

OPERATING IN TEXAS: A PRIMER FOR EMPLOYMENT LAW
ISSUES IN THE ENTERTAINMENT INDUSTRY

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I. INTRODUCTION

The entertainment industry faces many unique issues in the area of employment law. Irregular schedules, unpredictable work, and a competitive atmosphere are just some of the aspects of the entertainment world which can cause headaches from an employment law standpoint. The entertainment industry encompasses a wide variety of jobs – from acting extras to costume designers, dancers to writers, musicians to make-up artists, camera operators to directors, post-production editors to set designers, etc. – in a diverse range of mediums, including television, film, radio, music, theater, video games, and more. Technology and the Internet have also had far-reaching effects on the entertainment industry, allowing more and more people the opportunity to develop and share their own entertainment content.

A 2019 State of the Arts Report found that, in 2017, the Arts and Culture Industry generated \$5.59 billion in sales for the Texas economy, contributed \$350 million in state sales tax revenue, and had grown by 15.5% over the past decade.² With this substantial growth comes a need for awareness of employment related laws that apply to the entertainment industry so that entertainment-related companies can avoid common pitfalls and costly litigation. This article will provide an overview of employment law-related issues that can arise in the entertainment industry and is tailored to entertainment-related companies in Texas or companies looking to locate a production or project in Texas.

¹ Thanks to Kimberly Kauffman and Megan Carboni, who contributed extensively to the research and drafting of this whitepaper.

² TEX. CULTURAL TRUST, 2019 STATE OF THE ARTS REPORT 15 (2019), <http://txculturaltrust.org/wp-content/uploads/2019/02/658131-Texas-Cultural-v2-Pages.pdf>.

II. LOCATION, LOCATION, LOCATION! CHOOSING TEXAS

A. Incentive & Grant Programs

Texas offers certain incentives for locating films, television shows, commercials, or other film and media projects in Texas. You may be able to participate in an incentive program for hiring Texas residents and spending a certain amount of your budget in Texas. For example, the Texas Moving Image Industry Incentive Program provides cash grants to qualifying productions (including film, television, and video game productions) based on Texas-related expenses, such as wages for Texas residents.³ This program offers up to 22.5% of incentives and/or grants for the highest tier of production spend,⁴ which includes incentives for completing a portion of production in an underutilized or economically distressed areas of Texas.⁵ Certain cities in Texas may offer additional incentives to film in the city.⁶

B. Choosing A Location In Texas

Choosing a location for production can raise a host of legal issues for entertainment industry employers. A location may have certain guidelines, ordinances, or other restrictions that will not work for your production. These regulations can range from noise restrictions to regulations for drone filming.⁷ Additionally, a company may have to apply for permits, or otherwise obtain permission, to shoot in certain locations. Many cities throughout Texas have

³ *Texas Moving Image Industry Incentive Program*, TEX. FILM COMM'N, <http://gov.texas.gov/film/incentives/miip> (last visited Aug. 15, 2019).

⁴ *Id.*

⁵ *Underutilized & Economically Distressed Areas Incentive*, TEX. FILM COMM'N, http://gov.texas.gov/film/incentives/underused_areas (last visited Aug. 15, 2019).

⁶ *See, e.g., Incentives & Grants*, AUSTIN FILM COMM'N, <https://www.austintexas.org/film-commission/incentives/> (last visited Aug. 15, 2019); *Incentives*, FILM SAN ANTONIO, <https://www.filmsanantonio.com/Funding/Incentives> (last visited Aug. 15, 2019)

⁷ *Cf. Film Friendly Texas Sample Guidelines*, TEX. FILM COMM'N, http://gov.texas.gov/film/film_friendly/sample_guidelines (last visited Aug. 15, 2019) (providing sample film-friendly municipal guidelines).

their own film commissions, including applicable permit requirements and film regulations, which can help productions navigate this process.⁸ Additionally, the Texas Film Commission maintains an extensive database of filming locations from all over Texas that productions may use.⁹

III. AND, ACTION! GETTING STARTED

A. Contracts

Film, television, theater, music, video games, and radio productions, as well as other entertainment-related projects, involve a variety of contracts, including union agreements, licensing agreements, financing agreements, venue agreements, and distribution agreements. It is common for relationships in the entertainment industry to be governed by a contract specifying the terms and conditions of work to be performed, including wages, responsibilities, and the duration of the relationship.

Contracts are, for the most part, governed by state law. Employers in the entertainment industry must be cautious when negotiating and signing contracts in order to protect the company's interests, including interests in proprietary information, trade secrets, and copyrights. Employers should also ensure they understand the laws of the state where they will be conducting business and that their contracts comply with the applicable state and/or local laws. For example, an employer should understand the state child labor laws applying to child performers before attempting to enter into a contract with a minor.

Unlike some jurisdictions, oral agreements or verbal modifications to written contracts may be enforceable under Texas law.¹⁰ Some contracts, however, are required to be in writing, such as

⁸ *Regional Film Commissions*, TEX. FILM COMM'N, http://gov.texas.gov/film/production/regional_film_commissions (last visited Sept. 17, 2019).

⁹ *Location Services*, TEX. FILM COMM'N, http://gov.texas.gov/film/production/location_services (last visited Sept. 17, 2019).

¹⁰ *See, e.g., Thornton v. Dobbs*, 355 S.W.3d 312, 316 (Tex. App.—Dallas 2011, no pet.).

contracts that cannot be performed within one year.¹¹ If this type of agreement is not in writing, it is not enforceable.¹²

In the employment context, either an employer or its employee may bring suit for breach of contract for failure to carry out obligations under a contract. A party may plead several defenses to a breach of contract claim, including duress, fraud, or mistake.¹³

B. Employee Versus Independent Contractor

When negotiating contracts and setting up a new entertainment project or business, the employer should consider how it will classify its workers: employees or independent contractors. How a worker is classified can have far-reaching implications. The protections of anti-discrimination laws and wage and hour laws generally do not extend to independent contractors.¹⁴ In addition, an employer is not required to pay payroll taxes or provide workers' compensation for independent contractors. Moreover, there can be significant consequences if an employer misclassifies its employees as independent contractors. The employer may be subject to multiple lawsuits or a class action lawsuit (if a group of workers are claiming they were misclassified) and receive substantial penalties and fines for misclassifying its workers.

There is no bright-line test for determining when a worker is an employee versus an independent contractor, and the determination will often vary depending on the circumstances of a particular case. Having a worker sign an agreement saying they are an independent contractor

¹¹ *Cruikshank v. Consumer Direct Mortg., Inc.*, 138 S.W.3d 497, 500-501 (Tex. App.—Houston [14th Dist.] 2004, pet. denied); Tex. Bus. & Com. Code Ann. § 26.01.

