecutive workdays without a day of rest. However, after retail employees have worked six days consecutively, employers must give them a consecutive 24-hour rest period. The day of rest law only applies to full-time retail employees.

There are a few situations in which a Texas employer is obligated to give an employee time off. For example, Texas employees must be allowed up to two hours of paid time off to vote in an election and they must be given time off for jury duty. Also, the FMLA requires that Texas employers with more than 50 employees must allow employees up to 12 weeks unpaid time off for family or illness related issues.



ARE EMPLOYERS REQUIRED TO GIVE OUT BREAKS AND LUNCHES?

Absolutely not. Neither federal law or Texas state law require employers to provide employees with a lunch break. Employers choose whether to provide employees with a lunch break during a work shift. The only exception involves mothers who breastfeed. They must receive a lunch break of at least 30 minutes.

Employers may not discriminate in permitting rest periods (“breaks” or “lunches”). This means an employer may not offer some employees rest periods based on sex, age, gender, national origin, religion, disability, or any other protected class. Yet, an employer could offer rest periods based upon a uniform policy, business needs, or productivity.

While lunch breaks are not mandatory, the Fair Labor Standards Act stipulates some general rules regarding lunch breaks and Texas state law mirrors these laws. Essentially, a break of 30 minutes or more constitutes a lunch break. Both federal and state law do not require employers to compensate employees for this time when employees are not engaged in work while eating. ***If an employer provides a break shorter than 30 minutes, it must be paid.***

Because a lunch break is not required, some employers might encourage employees to eat while they work. If an employee is required to perform any duties while eating, the act says the time cannot count as a lunch break. Employees must be completely relieved of work duties while on a lunch break. If employees are not completely free of work duties during their lunch breaks, the employer must compensate the employees for the time.



AM I AN INDEPENDENT CONTRACTOR JUST BECAUSE THE COMPANY SAYS I AM?

Not necessarily. Employers frequently want to characterize workers as independent contractors rather than employees for several reasons. You may have even sign an agreement that classifies you as an independent contractor at the request of the company. However, such agreement is not the sole determination as to whether you are an employee or independent contractor. In fact, in Texas, the Texas Workforce Commission (“TWC”) and IRS will start with a presumption that the worker is an employee rather than independent contractor.

The burden is on the company to prove that the worker is a true independent contractor. The TWC uses a [20-factor test](#) to determine whether an employee-employer relationship exists. Depending upon the type of business and the services performed, not all twenty factors may apply. In addition, the TWC may place more emphasizes on one factor over another depending upon the business. In my experience, the TWC found that an individual was an employee when only three factors favored an employee relationship.

So, you are probably wondering how do you know if you are an independent contractor or employee? You may be an employee if the following has occurred:

- The company controls when to do a job, where to do the job, and how to do the job.
- The company trains you how to do the job requested.
- The company requires you to personally perform the job.
- The company requires you to submit regular oral or written reports on how the job is going.
- The company pays you per week or by the hour.
- The company provides the tools and equipment necessary to perform the job.
- The company pays or reimburses you for business related expenses.
- The company prohibits you from working for another company while you are performing work for it.
- The company sets your hours and schedule.
- The company requires you to work “full-time.”

Be aware that the company does not have to do all the above-mentioned for you to be considered an employee. If you feel like you have been misclassified as an independent contractor, give Law JBH a call to discuss what options you may have against the company.

LOCAL NEWS – SAN ANTONIO

SAN ANTONIO'S NONDISCRIMINATION ORDINANCE PROTECTS TRANSGENDER EMPLOYEES



The month of October has brought transgender individuals to the forefront. On October 5, 2017, Attorney General Jeff Sessions wrote in a memo released by the Department of Justice that federal anti-discrimination laws do not protect transgender individuals from discrimination at work. In response, San Antonio's Mayor Ron Nirenberg stated that "no person should be discriminated against in the workplace, or anywhere, because of gender identity...." Currently, San Antonio's nondiscrimination ordinance protects transgender individuals who work for the city and for city contractors. Mayor Nirenberg hopes to extend those protections to private sector companies as well.

On October 30, 2017, a federal judge temporarily blocked President Trump's policy barring military service by transgender troops, ruling that it was based on "disapproval of transgender people generally." Both Mayor Nirenberg's response and the recent judge's ruling are a huge step in the right direction. If you believe that you have been discriminated against because of your sex, give Law JBH a call to see what options you may have.

DO YOU HAVE AN EMPLOYMENT OR BANKRUPTCY QUESTION?



Each month Law JBH publishes this free monthly newsletter. The goal of the newsletter is to provide information related to current employment and bankruptcy questions that the average joe might have. If you have a question that you would like answered, contact Law JBH or email info@lawjbh.com. Juan may feature your question and the response in the upcoming newsletter.

November Holidays You May Not Know Of

November is **National Adoption Awareness Month**. Did you know that there are more than 114,000 children in the U.S. foster care system available for adoption? National Adoption Awareness Month works to increase the number of families willing to consider foster care adoption. For more information visit the [Dave Thomas Foundation for Adoption](#).

November 3 – “Sandwich Day” – On this day enjoy your favorite sandwich. Mine happens to be a Grilled Cheese...mmm, mmm, good. Also, Subway will give you a free sandwich, if you purchase a sandwich and drink!



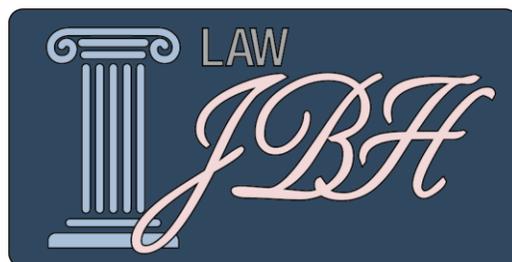
November 10 – “National Forget Me Not Day” – This is a day to remember family, friends, and loved ones. People use this day to get in touch with family, friends, and loved ones, especially those who we haven’t seen in a while. You don’t want them to forget you, do you!?

November 15 – “National Clean Out Your Refrigerator Day” – Everything in your fridge was once a fresh, healthy food, ready to eat. It may have been a tasty leftover, intended for later enjoyment. Unfortunately, over the course of weeks or more, things get pushed to the back of the fridge and slowly transform into something impossible to identify. Use this day to clean out that fridge!



HAPPY THANKSGIVING FROM MY FAMILY TO YOURS!





FOR MORE INFORMATION PLEASE VISIT:

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WWW.TWITTER.COM/LAWJBHTX

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