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Workers Defense Project
Proyecto Defensa Laboral

Know Your Employment Rights* During the Coronavirus (COVID-19) Pandemic

Initial Publication Date: March 30, 2020

Update: April 3, 2020

Information provided by: Disability Rights Texas, Equal Justice Center, Lone Star Legal Aid, and Workers Defense Project

*These rights generally only apply to employees and not to properly-classified independent contractors. These rights still apply to you if your employer incorrectly classifies you as an independent contractor when you should be an employee.

This publication is based upon the law at the time it was written. The law changes frequently and is subject to various interpretations by different courts. Future changes in the law may make some information in this handout inaccurate. The information in this fact sheet is not legal advice.

If you believe your rights have been violated and would like to consult with an attorney, you should consult an attorney. Nonprofit law firms like [Disability Rights Texas](#) (offices throughout Texas), the [Equal Justice Center](#) (offices in Austin, Dallas, Houston, and San Antonio), [Lone Star Legal Aid](#) (office in East, Southeast, and Northeast Texas), [Texas RioGrande Legal Aid](#) (offices throughout Central, South, and Southwest Texas), [Workers Defense Project](#) (offices in Austin, Dallas, and Houston) provide free legal services to workers.

To find a private attorney, visit the [Texas Employment Lawyers Association](#).

As an employee in Texas, you generally have the right to:

- 1) [Work in a safe workplace](#)
- 2) [Be free of discrimination in the workplace](#)
- 3) [Take unpaid leave to care for yourself or a family member](#)
- 4) [Take paid Emergency FMLA leave if you cannot work because your child's school is closed or child care provider is unavailable due to COVID-19](#)
- 5) [Take paid leave if you or a family member is sick with, or severely impacted by, COVID-19](#)
- 6) [Be paid for the work you have performed](#)
- 7) [Be paid in a timely manner and, if you lost your employment, to receive your last paycheck](#)
- 8) [Advocate for safer and better working conditions for you and your coworkers](#)
- 9) [Be free of retaliation](#)
- 10) [Receive unemployment benefits](#)

These rights are explained in more detail in the pages that follow.

1. To work in a safe workplace.

What is the law?

The Occupational Safety and Health Administration (OSHA) sets standards requiring employers to assess hazards that may endanger their employees, evaluate the risk of exposure, and ensure their employees are given and use procedures and tools to lower those risks. While there is no specific OSHA standard covering COVID-19 exposure, some OSHA requirements may apply to your employer depending on the type of work you do and your level of risk. All employers have the general duty under the law to furnish to each employee “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.”

How does this law protect me?

Under OSHA guidelines, your employer should assess its employees’ exposure to people and materials that could be infected with COVID-19. Employers should develop and implement a plan to encourage sick workers to stay at home; minimize contact among employees, clients, and customers (implementing telework if feasible); and provide employees with protective equipment and training on COVID-19 risk factors and protective behaviors. Depending on your type of work, your employer may be required to provide gloves, eye and face protection, respiratory protection, and other personal protective equipment to prevent the spread of COVID-19.

What if my rights have been violated?

Employees who believe their working conditions are unsafe or that their employer violated a safety or health standard can file a complaint with their local OSHA Area Office as soon as possible and ask for an inspection or an investigation. You have a right not to be retaliated against (see #9 for more information) for reporting safety hazards and have 30 days to file a complaint about retaliation. You can request that OSHA not reveal your name to your employer, and can also file complaints anonymously. Submit a complaint [online](#) or call your [OSHA Area Office](#) at 1-800-321-OSHA.

2. To be free of discrimination in the workplace.

What is the law?

Several federal laws prohibit workplace discrimination. These laws apply to most private employers that have 15 or more employees, or that receive federal money. They also apply to most governmental employers, employment agencies, labor organizations, and training programs. The [Americans with Disabilities Act](#) (ADA) protects people from disability discrimination at work. Employers may violate the ADA if they fire someone, or fail to hire them, because of their disability. Employers may also violate the ADA if they fail to make a reasonable accommodation for a worker with a disability who needs one. Finally, it may be illegal for an employer to discriminate against a worker because the person has a family member, friend, or other associate who has a disability. [Title VII of the Civil Rights Act](#) (Title VII) protects employees from discrimination on the basis of - among other characteristics - race and national origin (e.g., being Asian, having parents who immigrated from an effected country). The [Age Discrimination in Employment Act](#) (ADEA) protects employees over 40 from discrimination based on age. The ADEA and Title VII also prohibit discrimination on the basis of a worker's association with someone who is protected by those laws.

