

EXAM SPECIFICATIONS FOR LABOR AND EMPLOYMENT LAW

PURPOSE OF THE EXAM. The purpose of the certification exam is to require an applicant to demonstrate substantial knowledge of significant legal concepts and corresponding skills in labor and employment law.

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 required passing score is **350**. The essay portion of the exam may be taken by laptop (supplied by the examinee) or by writing. Answers to the multiple choice questions will be documented by the applicant on a scantron answer sheet supplied by TBLS.

EXAM GRADING. 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.

ESSAY QUESTIONS. Essay questions consist of a fact pattern followed by a series of questions (usually 4-6) for an applicant to answer. Essays are designed to require an applicant to recognize and analyze issues in the fact pattern and explain how those issues should be resolved. The fact patterns involve situations you would likely encounter in your practice. Essays typically involve the National Labor Relations Act or collective bargaining, some form of discrimination, and statutory duties imposed on employers. Applicants 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. In order to pass the exam, applicants 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 applicant to select the option that represents the **best** available answer.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES. An applicant in labor and employment law 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. A more detailed list of the knowledge, skills, and abilities is set out on the following pages.

NOTE: NOT ALL TOPICS LISTED BELOW WILL BE COVERED ON ANY GIVEN EXAM. APPLICANTS 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
 - (i) ADA Amendments Act of 2008
 - (3) Civil Rights Act of 1991
 - (4) Lilly Ledbetter Fair Pay Act of 2009
 - (5) Older Workers Benefit Protection Act
 - (6) Pregnancy Discrimination Act
 - (7) Section 1981 of the Civil Rights Act of 1866
 - (8) Texas Commission on Human Rights Act
 - (9) 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
 - (i) 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

b. State

- (1) Citizens Participation Act (but commonly known as “anti-SLAPP) based on recent litigation matters
- (2) Texas Payday Act
- (3) Texas Unemployment Act
- (4) Texas Uniform Trade Secrets Act
- (5) 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 applicant is advised to be familiar with all provisions of the TDRPC.

SKILLS.

An applicant must 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

Specifically, an applicant must be able to:

- 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
- 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