

# TEXAS BOARD OF LEGAL SPECIALIZATION

## STANDARDS FOR ATTORNEY CERTIFICATION

### PART II

#### SPECIFIC AREA REQUIREMENTS

These are specific requirements that apply the specialty area listed below. The specific requirements include the definitions, substantial involvement, reference, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I – General Requirements for requirements that apply to all specialty areas.

#### SECTION III

### LABOR AND EMPLOYMENT LAW (Revisions as of 8/11/09)

(Area ID: LB / Year Started: 1975)

- A. **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~~ Texas or federal laws regulating or 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 Texas 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.

- B. **SUBSTANTIAL INVOLVEMENT.** Applicant must show substantial involvement and special competence in labor and employment law practice by providing such information as may be required by TBLS.
1. **Certification.**
- a. **Percentage of Practice Requirement.** Applicant must have devoted a minimum of 25% of his or her time practicing labor and employment law in Texas during each year of the 3 years immediately preceding application as defined in Section III, A of the Specific Area Requirements for Labor and Employment Law.
- b. **Task Requirements.** Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in labor and employment law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.
- (1) Applicant must show that he or she has engaged directly and substantially in a broad practice of labor and employment law in Texas within the 3 years immediately preceding application in at least 3 of the areas within the definition of labor and employment law as set forth in Section III, A above, one of which must be practice involving the National Labor Relations Act. Applicant must submit required information concerning such practice, the frequency of the work, the jurisdictions involved, and the nature of the issues involved.

- (a) Applicant must show practice involving laws regulating or involving labor relations (National Labor Relations Act) by one of the following methods:
    - i. Actual experience through practice, or
    - ii. Completion of a minimum of 24 hours of continuing legal education (CLE) in comprehensive courses on the National Labor Relations Act, completed within the 3 years immediately preceding the application through June 1 of the year of application. The substitution of CLE in lieu of actual practice involving the National Labor Relations Act is in addition to the CLE requirement submitted to satisfy Part I-General Requirements, Section V, A,1.
  - (b) In addition to meeting the above requirement, applicant must show that he or she has been engaged directly and substantially in 2 additional areas within the definition of labor and employment law as set forth in Section III, A above.
  - (c) Applicant must show by detailed response that he or she has engaged at a significant level of responsibility in litigation in federal or state court or arbitration in at least one of the 3 areas applicant submitted to satisfy Section III, B,1,b(1)(a-b) above.
2. **Recertification.** Applicant must have devoted a minimum of 25% of his or her time practicing labor and employment law during each year of the 5 year period of certification as defined in Section III, A of the Specific Area Requirements for Labor and Employment Law except as provided for in Part I-General Requirements, Section VI, C,1(b).

C. **REFERENCE REQUIREMENTS.** Applicant shall submit a minimum of 5 names and addresses of persons to be contacted as references to attest to his or her competence in labor and employment law. These persons shall be substantially involved in labor and employment law, and be familiar with applicant's labor and employment law practice.

1. **Certification.** Applicant shall submit names of persons with whom he or she has had dealings involving labor and employment law matters within the 3 years immediately preceding application.
2. **Recertification.** Applicant shall submit names of persons with whom he or she has had dealings involving labor and employment law matters since certification or the most recent recertification.
3. **Reference Types.** Applicant shall submit the following types of references:
  - a. Four Texas attorneys who are substantially involved in labor and employment law. Applicant shall have been involved in litigation or arbitration with or against one of these attorneys in a labor and employment law matter.
  - b. One of the following before whom applicant has appeared as an advocate in a Texas labor or employment law matter:
    - (i) A judge of any court of record,
    - (ii) An arbitrator, or
    - (iii) An administrative law judge.