¹² Tex. Bus. & Com. Code Ann. § 26.01.

¹³ *Wright v. Sydow*, 173 S.W.3d 534, 543-46 (Tex. App.—Houston [14th Dist.] 2004, pet. denied) (duress and fraud defenses; *N. Nat. Gas Co. v. Chisos Joint Venture I*, 142 S.W.3d 447, 456 (Tex. App.—El Paso 2004, no pet) (mistake of fact defense).

¹⁴ While federal and Texas laws do not extend anti-discrimination and wage and hour protections to independent contractors, some states are extending these protections to independent contractors in light of the growing use of gig economy workers. *See, e.g.*, H.B. 679, 2019 Reg. Sess. (Md. 2019) (extending anti-discrimination and workplace harassment protections to independent contractors, effective October 1, 2019).

does not automatically make the worker a contractor.¹⁵ Rather, courts and agencies will look to the “economic reality” of the working relationship to make the determination of whether a worker is an independent contractor or employee.¹⁶ Different standards may be utilized by courts and agencies for distinguishing between employees and independent contractors, which can add to the confusion of how to classify workers. For example, the Internal Revenue Service uses different factors to determine if a worker is an employee or independent contractor than the factors utilized by the Department of Labor to determine a workers’ status under the Fair Labor Standards Act.¹⁷

IV. TIME IS MONEY! PAYING WORKERS

A. Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act (FLSA) is the federal law that establishes the minimum wage, overtime pay, and recordkeeping requirements for employees in the private sector, including employees in the entertainment industry. Almost all employers are covered by the FLSA and are required to comply with its provisions, to the extent they apply. In other words, if you hire employees, you need to be familiar with the FLSA and its requirements.

Below are several provisions of the FLSA that can affect the entertainment industry. You should be familiar with them all because the chances are good you will have employees who are affected by each.

¹⁵ See *Carrell v. Sunland Const., Inc.*, 998 F.2d 330, 334 n.4 (5th Cir. 1993) (citing *Robicheaux v. Radcliff Material, Inc.*, 697 F.2d 662, 667 (5th Cir.1983) (“[T]he fact that the [workers] signed contracts stating that they were independent contractors, while relevant, is not dispositive.”); *Faulkner v. Patterson-UTI Drilling Co. LLC*, No. 6:12-CV-104, 2014 WL 12567150, at *6 (E.D. Tex. Jan. 30, 2014).

¹⁶ See *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 343 (5th Cir. 2008) (analyzing five factors, including the degree of control exercised by the entity, to determine if the worker is economically dependent upon the entity “as a matter of economic reality”).

¹⁷ Compare *Publication 15-A: Employer’s Supplement Tax Guide*, 7-8 (2019), INTERNAL REVENUE SERV., available at <https://www.irs.gov/pub/irs-pdf/p15a.pdf>, with the factors outlined in *infra* Section IV.A.1.

1. Employees Under the FLSA

The FLSA applies only to employees. The FLSA defines “employ” as “to suffer or permit to work.”¹⁸ The Department of Labor (DOL), the agency tasked with enforcing the FLSA, looks at economic reality factors to consider when determining whether a worker is an independent contractor or an employee:

- The extent to which the services rendered are an integral part of the principal’s business.
- The permanency of the relationship.
- The amount of the alleged contractor’s investment in facilities and equipment.
- The nature and degree of control by the principal.
- The alleged contractor’s opportunities for profit and loss.
- The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
- The degree of independent business organization and operation.¹⁹

The determination of whether an individual is an employee or independent contractor is made on a case-by-case basis and will depend on the situation. Entertainment law businesses should carefully consider all of these factors when determining whether a crew member or an actor should really be classified as an independent contractor or whether he or she is actually an employee. For example, the fact that entertainment ventures or projects are often one-off productions and are in operation for a short duration of time does not automatically mean that workers who assist with the project are independent contractors.

¹⁸ 29 U.S.C. § 203(g).

¹⁹ *Fact Sheet 13: Employment Relationship Under the Fair Labor Standards Act (FLSA)*, U.S. DEP’T OF LABOR, <https://www.dol.gov/whd/regs/compliance/whdfs13.htm> (last updated July 2008).

2. Minimum Wage

Under the FLSA, the minimum wage is \$7.25 per hour.²⁰ All employees who are not “exempt” from the protections of the FLSA must be paid at least minimum wage. Therefore, even if you pay some of your employees day rates (a flat rate regardless of the number of hours they work), you must ensure their hourly rate never falls below \$7.25 per hour. Some states have set a minimum wage that is higher than the federal minimum wage, but Texas is not one of them.²¹

The Texas Minimum Wage Act applies only to those individuals who are *not* covered by the FLSA.²² Texas contains no exemption from the minimum wage or overtime for entertainment industry-related positions.²³

3. Overtime

The FLSA requires employers to pay non-exempt employees who work more than 40 hours per week time and a half for all hours over 40 worked in a week.²⁴ As the employer, the law places the burden on you to ensure that all of your non-exempt employees are properly recording their time and are not working off the clock.

An agreement with a crew member or performer to waive overtime compensation when they are entitled to it under the FLSA is unenforceable and in violation of the law.²⁵ Unless an employee is exempt from the FLSA, you must pay them at least the minimum wage and overtime (even if the employee agrees to work for less).

²⁰ *Minimum Wage*, U.S. DEP’T OF LABOR, <https://www.dol.gov/whd/minimumwage.htm> (last visited Aug. 16, 2019).

²¹ See Tex. Lab. Code Ann. § 62.051 (“[A]n employer shall pay to each employee the federal minimum wage under Section 6, Fair Labor Standards Act of 1938.”).

²² Tex. Lab. Code Ann. § 62.151.

²³ See Tex. Lab. Code Ann. §§ 62.151-62.160 (listing exemptions from the Texas Minimum Wage Act).

²⁴ 29 C.F.R. §§ 778.101, 778.107.

²⁵ *Fact Sheet #23: Overtime Pay Requirements of the FLSA*, U.S. DEP’T OF LABOR, <https://www.dol.gov/whd/regs/compliance/whdfs23.htm> (revised July 2008); see also 29 C.F.R. §§ 785.315-785.317.

