Texas
Employment Law Letter

Vol. 34, No. 12 | December 2023

DISCRIMINATION

Section 1981 breach of contract claim takes flight

by Michael P. Maslanka, UNT-Dallas College of Law

You know that Title VII of the Civil Rights Act of 1964 is the mainstay of our laws prohibiting unlawful workplace discrimination. But Section 1981 of the Civil Rights Act of 1866 was the first, and it's a potent—and very different—weapon in challenges to unlawful discriminatory conduct. A recent case from the U.S. 5th Circuit Court of Appeals (the federal appeals court covering Texas) underscores this crucial point.

Section 1981's origins

The U.S. Civil War was fought and won on the battlefield. But the war continued after April 1865, didn't it? Newly freed slaves were subjected to discriminatory treatment in their efforts to build new lives and to integrate into society.

Enter: the Civil Rights Act of 1866. Congress gave all citizens—regardless of their race—the right to make contracts and to sue for a racially motivated breach or modification. Now, this leads to two questions: What is a race, and what is a contract?

Defining 'race'

The concept of race was understood differently in 1866 to include ancestry and ethnic characteristics. Jewish? Covered. Middle Eastern? Covered. African? Covered. Or, look at my grandfather Jacob Maslanka, who immigrated in 1898 from Poland to the United States. Becoming a citizen in 1933, his citizenship certificate lists "Polish" as his race. (The U.S. Supreme Court decided in 1987 that ethnicity and ancestry were covered by Section 1981.)

More basically, though, race includes being black and—as the Supreme Court decided in 1973—being Caucasian. (Yes, 1987 and 1973. It takes a long, long time for the contours of our laws to fully develop.)

Contracts and race

A "contract" can be any type of business or commercial contract—selling seeds to a former slave to plant a crop or refusing to do business with an IT firm because it's owned by black people or Arab people.

Section 1981 also covers refusing to hire or firing a person because of their race. Why? At-will employment is a form of contract. And the creation of a hostile work environment based on race is also prohibited. So, a workplace polluted with unfunny jokes about "dumb Polacks" violates Section 1981.

Note: Section 1981 has a four-year statute of limitations. A person need not file any sort of claim with a government agency before filing a lawsuit, and there are unlimited punitive damages available.

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Section 1981 in 2023

With that as key background, let's fast-forward to October 13, 2023, and the 5th Circuit's decision in a case involving a fateful flight that was grounded.

Issam Abdallah and Abderraouf Alkhawaldeh are longtime American Airlines passengers who had tickets for the same flight. Here's the court:

> [Abdallah and Alkhawaldeh] bought their tickets from American Airlines; the flight was operated by Mesa. Both . . . are United States citizens and frequent fliers of American; Abdallah held Gold status, and Alkhawaldeh held Executive Platinum status. Both are "members of a racial and national origin minority group as Egyptian and Jordanian and members of the Arab, Middle Eastern and Muslim communities."

A flight attendant was alarmed by several things. First, Abdallah asked to sit in the exit row and then interrupted her instructions on exit-row responsibilities. Both passengers were texting in a foreign language. Although they weren't sitting together, they waved oddly to one another. Their names sounded unusual to her. And when Alkhawaldeh was in the restroom, the flight attendant heard liquid being poured and several flushes but wasn't able to discern between those sounds and the sound of urination.

The result? Airline security searched the plane and gave an all clear. Security told the flight attendant the passengers exhibited a calm demeanor and were longtime American Airlines travelers.

The flight attendant adamantly refused to fly with these two passengers, so the flight was canceled. While waiting to board the new flight, both were questioned by law enforcement and allowed to go on their way. A Section 1981 lawsuit followed.

Viable breach of contract claim under Section 1981?

Buying a ticket constitutes a contract: Pay us money, and we will fly you from point A to point B. Was the contract breached? Not according to Mesa because Abdallah and Alkhawaldeh ultimately flew from point A to point B.

But the appeals court held that to modify a contract is part of "the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship." Compelling them to deplane and take another flight was therefore a breach of contract.

Mesa countered that all the passengers were taken off the plane and put on a different flight, not just Abdallah and Alkhawaldeh. So, to borrow an ad slogan from several years ago, "Where's the discrimination?"

The appeals court reasoned there are different ways to prove discrimination. One is to show that two similarly situated people are treated differently because of a protected characteristic. But another is "but-for" causation—that is, when a particular outcome wouldn't have happened but for a protected characteristic.

