



TEXAS BUSINESS REPORT

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Drug Testing to Maintain Unemployment Benefits

Still A Long Way To Go

Earlier this year, Congress passed a law allowing for the limited drug testing of people receiving unemployment benefits. While the law certainly wasn't inclusive of everything that TAB has been on record as supporting over the past few years, it is still a start.

"What we were hoping for was a requirement that everyone receiving unemployment benefits would have to pass a drug test to keep those benefits," said Bill Hammond, TAB President and CEO. "What this is about is ensuring that people, who are looking for a job and receiving employer-supported unemployment benefits, are ready and able to take a job that is offered to them. If they are abusing illegal drugs, they are neither ready nor able to do that."

The new law will allow drug testing of people who lost their job because of drug use, which under Texas law would, in most cases, eliminate them from gaining unemployment benefits in the first place. The legislation also allows drug testing if the job that is being applied for requires it. This idea is something that could be implemented in Texas, since the majority of employers, including TAB, do require drug testing. The Department of Labor (DOL) is still in the process of developing

clear guidelines on exactly what states can and can't require under the new law. That hasn't happened yet, and when it does, those rules could be challenged in court. It's also unlikely that the DOL will take any firm action on this until after the November election and probably not until 2013.

Some states aren't waiting for all that to happen. Georgia is a good example. It is asking businesses to report people who are receiving



TAB supports UI drug testing.

WORKFORCE Q&A

As an employer, can I enter into our payroll system the expiration date of an employee's Permanent Resident Card for the purpose of employment eligibility reverification?

(see page 2)

SAVE THE DATE!

A reception recognizing distinguished Congressman Sam Johnson, recipient of the Maurice Aceris Champion of Free Enterprise Lifetime Achievement Award, with special guest presenter George P. Bush.

Thursday, September 6, 2012

7:00-9:00 p.m.

Details at www.txbiz.org

TAB MISSION

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

WORKFORCE Q&A



Harry J. Joe,
Jackson Lewis LLP, Dallas

As an employer, can I enter into our payroll system the expiration date of an employee's Permanent Resident Card for the purpose of employment eligibility reverification?

Lawful permanent resident aliens are authorized to work based on their status as such, not on the expiration date of their permanent resident card. Therefore, such an employee is not subject to reverification of employment eligibility even though his/her permanent resident card becomes expired during the course of employment. This is in contrast to the requirement that the permanent resident card be valid at the date of hire if used for initial employment eligibility verification. Subjecting an employee, who is a lawful permanent resident alien, to reverification of employment

authorization solely because his or her permanent resident card has expired is viewed by the Office of Special Counsel for Unfair Immigration Related Employment Practice to be discrimination based on citizenship and document abuse.

The Immigration and Nationality Act requires all employers to treat all authorized workers equally during the hiring, firing and employment eligibility verification and reverification process regardless of national origin or citizenship status.

As a recent example of the commitment to enforcing such laws, the Office of Special Counsel filed a complaint against Tuscany Hotel and Casino LLC in Las Vegas alleging that it treated non-citizens differently from U.S. citizens during initial employment eligibility and reverification process by requiring non-citizens to provide more or different documents or information than required in the initial employment verification process because of the expired permanent resident card for reverification. The complaint is now pending before the Office of the Chief Administrative Hearing Officer.

Employers should incorporate the following practices in their hiring and employment eligibility verification and reverification processes:

1. Treat work authorized job applicants equally in recruitment and hiring without regard to citizenship status or national origin unless required by law, regulation, executive order, government contract or determination by the Attorney General;
2. There are many classes of immigrants who can have employment authorization;
3. If you believe that a certain position requires a specific citizenship status such as U.S. Citizenship, carefully review the legal support for such a requirement before posting the job advertisement;
4. Unless legally required, avoid using such phrases in recruitment and job advertisements:
“only U.S. Citizens”
“citizenship requirement”
“only U.S. Citizens or green card holders”
“OPT candidates preferred” or “H-1Bs only”
“must have green card/U.S. passport”
“I-9 qualifying identification required at time of application”
5. Ensure that all individuals involved in hiring and recruiting are familiar with equal employment opportunity laws including unfair immigration related employment practices discrimination.

