



C.B. BURNS  
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## State Law Update: Texas and Beyond

### Texas Supreme Court Cases



- *Lujan v. Navistar, Inc.* (Tex. April 27, 2018)
  - Not an employment case but addresses an important issue that arises in employment cases: the sham affidavit
  - Holding: Under Rule 166a(c), a trial court may conclude that a party does not raise a genuine issue of material fact by submitting sworn testimony that conflicts with the same witness's prior sworn testimony, unless there is a sufficient explanation for the conflict.

## Texas Supreme Court Cases



- *Alamo Heights ISD v. Clark* (Tex. April 6, 2018), p. 2
  - Female P.E. teacher (Clark) claimed harassment by a female co-worker and retaliation
  - Plea to the jurisdiction denied and ultimately appealed to the Texas Supreme Court
  - 6-2 decision; Guzman writing for the majority; Boyd and Lerhmann dissenting; Blacklock did not participate
  - Two issues:
    - ✦ Whether there was more than a scintilla evidence of gender-based harassment
    - ✦ Whether the jurisdictional facts are limited to the prima face case elements, even if the presumption it raises has been rebutted by evidence attached to the jurisdictional plea

## Texas Supreme Court Cases



- *Alamo Heights, cont'd.*
  - Allegations included:
    - Co-worker bullied and harassed her daily
    - Made comments about Clark's breast size
    - Commented how tan Clark's chest was
    - Suggested Clark should hook up with a male coach
    - Talked about her own sex life and showed pictures of her boyfriend's genitals
    - Told dirty jokes to male and female coaches
    - Insulted other coaches
    - Brushed up against Clark
    - Showed nude photographs of men to male and female coaches

## Texas Supreme Court Cases



- *Alamo Heights*, cont'd
  - Court, on harassment: “Why matters.” Here, no evidence of sexual-desire motivation, no evidence of general hostility to women, no direct comparative evidence of discrimination. TCHRA is not a “strict liability” statute that mandates a finding of sex discrimination on mention of a gender-specific body part.
  - “Taking all of her evidence as true, Clark experienced misery at work that no employee should endure. But it is not an actionable TCHRA violation.”
  - Court, on retaliation: jurisdictional inquiry is not limited to the prima facie elements. If a defendant rebuts the inference of discrimination, and the plaintiff fails to raise a fact issue on causation, the plea should be granted.
  - “Magic words” are not required . . . . But complaining only of ‘harassment,’ ‘hostile environment,’ ‘discrimination,’ or ‘bullying’ is not enough.”

## Texas Supreme Court Cases



- *Community Health Sys. v. Hansen* (Tex. 2017), p. 17
  - Physician had 5 year employment contract but could be terminated without cause if his annual practice losses exceeded \$500,000 after third year
  - His employment was terminated at end of third year without cause based on annual practice losses
  - He sued for breach of contract and tortious interference
  - Court: annual practice loss was a condition subsequent, and no reason for termination had to be given — “without cause signifies the reason for termination is irrelevant”
  - No tortious interference claims against individual manager because he was an agent of the corporate employer and his actions were those of the corporation

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