



LEGISLATIVE BUDGET BOARD

State Employment, Travel and Membership in Trade Associations

**PRESENTED TO THE GENERAL INVESTIGATING AND ETHICS COMMITTEE
LEGISLATIVE BUDGET BOARD STAFF**

FEBRUARY 2018

Charge 6: Employment Policies and Procedures

Charge No. 6: Examine employment policies and procedures at state agencies relating to the hiring of individuals who were terminated from employment with another state agency for misconduct

- An employer is not required to provide an employment reference to or about a current or former employee.
- The Legislature encourages the disclosure of employment information to prospective employers and provides civil liability for most disclosures.
- Misconduct registries require due process protections for employees: formal investigations, written notice, administrative hearings, conclusions of law and findings of fact, and potentially an appeal to a state district judge.

Labor Code, Chapter 103

The Texas Labor Code, Chapter 103, provides:

- An employer is not required to provide an employment reference to or about a current or former employee.
- The Legislature finds that disclosure of such information protects employment relationships and benefits the public welfare.
- An employer is given immunity from civil liability for disclosure by an employer of truthful information regarding a current or former employee.
- The immunity is waived if the information disclosed was known by that employer to be false at the time the disclosure was made or that the disclosure was made with malice or in reckless disregard for the truth or falsity of the information disclosed.
- The immunity applies only to a managerial employee or other representative of the employer who is authorized to provide such information.

Health and Safety Code, Chapters 250, 253

- Nurse aides may not be employed unless they pass a criminal history background check, are listed in the nurse aide registry and do not have a finding of misconduct in the nurse aide registry
- A background check and a registry is done upon initial employment and annually thereafter.
- If a report of misconduct is made against an employee the commission must conduct a formal investigation and make a determination if the conduct occurred.
- The commission must give the employee written notice of the determination, including the employee's right to an administrative hearing.
- The employee has 30 days to accept the determination or request a hearing. If the employee requests a hearing, an administrative law judge will conduct the hearing within 120 days.
- The administrative law judge will make findings of fact and conclusions of law upon which the commission will make the determination of misconduct.
- The commission must give the employee notice of the administrative order and determination of misconduct.
- If the employee disagrees with the determination, the employee may file for a judicial review with a state district court judge within 30 days.

Charge 9: Participation in Trade Associations

Interim Charge No. 9 requires the General Investigating and Ethics Committee to investigate the use of state agency resources to participate in trade associations and groups funded by industries regulated by the agency.

- Few types of restrictions contained in statute apply to the interplay between state agencies and trade associations/groups.
- Most restrictions prohibit a state agency from allowing an officer, employee or paid consultant of a trade association to serve in specified leadership positions at the agency.
- The Texas Government Code, Section 2113.104, specifies conditions that must be met before a state agency expends appropriated money to participate in a trade association or group.

Government Code, Chapter 2113

The Texas Government Code, Section 2113.104, states:

- (a) Except as provided by Subsection (b), a state agency may not use appropriated money to pay for membership in or dues for a professional organization unless the administrative head of the agency, or that person's designee, first reviews and approves the expenditure.
- (b) This section does not apply to a state library.

Charge 8: Travel Policies and Regulations

Interim Charge No. 8 requires the General Investigating and Ethics Committee to examine laws and policies regulating travel by state agency officials to ensure that expenditures are in the best interest of the state.

- The General Appropriations Act (GAA), Article IX, governs the maximum amount of reimbursements for various travel-related expenses.
- The Texas Government Code, Chapter 660, provides guidance and limitations of when travel should be reimbursed.
- The Texas Administrative Code, Title 34, provides detailed information on the administration of travel reimbursements.

General Appropriations Act, Article IX

Article IX, Part 5. Travel Regulations:

- Section 5.02 – Provides that the maximum amount that may be spent by agencies for transportation, meals, lodging, or incidental expenses is the amount appropriated in the GAA for those specific purposes, and that spending must comply with state law
- Sections 5.03 and 5.05 – Provide for reimbursement of state employees for travel in motor vehicles at the U.S. Internal Revenue Service allowed mileage rate and travel-related meals and lodging expenses at actual cost and not to exceed the rates allowed by federal travel regulations
- Sections 5.07 and 5.08 – Provides for reimbursement of advisory committees and board members for travel-related meals, lodging expenses and per diems (for board members) at the same rate as state employees for actual expenses

Previously in Article IX

- From 1998 to 2014, the GAA, Article IX, contained a provision that required agencies to receive Legislative Budget Board approval before expending funds on travel in excess of a certain threshold. Over the years the provision existed, that threshold was generally expressed as a percentage of an agency's expenditures on travel from a set previous fiscal year.
- The provision resulted in a large volume of requests from agencies to exceed the limitation on travel expenditures. More requests, by far, were received pursuant to this provision than to any other provision in the GAA.

Government Code, Chapter 660

The Texas Government Code, Chapter 660, also regulates travel for state officers and employees.

- The Texas Government Code, Section 660.003(e), provides that a state agency may pay for or reimburse a travel expense only in certain circumstances:
 - where “reasonable and necessary”;
 - where the travel “clearly involves official state business” and is consistent with the agency’s legal authority; and
 - where the expense and related travel comply with relevant regulations.
- Travel outside of Texas must be approved in advance “in accordance with the policy of the state agency that proposes to pay or reimburse the expenses.”

Government Code, Chapter 660

Other travel expense provisions in Chapter 660:

- Requires agencies to minimize travel expenses and ensure all travel arrangements are “the most cost effective considering all relevant circumstances.”
- Prohibits accepting travel reimbursement from a person that a state employee’s agency intends to or is auditing, examining, or investigating
- Requires audit or examination of reimbursement requests by the Comptroller of Public Accounts to determine compliance with relevant laws and whether travel necessary and efficient to conduct state business
- Provides for limitations on reimbursement for personal vehicle and aircraft
- Provides for limitations on reimbursement for commercial air travel, use of limousines, certain lodging types, meals within agency headquarters or without overnight travel, and alcoholic beverages
- Encourages the use of technology to the greatest extent possible to reduce travel expenses

Administrative Code

The Comptroller of Public Accounts also promulgates rules regarding travel vouchers pursuant to the Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Rule Section 5.22:

- Requires travel expenses be incurred before reimbursement and proof of payment for lodging and transportation costs; provides methodologies for calculating reimbursable mileage and rates
- Lists examples of incidental expenses which are reimbursable, including, but not limited to: telephone calls; toll charges; and parking charges
- Limits the number of days before state business that meal or lodging costs may be reimbursed
- Provides for Comptroller audits and examinations, including the type of documentation required for reimbursement; provides that the Comptroller “may question the fiscal responsibility of a payment even if it is technically legal”



LEGISLATIVE BUDGET BOARD

Contact the LBB

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