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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Washington Woes, Texas Solutions

Texas Center for Federal Policy Releases New Priorities.



New federal priorities

It's been a year since TAB members celebrated the launch of a new federal initiative, the Texas Center for Federal Policy. In that time, TAB has raised its profile in our Nation's Capitol, including a successful Washington conference where members spent one-on-one time with their elected officials and heard from some of the top leaders in Congress, including vice-president elect Congressman Paul Ryan.

Now TAB is taking the next step with a new list of priorities sent from Texas business to our members of Congress. Those priorities were developed by the members of TAB's National Affairs Committee and approved by the TAB Board during its Washington, D.C. meeting.

"Among TAB's many victories in Washington, D.C. over the past year, one major accomplishment stands out. That was keeping the Dunes Sagebrush Lizard off of the endangered species list in West Texas," said TAB President and CEO Bill Hammond. "That decision means that the oil drilling business in West Texas will remain strong and keep thousands of Texans employed in good paying jobs."

"We know here in Texas what it takes to make the economy strong, grow jobs and keep the business climate healthy. How we do it here, with fiscal responsibility, low taxes and measured regulation, is sometimes lost on Congress," said Hammond. "TAB will continue to be a strong presence at the federal level to deliver the message of how the Texas way of spending restraint and low taxes can lead the way."

The full report is available on the TAB website. Here are some highlights:

Debt Reduction:

Prohibit deficit spending and limit spending increases to some rational index, such as growth in personal income. It is critical that our focus be on economic growth and reduced spending as a way to reduce our debt.

Energy:

Maximize the production of domestic energy resources without interference in the free markets and oppose efforts to use environmental regulatory policy as a means to manipulate energy markets.

Environment:

Use real science to justify new regulations and reform the Endangered Species Act.

Federal fiscal policy:

Support efforts to prohibit deficit spending and limit spending increases to some rational index, such as growth in personal income.

Medicare Reform:

Support gradual changes to allow the Medicare program to continue, including increasing the eligibility age and replacing the current model with a premiums-supported model.

Medicaid reform:

Support converting the federal share of Medicaid spending into block grants.

Repeal The Affordable Care Act:

The law does little to stem the skyrocketing cost of health care and will be financed on the backs of small businesses. TAB supports legislation that will increase, not reduce, the quality of care for patients.

Regulations:

Require a two-year moratorium on any new regulations unless approved by Congress.

Social Security:

Raise the retirement age and replace the cost of living adjustment.

UI Drug Testing

continued from page one

unemployment benefits and fail drug tests as part of the hiring process. To receive unemployment in Georgia, much like in Texas, people must not only be actively seeking work but must also make themselves able and available to work any job. Failing a drug test, or even refusing to take one, could be interpreted as a violation of those terms, making Georgia's policy permissible under federal law.

Of course, it's not required that businesses in Georgia report people. Passing such a requirement in Texas could lead to lawsuits that would drag out the implementation of the new requirement for years.

It is highly unlikely that Congress will revisit any issue involving unemployment insurance, including an extension of benefits, let alone reopen the drug testing issue before the end of the year. Thus, TAB believes that the Texas Legislature should pass a law during the next session that gives authority to the Texas Workforce Commission and instructs them to develop the rules to fully implement federal standards.

"We want to make sure that our employers in Texas feel confident that when they are about to hire someone, and remove that person from the unemployment rolls, that they are getting a new employee who is qualified and ready to go to work. A big part of being both qualified and ready to go to work is being drug free," said Hammond. "That is why we so strongly support the idea of drug testing for people receiving unemployment benefits. It is our hope that eventually we will be able to implement this policy for everyone getting those benefits."