How do these laws protect me?

Covered employers are required to make reasonable accommodations to help employees with disabilities do their job and equally enjoy benefits of the job. But employers are not required to make accommodations that impose an undue burden (e.g., cost prohibitive or not workable). A reasonable accommodation may include allowing an employee to telecommute because the person has a disability that compromises their immune system or a disability that makes it more likely the person will suffer severe complications from COVID-19. To request a reasonable accommodation, you should use your employer's approved process. If your employer does not have a policy in place, you should write an email or letter to your supervisor and HR representative requesting a reasonable accommodation. Employees should ask for a reasonable accommodation as soon as possible. The ADA, Title VII, and ADEA protect employees from having to work in an environment with severe discriminatory harassment (e.g., frequent inappropriate comments or jokes from employees or customers about your national origin). They also prevent employers from taking negative actions against you because of your disability, age, race, or national origin (e.g., cutting your hours because you are over 40, changing

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your job duties because “customers do not want to be served by Asians”).

What if my rights have been violated?

You can file a joint charge of discrimination with the Equal Employment Opportunity Commission (EEOC) and the Texas Workforce Commission Civil Rights Division (TWC-CRD) with or without an attorney. To file a charge of discrimination you can call the EEOC at 1-800-669-4000, and you can call the TWC-CRD at 1-888-452-4778. If you call the EEOC or TWC- CRD, make it clear that you want to file a joint charge of discrimination. If you decide to file a joint charge of discrimination or to file only with the TWC, you must file the charge within 180 days of the discriminatory act. If you only file with the EEOC, you have 300 days to file your charge.

3. To take unpaid leave to care for yourself or your family member.

What is the law?

The [Family Medical Leave Act](#) (FMLA) guarantees certain employees up to 12 weeks of unpaid leave to care for themselves when they have a serious health condition or for certain family members (a spouse, a parent, or a child, including a biological, adopted, or foster child, a stepchild, a legal ward, or the child of a person standing in loco parentis) with a serious health condition. COVID-19 could be considered a [serious health condition](#) if it requires inpatient treatment (i.e., being hospitalized overnight) or causes incapacity (inability to work, attend school, or perform other regular daily activities) of three full days and requires continuing treatment by a healthcare provider. To qualify, an employee must work for an employer with 50 or more employees and have worked for that employer for at least 12 months. The 12 months of work do not need to be consecutive (i.e., it can be seasonal), but an employee must have worked at least 1,250 hours (i.e., about 24 hours per week) in the 12 months before they request leave.

How does this law protect me?

Employees who qualify for FMLA can use up to 12 weeks of unpaid leave (consecutively or in smaller increments) to care for themselves or certain family members. Employers must maintain an employee's health insurance while the employee is on FMLA leave and must return the employee to the same job or one nearly identical to it when the employee returns from FMLA leave. Employees must request FMLA leave from their employers as soon as possible. An employer must tell you within 5 business days whether you qualify for FMLA leave. The employer may require you to fill out some forms and may ask for medical certification from a healthcare provider.

What if my rights have been violated?

If you believe your rights under the FMLA have been denied, contact the Wage and Hour Division of the U.S. Department of Labor. There are numerous [offices in Texas](#) and each has its own phone number.

4. To take paid Emergency FMLA leave if you cannot work because your child's school is closed or child care provider is unavailable due to COVID-19.

What is the law?

The [Emergency Family Medical Leave Expansion Act](#) (EFMLEA), which went into effect on April 1, expands the protections of the FMLA (described on page 4, in number 3). It covers employees who are unable to work (or telework) due to a need for leave to care for a child because the child's school or place of care has been closed, or the child's care provider is unavailable, because of COVID-19. Most employers with fewer than 500 employees are required to provide EFMLEA leave to any employee who has been on their payroll for the 30-day period before leave is requested. Certain "health care providers" and "emergency responders," including workers employed at clinics, pharmacies, and public works employees, may not be eligible for EFMLEA leave. Employers with fewer than 50 employees who could not operate if required to provide leave are not required to provide EFMLEA leave.

How does this law protect me?

