

EXAM SPECIFICATIONS FOR LABOR AND EMPLOYMENT LAW

PURPOSE OF THE EXAM. The purpose of the certification exam is to require an examinee to demonstrate substantial knowledge of significant legal concepts and corresponding skills in the specialty area.

EXAM FORMAT. The exam consists of a three-hour morning session with three essay questions each worth 100 points and a three-hour afternoon session with 100 multiple-choice questions (10 of which involve professional ethics) each worth 2 points. The exam (essay and multiple-choice) must be taken by laptop (supplied by the examinee).

ESSAY QUESTIONS. Essay questions consist of a fact pattern followed by a series of questions (usually 4-6) for an examinee to answer. Essays are designed to require an examinee to recognize and analyze issues in the fact pattern and explain how those issues should be resolved. The fact patterns will involve situations you would likely encounter in your practice. Essays typically involve employer-employee relations (discrimination in employment, employee privacy rights, employment-related torts, and employment relations), statutory duties imposed on employers (state and federal), and relationships among employers and employees and their labor organizations. Examinees should ensure they provide the specific information each question requests and communicate their response as clearly as possible. An organized, clearly written answer using complete sentences will almost always receive a higher score than a choppy, disorganized one. To pass the exam, examinees must be able to clearly express answers in a manner that would be persuasive to the decision-maker in a case.

MULTIPLE-CHOICE QUESTIONS. These questions are designed to test a breadth of issues in the specialty area and require an examinee to select the option that represents the best available answer.

EXAM GRADING. The required passing score is 350. All exam materials are confidential and not available for review. Essay answers are graded anonymously and identified only by an assigned examinee number. Multiple-choice answers are computer graded. Successful examinees are notified that they passed but are not provided with their specific score. Unsuccessful examinees are notified of their exam score. Exams that score 10 points below the passing grade are automatically regraded. Exam results are final.

REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES. An examinee is expected to understand state and federal laws which regulate employers and employees, and which govern the relationships among employers, employees, and labor organizations to which the employees belong. An examinee must also demonstrate the ability to:

- Communicate effectively and persuasively to clients, counsel, and courts;
- Develop and evaluate strategies for solving a problem or accomplishing an objective;
- Analyze and apply legal rules and principles;
- Analyze, sort, and use facts, plan, and direct factual investigations;
- Organize and manage a legal task efficiently within time constraints;
- Represent a client consistent with applicable ethical standards;
- Invoke and utilize the procedures normally required in the specialty area, including pleadings and filings;
- Evaluate a case; including available remedies and elements of damages, develop pre-trial strategy and proposals for settlement;
- Draft pleadings; identify appropriate parties; identify causes of action and affirmative defenses;
- Conduct discovery;

- Draft pre-trial motions;
- Conduct voir dire;
- Examine and cross-examine lay and expert witnesses;
- Present, and object to, evidence;
- Use documentary evidence;
- Compose arguments;
- Preserve error;
- Draft trial motions and briefs;
- Draft jury instructions;
- Draft post-trial motions; and
- Advise and counsel employers on day-to-day issues, such as discipline and leave issues, and also advise and counsel employees on their rights and potential claims under applicable employment laws.

EXAM TOPICS. The following is a listing of topics on which essays and multiple-choice questions in the specialty area exam may be based on.

NOTE: NOT ALL TOPICS LISTED BELOW WILL BE COVERED ON ANY GIVEN EXAM. EXAMINEES WILL BE TESTED ON RULES AND LAWS IN EFFECT AT THE TIME OF THE EXAM, UNLESS OTHERWISE SPECIFIED.

1. Employer-Employee Relations

- A. Discrimination in Employment
 - (1) Age Discrimination in Employment Act of 1967
 - (2) Americans with Disabilities Act of 1990, including ADA Amendments Act of 2008
 - (3) Civil Rights Act of 1991
 - (4) Genetic Information Non-Discrimination Act
 - (5) Lilly Ledbetter Fair Pay Act of 2009
 - (6) Older Workers Benefit Protection Act
 - (7) Pregnancy Discrimination Act
 - (8) Section 1981 of the Civil Rights Act of 1866
 - (9) Texas Commission on Human Rights Act
 - (10) Title VII of the Civil Rights Act of 1964
- B. Employee Privacy Rights
 - (1) Drug Testing
 - (2) Polygraph Protection Act
- C. Employment-Related Torts
 - (1) Negligent Hiring
 - (2) Negligent Supervision
 - (3) Sexual Harassment
- D. Employment Relations
 - (1) Arbitration Agreements
 - (2) Employment at Will
 - (3) Fair Credit Reporting Act and Retaliation claims
 - (4) Implied Contract
 - (5) Retaliation under Texas Labor Code Chapter 451
 - (6) Texas Business & Commerce Code, Sections 15.50-15.52 (covenants not to compete)
 - (7) Wrongful Discharge Litigation including Sabine Pilot Claims

2. Relationships Among Employers and Employees and their Labor Organizations

- A. Discrimination in Employment and Union Membership
- B. Labor Contract Administration and Arbitration
- C. Labor-Management Reporting & Disclosure Act of 1959
- D. Labor Relations Administration
- E. National Labor Relations Act
- F. National Labor Relations Act Implications for Non-Union Employers
- G. Railway Labor Act

3. Statutory Duties Imposed on Employers

- A. Federal
 - (1) Defend Trade Secrets Act of 2016
 - (2) Equal Pay Act of 1963
 - (3) Office of Federal Contracts Compliance Programs regulations
 - (4) Fair Labor Standards Act of 1938
 - (5) Family and Medical Leave Act of 1993
 - (6) Federal Arbitration Act
 - (7) Occupational Safety and Health Act of 1970
 - (8) Rehabilitation Act of 1973
 - (9) USERRA
 - (10) Vietnam Veterans Readjustment Assistance Act
 - (11) Whistleblower and Anti-Retaliation Provisions Under the Sarbanes Oxley Act, Dodd-Frank Wall Street Reform and Consumer Protection Act, and the Affordable Care Act
 - (12) Worker Adjustment and Retraining Notification Act
 - (13) Pregnant Workers Fairness Act
- B. State
 - (1) Citizens Participation Act (but commonly known as “anti-SLAPP) based on recent litigation matters
 - (2) Texas Minimum Wage Act
 - (3) Texas Payday Act
 - (4) Texas Unemployment Act
 - (5) Texas Uniform Trade Secrets Act
 - (6) Whistleblower

4. The Texas Disciplinary Rules of Professional Conduct. The ethics questions regarding this topic will involve an array of hypothetical fact situations which will cover several different aspects of ethical issues that arise in the practice of law. The questions will not be limited to the practice of any one specialty area, and consequently, an examinee is advised to be familiar with all provisions of the TDRPC.