



Contents

[Case of the Month](#)
[From the Courts and Attorney General](#)
[Recent Regulations and Guidance](#)
[In the News](#)



Case of the Month

College's decision to not renew employee's contract based on investigation that employee complaint exposed the college to liability was evidence of a retaliation claim.

Linda Hernandez, a speech instructor at Texas Southmost College (TSC), served as faculty senate president. Acting in that capacity, Hernandez messaged a TSC board member, then emailed the college president, vice president of instruction, and several faculty and staff senate members notifying them she would call a vote of no confidence in several administrators. She alleged poor judgment and mistreatment toward faculty and staff by administrators, including concerns about age and gender discrimination against former and current faculty and staff members.

Hernandez filed a complaint under the college's anti-discrimination policy, which was investigated and found to have no evidence of discrimination or harassment. Based on the investigation report and concerns the information Hernandez shared failed to consider the privacy and property rights of those named in the email and exposed the college to liability, the college did not renew Hernandez's contract.

Hernandez filed a grievance under the general employment complaint policy, which the board denied. Hernandez filed suit alleging age and gender discrimination, and retaliation, under the [Texas Commission on Human Rights Act \(TCHRA\)](#), Texas Labor Code chapter 21. TSC filed a plea to the jurisdiction, arguing Hernandez could not establish her claims, and that TSC had legitimate, nondiscriminatory, nonretaliatory reasons for not renewing her contract, which were denied by the trial court. The college then filed an interlocutory appeal.

The court found Hernandez's messages constituted evidence of a protected activity under the TCHRA because Hernandez raised issues regarding discrimination. The court also found a causal link between TSC's decision to not renew Hernandez's contract and Hernandez's messages. TSC argued it chose to not renew Hernandez's contract because of the results of the investigation, not her complaint, but the court found the college still changed its decision to not renew based on the investigation, even if it determined her complaint had no merit. The court determined the trial court had jurisdiction to hear Hernandez's retaliation claim, but reversed and dismissed the age and gender discrimination claims because she did not provide a sufficient comparator. [Tex. Southmost Coll. v. Hernandez](#), No. 13-21-00454-CV, 2023 WL 406174 (Tex. App.—Corpus Christi, Jan. 26, 2023) (mem. op.).

Why is This Case Significant?

A personnel action taken against an employee who files a complaint can still be considered retaliation in violation of the TCHRA even if the college determines the underlying complaint lacks merit.

Highlights

[TASB/TACCA Post-Legislative Seminar](#)
August 4, 2023
TASB offices

Resources

[Texas Higher Education Coordinating Board](#)
[Texas Legislature](#)
[Texas Statutes](#)
[Texas Attorney General](#)
[U.S. Department of Education](#)



From the Courts and the Attorney General

Business and Finance

The Texas Attorney General found that the Texas Local Government Code, [chapter 176](#) does not prohibit a contract between a local government entity and a vendor when one of the business or family relations described in the chapter, provided the local government officer and the vendor file a specified disclosure form. Tex. Att'y. Gen. Op. No. [KP-0428](#) (Feb. 10, 2023).

The Texas Attorney General found that a county commissioners' court, as the county's principal governing body and with legislative power to create the budget for various county offices, may select and purchase a computer software system over the objection of the justice of the peace, who acts as records management officer for its office. Tex. Att'y Gen. Op. No. [KP-0429](#) (Feb. 10, 2023).

Personnel

Former faculty member failed to provide sufficient evidence to support claims that her termination by a community college was the result of gender discrimination and retaliation in violation of [Title VII of the Civil Rights Act of 1964](#), and [Title IX of the Education Amendments of 1972](#), age discrimination in violation of the federal [Age Discrimination in Employment Act](#), and retaliation in violation of the U.S. Constitution [First Amendment](#), or that the college breached her contract and violated her procedural and substantive due process rights. [Bennett v. Tarrant Cnty. Coll. Dist.](#), No. 3:22-CV-0289-B, 2023 WL 1805215 (N.D. Tex. Feb. 7, 2023) (mem.)¹

School district that terminated a teacher for social media posts directed to President Trump that referenced students' legal status provided sufficient evidence to support the board's decision that the former teacher's comments raised community concerns and that the [First Amendment](#) did not prohibit district from terminating her contract. [Clark v. Fort Worth Indep. Sch. Dist.](#), No. 03-21-00275-CV, 2023 WL 376901 (Tex. App.—Austin, Jan. 25, 2023) (mem. op.).

Former university employee who was struck by vehicle while attending a graduation ceremony provided sufficient facts for the trial court to have jurisdiction to hear personal injury lawsuit against the university even though she had not filed a worker's compensation claim because she did not have to exhaust her administrative remedies under the Texas Workers' Compensation Act before filing a Texas Tort Claims Act suit. [Univ. of Tex. Rio Grande Valley v. Oteka](#), 13-22-00063-CV, 2023 WL 413587 (Tex. App.—Corpus Christi, Jan. 26, 2023) (mem. op.).

Students and Instruction

University officials were entitled to qualified immunity from the U.S. Constitution [Fourteenth Amendment](#) and [Section 1983](#) claims of a former student arrested and prosecuted under a state harassment statute and placed on paid investigative leave because those actions were supported by probable cause, did not change his at-will employment status, and did not violate the student's due process rights. [Doe v. Univ. of Tex. M.D. Anderson Cancer Ctr.](#), No. 4:21-CV-1356, 2023 WL 1111832 (S.D. Tex., Jan. 30, 2023) (mem.).

¹ This case was summarized in the [September 2022](#) Community College Services Legal Update.



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board amended [regulations](#) relating to admission application form requirements for all public institutions of higher education in Texas.

THECB amended [regulations](#) regarding an increase in the Texas Transfer Framework's Field of Study Curriculum transfer credit hours.

THECB amended [regulations](#) to reflect the updated college readiness benchmarks for the ACT.

The Texas Workforce Commission amended [regulations](#) relating to employee sexual harassment complaints filed against their employers in response to statutory changes made during the 87th Legislative Session.

The Texas State Board of Public Accountancy amended [regulations](#) relating to continuing education requirements for ethics instructors.

The U.S. Department of Labor (DOL) issued a [bulletin](#) regarding telework under the [Fair Labor Standards Act](#) and [Family and Medical Leave Act](#).

The DOL Wage and Hour Division issued an [opinion letter](#) regarding use of FMLA leave to limit an employee's workday when that employee normally works in excess of eight hours a day.

The Equal Employment Opportunity Commission issued [guidance](#) regarding how the Americans with Disabilities Act applies to job applicants and employees with hearing disabilities.



In the News

The Texas Governor renewed the [disaster proclamation](#) issued for all counties in Texas due to the COVID-19 pandemic.

The governor provided the [State of the State](#), including emergency items related to education freedom and school safety.

The Texas Lieutenant Governor announced Senate committee appointments, including the [education committee](#) and [higher education subcommittee](#).

The Texas House Speaker announced House committee appointments, including the [higher education committee](#).

The lieutenant governor announced the Senate's [priority bills](#), which include addressing diversity, equity, and inclusion policies, and other higher education issues.

The Texas Comptroller's office released [A Field Guide to the Taxes of Texas](#), a report addressing an overview of the state's major taxes, including community college property taxes.

The President announced the U.S. Department of Labor Secretary's [resignation](#).

The President announced the [COVID-19 national and public health emergencies](#) will end on May 11, 2023.