

# Texas BusinessToday

Aaron S. Demerson  
Commissioner Representing Employers

July 2023

## Updates from the Office of the Commissioner Representing Employers

Texas Employers,

Welcome to the July issue of *Texas Business Today*. Texas has done it again! Texas is recognized by [Business Facilities Magazine](#) as the state with the Best Business Climate in the magazine's annual State Rankings. The Lone Star State doesn't accumulate these accolades by accident. Texans are intentional, driven, goal oriented, and will always get the job done! Way to go, Texas! Check out the full news article [HERE](#).

In celebration of National Intern Day, the 2<sup>nd</sup> Annual Texas Interns Unite! National Intern Day with a "Texas Twist" conference will be held on July 27, 2023, at the Thompson Conference Center, 2405 Robert Dedman Drive, on the University of Texas campus. This conference will provide valuable information to the future leaders who will help shape the workforce of tomorrow. If you are an employer who has interns, please share this opportunity with them. Click [HERE](#) to register! It's free and they will walk away with a "Texas-sized" experience.



## Recognizing National Intern Day

**July 27** Austin, TX  
9am - 3:30pm



Lastly, be sure to check out the [Texas Business Bulletin](#) from the Texas Economic Development & Tourism Office. This bulletin is always full of great information that is very beneficial for our Texas employers.

As always, continue to enjoy your Texas summer and stay safe!

Let's Continue to Make Progress!



Aaron Demerson  
Commissioner Representing Employers  
Texas Workforce Commission



## Poor Job Performance and Unemployment Claims

**By: Mario Hernandez**

Legal Counsel to Commissioner Aaron Demerson

As employers in our great state know, hiring is not an exact science. In an ideal world, every new hire would be perfect and never have to be replaced by the employer. However, the reality is that some employees will be great additions, while others will not. At some point, an employer may conclude that an employee is not meeting expectations and will discharge the employee due to poor job performance. But what if the former employee files an unemployment claim? Will the poor job performance amount to misconduct connected with the work?

### **Inability to Meet the Employer's Expectations**

*Note: The links in the paragraphs below are taken from the Texas Workforce Commission's Unemployment Benefits Appeals Policy & Precedent Manual.*

In the context of unemployment claims about job performance, a key element considered is whether the claimant's poor job performance was within claimant's power to control. This is due to the concept of inability to perform the work to the employer's satisfaction. All it usually takes to make inability an issue in these types of cases is for claimants to allege that they were working to the best of their ability. This can present a challenge for employers because, generally, inability to meet the employer's standards does not rise to the level of misconduct connected with the work if the claimant was working to the best of the claimant's ability. (See: Appeal No. 1456-CA-77: <https://twc.texas.gov/files/twc/appeals-policy-precedent-manual.pdf#page=349>). Another example of how inability might become an issue in these cases is if the employer states that the claimant could never perform the job to the employer's satisfaction. (See: Appeal No. 1123-CA-76: <https://twc.texas.gov/files/twc/appeals-policy-precedent-manual.pdf#page=349>).

### **Prevailing in Job Performance Claims**

While unemployment claims about job performance can potentially be challenging, it is still possible for the employer to prevail. For example, establishing that the claimant's work was not complex, and that the claimant failed to pay reasonable attention to tasks could establish misconduct connected with the work. (See Appeal No. 96-003785-10-031997: <https://twc.texas.gov/files/twc/appeals-policy-precedent->



[manual.pdf#page=356](#)). Furthermore, if the employer can establish that there was an unexplained drop-off in the claimant's work performance, when the claimant had previously performed the work adequately, misconduct connected with the work could be found. (See: [Appeal No. 1781-CA-77](#): <https://twc.texas.gov/files/twc/appeals-policy-precedent-manual.pdf#page=354>). Moreover, a claimant's negligent performance of the work has also been found to be misconduct connected with the work. (See precedents under "MC 300.40 Manner of Performing Work: Careless or Negligent Work." here: <https://twc.texas.gov/files/twc/appeals-policy-precedent-manual.pdf#page=356>).

### **Conclusion**

In an unemployment claim about job performance, a claimant could contend that they could not meet the employer's expectations despite working to the best of their ability. If that occurs, the employer has a better chance at prevailing on the claim if it can establish that the final incident of poor job performance was close to the time of discharge, was within the claimant's power to control, and that the claimant knew or should have known that failure to improve would result in discharge.

## **Upcoming Events:**



The image is a promotional banner for the Texas Conference for Employers. It features a dark blue background with a gold border. On the left, there is a logo consisting of a white outline of the state of Texas with a gold arrow pointing clockwise around it. To the right of the logo, the text "TEXAS CONFERENCE FOR EMPLOYERS" is written in white, all-caps, sans-serif font. Below this, the phrase "Register Now" is written in a larger, bold, white, sans-serif font. At the bottom left, there is a circular gold seal for the "TEXAS WORKFORCE COMMISSION" with a star in the center. On the right side of the banner, the word "Marfa" is written in a large, bold, white, sans-serif font. Below "Marfa", the text "The Hotel Paisano" is written in a smaller, white, sans-serif font, followed by "July 27, 2023" and "8:15am - 4:15pm" in the same font style.

# SAVE the DATE



## GRACE Conference

*Growth through Reentry to Advance Careers & Employment*

Arlington Expo Center | September 28, 2023

Registration to open this summer

For more information contact: [Employer.Initiatives@twc.texas.gov](mailto:Employer.Initiatives@twc.texas.gov)



# SAVE the DATE

## Texas HireAbility Employer Forum & Lex Frieden Employment Awards

October 26, 2023

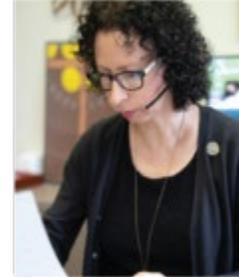
Edinburg Conference Center at Renaissance  
Edinburg, Texas



# 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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