4. Regular Rate of Pay

The overtime rate is based on the “regular rate” of pay that an employee receives per hour.²⁶ Calculating the regular rate of pay depends on how a worker is paid and can become complex for entertainment workers who often work irregular schedules. For example, if the employee is paid a flat sum for a day’s work or for doing a particular job, without regard to the number of hours worked in the day or at the job, the employee’s regular rate is determined by totaling all the sums received at such day rates or job rates in the workweek and dividing by the total hours actually worked.²⁷ The employee is then entitled to one and half times his normal rate of pay for all hours worked in excess of 40 hours during the workweek.²⁸

5. Hours Worked

It may seem like a simple concept to pay an employee for all hours worked, but there are several nuances that could affect how many hours an employee has worked for you, especially in an industry like entertainment where the hours can be varied and sporadic. Generally, in addition to all hours actually worked, an employee should be paid for all of their time that they are required to be on your premises or on duty at a prescribed work place.²⁹ This usually includes time an employee is “engaged to wait” and on-call time if the employee is waiting on site.³⁰ In the film industry, ensuring that all on-call time and waiting time is properly compensated is particularly important when asking employees to “hurry up and wait,” as the saying goes.

²⁶ 29 C.F.R. § 778.109.

²⁷ 29 C.F.R. § 778.112.

²⁸ *Id.*

²⁹ *Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)*, U.S. DEP’T OF LABOR, <https://www.dol.gov/whd/regs/compliance/whdfs22.htm> (last updated July 2008); *see also* 29 C.F.R. §§ 785.14-785.17.

³⁰ *FLSA Fact Sheet #22*, *supra* note 27; 29 C.F.R. §§ 785.14-785.17.

6. Rest and Meal Periods

There is no requirement under federal or Texas law that employees be provided with rest or meal breaks. Other states may have laws addressing this, or if the employees belong to a union, the union agreement may specify these breaks.³¹ Breaks of 20 minutes or less are known as “rest breaks” and should typically be paid.³² Breaks of 30 minutes or more are typically known as “meal breaks”, and if an employee is completely relieved from their duties during this break, the break time is not compensable.³³

Breaks of less than 30 minutes or more than 20 minutes may be unpaid under certain circumstances, including if the employee has enough time to eat a meal; the employee is relieved from duty; the break is at a time during the shift when meals are typically consumed; and the employee has agreed that a break of less than 30 minutes is sufficient to eat a meal.³⁴ Breaks during which an employee is required to perform duties (even inactive ones, like answering the phone if it rings) generally must be compensated.³⁵

7. Travel Time

Certain types of travel must be counted as hours worked for non-exempt employees, and it depends on what kind of travel it is. Employees do not need to be paid for travel from their home to their regular work site,³⁶ but if they are traveling to a different work site for an assignment, they

³¹ See, e.g., Screen Actors Guild-American Federation of Television and Radio Artists Meal Penalties (Nov. 14, 2015), available at <https://sag-aftra-actors.com/meal-penalties.html> (stating meal period requirements and penalties).

³² 29 C.F.R. § 785.18.

³³ 29 C.F.R. § 785.19.

³⁴ DEP'T OF LABOR, FIELD OPERATIONS HANDBOOK § 31b23 (2016), available at https://www.dol.gov/whd/FOH/FOH_Ch31.pdf.

³⁵ *Id.*; 29 C.F.R. § 785.19.

³⁶ 29 C.F.R. § 785.35.

should be paid for extra time traveling to the alternate work site.³⁷ Likewise, travel that occurs during the employee's work day (like travel from work site to work site or travel in another city during the work day) should be counted as time worked.³⁸

8. Nursing Mothers

Under federal law, employers with 50 or more employees (and certain employers with less than 50 employees) are required to provide a reasonable break time for a nursing employee to express breast milk for up to one year after the child's birth, as well as provide a place that is not a bathroom for the employee to express milk.³⁹ Texas does not have a state law that addresses nursing mothers in the workplace. Compliance with the federal law may be challenging when providing nursing accommodations on an outdoor or unconventional film set or work site. Examples of compliant accommodations may include using mobile screens or tall cubicles to create private areas, as well as trailers, company vans or vehicles, or tents, so long as the space is private, away from public view, and large enough for a chair and tall enough for a person to stand.⁴⁰

9. Exempt Versus Non-Exempt

As discussed previously, the FLSA requires that most employees be paid at least minimum wage for all hours worked and overtime pay at time and one-half for all hours worked over 40 hours in a workweek. Some employees, however, are exempt from both the minimum wage and overtime pay requirements of the FLSA – hence the term “exempt.” Employees employed as bona fide executive, administrative, professional and outside sales employees are exempt.⁴¹ To qualify

³⁷ 29 C.F.R. § 785.37.

³⁸ 29 C.F.R. §§ 785.38, 785.39.

³⁹ 29 U.S.C. § 207(r).

⁴⁰ See OFFICE OF WOMEN'S HEALTH, <http://www.womenshealth.gov> (last visited Sept. 30, 2019).

⁴¹ 29 U.S.C. § 213.

for most exemptions, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week.⁴²

Particularly relevant to the film industry is the creative professional exemption. To qualify for the creative professional employee exemption, the employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor, such as music, writing, or acting.⁴³ It is important to note that job titles do not determine exempt status – an employer cannot simply call an employee an “executive” or “creative professional” and gain the exemption.⁴⁴ Employers should carefully analyze whether the position is one that allows the employee an opportunity to exercise discretion and express creativity.

10. Recordkeeping

An employer must maintain proper and accurate records, and a failure to do so can make it much more difficult for employers to defend against unpaid wage claims under the FLSA.⁴⁵ Employers should keep payroll records and employment agreements for three years⁴⁶ and records

⁴² 29 C.F.R. § 541.600 (2015). On December 1, 2016, the amount of salary required for an individual to be exempt was to be increased to \$913. *See id.* The implementation of this regulation, along with other new FLSA regulations, has been halted after several states filed suit in opposition to the new regulations. Later, on March 7, 2019, the DOL issued a proposed rule that would increase the required salary threshold from \$455 to \$679. *Notice of Proposed Rulemaking: Overtime Update*, U.S. DEP'T OF LABOR, <https://www.dol.gov/whd/overtime2019/> (last visited Aug. 16, 2019). Public comments on this proposed rule closed on May 21, 2019. News Release, U.S. Dep't of Labor, U.S. Department of Labor's Overtime Proposal Open for Public Comment (Mar. 22, 2019) <https://www.dol.gov/newsroom/releases/whd/whd20190322>.

⁴³ 29 C.F.R. § 541.302.

⁴⁴ 29 C.F.R. § 541.2.

⁴⁵ *See Colindres v. QuietFlex Mfg.*, 427 F. Supp. 2d 737, 751 (S.D. Tex. 2006) (discussing how an employee may provide evidence that he performed work for which he was improperly compensated where an employer's records are inaccurate or inadequate).