Here, the flight wouldn't have been canceled and everyone put on a different flight if not for Abdallah's and Alkhawaldeh's ethnicity and national origin. Thus, the fact that all passengers had to deplane and take a new flight is rendered irrelevant. The court makes this point:

> To hold otherwise would lead to intolerable results—would an employer be able to avoid liability . . . if it merely started a hiring freeze every time a Black man added his name to the applicant pool? Could a school fire a female employee so long as it fired a male employee as well? . . . The but-for reason for the action, even though it happened to those not in the protected class as well, was discrimination based on the protected class.

Although the trial court dismissed the Section 1981 claim, the appeals court said it must be submitted for a jury determination of possible liability and, if so, damages. *Abdallah and Alkhawaldeh v. Mesa Air Group, Inc.*

Bottom line

Damages can include compensatory damages such as mental anguish and punitive damages without any statutory caps—plus an award of attorneys' fees incurred by the lawyers for the plaintiffs.

Finally, Section 1981 enlightens us that the number of those protected by our antidiscrimination laws is larger than one would think. Be aware.

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DISCIPLINE

Texas Supreme Court on employer write-ups: It's all in the details

by Michael P. Maslanka, UNT-Dallas College of Law

Many readers may be responsible for either writing up employees for performance and conduct issues or reviewing write-ups. There's an art to this skill set. Now, the Texas Supreme Court is considering a retaliation case in which the issue is front and center.

Can you spot the issue?

Dawn Thompson is a registered nurse. She worked at Baylor Scott & White Memorial Hospital. Here is her history of write-ups:

No. 1: May 8, 2015. Thompson allegedly raised her voice at another employee in the cardiology department and was disrespectful to her coworker. The counseling form stated that "immediate and sustained improvement is expected [and] . . . failure to exhibit immediate and sustained improvement, or any other unacceptable conduct or performance, may result in further corrective action up to and including separation from employment."

No. 2: October 7, 2015. Another counseling form stating that Thompson "became argumentative and disrespectful" on numerous occasions and telling her to abide by hospital rules in dealings with coworkers. The form warned her that "failure to meet these expectations, or if any other incident transpires, will result in separation from employment."

No. 3: May 19, 2016. Thompson learned that a minor, whose parents were separated, was allegedly receiving conflicting medical treatment from the doctor retained by the mother and the one retained by the father. She called the school nurse to discuss the child's condition without receiving the proper authorization under the Health Insurance Portability and Accountability Act (HIPAA).

The plot thickened when Thompson called Child Protective Services (CPS) to report possible child abuse, asserting that her supervisor told her, "If [she] felt that the child was in danger, then [she needed] to report, because [she has] a duty to report." (And true, professionals such as nurses are legally obligated to report child abuse and are protected from employer retaliation from doing so in Texas.)

Thompson received another counseling form and was terminated. Here's what the form said:

> **Describe the incident at issue (what, when, where, etc.)** On 5/10/2016, [the hospital] received a complaint [that Thompson] inappropriately contacted a school nurse to discuss a patient without a signed release of information from the parent. This is a violation of HIPAA and patient rights. As a result of this violation, [her] employment is being terminated immediately.
>
> **Expectations (Include goals/objectives. timeframes etc.)** An Audit revealed that [Thompson] contacted a school nurse without a [release of information]. Furthermore, a CPS referral was made without all details known to Thompson. It is a violation of a patient's rights under HIPAA to share information with outside parties without a current [release of information].

Thompson filed a retaliation claim, and although the trial court in Bell County dismissed her claim, the El Paso Court of Appeals reversed and directed it to go to trial. Now the Texas Supreme Court will decide if the appeals court was right in its decision. *Thompson v. Scott & White Memorial Hospital*, 2022 WL 2093092 (El Paso Court of Appeals, June 10, 2022).

And the issue is?

So, the hospital argued there can be no retaliation because it wrote Thompson up before she engaged in the protected activity of making the CPS report and told her—without equivocation—that she would be fired for any future infractions. This was a decision made before she made her CPS report, so she couldn't have been fired in retaliation.

But wait! If Thompson's report was irrelevant to her termination, then why did the hospital mention it in the final write-up? It could have stopped at the end of the first paragraph, but oh no. It kept on writing and identified her report in the termination document. A jury must therefore decide the hospital's true motivation.

