

Texas Business Today

Winter 2009

Tom Pauken, Chairman
Commissioner Representing Employers

TEXAS
WORKFORCE SOLUTIONS

Cutting Hours — Is Shared Work an Option in Tough Times?

- Dislocated Workers' Programs Assist Employers and Their Employees •
- Dress Codes and Grooming Standards: Yes, Employers May Still Set Both •

Texas responds to natural disasters and economic storms

Economic news used to make enjoyable reading. Not anymore – even here in Texas.

It is true that our state, thanks to its excellent business climate, has suffered less than most other states from the financial hurricane that made landfall during September. Unemployment is so high in Michigan – 9.3 percent – that the state already

Chairman's Corner

has had to borrow \$481 million from the federal government to replenish its Unemployment Insurance (UI) trust fund. In contrast, Texas had an October 2008 unemployment rate of 5.6 percent and even has been able to add nearly a quarter million jobs in the past year – at a time when the nation as a whole was losing 1.1 million jobs.

Texas has a well-deserved reputation for encouraging economic development and job creation – and keeping its fiscal house in order. While many states have raised taxes and gone on spending sprees, Governor Rick Perry and the Texas Legislature have resisted the temptation to tax and spend as if there were no tomorrow. Texas goes into a new legislative session in 2009 with a substantial budget surplus, unlike other large states like California, New York, and New Jersey, which have huge budget deficits.

Nevertheless, Texas has been negatively impacted both by national economic trends and the two physical hurricanes which reached our shores in 2008: Hurricane Dolly hit Texas' lower Gulf Coast on July 23, and Hurricane Ike hit the upper Gulf Coast on September 13.

The Texas Workforce Commission (TWC) anticipated the need for speedy attention to unemployment claims in the wake of these natural disasters. Our local workforce boards moved quickly to work with our locally elected officials in determining what needed doing. To handle the additional workload of disaster-related unemployment claims, we added 168 telephone lines and 150 workers to our Tele-Centers in Fort Worth, San Antonio, McAllen and El Paso, operating extended hours and opening on Saturdays, the better and faster to get money moving to those in need. We transferred as many TWC employees as possible from other duties in order to meet the demand; we also hired additional workers and rapidly trained them.

Since Ike's quick but brutal visit, we have received 115,000 disaster-related claims and an estimated more



TWC Chairman Tom Pauken speaks in Harlingen. Chairman Pauken says natural disasters and the economic downturn have made an impact in Texas. *Texas Workforce Commission photo*

than 250,000 follow-up calls. It took an average of three weeks from when a claim was filed to the arrival of the first payment. We pushed as hard as possible to make sure no claims, during that short but vital stretch, fell between bureaucratic cracks. In the first weeks after Ike, we distributed nearly \$1 million in disaster-related unemployment benefits. Likewise, TWC requested federal funding through the National Emergency Grant Program to create and fill 600 temporary jobs dedicated to the task of rebuilding the devastated areas.

The combination of Hurricane Ike and negative national economic trends has impacted increases in the Texas unemployment rate to the extent that it reached 6 percent in December. While Texas still has an unemployment rate more than 1 percent lower than the 7.2 percent national rate, I would expect

unemployment rates in Texas to continue to track the national trend upward in the months ahead.

Unemployment insurance is, of course, only a temporary measure to help workers who have lost their jobs through no fault of their own while they seek to find new employment. Our economy only will get better once we put policies in place to encourage job creation and economic growth.

We here in Texas cannot control the decisions being made in Washington, D.C. and New York City on virtually a daily basis to bail out troubled financial institutions during this bursting of a bubble economy fueled by credit excess – excesses, by the way, which have been building for more than a decade. Nonetheless, common sense tells us that we need to get back to our core economic principles if we are to “put America back to work.”

Let me offer a few common sense ideas for getting us back on the right track: the encouragement of fiscal responsibility by our federal government and the preservation of a sound dollar; a business tax system that rewards savings and investment in the United States, rather than one that encourages the leveraging of companies with high levels of corporate debt while outsourcing good jobs abroad; an educational system which teaches our young people the basics along with the skills that our employers actually need; a de-glamorization of illegal drug use and a restoration of a strong work ethic; reduction of our dependence on unstable and expensive foreign sources of energy; and, something we should not neglect, employing the skills, character, and leadership of our veterans returning from Iraq and

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Afghanistan.