⁴⁶ 29 C.F.R. § 516.5.

on which wage computations are based, such as timecards, for two years.⁴⁷ This is true even if the project that you were working on has concluded.

Below is a list of the basic records that employers are required to maintain for non-exempt employees:

- Employee's full name and social security number.
- Home address, including zip code.
- Birth date, if younger than 19.
- Gender and occupation.
- Time and day of week when employee's workweek begins.
- Hours worked each day.
- Total hours worked each workweek.
- Basis on which employee's wages are paid (e.g., "\$9 per hour," "\$440 a week," or "piecework").
- Regular hourly pay rate.
- Total daily or weekly straight-time earnings.
- Total overtime earnings for the workweek.
- All additions to or deductions from the employee's wages.
- Total wages paid each pay period.
- Date of payment and the pay period covered by the payment.⁴⁸

Because employers are required to pay at least minimum wage and overtime to all non-exempt employees, you must ensure that you are properly classifying employees as exempt and non-exempt and that you are properly recording non-exempt hours worked. For example, if

⁴⁷ 29 C.F.R. § 516.6.

⁴⁸ 29 C.F.R. § 516.2.

you pay day rates or session rates to some of your employees, you must ensure the hourly rate never falls below minimum wage. You must also ensure that these rates compensate for overtime if employees work more than 40 hours a week.

11. Volunteers

Under the FLSA, a volunteer is typically not considered an employee for wage payment purposes if an individual volunteers freely for public service, religious, or humanitarian organizations, and without the expectation or receipt of compensation.⁴⁹ Similarly, an individual is exempt from the Texas Minimum Wage Act for any employees who are engaged in the activities of a religious, educational, charitable, or nonprofit organization in which (1) the employer-employee relationship does not in fact exist; or (2) the services are rendered to the organization gratuitously.⁵⁰ The U.S. Department of Labor, however, has made it clear that employees may not volunteer services for for-profit private sector employers.⁵¹

Thus, individuals working for-profit productions will almost certainly not qualify as volunteers and must be compensated accordingly under the FLSA and the Texas Minimum Wage Act. If you plan on having a nonprofit or educational production, you should carefully check the regulations to determine if you can have volunteers providing services for the production.

12. Interns

Compensation for interns has been a hot-button issue in the entertainment industry. For example, in 2015, Viacom, the media conglomerate, settled a lawsuit for \$7.2 million brought by

⁴⁹ *Fact Sheet #14A: Non-Profit Organizations and the Fair Labor Standards Act (FLSA)*, U.S. DEP'T OF LABOR (Aug. 2015), <https://www.dol.gov/whd/regs/compliance/whdfs14a.pdf>.

⁵⁰ Tex. Labor Code Ann. § 62.152.

⁵¹ *Volunteers*, U.S. DEP'T OF LABOR, <https://webapps.dol.gov/elaws/whd/flsa/scope/er16.asp> (last visited Aug. 16, 2019).

former unpaid interns seeking compensation.⁵² The U.S. Department of Labor has set out six criteria for employers to apply when determining whether an internship should be paid or unpaid:

- Whether the experience is similar to training received in an educational environment;
- Whether the experience is for the benefit of the intern;
- Whether the intern displaces regular employees;
- Whether the employer derives an immediate advantage from the intern;
- Whether the intern is entitled to a job at the end of the internship;
- And whether both parties understand the intern is not entitled to wages for the internship.⁵³

If these factors are met, the intern is not an employee and is not entitled to minimum wage or overtime.

B. Texas Payday Law

The Texas Payday Law governs the payment of wages and investigations into claims for unpaid wages and is administered by the Texas Workforce Commission. This law covers all employers regardless of size (with certain exemptions for government employees).⁵⁴

1. Employees Under Texas Law

The Texas Workforce Commission (TWC), the agency that enforces Texas employment-related laws, uses its own set of twenty factors when analyzing whether a worker is an employee or independent contractor under Texas law.⁵⁵ The test focuses on the right of the

⁵² *Viacom agrees to pay up to \$7.2 million to settle intern lawsuit*, L.A. TIMES, Mar. 12, 2015, <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-viacom-settles-intern-lawsuit-20150312-story.html>.

⁵³ *Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act*, U.S. DEP'T OF LABOR (Apr. 2010), <https://www.dol.gov/whd/regs/compliance/whdfs71.pdf>.

⁵⁴ Tex. Lab. Code Ann. §§ 61.001(4), 61.003.

⁵⁵ *TWC Independent Contractor Test*, TEX. WORKFORCE COMM'N, https://twc.texas.gov/news/efte/appx_e_twc_ic_test.html (last visited Aug. 16, 2019); 40 Tex. Admin. Code § 821.5 (Tex. Workforce Comm'n, Employment Status).

entity to direct or control the worker, including the final results of the work and as to the details of when, where, and how the work is done.⁵⁶ The TWC further cautions that not all of the twenty factors may apply to every situation, and that the weight given to the applicable factors may vary based on the facts of the case.⁵⁷

2. Paychecks

Texas requires employers to pay wages to exempt employees at least one a month, and all other employees (i.e., non-exempt employees) at least twice a month.⁵⁸ Employers may not deduct a portion of an employee's wages unless a court order directs them to do so, the deduction is authorized by a state or federal law (e.g., for taxes), or the employee has provided written authorization.⁵⁹

In addition, employers must pay wages by: (1) delivering them to employee's regular place of employment during employment hours (or at another agreed upon time and place), (2) sending them via registered mail, (3) sending electronic funds through direct deposit, *or* (4) delivering them using any other reasonable means authorized in writing by the employee.⁶⁰ The employer must conspicuously post notices indicating the paydays.⁶¹ Employers could face criminal penalties if they intentionally withhold or avoid paying wages owed to an employee and continue to do so after a demand is made for the wages.⁶²

⁵⁶ *TWC Independent Contractor Test*, *supra* note 50.

⁵⁷ *Id.*

⁵⁸ Tex. Lab. Code Ann. § 61.011

⁵⁹ Tex. Lab. Code Ann. § 61.018.

⁶⁰ Tex. Lab. Code Ann. § 61.017.

⁶¹ Tex. Lab. Code Ann. § 61.012.

⁶² Tex. Lab. Code Ann. § 61.019.