Bottom line

First, the first two write-ups are solid. They identify the rule violation and state that any further violation—not just the one in the write-up—can lead to termination. This language allows you to argue that engaging in protected activity that post-dates the write-ups makes zero difference in your termination decision.

Second, the final write-up involved what I call "piling on," just like in football. This is when the runner is tackled and down, but other defensive players jump on top of the first defensive player and create a pile. Totally unnecessary, and it will always draw a flag for a penalty. Same here. The termination for the HIPAA violation was plenty. Cut the clutter.

Third, stick to facts. Consider the case in which a supervisor is instructed not to preach his religious beliefs at work. He keeps doing so and is warned again. One day the copier breaks down, and he requires other employees

to pray over it to get it started. The termination form asks the reason for termination and provides a small block. The company manager writes in one word: "Religion." If you need more space, write up the facts on an additional sheet of paper. (The jury finds against the company in the religious discrimination trial, but the judge sets aside the verdict.) Stick to facts—the cashier employee is fired for being out of balance, not for theft.

Finally, what will the court do in this case? I think it will side with the hospital, reaffirm its commitment to the predetermined decision doctrine, and find a way to excuse or cha-cha around the unfortunate language in the final write-up by saying, "No rational jury could find that, given these facts, a retaliatory motive was at work in the termination decision." I will keep you posted.

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DISCRIMINATION

TSU and two Ps: F on discrimination claim

by Michael P. Maslanka, UNT-Dallas College of Law

I know this sounds like the tiles drawn in Scrabble, but it's much more. Let's decipher.

Law school professor in conflict with her school

Deana Pollard Sacks, a tenured professor at the school of law at Texas Southern University (TSU) in Houston, filed a lawsuit against the school claiming a constructive discharge—that is, she was forced to resign because the school made her working conditions intolerable because of her race.

But employees can't just resign and manufacture a claim; they must act reasonably. Otherwise, they'd be able to just pop out viable lawsuits at will. So, the federal court of appeals covering Texas requires employees claiming a constructive discharge to produce evidence along these lines to justify their resignation:

- A demotion
- A reduction in salary
- A reduction in job responsibilities
- Badgering, harassment, or humiliation by the employer calculated to encourage the employees' resignation

And her grade on each?

Well, according to the appeals court, Sacks only alleged in her lawsuit that the law school dean "add[ed] time-consuming, unnecessary, and menial tasks such as rearranging the order of subjects taught in classes . . . calling many extra faculty meetings . . . and adding new methods of [class] attendance recording," as well as assigned law professors an additional duty.

The appeals court essentially said, "OK, even if we assume these are menial tasks, what else you got to explain your resignation?" The answer? Nothing. The court: "She fails to allege any other factor that would make a reasonable person feel compelled to resign."

But Sacks argued that TSU engaged in systemic unlawful discrimination at the school, that the American Bar Association publicly censured TSU for discrimination, and that TSU engaged in sex discrimination toward other female law professors. But the court reflected that none of this personally involved her and therefore can't be used as a rationale for her resignation.

Not to be deterred, Sacks argued that a variety of personal disputes warranted her resignation. But the court said personal disputes don't factor into whether there's a legally sufficient basis to support a constructive discharge lawsuit. Also, the fact that she didn't receive a sabbatical couldn't justify her resignation because the denial occurred three years before.

The two Ps?

The lawsuit was dismissed without any pretrial fact-finding. The court held that the lawsuit, on its face, didn't muster enough facts to state a claim of constructive discharge. To survive dismissal, a plaintiff must "plausibly" allege unlawful conduct, not just "possibly." This standard, as applied here, performs a gatekeeping function to screen out cases the courts believe shouldn't consume the time, energy, and money fact-finding involves. *Deana Pollard Sacks v. Texas Southern University et al.* (5th Cir. October 3, 2023).

Bottom line

This is a solid case for employers. Pull it up whenever you're hit with a constructive discharge claim, and plan your strategy accordingly.

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COMMUNICATION

Making it count: Tips for effective email communication

by Michael P. Maslanka, UNT-Dallas College of Law

Email is woven into our work lives. It's important, and we should treat it as important, so we need to take a minute to think about making it more effective. Here are three suggestions.

Suggestion No.1: Respond

Somewhere along the line, email made us forget basic manners, but its ease of use is to blame, not our basic nature. Someone in the hallway says, "Good morning," and we respond in kind. But oftentimes, people send an email and get no response. Example: "Hi. I have a doctor's appointment and won't be able to make the meeting on Friday. I'll review the meeting notes on Monday." Then, crickets.