Texas is not immune from the negative economic trends in the U.S. and around the world. The push for “globalization” has its down side as well as its positives. Texans can be proud of our economic performance in recent years. With the example we have set here in Texas, we need to encourage the politicians in Washington to pay more attention to the Texas economic model. *The Wall Street Journal* has editorialized that other states should “be more like Texas.” Let me take that one step further and add that our national government should be more like our Texas government. 🇹🇽

Sincerely,



Tom Pauken, Chairman
Commissioner Representing Employers

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Cutting hours: Is shared work an option in tough times?

With the economy under pressure, some employers are looking for ways to reduce labor costs by cutting back on hours worked by employees. Under the Texas Unemployment Compensation Act, there are three ways that a reduction in hours might lead to an employee or ex-employee being able to qualify for unemployment insurance benefits.

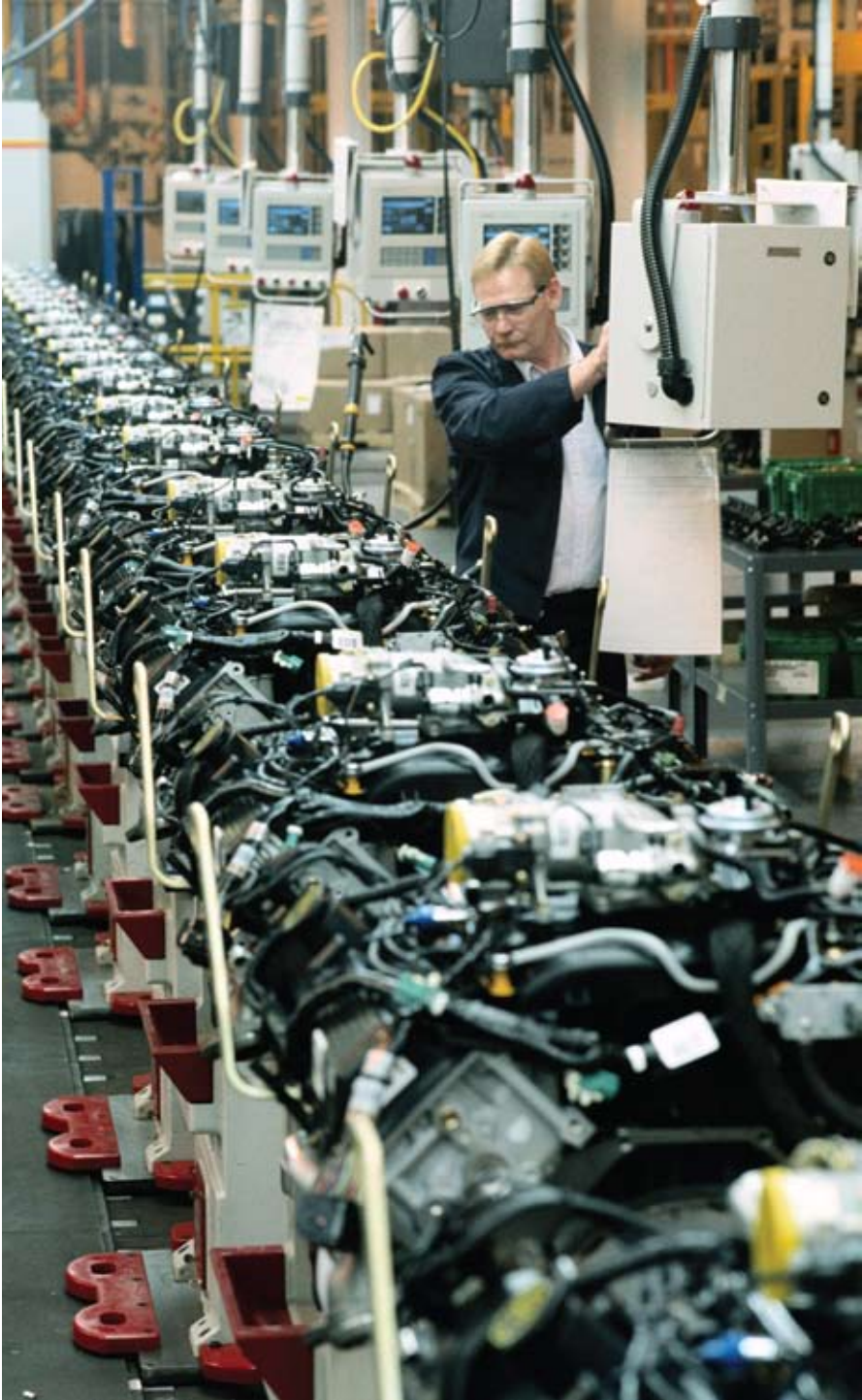
The first way is the method with the least to recommend it: a