3. Final Paycheck

Under the Texas Payday Law, an employer must pay a discharged employee no later than six days after the date the employee is discharged.⁶³ If the employee voluntarily leaves employment, he or she must be paid by the next regularly scheduled payday.⁶⁴ Wages due for commission and bonuses must also be paid in accordance with these timelines.⁶⁵

4. Unpaid Wage Claims

The Texas Payday Law also governs investigations into wage claims.⁶⁶ Wage claims must be filed no later than 180 days after the date the wages claimed became due for payment.⁶⁷ Wage claims are analyzed by a Texas Workforce Commission examiner, and the examiner will issue a preliminary wage determination order.⁶⁸ The preliminary wage determination order may then be appealed by either the employer or employee to an appeal tribunal.⁶⁹ If no appeal is filed, the wage determination becomes final.⁷⁰ An employer may receive an administrative penalty if it is determined that the employer acted in bad faith.⁷¹ After exhausting the remedies under the Payday Law, either party may file a civil court action to appeal the final wage claim order no later than 30 days after the final order is mailed.⁷² An employee, however, cannot elect to both obtain a decision

⁶³ Tex. Lab. Code Ann. § 61.014.

⁶⁴ *Id.*

⁶⁵ Tex. Lab. Code Ann. § 61.015.

⁶⁶ *See* Tex. Lab. Code Ann. §§ 61.051, 61.052.

⁶⁷ Tex. Lab. Code Ann. § 61.051.

⁶⁸ Tex. Lab. Code Ann. § 61.052.

⁶⁹ Tex. Lab. Code Ann. § 61.054.

⁷⁰ Tex. Lab. Code Ann. § 61.055.

⁷¹ Tex. Lab. Code Ann. § 61.053.

⁷² Tex. Lab. Code Ann. § 61.062.

from Texas Workforce Commission on a wage claim and file a common law wage claim in court based on the same set of circumstances.⁷³

5. Vacation Pay / Paid Time Off (PTO)

An employer in Texas is not required to offer fringe benefits like paid time off, vacation pay, or holiday pay.⁷⁴ But if an employer does provide for these benefits in writing, it is then required to comply with this policy or agreement, as the Texas Payday Law defines “wages” as including “vacation pay . . . owed to an employee under a written agreement with the employer or under a written policy of the employer.”⁷⁵ The employer has leeway in setting terms for fringe benefits, such as how these benefits are earned, accrued, and used.

C. Paid Sick Leave In Texas

One current hot-button issue in Texas is paid sick leave. Texas has no state-wide law guaranteeing paid sick leave to employees. The cities of Austin, San Antonio, and Dallas, however, have passed ordinances requiring employers to provide paid sick leave.⁷⁶ These ordinances are almost identical – all apply to private employees who work more than 80 hours a year within the respective city.⁷⁷ Employees accrue one hour of paid sick time for every 30 hours worked, up to 64 hours a year for employers with more than 15 employees, or up to 48 hours a

⁷³ *Igal v. Brightstar Info. Tech. Group*, 250 S.W.3d 78, 82 (Tex. 2007), *superseded by statute on other grounds*; *Abatement Inc. v. Williams*, 324 S.W.3d 858, 863-64 (Tex. App.—Houston [14th Dist.] 2010, pet. denied).

⁷⁴ *Vacation and Sick Leave*, TEX. WORKFORCE COMM’N, https://twc.texas.gov/news/efte/vacation_and_sick_leave.html (last visited Sept. 15, 2019).

⁷⁵ Tex. Lab. Code Ann. § 61.001(7)(B).

⁷⁶ *See generally* DALLAS, TEX., CODE OF ORDINANCES, ch. 20, *Earned Paid Sick Time*; San Antonio, Tex., Ordinance No. 2018-08-16-0620 (Aug. 16, 2018); Austin, Tex., Ordinance 20180215-049 (Feb. 15, 2018).

⁷⁷ DALLAS, TEX., CODE OF ORDINANCES, § 20-2(5); San Antonio, Tex., Ordinance No. 2018-08-16-0620, § 15-269; Austin, Tex., Ordinance 20180215-049, § 4-19-1(C).

year for employers with 15 or less employees.⁷⁸ Employees may carry over to the next year paid sick time up to the yearly cap amount.⁷⁹

All three of these paid sick laws, however, have encountered legal challenges in the courts. As of the date of publication, only the Dallas paid sick leave ordinance is in effect. Both Dallas' and San Antonio's ordinances were to go into effect August 1, 2019, for employers with more than five employees.⁸⁰ Yet, both the City of Dallas and the City of San Antonio were sued shortly before the effective date, by business groups alleging that the ordinances violate the Texas Minimum Wage Act, which they argue prohibits localities from requiring employers to pay more than the minimum wage.⁸¹ The Dallas paid sick leave ordinance went into effect on August 1, 2019, despite the legal challenge,⁸² while San Antonio agreed to delay implementation of its paid sick leave ordinance until December 1, 2019.⁸³ Austin's paid sick leave ordinance—the first of its kind in Texas – was also challenged in court before it could go into effect, and was most recently struck down by appellate court in November of last year.⁸⁴ There is now an appeal pending before the Texas Supreme Court to determine the fate of Austin's (and possible all Texas

⁷⁸ DALLAS, TEX., CODE OF ORDINANCES, §§ 20-2(8), (11), 20-4(a), (c); San Antonio, Tex., Ordinance No. 2018-08-16-0620, §§ 15-269, 15-272(b)(1), (3); Austin, Tex., Ordinance 20180215-049, §§ 4-19-1(F), (H), 4-19-2(A), (G).

⁷⁹ DALLAS, TEX., CODE OF ORDINANCES, § 20-4(d); San Antonio, Tex., Ordinance No. 2018-08-16-0620, § 15-272(b)(4); Austin, Tex., Ordinance 20180215-049, § 4-19-2(H).

⁸⁰ Dallas, Tex., Ordinance 31181, § 5; San Antonio, Tex., Ordinance No. 2018-08-16-0620, § 15-280.

⁸¹ Alex Samuels, *A Rule requiring Paid Sick Leave for Workers Takes Effect Thursday in Dallas. Activists are Watching*, TEX. TRIBUNE (Aug. 1, 2019) [hereinafter Samuels, *Dallas*], <https://www.texastribune.org/2019/08/01/dallas-paid-sick-leave-policy/>; Alex Samuels, *Implementation of San Antonio Paid Sick-Leave Requirement Delayed Amid Court Fight*, TEX. TRIBUNE (July 24, 2019) [hereinafter Samuels, *San Antonio*], <https://www.texastribune.org/2019/07/24/san-antonio-paid-sick-leave-requirement-delayed-amid-lawsuit/>; *see also* Tex. Lab. Code Ann. § 62.0515.