The sender thinks: Did the person get the email? Is she upset with me? At worst, catastrophic thinking sets in. How hard is it to respond with "Hope you're well, and thanks for the heads-up"? To ask the question is to answer it.

Suggestion No. 2: Write a meaningful acknowledgment

Let's say you're copied on an email to your work group. "Lola's article on XYZ was published in our industry magazine. A copy is attached. Way to go, Lola!"

Here's your choice: Tap out "Congrats" and get on with your busy day, or make an investment of 5 minutes to peruse the article and write, "Liked your article. Good grouping of the issues we face every day. A real contribution. Thanks."

Which would you rather receive? And, by the way, CC all. If you really believe you're on a team, then show it to others. Is it really a burden to read a three-sentence email?

Suggestion No. 3: Ditch emoticons

Until I became a law professor, I eschewed the use of the exclamation point. But I've changed thanks to my young students, who taught me the value of a well-placed "!" The line, though, is drawn at the use of emoticons, which—unlike the exclamation point or the question mark—aren't accepted punctuation in the English language.

Emoticons are a crutch. They make us lazy. They retard our ability to express ourselves sincerely; forthrightly; and, now that I think about it, humanely. And that's a victory against the ever-encroaching use of artificial intelligence (AI).

Bottom line

And speaking of humanity, my concluding thought: Occasionally ditch email. Walk down the hall to a colleague's office, or talk about an issue over a libation. There are options, and we possess free will. Like email, that's another tool in your work tool belt. Use it.

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COMMUNICABLE DISEASES

Texas bans COVID-19 vaccines

by Michael P. Maslanka, UNT-Dallas College of Law

The Texas Legislature is in special session and decided to enact a law, which Governor Greg Abbott is promising to sign, that bans the use of COVID-19 vaccine requirements by private employers.

Details

First, the law doesn't take effect until February 7, 2024, so take a breath. **Senate Bill 7** prohibits private employers from taking adverse action against contractors or workers who decline to be vaccinated. Do so, and you'll be fined $50,000, although it's unclear whether that is per employee or overall.

But, you can still require workers to wear masks or other protective gear. In these circumstances, there's no $50,000 fine. The Texas Workforce Commission (TWC) will take complaints from employees who assert the law is being violated. The attorney general's office will file suit for violations. There's no private claim, so individuals can't sue their employers under the law.

Thoughts

It will still be up to you as the employer to keep your workers and customers safe. Talk to your lawyer about alternatives. By way of example, you can still offer health fairs during which workers can get vaccinated as long as those who decline aren't punished or feel they are under pressure to become vaccinated. I'll keep you posted on developments.

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LITIGATION

Improving internal controls: Lessons from the Case of the Double-Dealing Manager

by Michael P. Maslanka, UNT-Dallas College of Law

Managers in positions of authority can either do great good for a company or inflict great harm. Because we learn more from the second than the first, I wanted to tell you about this recent case from the U.S. 5th Circuit Court of Appeals, the federal appeals court covering Texas.

$11,897,689.39

That is the amount of monetary harm a jury found was caused by John Kawcak, a former operations supervisor, to his employer, Antero Resources Corporation, a large, publicly traded oil and gas producer. Seems that Kawcak had a close friend, Tommy Robertson, who owned two companies performing "drillout" operations. Essentially, these companies unplug obstructions in an oil or gas well so drilling won't be impeded. And guess who awarded contracts to perform this work for Antero? Kawcak.

According to Antero, Kawcak and Robertson hatched a scheme for Kawcak to give all of the drillout work to Robertson. Antero claimed Robertson's companies would take longer than necessary to unplug the well by dropping tools down it or bringing the wrong equipment to the worksite. And, well, time is money, especially when a drillout operation costs $30,000 per day.

In other words, Antero believed these companies were milking the gig. It figured this out and sued Robertson and his companies. The pretrial exchange of evidence (known as discovery) revealed Kawcak's role, and Antero sued him as well for, among other claims, breach of fiduciary duty (a duty owed by managers to their employers when they are placed in position of great authority). Robertson settled, but Kawcak took his chances with a jury.

At trial, the jury learned Kawcak received cash payments of $729,000 from Robertson's companies, plus a jet (although Kawcak asserted he bought the jet himself). I know what you're wondering: How much did Kawcak receive in compensation from Antero? Get this: $2,666,828 (salary and bonuses), plus restricted stock valued at $9,439,497 when the stock vested.