At Issue

resignation due to the cut in hours. In

such a situation, if a cut in hours leads to a reduction in pay, and the employee quits because of the pay cut, TWC applies a general principle known as the “20 percent rule,” under which a cut in pay of 20 percent or more gives a claimant good cause connected with the work to quit. A claimant who leaves work for such a reason can file an unemployment claim and not be disqualified from UI benefits, at least on the work separation issue. However, an employer trying to retain its trained workforce might want to point out to wavering employees that leaving should be regarded as a last resort, particularly as the economy is tightening up. It is best to hold on to the job one has, instead of quitting and going on total unemployment; as a general rule, it is easier to find a new job if one is currently employed. More details on this situation are available in the book *Especially for Texas Employers* at the following address:

http://www.twc.state.tx.us/news/eftc/ui_law_the_claim_and_appeal_process.html#ui-20percentrule.



Manufacturing is an industry that often utilizes the shared work option. This kind of plan must be coordinated with the affected employees, the employer, and the Texas Workforce Commission. *Photo illustration.*

Partial Unemployment Benefits

Employees can file a claim for partial UI benefits on an individual basis if they are partially unemployed through no fault of their own. "Partially unemployed" applies to someone who is earning more than 25 percent, but less than 125 percent, of the weekly benefit amount to which they would be entitled if they were totally unemployed. A partially-unemployed claimant can file valid weekly claims and draw benefits as long as they report their work and earnings and do not earn 125 percent or more of their weekly benefit amount. The earnings act as an offset against the UI benefits. As an example, if an employee whose prior earnings entitle her to a weekly benefit amount of \$240 per week experiences a drop in earnings due to a reduction in hours through no fault of her own (not as a disciplinary measure and not as the employee's own request), and the earnings fall below 12 percent of \$240 per week (which would be \$300), the employee can file a valid partial unemployment claim and draw the difference between the lower weekly earnings and \$300 per week. A paycheck of \$280 would thus result in payment of \$20 in UI benefits. The reason that the law provides for partial UI benefits is to encourage employees whose hours are reduced to stay with the job and work the available hours, thus promoting employment, rather than quitting altogether and going on total unemployment; those who stay with the job and collect partial UI benefits end up with earnings of 125 percent of their weekly benefit amount, instead of only 100 percent. From an employee's standpoint, this would be the way to go, even if he or she is of a mind to look for other work that can offer more hours – the bottom-line amount available each week higher is than for total unemployment.

Due to the formula by which UI benefits are calculated, this

Shared Work Compensation offers an alternative to employers facing a reduction in force. Instead of laying off employees, the employer reduces the hours of work among a specific group of employees. Wages lost to the worker as a result of reduced hours may be supplemented by a partial unemployment benefit.

kind of partial UI benefit is meant for claimants whose work hours have been reduced by around 35 percent or more. The exact amount of reduction in hours will vary from claimant to claimant, depending upon the prior earnings used as the basis for calculating the weekly benefit amount, but generally speaking, a claimant whose hours and pay have not gone down by at least 35 percent will be unable to qualify for this type of partial UI benefit (at the current maximum weekly benefit amount of \$392 per week, employees who have been earning \$18.85 per hour or more will have to have a reduction in their weekly earnings of greater than 35 percent in order to qualify). Employers whose employees ask about partial UI benefits should let them know that since results can vary if an employee's earnings have varied over time, especially if the employee has worked for other employers in the 18-month period preceding the claim, any employee who is even potentially eligible for such benefits should check with TWC regarding their benefit rights.