⁸² Samuels, *Dallas*, *supra* note 74.

⁸³ Samuels, *San Antonio*, *supra* note 74.

⁸⁴ Mark Lisher, *Paid Sick Leave for Some But Not in Austin, Until State High Court Rules*, TEX. MONITOR (June 21, 2019), <https://texasmonitor.org/paid-sick-leave-for-some-but-not-in-austin-until-state-high-court-rules/>.

cities’) paid sick leave laws.⁸⁵ Employers who are doing business in Texas, therefore, should pay close attention to how these cases play out to determine whether they will be required to provide paid sick leave to employees.

V. TEACH THEM WELL: HIRING MINORS IN THE ENTERTAINMENT INDUSTRY

While the law generally prohibits employing minors, there are exemptions for entertainment-related positions. If you are planning on hiring minors on a project, however, you should be aware of the strict requirements that surround the employment of minors – such as restrictions on the hours they can work and restrictions on their working environments.

A. Under the FLSA

Under the FLSA, the employment of minors under the age of 14 years old is illegal, except in circumstances where the FLSA specifically provides an exception for employment.⁸⁶ The FLSA provides such an exemption from the restrictions on child labor for “any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.”⁸⁷ The term “performer” covers not only actors but also singers, dancers, musicians, comedians, or other children who provide entertainment.⁸⁸

The FLSA also places certain limitations on the employment of 14- and 15-year-olds, including limitations on the numbers of hours they can work and when they can work.⁸⁹ Those younger than 18 years of age are prohibited from working in jobs declared to be hazardous or detrimental to health or well-being.⁹⁰ Minors must be paid the minimum wage under the FLSA,

⁸⁵ *Id.*

⁸⁶ 29 C.F.R. § 570.119.

⁸⁷ 29 U.S.C. § 213(c), 29 CFR §§ 570.122(a)(3), 570.125.

⁸⁸ 29 C.F.R. § 550.2(b).

⁸⁹ 29 C.F.R. § 570.35.

⁹⁰ 29 C.F.R. § 570.120.

except that employees who are younger than 20-years-old may be paid \$4.25 per hour during their first 90 days of employment.⁹¹

B. Under Texas Law

In Texas, as is the case under federal law, it is generally illegal to employ children under the age of 14 years old, and the employment of 14- and 15-year-olds is subject to certain limitations, including limitations on when and how long 14- and 15-year-olds work each day.⁹² Like the FLSA, the Texas Labor Code also provides exemption from the 14-year minimum age requirement for performers in a film, theater, radio, or television production.⁹³ The limitations on the employment of 14- and 15-year-olds in general also apply to the employment of 14- and 15-year-old performers, except that the child performer may work during prohibited hours with parental consent and other limitations.⁹⁴ Texas requires that a parent or guardian be allowed to be present on set with the child during the employment.⁹⁵

Employers in Texas who wish to hire a child actor or performer younger than 14 years old must request authorization from the Texas Workforce Commission (TWC) prior to the child's employment.⁹⁶ An employer does not need to fill out an authorization application for child actors employed as extras as long as the employer: (1) informs the TWC about the employment and provides certain information prior to the beginning of the employment, (2) uses reasonable efforts to establish the actor is under 14 years old, (3) secures the written consent of a parent/guardian,

⁹¹ 29 U.S.C. § 206(a), (g).

⁹² Tex. Lab. Code Ann. §§ 51.001, 51.013.

⁹³ Tex. Lab. Code Ann. § 51.012.

⁹⁴ 40 Tex. Admin. Code § 817.33 (Tex. Workforce Comm'n, Limitations on Employment of Child Actors).

⁹⁵ *Id.*

⁹⁶ 40 Tex. Admin. Code § 817.31 (Tex. Workforce Comm'n, Child Actor Authorization). The application for authorization may be found here: <https://twc.texas.gov/files/jobseekers/application-child-actor-performer-authorization-twc.pdf>.

(4) notifies the child's school about the employment, and (5) submits report after production certifying compliance.⁹⁷

California employers should also be aware that if they plan on taking a minor California resident out-of-state to work on location (as part of a contractual agreement made in California), the child labor laws of California will still apply.⁹⁸ An overview of child labor laws in California can be found here: <https://www.dir.ca.gov/dlse/DLSE-CL.htm>.

VI. ALL FOR ONE: UNIONS IN THE ENTERTAINMENT INDUSTRY

Unions play a significant role in the entertainment industry. Usually, entertainment unions and guilds have additional rules that members must follow. For example, a union member may be prohibited from working for companies that do not sign an agreement with the union. Additionally, companies employing labor union members must comply with the collective bargaining agreements negotiated between the company and the labor union regarding the terms and conditions of employment of the union members.

A. National Labor Relations Board

Employees in the entertainment industry may receive protection from The National Labor Relations Board (NLRB), which protects an employee's rights to organize and safeguards employees from other unfair labor practices.⁹⁹ The NLRB may investigate charges alleging violations of the National Labor Relations Act¹⁰⁰ and may determine there is enough evidence to adjudicate the case before an NLRB Administrative Law Judge.¹⁰¹ The decisions of the

⁹⁷ 40 Tex. Admin. Code § 817.32 (Tex. Workforce Comm'n, Application Exceptions).

⁹⁸ Cal. Code Regs. tit. 8, § 11756.

⁹⁹ 29 C.F.R. §§ 100.101 *et seq.*

¹⁰⁰ 29 C.F.R. §§ 101.2, 101.4.

¹⁰¹ 29 C.F.R. §§ 101.8-101.11.

Administrative Law Judges may then be appealed to the Board, who issues a decision and an order containing detailed findings of fact, conclusions of law, and reasoning to support the decision.¹⁰²

B. Texas Is Right-to-Work State

Texas – unlike California and New York – is a “right-to-work” state, meaning that employers are prohibited from denying an individual employment, or otherwise interfering with the right to work, because of an individual’s membership or non-membership in a labor union or organization.¹⁰³ A union cannot demand a fee in exchange for the right to work from a non-member employee.¹⁰⁴ Additionally, an employer cannot require an employee to sign a contract requiring that the employee be part of a union or prohibiting the employee from joining a union.¹⁰⁵

C. Hiring Union Members

If you plan on hiring performers or crew members from a union, such as the Screen Actors Guild-American Federation of Television and Radio Artists (“SAG-AFTRA”), union contracts typically set terms for the work of union members, including standard wage rates, overtime rates, and travel conditions.¹⁰⁶ Employers should be aware that the standard wage rates may vary based on a variety of factors. For example, the wage rates for SAG-AFTRA performers can vary based on factors such as type of performer, hours worked, type of production, and budget of the production.¹⁰⁷

¹⁰² 29 C.F.R. § 101.12.

