



TEXAS BUSINESS REPORT

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TAB Fights On Behalf Of Texas Business *Business Community Tackles The Tough Issues*

Riding high from across-the-board successes on employer rights, public and higher education, tort reform, health insurance and the Sunset review process during the 81st Legislative Session, the Texas Association of Business is hard at work preparing for the upcoming Session that begins in January 2011.

Due in large measure to the global economic crisis, Texas is facing a \$15 billion budget shortfall for the next biennium. What does that mean for Texas? Unlike crippled economies like California and New York, Texas leaders had the foresight to leave over \$9 billion dollars untouched in emergency funds. While these funds are not enough to fill the gap in its entirety, our State is well-positioned to meet the fiscal challenges we face.

For TAB's dedicated government affairs team, including President Bill Hammond and lobbyists Cathy DeWitt, Steve Minick and Kandice Sanaie, the hope is to build upon the rich success the Association has had in the past.

"The Legislature will be far more concerned with economic issues than any others on the table," said Bill Hammond. "The November election outcomes will play a large role in our approach. Given the budget shortfall we are facing, a more conservative Legislature will be more apt to cut taxes and reduce spending. If the outcomes produce a more polarized body, you'll find half the Legislature pushing for higher taxes with no checks and balances for spending. TAB will lead the fight

against any tax hikes or burden on Texas families. We will not let what happened to California happen to Texas."

Hammond, a former legislator and chair of the Texas Workforce Commission, specializes in taxes, transportation, employment issues and education. Last year, TAB efforts yielded a tax cut for



WORKFORCE Q&A

When are you required to investigate an employee's complaint and what should be placed in writing?

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TAB MISSION

To make the Texas business climate the best in the world.

WORKFORCE Q&A



Ashley Scheer,
Jackson Walker LLP, Dallas

When are you required to investigate an employee's complaint and what should be placed in writing?

While an employer is not always technically required to investigate an employee's complaint, there are many instances in which an employer is well advised to conduct an investigation. Furthermore, federal and state law impose a duty to promptly investigate allegations of sexual harassment and based on the results, take prompt remedial action to stop the harassment.

From a business perspective, investigations can be an integral part of policy enforcement and can assist

in maintaining a professional environment. From a legal perspective, a prompt investigation and subsequent actions can provide an employer a solid affirmative defense in the later defense of an employee lawsuit. In other words, the exercise of reasonable care to prevent and protect harassing behavior requires a workplace investigation if the employer wants to rely on this affirmative defense created by the U.S. Supreme Court.

There are a variety of employee complaints that may warrant investigation. Examples include, but are not limited to, the following:

- | | |
|---|---|
| <ul style="list-style-type: none">★ Harassment★ Discrimination★ Violence or threats of violence | <ul style="list-style-type: none">★ Possession or use of drugs★ Theft★ Falsification of documents |
|---|---|

To be effective, an employer's investigation should be prompt, thorough and impartial. Additionally, an action should be taken in response to the investigation. Finally, try to maintain confidentiality throughout the investigation.

It is important to document all aspects of the investigation including interviews with employees. It is difficult to defend the thoroughness of an investigation, if there is no documentation. Be factual in your notes and do not express opinions or editorialize. Always remember that it is likely that the investigation notes will be discoverable and admissible in court.

Finally, remember that any retaliatory actions toward the complaining party violate the law. The U.S. Supreme Court recently held that Title VII's anti-retaliation provision protects an employee who cooperates with an employer's internal investigation of sexual harassment. *Crawford v. Metro. Government of Nashville & Davidson County*, 129 S.Ct. 846 (2009). Accordingly, employers must proceed with caution with respect to adverse actions against employees involved in an investigation.

Courts are increasingly requiring more from employer investigations. Accordingly, it is important to take prompt and remedial action in response to an employee complaint.

Employment Relations questions?

***Don't forget to call TAB's Employment Relations Hotline
for your next HR Question
1.800.856.6721, ext. 164 or E-mail smcgee@txbiz.org***

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TAB Readies For 82nd Legislative Session

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40,000 small businesses; stopped a \$75 million annual Job Tax; and overhauled the public school accountability system.

TAB Vice President, Cathy DeWitt, who handles employment relations, worker's compensation and tort reform for TAB, believes that workers' compensation will be a key issue for the session as the Division of Workers' Compensation is going through its Sunset Review. "Texas is still in the infancy stage in reference to workers' compensation reforms so it is critical that the Texas Legislature ensure that these reforms are fully implemented before any major changes are made." In 2005, the workers' compensation system was revamped to reduce costs for employers and improve the quality of care for injured workers. As a result of the 2005 legislative session, the Texas Workers' Compensation Commission was abolished and the Division of Workers' Compensation under the Texas Department of Insurance was created. Since its inception, the Division has been charged to implement the reforms. Over 25 rules have been developed since 2005 and one of the cornerstones of the reforms is still undergoing the rulemaking process. TAB supported creating a drug formulary to reduce costs as well as to prevent injured workers from staying on inappropriate drugs for too long which ultimately affects their ability to get back to work. This rule will be implemented in the next several months.