MEMBER PROFILE

R.W. Dirks Petroleum Engineer, Inc. – Bringing Success to the Oil Industry for More Than 60 Years

“Community involvement is a core component of our business model,” says Laura Fischer, CEO of R.W. Dirks Petroleum Engineer, Inc. (RWDPE) “I can’t really envision what our business would look like without the community piece – whether it’s on a local, regional or state level.”

Laura Fischer grew up in Tuleta, TX -- the same small town where her father, R.W. Dirks, established the family business and where that company still resides. Dirks started R.W. Dirks Petroleum Engineer, his own engineering consulting firm, in 1951. Their work included such jobs as core analysis, corrosion control and on-site well supervision. RWDPE’s office doubled as a home for Dirks and his wife, Sandy, as Dirks built a laboratory in the upstairs garage apartment where they lived. Dirks did all of the field work while Sandy stayed back to man the headquarters.

Fischer remembers, “It was a time when you and your family would go into town, park your car, and walk down the sidewalk, going into one store after the other, running into friends and acquaintances along the way. You knew the business owners, and they knew you. That’s community. That’s making a community with your neighbors. Business is an integral part of that fabric.”

Though RWDPE has evolved, it is still providing the same quality service it did in 1951. Today, Fischer’s husband Jon, who like her father is a petroleum engineer, is RWDPE’s general manager. “I couldn’t do what I do without Jon,” says Fischer.

And, she’s done quite a bit. From serving 15 years on the Beeville Independent School District’s Board to being named South Texas Woman of the Year, Fischer is currently in her fourth year as a board trustee for Coastal Bend College.

Fischer is also both the education chair and an executive board member of the Texas Association of Business, an experience she believes is invaluable. “State decision makers need to hear from small business on a regular basis. TAB very effectively makes that happen with one collective voice. It is good for business, and it is good for Texas.”

Fischer insists she never set out to be a civic leader. She simply wanted to help find solutions, and TAB has given her an outlet to do so. “I’m a problem solver. And that’s one of the reasons I appreciate the TAB so much. It identifies areas that business in Texas need to be paying attention to and offers solutions. TAB gives me the opportunity to help make my state a better place for business. That’s good for my business and my community.”

That mindset is probably one of the primary reasons Fischer has also been the president of the Bee Development Authority (BDA) for the last 10 years. “If you show yourself over time to be a consistent, responsible problem-solver and do it with integrity, people will begin to associate that with your business or the entity you represent. I’ve helped to grow the impact and the influence of the BDA with that approach. It’s the way we do business at RWDPE, and it’s the way we do business at TAB. Because at the end of the day, all you’ve really got is your reputation.”



Three generations of RWDPE owners

TAB Honors Tommy Simmons Longtime Workforce Commission Attorney Honored As Lifetime Friend Of Employers



Bill Hammond and Tommy Simmons

Many people in Texas can't imagine the Texas Workforce Commission without Tommy Simmons. He's been there since 1984, with a brief break from 1998 to 2004. Simmons has served as legal counsel to five different commissioners including current TAB President and CEO Bill Hammond when he was the Workforce Commission chairman.

"When it comes to serving the employees of this state, Tommy Simmons is the gold standard for both service and knowledge," said Hammond when presenting Simmons with the TAB Lifetime Friend of Employers Award at the recent TAB/SHRM Employment Relations Symposium in San Antonio.

"This special recognition of Tommy Simmons by the Texas Association of Business is well-deserved," said his current boss, Workforce Commission employer representative and former chairman Tom Pauken. "As an attorney and public servant, Tommy stands out for his extensive

legal knowledge, tireless work ethic, and dedication to the employers of Texas. Tommy has spent his career educating our state's business community and advocating for their interests. As a small businessman and the commissioner representing employers, I am very grateful for his service."

"Tommy has been a real life line for many of us employers for many years," said Pamela Bratton, Vice President of Meador Staffing Services. "I have personally worked with Tommy for many years, and he always tells you the whole answer to your question. He knows more about employment laws and regulations than any team of lawyers I have met. Tommy is the Wikipedia of employment law."