Appeal

Kawcak appealed the awarding of damages. He lost.

First, Texas law doesn't require exact precision in the amount sought by the injured party. Rather, a principled basis for an estimate is legally sufficient.

Second, the loss recoverable in Texas is for out-of-pocket damages (the difference between what was charged and the value that was received). By billing Antero more than the services it rendered, Kawcak caused Antero to incur out-of-pocket expenses.

Third, the appeals court ordered the trial court to further explore whether Robertson's settlement should operate as a credit to lessen the damages awarded against Kawcak. *Antero Resources Corp. v. Kawcak* (5th Cir., October 31, 2023).

Bottom line

Why did I want to tell you about this case? Because all companies, large or small, need to focus on internal controls to prevent employee self-enrichment or any type of position abuse.

Talk to your CPA or forensic accountant or lawyer about your current internal controls. How can they be improved? What does this case teach you about improving them? Some thoughts:

- "I can resist everything except temptation." That's Oscar Wilde. Your job is to make sure you remove temptation for your employees.
- Make employees in key positions take vacations. If an employee is engaged in wrongful conduct, the best way to keep the conduct under wraps is never to let other employees sit at your desk.
- Never centralize the awarding of contracts to one person.
- Segregate accounts payable from accounts receivable.
- If all your needs in an area are limited to one vendor, ask why.

You get the idea. It's always a good idea to review and revisit policies and procedures.

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WORKPLACE CULTURE

Time for a party? Consider red flags, tips, and alternatives

by Tammy Binford

The annual office holiday party conjures up an array of memories and emotions—not all of them good and some downright horrendous. Many employees look forward to leaving the pressures of work behind and gathering with coworkers for a relaxed, festive good time. Others—dreading the thought of forced merriment—remember ghosts of parties past that were marred by bad behavior from coworkers and even managers. To set the right tone, the party planners need to be on the lookout for red flags and consider ways to make the gathering both appropriate and fun. Another idea to consider: Skip the bash altogether and do something else enjoyable.

Be warned

It doesn't make someone a Scrooge to be on guard against trouble. After all, the mind reels when thinking about all that can go wrong at an office holiday party. An HR horror story was even chronicled in the 2016 movie *Office Christmas Party,* which showed merrymakers sledding down the office steps, swinging on string lights, and walking in on a live reindeer drinking from an office toilet.

But a party doesn't have to be that bad to be a problem. Therefore, precautions are called for. To hold down the chance revelers will overindulge, parties that include alcohol need special care.

If a party does include alcohol, both party planners and attorneys suggest distributing drink tickets to limit consumption, making sure there is plenty of food to go along with the alcohol, and hiring professional bartenders who know how and when to cut people off. Making free rides home available is another idea to reduce risk.

In addition to alcohol concerns, party planners need to keep sexual harassment in mind. Managers need to make clear the office party is no place for mistletoe and flirtatious behavior. They also may want to issue reminders about suitable dress and conduct ahead of the party.

Employers also are advised to make sure parties are voluntary. Too often, managers send signals that skipping the annual office party can be detrimental to chances for advancement. Making sure everyone knows the party is completely optional holds down the risk of resentment on the part of employees who don't want to attend and wage claims for time spent at the party.

Just as people need to know they can choose to stay away, everyone also should feel welcome to attend, so planners need to make sure remote workers know they are invited.

Employers also need to guard against religious discrimination. Just promoting the event as a "holiday party" doesn't mean people won't think of it as a Christmas party. Even if the party includes decorations and music people associate with Christmas, it's important to make sure people of all faiths feel comfortable attending.

Ideas for fun

Once the red flags have been identified and addressed, it's time to think of ways to make the gathering fun. Indeed Career Guide has posted some ideas:

- **Throw a scavenger hunt.** Pass out a list of items for partygoers to look for around the workplace or party venue. They can snap fun photos to prove their finds.
- **Offer a variety of games.** Some suggestions include an ugly sweater contest, holiday movie trivia, guess the holiday song, and Giant Jenga.
- **Include prizes.** Each attendee can be given a raffle ticket for prize drawings during the party. Some prize possibilities: gift cards, mugs, tickets to an event, and paid time off.
- **Hire entertainment.** If the budget allows, hire a band, a DJ, a magician, or some other entertainer.