¹⁰³ Tex. Lab. Code Ann. §§ 101.052-101.053.

¹⁰⁴ Tex. Lab. Code Ann. § 101.111.

¹⁰⁵ Tex. Lab. Code Ann. § 101.053.

¹⁰⁶ See, e.g., *Sample Agreement for Low Budget Theatrical Motion Pictures*, SAG-AFTRA, <https://www.sagaftra.org/files/Low%20Budget%20Ageement%20-%202017%20-%20Rev%201.5.pdf> (last visited Aug. 14, 2019).

¹⁰⁷ See SAG-AFTRA wage table examples: https://www.sagaftra.org/files/2017%202020%20wages%20thatrical%2011%2028%2018_1.pdf (theatrical wage table); https://www.sagaftra.org/files/rate_sheet

Unions also may provide the employment agreement between the producer and the performer.¹⁰⁸ Additionally, certain terms under union agreements may be different for productions made, or played, in Texas.¹⁰⁹ Employers should work closely with the union and carefully review union agreements to ensure they are complying with the terms of the agreement.

D. Hiring Non-Union Members

Non-union members are not automatically entitled to receive the minimum terms and conditions guaranteed to union members. Rather, they must negotiate to receive these terms. It is recommended that whatever terms are agreed upon are set out in some sort of written agreement or collective bargaining agreement. In a right-to-work state such as Texas, a non-union performer can work union jobs, but a union performer cannot work non-union jobs.¹¹⁰

E. Examples of National Entertainment-Related Guilds and Trade Unions

Below is a list of just some of the national entertainment-related guilds and unions, along with their local Texas chapters:

- Actors' Equity Association: <http://www.actorsequity.org>
- American Guild of Musical Artists (AGMA): <https://www.musicalartists.org/>
- Directors' Guild of America (DGA): <http://www.dga.org/>
- International Alliance of Theatrical Stage Employees (IATSE)

[low budget theatrical 8 13 0.pdf](#) (wage tables for low budget theatrical production); <https://www.sagaftra.org/files/20172020wagesTV.pdf> (wage tables for live action television); <https://www.sagaftra.org/files/2019%20All%20Commercial%20Rate%20Sheets%207.1.19.pdf> (main rates for 2019 commercials contract).

¹⁰⁸ See *2016 Sample Standard SAG-AFTRA Employment Contract for Commercials*, SAG-AFTRA, <https://www.sagaftra.org/files/2016%20Commercials%20%20Exhibit%20A-1%20Principal%20Employment%20Contract%20NOT%20FILLABLE.pdf> (last visited Aug. 14, 2019).

¹⁰⁹ See, e.g., *2016 Texas Regional Commercials Code with Rate Sheet*, SAG-AFTRA, https://www.sagaftra.org/files/2016_texas_regional_commercials_code_and_rates.pdf (last visited Aug. 14, 2019) (modifying SAG-AFTRA's national Commercials Contract for commercials produced in Texas).

¹¹⁰ *Which States are Right to Work States?*, SAG-AFTRA, https://services.sagaftra.custhelp.com/app/answers/detail/a_id/294/kw/texas (last visited Sept. 16, 2019).

- Local 484, Studio Mechanics (Texas, Oklahoma): <http://www.iatse484.org/>
- Local 51 (Houston, Galveston): <http://www.iatse51.org>
- Local 796, Television Production Employees (Austin, Dallas, Houston, San Antonio): <http://www.iatse796.org/>
- Location Managers Guild International (LMGI): <http://locationmanagers.org/>
- Producers Guild of America (PGA): <http://www.producersguild.org/>
- Screen Actors Guild and the American Federation of Television and Radio Artists (SAG-AFTRA): <https://www.sagaftra.org/>
 - Dallas-Fort Worth Local: <http://www.sagaftra.org/dfw>
 - Houston-Austin Local: <http://www.sagaftra.org/ha>
- Writers' Guild of America (WGA):
 - East: <https://www.wgaeast.org/>
 - West: <http://www.wga.org/>

VII. OTHER EMPLOYMENT LAWS RELEVANT TO THE ENTERTAINMENT INDUSTRY

A. Anti-Discrimination Laws

Discrimination on the basis of race, color, religion, sex, or national origin is prohibited under Title VII of the Civil Rights Act of 1964.¹¹¹ Furthermore, the Americans with Disabilities Act forbids discriminating against individuals on the basis of their disability,¹¹² while the Age Discrimination in Employment Act prohibits discrimination against individuals age 40 and older.¹¹³ Similarly, Chapter 21 of the Texas Labor Code prohibits employers from discriminating against employees based on race, color, disability, religion, sex, national origin, or age.¹¹⁴

¹¹¹ 42 U.S.C. § 2000e-2.

¹¹² 42 U.S.C. § 12112.

¹¹³ 29 U.S.C. § 623.

¹¹⁴ Tex. Lab. Code Ann. § 21.051.

A defense to a discrimination claim which may come up in the entertainment context is that an employee's religion, sex, or national origin is a bona fide occupational qualification (or BFOQ) "reasonably necessary to the normal operation of that particular business."¹¹⁵ Texas allows employers to assert a bona fide occupational qualification defense for discrimination based on an employee's disability, religion, sex, national origin, or age.¹¹⁶ The BFOQ must be "reasonably related to the satisfactory performance of the duties of a job" and "a factual basis [must] exist[] for the belief that no person of an excluded group would be able to satisfactorily perform the duties of the job with safety or efficiency."¹¹⁷ For example, an employer may argue that being a woman is a BFOQ for the role of Jackie Kennedy.

Noticeably, however, neither federal law nor Texas law allow employers to assert a BFOQ defense for race or color. Yet, there may be times when an entertainment producer wants to cast an actor of a certain race in a role. This situation can create tension between anti-discrimination laws and other laws protecting freedom of expression, most notably, the First Amendment. Employers should be aware of this tension when making casting decisions and think through alternative methods for compliance and/or possible defenses in the event of a lawsuit. An employer may, for example, put forth a business necessity defense, arguing that casting an actor who had features of a certain race was essential for the authenticity of the production. Additionally, as alluded to earlier, an employer can attempt to argue that the decision is protected by the First Amendment.

¹¹⁵ 41 U.S.C. § 2000e-2(e).

¹¹⁶ Tex. Lab. Code Ann. § 21.119.

¹¹⁷ Tex. Lab. Code Ann. § 21.002(2).