Employees who qualify for EFMLEA leave can take up to 12 weeks of job-protected leave. Your employer can require you to take this leave all at once until your need for it ends. If you and your employer agree, you can take this leave "intermittently," on an as-needed basis. The first 10 days of EFMLEA leave can be unpaid, although if you have other paid leave you can choose to use it (and your employer may require you to do so). For the next 10 weeks, your employer must pay you at least two-thirds of your regular hourly rate, up to \$200/day or \$10,000 in total. Your employer cannot fire you, discipline you, or otherwise retaliate against you for requesting or taking EFMLEA leave. Employers who have 50 to 500 employees must comply with the reinstatement requirements of the FMLA. However, if your employer has fewer than 25 employees, they may not have to return you to your job if your position no longer exists as a result of the pandemic.

What if my rights have been violated?

If you believe your rights under the EFMLEA have been violated, contact the Wage and Hour Division of the U.S. Department of Labor. There are numerous [offices in Texas](#) and each has its own phone number.

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5. To take paid leave if you or a family member is sick with, or severely impacted by, COVID-19.

What is the law?

[The Emergency Paid Sick Leave Act](#) (EPSLA), which went into effect on April 1, requires all employers with fewer than 500 employees to provide 10 days of paid leave to employees who fall into one of the following categories:

- They are subject to a federal, state, or local quarantine, isolation, shelter-in-place, or stay-at-home order related to COVID-19
- They have been advised by a health care provider to self-quarantine due to concerns related to COVID-19
- They are experiencing symptoms of COVID-19 and seeking a medical diagnosis
- They are caring for someone who is subject to a quarantine or isolation order or has been advised to self-isolate
- They are caring for a child whose school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19 precautions
- They are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor

Certain “health care providers” and “emergency responders,” including people who work at clinics, pharmacies, and research laboratories, may not be eligible for paid leave. Employers with fewer than 50 employees who could not operate if required to provide leave are not required to provide EPSLA child care leave.

How does this law protect me?

If you are an eligible full-time employee, you are entitled to 80 hours of emergency leave paid at your average hourly rate (up to a maximum of \$511/day for a total of \$5,110 if you fall into one of the first three categories above, or a maximum of \$200/day for a total of \$2,000 if you fall into one of the latter three categories above). If you are an eligible part-time employee, you are entitled to a number of hours of paid leave based on your average weekly schedule and your regular pay, subject to the same daily maximums. You are required to take all of this leave at once until your need for the leave ends. Your

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employer cannot require you to take other paid or unpaid leave instead of paid emergency leave. Your employer cannot fire you, discipline you, or otherwise retaliate against you for requesting or taking emergency paid leave.

What if my rights have been violated?

If you believe your rights under the EPSLA have been violated, contact the Wage and Hour Division of the U.S. Department of Labor. There are numerous [offices in Texas](#) and each has its own phone number.

6. To be paid for the work that you have performed.

What is the law?

The Fair Labor Standards Act (FLSA) and the Texas Minimum Wage Act (TMWA) generally require employers to pay their employees no less than \$7.25 per hour for all hours worked. In addition, the FLSA requires covered employers (most employers who do at least \$500,000 per year in business) to pay non-exempt employees one and a half times their regular hourly rate for all hours worked beyond 40 in a workweek.

How do these laws protect me?

These laws entitle you to wages for the work you have actually performed. This includes time that you are required to be at a jobsite waiting for assignment, time spent travelling between jobsites, and time spent setting up or closing down your workstation. The FLSA also entitles many workers to overtime pay for hours worked beyond 40 in a workweek, and prohibits employers from retaliating against employees for complaining about violations of the law. These protections apply regardless of your immigration status.

What if my rights have been violated?

The FLSA [applies](#) to most employers who do at least \$500,000 per year in business and some employers whose employees produce goods for interstate sale or are engaged in interstate commerce. The TMWA applies to most employers not covered by the FLSA. If you believe your rights under the FLSA have been violated, contact the Wage and Hour Division of the U.S. Department of Labor. There are numerous [offices in Texas](#) and each has its own phone number. If you believe your rights under the TMWA have been violated, file a wage claim with the Texas Workforce Commission using their [online filing system](#).

7. **To be paid in a timely manner and, if you lost your employment, to receive your last paycheck.**

What is the law?

The Texas Payday Law covers all Texas business entities, regardless of size, except for public employers such as the federal government, the state, or city and municipal governments. It requires employers to pay their employees at least twice per month, although employees who are exempt from the overtime provisions of the FLSA may be paid once per month, and to timely pay earned wages to employees who are laid off, are fired, or quit.

How does this law protect me?