During the Texas legislative interim, Vice-President Steve Minick, who handles environmental and energy issues, has been busy attempting to keep up with the deluge of new environmental regulations pouring

from the federal Environmental Protection Agency and keep our members informed as to how these proposals can significantly affect business growth and opportunity in Texas.

"The business community in Texas must be extremely vigilant and proactive in understanding what the new administration in Washington is attempting to do in regulating businesses and industrial activities," said Minick. "Many of the proposals coming out will cost far more to implement than we will receive in environmental benefit and many simply cannot be justified on the basis of the science being used to support them."



While Congress has debated ill-conceived climate and energy legislation and cap-and-trade provisions that would cripple Texas' economy and raise energy prices for all Americans, EPA is attempting to leverage the debate by threatening to use its regulatory authority under the Clean Air Act to control greenhouse gas emissions. The Clean Air Act was never intended by Congress to regulate greenhouse gases and cannot be applied in any logical way without devastating effects on the economy and on the entire permitting system for air pollutants.

"Despite what many have been led to believe, Texas has made enormous progress in both reducing emissions

of air pollution and in promoting clean energy. It is time Washington paid attention and used Texas as a model for how you can promote both a viable economy and environmental quality and stop the efforts that will have significant negative consequences for this state."

In the 2011 Legislative Session, the key environmental and energy regulatory agencies in Texas will be up for Sunset review. The TAB will be actively engaged at this critical time to ensure that the Sunset process is used to focus on the efficient operation of state agencies and not as a vehicle for any legislative agenda that does not support rational regulation of businesses.

Kandice Sanaie, who handles health care, insurance industry and property & casualty issues, is managing one of TAB's most pressing legislative priorities: Sunset Review of the Texas Department of Insurance (TDI) and expanding the Medicaid managed care system in Texas. "The State of Texas, its taxpayers and its businesses are being forced to pay for the waste and over-utilization of health care services in Medicaid. Texas knows that Medicaid managed care works—both for the Medicaid recipients and for Texas' budget. The employers and citizens of Texas deserve to have the best costs and the best access to health care services available throughout our entire state," said Sanaie. "While the Sunset Advisory Commission will not be performing a full review of TDI, we can again expect to see the TDI Sunset Bill turned into a 'Christmas tree' bill—unless major rule changes occur in both Chambers."

To learn more about our legislative agenda, please visit www.txbiz.org.

MEMBER PROFILE

Summit Financial Group – Solutions To Value, People To Trust

Summit Financial Group, Inc. is a national employee benefits firm and an entrepreneurial incubator whose family of companies collaborates with human resources departments to deliver value for both employers and employees.

Based in Dallas with offices in seven states, Summit has grown from a bootstrapped start-up to a major company that serves over 800 corporate clients of various sizes all across the United States since 1987.

Summit operates as an independent firm, having neither contractual obligations nor any production requirements with any insurance company or service provider. Summit is a Benefits Advisor utilizing a unique integrated planning and consultative approach.

Summit operates under the spotlight of a highly regulated, compliance oriented industry.

Committed to inventing, developing, and supporting new technologies and processes that benefit the client, service and communication are cornerstones of the Summit “one-stop” shopping culture. Out of necessity, Summit has morphed into a solutions-based firm with an on purpose strategy to partner with clients.

As they help clients navigate the turbulent waters surrounding both health care and retirement income, Summit often becomes a primary resource for its clients. The word that comes to mind is “family.” Summit aims to become a part of each client’s family.

With such an established presence, why has Summit chosen to make Texas its home?

Ease of travel, a central location and a can-do spirit for business were contributing factors to Summit locating in Texas. With the recent challenges to business, they feel best postured for success here in Texas. Chairman and CEO, Dale Young, sees the need for affordable capital, the uncertain business climate, tax pressure,

and inflationary pressures as primary challenges facing business today.

The insurance industry is also challenged by the Government via Medicare and Medicaid. The ever present threat of additional Government regulation may indeed cause more inflationary pressures on prices of benefits.

“We are committed to TAB membership. Investing in the Texas Association of Business is investing in the

future of our State and its economic strength,” said Dale Young, Chairman, Summit Consolidated Group. “TAB has been instrumental in helping us advance our business by helping us navigate the legislative and regulatory layers of bureaucracy in Austin. Every business in Texas needs to be a member of the TAB.”

The Summit/TAB relationship has fostered true partnership and helped protect its business needs. Summit credits TAB for making it possible to enter the government sector of its business.