B. Workers' Compensation

Employers in Texas may, but are not required to, sign up for workers' compensation insurance coverage for its employees.¹¹⁸ Employers must notify employees as to whether or not they have workers' compensation insurance.¹¹⁹ Workers' compensation provides covered employees with income and medical benefits if they sustain an injury in the course of their employment, regardless of fault.¹²⁰ If an employee is covered by workers' compensation insurance, recovery of these workers' compensation benefits is the only remedy for the employee's death or work-related injury.¹²¹ Independent contractors are not considered employees under the act and therefore cannot obtain workers' compensation benefits.¹²²

You should carefully consider whether to purchase workers' compensation insurance as employees may be able to bring additional claims against you for recovery of their injuries if you do not have workers' compensation and they are injured at work, for instance, while on location or in the studio.

C. Unemployment Benefits

Unemployed individuals in Texas may be able to collect unemployment benefits under the Texas Unemployment Compensation Act if they are involuntarily unemployed through no fault of their own. An individual cannot collect unemployment benefits if he or she was terminated for misconduct or voluntarily left his or her job without good cause.¹²³ In addition, to be eligible for unemployment benefits, an individual must: (1) register for work at an employment office and

¹¹⁸ See Tex. Lab. Code Ann. § 406.002.

¹¹⁹ Tex. Lab. Code Ann. § 406.005.

¹²⁰ Tex. Lab. Code Ann. §§ 406.031, 408.021, 408.081.

¹²¹ Tex. Lab. Code Ann. § 408.001.

¹²² Tex. Lab. Code Ann. § 401.012.

¹²³ Tex. Lab. Code Ann. §§ 207.044-45.

continuously report to the office, (2) file a claim for benefits, (3) be able and available to work, (4) be actively seeking work, (5) have earned a certain amount of wages in the base period, (6) be partially or totally unemployed for at least seven consecutive days, and (7) participate in reemployment services.¹²⁴ The amount of unemployment benefits an individual is entitled to is based on the amount of wages he or she received while employed.¹²⁵

Once an individual files a claim for unemployment, the Texas Workforce Commission will issue an initial determination on the validity of the claim.¹²⁶ The claimant or employer may appeal the determination. The appeals process involves three levels of appeal: first, an appeal to the Appeal Tribunal, followed by an appeal to the Commission, and then finally, an appeal of the Commission's decision to civil court.¹²⁷ While athletes are explicitly disqualified from receiving unemployment benefits in the off-season,¹²⁸ Texas does not disqualify performers or other entertainment workers who may not have steady employment from receiving unemployment benefits (assuming they meet the other requirements to receive unemployment benefits).

Only employees may file for unemployment; independent contractors are not eligible for unemployment.¹²⁹ Additionally, the Texas Workforce Commission has recently passed a rule that classifies workers who use the digital network of a marketplace platform to provide services to the

¹²⁴ Tex. Lab. Code Ann. § 207.021.

¹²⁵ Tex. Lab. Code Ann. § 207.002.

¹²⁶ Tex. Lab. Code Ann. §§ 208.053.

¹²⁷ See generally Tex. Lab. Code Ann. §§ 212.053-210; *Introduction to the Unemployment Benefits Appeal Process*, TEX. WORKFORCE COMM'N, <https://twc.texas.gov/jobseekers/introduction-unemployment-benefits-appeal-process> (last visited Aug. 21, 2019).

¹²⁸ Tex. Lab. Code Ann. § 207.042.

¹²⁹ *Classifying Employees & Independent Contractors*, TEX. WORKFORCE COMM'N, <https://twc.texas.gov/businesses/classifying-employees-independent-contractors> (last visited Sept. 15, 2019).

public (also commonly known as a “gig worker”) as independent contractors for purposes of unemployment benefits, and as such, are, not eligible for unemployment benefits.¹³⁰

D. Occupational Safety and Health Administration (OSHA) Standards

The Occupational Safety and Health Administration (OSHA) sets and enforces standards to protect workplace safety and health.¹³¹ These standards include restrictions and procedures relating to hazardous materials, personal protective equipment, medical and first aid treatment, fire protection, handling and storage of materials, and machinery.¹³² OSHA standards apply to any employer engaged in business affecting interstate commerce who has employees (but excludes certain government employers or state political subdivisions).¹³³

Most employers with more than ten employees are required to keep a log of fatal or severe workplace injuries, or other workplace injuries resulting in days away from work or treatment beyond first aid workplace injuries.¹³⁴ OSHA may also conduct inspections of workplaces to check for compliance with OSHA standards.¹³⁵ Because movie sets, theater sets, and other production-related sites can present numerous dangers to employees, compliance with OSHA standards is important to ensuring safety and avoiding penalties for OSHA violations. Employers should also be aware they cannot discriminate or retaliate against employees for filing an OSHA-related complaint.¹³⁶

¹³⁰ See 40 Tex. Admin. Code § 815.134 (Tex. Workforce Comm’n, Employment Status).

¹³¹ *About OSHA*, OCCUPATIONAL SAFETY AND HEALTH ADMIN., DEPT. OF LABOR, <https://www.osha.gov/aboutosha> (last visited Aug. 21, 2019).

¹³² 29 C.F.R. Part 1910.

¹³³ 29 U.S.C. § 652(5).

¹³⁴ 29 C.F.R. §§ 1904.1, 1904.7.

¹³⁵ See generally 29 C.F.R. Part 1903.

¹³⁶ 29 U.S.C. § 660(c); 29 C.F.R. § 1904.36.

States are encouraged by OSHA to develop their own job safety and health programs, but currently, Texas does not have its own workplace safety and health program.¹³⁷

VIII. THAT'S A WRAP: CONCLUSION

The entertainment industry operates very differently than other industries. Because of the unique employment-related issues that can arise in the entertainment industry, compliance with employment laws is not always easy or straight-forward. Therefore, it is important businesses in this industry carefully understand these laws and their legal obligations under these laws in order to reduce the risk of liability and exposure to a lawsuit. As always, employers are encouraged to consult legal counsel for questions related to the discussed topics and laws.

¹³⁷ 29 U.S.C. § 667; *see State Plans*, OCCUPATIONAL SAFETY AND HEALTH ORG., DEPT. OF LABOR, <https://www.osha.gov/dcsp/osp/> (last visited Aug. 15, 2019) Questions <https://www.osha.gov/dcsp/osp/> (last visited Aug. 15, 2019) (indicating which states have OSHA-approved state plans in place). Public employers in Texas are covered by the Texas Hazard Communication Act. *See* Tex. Health & Safety Code Ann. ch. 502.