Shared Work Unemployment Benefits

There is also a program under which an entire group of employees in a company can receive partial UI benefits by filing UI claims under a "shared work" plan. This kind of plan must be coordinated with the

affected employees, the employer, and TWC. The advantage to shared work UI benefits is that they can fill the gap between no reduction in work time and the 35 percent threshold for individual partial UI benefits. In addition, use of such a plan can help avoid layoffs and keep valued employees close to the company, so that when business picks back up, the company still has its trained workers who know the company and its customers. Employees who have experienced a reduction in pay between 10 percent and 40 percent due to a cut in hours can be part of a designated shared work plan unit. The information that follows is largely from the page on TWC's Internet site featuring frequently-asked questions on the shared work program:

<http://www.twc.state.tx.us/ui/bnfts/sharedworkfaq.html>.

Q: What is shared work compensation?

A: Shared Work Compensation offers an alternative to employers facing a reduction in force. Instead of laying off employees, the employer reduces the hours of work among a specific group of employees. Wages lost to the worker as a result of reduced hours may be supplemented by a partial unemployment benefit amount equal to the claimant's regular weekly benefit amount multiplied by the nearest full percentage of

reduction of the claimant's wages under the plan. For example, if the claimant's regular weekly benefit amount would be \$200 per week in a non-shared work plan situation, and the claimant's wages have been reduced by 15 percent the shared work benefit would be \$30 for the reduced workweek. The claimant's lower weekly wage would thus be supplemented by the shared work benefit of \$30 per week.

Q: How does the plan work?

A: An interested employer submits to the Commission a Shared Work Plan Application and Employee Participant List by mail or fax. If the plan is approved, workers who qualify for unemployment benefits will receive both wages and shared work benefits. The workers will receive the percentage of their regular benefits that matches the percentage of reduction in the employer's plan.

Q: Is it possible to modify a shared work plan?

A: Yes. If conditions change, the employer may submit a request to TWC to modify the plan. Such a request must be in writing and be approved by TWC.

Q: What happens if extra work comes in during a week or two while a shared work plan is in effect?

A: The only effect is that the shared work benefits can be interrupted if the claimant works more hours than provided under the plan. Once the hours go back down, the shared work benefits can resume.

Q: Are there chargebacks from shared work plan benefits?

A: Yes. Benefits paid under shared work plans are charged back against employers' accounts for use in computing general (experience) tax rates. Thus, they affect employers' tax rates in the same manner and to the same extent as other chargebacks of benefits.

Q: What happens if an employee has an overpayment remaining from a previous unemployment claim?

A: If your employee has an overpayment balance from a previous claim, all benefit overpayments must be repaid prior to new payments being released to the employee. Any benefits the employee is eligible to receive will be applied to the overpayment until it is cleared.

Q: Can an employer have more than one plan?

A: Yes, there are no specific restrictions as to how many plans an employer can have within his/her organization as long as he/she meets the "unit" requirements.

Q: What are the unit requirements for a shared work plan?

A: The plan must identify the specific unit of the company to be covered by the plan; apply to at least 10% of the employees in the affected unit; specify each covered employee by name and SSN; reduce the normal weekly hours of each covered employee between 10 and 40 percent; and describe the manner in which the employer treats the fringe benefits of each employee in the unit.

Q: Are there circumstances in which a shared work plan cannot be used, even if employees' hours are being reduced?

A: Yes. Shared work plans may not be used to subsidize a seasonal employer during the off-season or an employer that has traditionally used part-time employees.

Q: When will the shared work plan begin?

A: The Commission shall approve or deny a shared work plan no later than 30 days after the plan is received. A shared work plan is effective on the date it is approved by the Commission. The plan expires on the last day of the 12th full calendar month after the effective date of the plan. It is suggested that the employer request a starting date that will coincide with his payroll date to simplify the timekeeping procedures.

Q: If an employer chooses shared work, must the employer use it for his/her entire business or company?

A: No. An employer can use shared work in one or more departments, shifts, or unit. The program gives an employer the flexibility to specify the affected areas.

Q: Can an employer reapply for a new plan after an existing plan expires?

A: Yes.

Q: If the employer's shared work plan expires, but the employees are still working on a reduced work schedule, can the employees receive shared work benefits?



A shared work employer does not have to report any wages their employees may earn from an outside part-time employment. *Photo illustration.*

A: No. Shared work benefits are payable only while the employer's plan is in effect. However, the employer may apply for certification of a new plan.