This law entitles you to regular payment of wages you have earned. If you quit, retire, resign, or otherwise leave employment voluntarily, the Payday Law requires your employer to deliver your final wages on the next regularly-scheduled payday following the effective date of resignation. If you are “discharged” (laid off, fired, or otherwise involuntarily separated from employment), the Payday Law requires your employer to deliver your final wages within six calendar days of discharge. Employees are only entitled to payment for fringe benefits like vacation days, sick leave, or severance pay if their employer provided for those benefits in a written policy or agreement. These protections apply regardless of your immigration status.

What if my rights have been violated?

If you believe your rights under the Payday Law have been violated, file a wage claim with the Texas Workforce Commission using their [online filing system](#).

8. To advocate for safer and better working conditions for you and your coworkers.

What is the law?

Section 7 of the National Labor Relations Act (NLRA) gives employees, even those not in unions, the right to engage in “concerted activities for the purposes of collective bargaining or other mutual aid or protection.” Because the law refers to **mutual** aid or protection, an employee must advocate for herself and some or all of her coworkers, not just herself, to be protected. It is even better if a group of employees acts together.

Agricultural workers, domestic workers, and government employees are not protected by the NLRA, but they can still form a union and organize their workplace. Workers should be specific about what conditions they are organizing around (e.g., safer working conditions, receiving owed wages). Their demands and actions may be protected from retaliation by other workers’ rights laws, such as OSHA and state and federal wage payment laws.

How does this law protect me?

This law prohibits employers from retaliating (see #9 below) against employees who engage in concerted activity like advocating for better working conditions (e.g., being provided gloves and masks, increased sanitation), benefits (paid sick leave, the right to be re-hired after being laid off), and other terms and conditions of employment. Other examples of concerted activities that are protected by the NLRA include refusing to work, talking to coworkers about your wages, and reporting working conditions or workplace problems to the media.

What if my rights have been violated?

If you think your employer has violated the NLRA, you have 6 months to file a [charge](#) with your [Regional Office](#) of the National Labor Relations Board (NLRB), the government agency responsible for enforcing the NLRA. The Texas offices are located in Fort Worth (817-978-2921), Houston (281-228-5600), and San Antonio (210-472-6140). Call them for more information and for help filing a charge.

9. To be free of retaliation.

All of the laws listed above have provisions that prohibit employers from retaliating against employees for exercising their rights. Examples of retaliation include termination, discipline, cut in pay or hours, demotion, assignment of less desirable duties, or calling the police or immigration authorities. Threatening to do any of these things can also be unlawful retaliation.

10. To receive unemployment insurance benefits.

What is the law?

Unemployment insurance (UI) benefits provide temporary financial assistance to workers who are unemployed through no fault of their own. To qualify for regular unemployment benefits in Texas, you must have earned a minimum amount of [wages](#) from work in Texas during the past 12 to 18 months. You will also need your last employer's business name and address, dates you worked for your last employer, and your normal weekly hours and pay rate. Noncitizens can apply for regular UI benefits only if they have valid employment authorization both at the time they earned wages over the previous 12 to 18 months and for the period continuing forward when they are unemployed. Noncitizens must provide their Alien Registration Number.

Individuals who do not qualify for state unemployment insurance benefits, such as self-employed workers, gig workers, independent contractors, part-time workers, workers who do not have a long enough work history to qualify for regular unemployment benefits, and workers who have already used up their benefits, may be eligible for benefits through the recently created Pandemic Unemployment Assistance (PUA) program.

How does this law protect me?

If (1) your employer temporarily ceases operations due to COVID-19, preventing employees from coming to work, (2) your employer reduces your hours due to COVID-19, (3) you are furloughed but expect to return to work after the pandemic is over, (4) you have left employment due to a risk of exposure or infection or to care for a family member, or (5) you are not currently working for a similar reason, through no fault of your own, you could be eligible for UI benefits. If you are a gig worker, like an Uber or Lyft driver; an independent contractor; or a freelancer, and your income has decreased because of COVID-19, you could be eligible for PUA benefits. Your application for regular UI benefits must be rejected before you will be considered for PUA benefits. Apply can online at any time using [Unemployment Benefits Services](#) or by calling the Texas Workforce Commission's (TWC) Tele-Center at 800-939-6631 from 8am-6pm Mondays through Fridays. Under normal circumstances, payment for the first week of your claim is deferred until your benefits end, and you are required to report efforts you have made to find a new job. However, the wait time and job search requirements have been waived because of COVID-19.

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What if my rights have been violated?

If you receive a Determination Notice from the TWC denying you unemployment benefits, you can appeal that decision in writing within 14 calendar days from the date on the Determination Notice.