“Summit has been a tried-and-true example of what can happen when good people and a good product find

the right business climate to thrive,” said TAB President Bill Hammond. “I am proud they are on the TAB team, and I’m glad that we can lend support to the successful Summit team.”



Summit Chairman and CEO Dale Young



T E X A S
ASSOCIATION OF
BUSINESS

PRO - BUSINESS • PRO - TEXAS
FOR OVER 85 YEARS

March 2, 2010

Dear Senator,

The Texas Association of Business recently alerted our membership of the debate currently taking place in Congress regarding the authority of the Environmental Protection Agency to regulate greenhouse gases as air pollutants under the federal Clean Air Act.

While Congress has debated ill-conceived climate and energy legislation and cap-and-trade provisions that would cripple Texas industry and raise energy prices for all Americans, EPA has attempted to leverage the debate by threatening to use its regulatory authority under the Clean Air Act to control greenhouse gas emissions.

The Clean Air Act establishes very specific limits on what sources must be regulated and permitted. To include greenhouse gases under the regulatory scheme established by Congress can have only one result – the direct regulation of hundreds of thousands of sources of emissions and the complete collapse of state and federal permitting programs under their own bureaucratic weight.

The EPA plan to “tailor” the federal statutory provisions is intended only to reduce the obvious backlash against a disastrous regulation while still pressuring Congress to enact statutory controls on greenhouse gases.

The threat of EPA regulatory action can only have effect if Congress is willing to allow an administrative agency to re-write federal law. Regardless of where any member stands on climate and energy policy, that member should insist the EPA and any other administrative agency acknowledge the sole responsibility of Congress to establish the law.

Sincerely,

Bill Hammond
President, Texas Association of Business

ENVIRONMENTAL UPDATE

The Texas Association of Business last week sent this letter to the Texas congressional delegation, letting them know that they – not EPA – had sole rule-making authority. To date, Congress has taken a hands-off approach in confronting EPA's power grab. Here we tell Congress to do its job.



T E X A S
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TEXAS BUSINESS REPORT

MARCH 2010

Talk About Business

A Business Climate on the Brink



Bill Hammond, TAB President

The situation is stark. Texas is facing a multi-billion dollar structural budget shortfall. The chief of the Legislative Budget Board (LBB) concluded that the best case scenario would be \$11 billion. It is equally as likely that the shortfall could reach \$15 billion. Texas is in a wait and see mode as we brace ourselves for what will be a session filled with difficult choices.

The path of least resistance would be to sell out Texas families and employers by raising taxes. In this economy, every penny counts for hardworking men and women. If they are making the tough sacrifices to cut spending and act responsible – shouldn't our government be held to the same standard?

When employers are asked why they have located their businesses in Texas, the two resounding answers are low taxes and fiscal restraint. Those bedrock conservative principles have catapulted Texas to having the best economy in America, being home to more Fortune 500 companies than any state in the nation, having the largest population growth and scores of recognition from top financial publications.

There is no question in my mind that scores of legislators will immediately

turn to raising taxes for the solution. It's a quick-fix, but one that never reaps a harvest in the future. If we adopt new taxes, we are dismantling one half of our recipe for a successful economic climate. Opening the door to new taxes would be the death knell in the fiscally conservative movement that has been the driving force behind the Texas economic success story.

No, instead all of our state leaders including the Governor, Lt. Governor, Speaker of the House, state senators and state representatives must heed the harbinger of California's mistakes. The California economy is in shambles due to its high tax, bloated government ideology. The ravage of a legislature that blithely passes the buck on tax increases has left the once powerful Golden State tarnished with the stain of failing its citizens. The Lone Star State currently shines brighter than any other in the nation. We must preserve and build upon that success.

The Texas economy has equally benefited from the foresight of its leaders who exercised fiscal restraint by stockpiling resources for emergency use during the good times and cut taxes for small business owners to assist in retaining jobs for

struggling families during the bad times. Legislators and the business community worked in cohesion to ensure that \$7 billion was kept in reserves to shield ourselves from any potential downturn in the economy. After our financial system collapsed in September 2008, nobody is happier that we held onto that money than the business community.

In 2003, the Legislature confronted and addressed a \$10 billion dollar shortfall through decreased spending and cutting the size of government. The 2011 session will present similar challenges; however, the State has at its disposal a broad base of mechanisms through which it can reduce the size of the shortfall. The state can tap into the approximately \$2 billion from the Available School Fund, push off expenditures into the next cycle and tap into a portion of the \$9 billion emergency pool better known as the Rainy Day Fund. This umbrella was meant to shield us from financial storms. As any family can tell you – it's raining right now. Texas leaders must commit to fighting any new tax, so that Texas families, employers and employees can continue to keep their heads above water.