Party alternatives

The Indeed Career Guide also suggests some alternatives to a traditional office party, such as skipping the party and instead giving employees the chance to travel off-site to volunteer together on a project. Another idea is to host a food, clothing, or toy drive at work, maybe in conjunction with a party where the results of the drive are announced.

Career advice platform CareerAddict also suggests some party alternatives, including treating employees to a trip to a theme park, an escape room, or a spa. The Total Wellness Employee Wellness Blog suggests more ideas, such as taking the team ice skating or sledding, screening a holiday movie, bringing in a local chef for a food demonstration, or hosting a multicultural holiday feast. ■

HIRING

Research finds lying on résumés is common; know how to spot trouble

by Tammy Binford

Finding that perfect résumé is every employer's dream. But research shows the risks they face if they're too quick to assume candidates really are what they seem to be. Recently, career advice website ResumeLab surveyed U.S.-based workers to examine job applicant behavior. The survey turned up alarming numbers of people who frequently lie on résumés, proving that the hiring process is no time for employers to don rose-colored glasses.

Dishonesty abounds

In August, ResumeLab surveyed over 1,900 U.S. workers and found seven in 10 confessed they have lied on their résumés, with 37% admitting they frequently lie. A third admitted lying once or twice, and 15% said they haven't lied but they have considered lying. Just 15% said they haven't lied or considered lying.

The survey results show that highly educated applicants reported the highest incidences of lying on résumés. Of the applicants with master's or doctoral degrees, 58% said they frequently lie, and 27% said they have lied once or twice.

The survey found 29% of participants without a college degree said they frequently lie, and 42% said they have lied once or twice. Survey respondents with a bachelor's degree or an associate degree were found least likely to lie, with 30% saying they frequently lie and 33% saying they have lied once or twice.

Common lies

The ResumeLab survey asked what jobseekers lie about. Responsibilities and job titles were the top answers. Here's the breakdown when survey participants were asked "What did you lie about on your résumé?"

- Embellishing responsibilities in general—52%;
- Job title (to make it sound more impressive)—52%;
- Fabricating how many people I managed—45%;
- The length of time I was employed at a job—37%;
- The name of the company that employed me—31%;
- Made up the entire position—24%;
- Inflating metrics or accomplishments I achieved (e.g., sales numbers)—17%;
- My skills section—15%;
- Awards or accolades—13%;
- Volunteer work—11%;
- My education credentials—11%;
- Covered up a career gap—9%; and
- Technology capabilities (knowing tools such as Trello, Asana, etc.)—5%.

Don't be fooled

With so much dishonesty marring the hiring process, employers need to learn when they're being duped. CareerBuilder for Employers has advice on how to spot résumé lies.

Look at dates. Employers are advised to look for inconsistencies in dates on a résumé. For example, if a person claims to have been in a high-level position before or just after graduating, that's a red flag. Also, an applicant claiming to have earned a degree in a very short time may need to be questioned further.

Check references, and make sure they're valid. Be aware that some candidates may provide contact information for friends who have been coached to act like legitimate job references. Employers also should let candidates know references will be checked. Often, previous employers will share only dates and titles, but asking for specifics may still pay off.

Conduct background checks. Such checks are often a good idea, and a candidate who doesn't want to submit to a background check may not be a good hire. Types of background checks vary. They include criminal background checks, credit background checks, identity verification, and professional license and education background checks.

Ask technical questions. If a résumé shows signs of dishonesty, an interviewer may get a true picture of the candidate's qualifications by asking technical questions. If the interviewer uses jargon appropriate for the role and the candidate doesn't understand or can't answer, it may be a sign the person has lied on the résumé.

The Society for Human Resource Management (SHRM) also has tips for detecting dishonesty in a résumé. Among the tips: It suggests that a quick Internet search, including LinkedIn, can bring up a lot of information that may be inconsistent with a candidate's résumé.

SHRM also says candidates who copy and paste the employer's job posting into their résumés may be signaling some dishonesty. Big advancements achieved in a short time also may indicate a problem.

Another tip from SHRM: Don't ignore intuition. If something seems off, it may be, making further fact-checking necessary. ■

TEXAS EMPLOYMENT LAW LETTER (ISSN 1046-9214) is published monthly for $499 per year by **BLR®—Business and Learning Resources,** 5511 Virginia Way, Suite 150, P.O. Box 5094, Brentwood, TN 37024-5094.

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