"Tommy Simmons epitomizes the 'best of the best' when it comes to public service," said Mary Scott Nabers, former Texas Employment Commission employer representative and current president of Strategic Partnerships, Inc. "He has served the business community of Texas for decades and has made valuable contributions to thousands of employers. It is fitting to recognize and thank Tommy for his years of service."

If you subscribe to the Texas Employment Law Handbook from TAB, you also are touched by Simmons' work. He is a long-time editor of that publication and was the creator of the first online edition. He also created, designed, wrote and programmed the first employment law software programs specifically for Texas employers.

WE'VE UPDATED TXBIZ.ORG

If you go to our website you will notice a few changes. There are new banners at the top to make navigation to the most popular parts of the website easier. Those banners will be changed and updated to reflect the latest events and happenings at TAB.

"We wanted to make the website a little more user friendly and a little more colorful at the same time," said Bill Hammond, TAB President and CEO. "You're going to see a lot more information on our website, and we want

to make it easier for you to find the newest content."

Right now on the website you can link to the new National Priorities report from a banner at the top and also find out how to register for our Dallas reception honoring Congressman Sam Johnson and our golf tournament coming up in September in Austin. Coming soon will be the State Priorities report looking ahead to major issues facing business in the upcoming 2013 legislative session.

QUOTES

“The whole idea of improving education is to ensure that our kids are ready to make it in the real world and that they have the skills needed to get a good job.”

– TAB President and CEO Bill Hammond speaking about low AYP passing rates in the *Ft. Worth Star-Telegram*.

“There is a place where employers can focus on building a business and creating jobs instead of operating in fear of a lawsuit that could force them to shut their doors.”

– TAB President and CEO Bill Hammond speaking about a TAB Lawsuit Reform survey in the *Southeast Texas Record*.

“Being in the accountability camp, I am glad the business/ed reform group pushed back. There is a myth floating around that the emphasis on accountability harms students.”

– William McKenzie with the *Dallas Morning News* in support of TAB's stance on school accountability.



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TEXAS BUSINESS REPORT

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Talk About Business

Texas Business – We Built Ours



Bill Hammond, TAB President

"If you've got a business, you didn't build that." Those were the words of President Obama on the campaign trail. Those words should be disturbing and challenging to everyone who has built their own business. Yes, we all know that there are things that government can do to help people build businesses, but it takes a lot more than that to succeed in the business world. If you have built a business, **YOU** have done it.

It is insulting to the entrepreneurs of this country when the President doesn't appear to appreciate what you have done. Small business is the largest employer in the country. Mom and Pop own the economy. Without those jobs, the economy would be in far worse shape; in fact, America would be a third world country.

I also understand that the President was trying to remind folks that

the government funds things like education and roads that are essential for business. I could, of course, remind him that it's business that funds the majority of those programs. Then comes the last part of that quote: "Someone else made that happen." Who might that be, Mr. President? If you are an entrepreneur, you are using all of the tools that you have learned to be successful, but they are your tools. You may have learned them in school, but you also learned them from being in the business world, from peers and from trial and error. The point is, if you don't act using those tools, then no one makes it happen. It's up to you, not someone else.

Recently the President has been trying to undo the damage he caused. For my money, it's too little too late. We feel it's time to send a message that in Texas we do build our own

businesses. That's where our new sticker comes in. As you can see below it has a very simple message. "Texas Business—We Built Ours!"

I am proud of each and every one of our TAB members because your membership is what makes up the most powerful organization in the State representing business in Texas, and a rising power for business representation in Washington, D.C. If it weren't for you, and the businesses that you have built, this organization wouldn't exist. Likewise we wouldn't be living in the state with the strongest economy and the best business climate in America. **YOU** did that, and everyone should know it.

To get your sticker email, webuiltours@txbiz.org. The first sticker is free, subsequent stickers are \$3.00 per sticker.



TEXAS BUSINESS
WE BUILT OURS!