

EXAM SPECIFICATIONS FOR LABOR AND EMPLOYMENT LAW

The purpose of the certification examination is to require applicant to demonstrate substantial knowledge of significant legal concepts and corresponding skills in labor and employment law.

DEFINITION. Labor and employment law is the practice of law dealing with the relationships among employers, employees or their labor organizations, except workers' compensation. It includes, by way of definition not limitation, matters involving laws regulating or involving labor relations (National Labor Relations Act experience); Occupational Safety and Health (does not include workers' compensation or non-subscriber matters); Equal Employment Opportunity; Wage and Hour and leave matters under federal or state law, including FLSA, FMLA, USERRA, Texas Payday Act, and judicial review of unemployment compensation matters; employment-related torts, employment contracts, and 42 U.S.C. 1983 employment litigation; and whistleblowers and non-EEO retaliation. The practice of law dealing with ERISA, bankruptcy, and administrative proceedings may, under the proper circumstances, constitute the practice of labor and employment law within the meaning of this section.

KNOWLEDGE. Applicant must have knowledge of the following: **(Not all of the following exam topics will be covered on the exam. Applicant will be tested on all laws currently in effect at the time of the exam.)**

- I. Relationships Among Employers and Employees and their Labor Organizations
 - A. National Labor Relations Act
 - B. Railway Labor Act
 - C. Labor Contract Administration and Arbitration
 - D. Labor-Management Reporting & Disclosure Act of 1959
 - E. Labor Relations Administration
 - F. Discrimination in Employment and Union Membership
- II. Employer-Employee Relations
 - A. Employment Relations
 - 1. Employment at Will
 - 2. Implied Contract
 - 3. Wrongful Discharge Litigation
 - 4. Retaliation under Texas Labor Code Section 451
 - 5. Texas Business & Commerce Code, Sections 15.50-15.52 (covenants not to compete)
 - 6. Arbitration Agreements
 - 7. Fair Credit Reporting Act and Retaliation claims
 - B. Discrimination in Employment
 - 1. Title VII of the Civil Rights Act of 1964
 - 2. Civil Rights Act of 1991
 - 3. Americans with Disabilities Act of 1990

4. Pregnancy Discrimination Act
 5. Age Discrimination in Employment Act of 1967
 6. Older Workers Benefit Protection Act
 7. Texas Commission on Human Rights Act
- C. Employment-Related Torts
1. Sexual Harassment
- D. Employee Privacy Rights
1. Drug Testing
 2. Polygraph Protection Act
- III. Statutory Duties Imposed on Employers
- A. Federal
1. Fair Labor Standards Act of 1938
 2. Occupational Safety and Health Act of 1970
 3. Family and Medical Leave Act of 1993
 4. Equal Pay Act of 1963
 5. Worker Adjustment and Retraining Notification Act
 6. Rehabilitation Act of 1973
 7. Vietnam Veterans Readjustment Assistance Act
 8. Executive Order 11246
 9. USERRA
 10. Federal Arbitration Act
- B. State
1. Texas Payday Act
 2. Texas Unemployment Act

IV. 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. Applicant must demonstrate the:

1. Ability to communicate effectively to a variety of audiences (e.g., communications addressed to clients, counsel, courts, administrative agencies, etc.)
2. Ability to develop and evaluate strategies for solving a problem or accomplishing an objective
3. Ability to analyze and apply legal rules and principles
4. Ability to analyze, sort and use facts, and to plan and direct factual investigations
5. Ability to organize and manage a legal task efficiently within time constraints
6. Ability to represent a client consistent with applicable ethical standards
7. Ability to invoke and utilize the procedures normally required in the area of specialty including pleadings and filings

Specifically, applicant must be able to:

8. Evaluate a case; including available remedies and elements of damages, develop pre-trial strategy and proposals for settlement
9. Draft pleadings; identify appropriate parties; identify causes of action and affirmative defenses
10. Conduct discovery
11. Draft pre-trial motions
12. Conduct voir dire
13. Examine and cross-examine lay and expert witnesses
14. Present, and object to, evidence
15. Use documentary evidence
16. Compose arguments
17. Preserve error
18. Draft trial motions and briefs
19. Draft jury instructions
20. Draft post-trial motions
21. 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.