Q: What effect will shared work benefits have on an employer's unemployment insurance tax rate?

A: Benefits paid through the shared work plans are charged back against the employer's account for use in computing his/her general (experience) tax rate. Thus, shared work benefits affect the employer's tax rate in the same manner and to the same extent as other chargebacks of benefits.

Q: Does the employer need to specify which employees will be included in the shared work program?

A: Yes. The employer's plan must include the names and social security numbers of all participating employees so that they can be paid.

Q: How are employees paid shared work benefits?

A: The employer completes a bi-weekly shared work continued claim list of participating employees so that they can be paid.

Q: Does an employee who is participating in the shared work program serve a waiting period week?

A: While participating in the shared work program, an employee does not serve the waiting period week. If employees, for any reason, are no longer participants in the shared work program and they file for regular unemployment, they will have to serve the waiting period week unless they have been paid three times their weekly benefit amount while participating in the shared work program.

Q: Can an employer put individuals or groups back to work full-time for a week or two and then continue the plan?

A: Yes, putting individuals or groups back to work full-time for a week or more is even encouraged. The plan is

structured such that there would be no real inconvenience in returning to it.

Q: Can an employer lay off some workers who were originally in the plan and still keep the remainder in the plan?

A: Yes, as long as requirements for an approved plan are being met.

Q: Can the percentages of reduced hours be different for different individuals?

A: Yes, as long as the reduction is between 10 - 40 percent depending on the specifications of the plan.

Q: Once the shared work plan is in effect, can an employer hire a replacement for an employee who leaves for personal reasons?

A: Yes.

Q: Can employees who normally work overtime receive shared work benefits for a reduction in their overtime hours?

A: No. Shared Work benefits can only be paid for wages lost because of a reduction in the employee's normal full-time hours. Normal full-time hours may not exceed forty hours.

Q: Can an employer use the shared work program for part-time workers?

A: No, only full-time employees whose hours have been reduced may participate in the program.

Q: Do shared work employers have to report earnings from an employee's outside part-time job?

A: No. A shared work employer does not have to report any wages their employees may earn from an outside part-

time employment. However, once an individual files under the regular unemployment insurance program, that individual is required to report any earnings (full-time or part-time) on their claim certification.

Q: If someone on a shared work plan becomes totally unemployed, do the benefits they received while on the shared work plan count against the amount they can draw while on regular UI benefits?

A: Yes. Filing either a shared work UI claim or a regular UI claim establishes a benefit year and a maximum benefit amount based upon the individual's prior earnings, and collecting under either program reduces the maximum benefit amount. Once that amount has been collected, the only source of further UI benefits would be extended unemployment compensation, which is paid out of federal funds if such a program is available at a particular time (that kind of benefit is dependent upon Congressional action).

Q: Whom can I call for additional information or to request a packet?


A: (512) 463-2999, or send an e-mail to ui.sharedwork@twc.state.tx.us.

Send the Shared Work Plan Application and Employee Participant List to:

Texas Workforce Commission
UI Support Services
101 E. 15th Street
Austin, TX 78778
Phone: (512) 463-2999
Fax: (512) 936-3250

In general, the three unemployment compensation-related ways to deal with a

reduction in hours have important differences:

- Quitting altogether due to a cut in hours of 20 percent or more may qualify one for benefits, but is not recommended because unemployment benefits are 52 percent or less of a claimant's normal weekly earnings.
- Individual claims for partial unemployment benefits are better, since by working and filing for such benefits, a claimant can end up with earnings of 125 percent of what they would have with only UI benefits, but such benefits require a reduction in hours through no fault of the claimant's own and a reduction in pay of around 35 percent or more.
- Shared work plan benefits are for reductions in hours that result in pay cuts between 10 percent and 40 percent, but must be done under a group plan that meets certain criteria. 

William T. Simmons
Legal Counsel to
Chairman Tom Pauken

Dislocated workers' programs assist employers, employees

In these challenging economic times marked by layoffs and rising unemployment, it's good to know that there are programs already in place to assist employers and their workers. The Workforce Investment Act (WIA) is the nation's employment and training program. The program is federally funded and is available at no additional expense to employers and workers.

In Texas, the Texas Workforce Commission (TWC) administers this program, and services are provided through local Workforce Centers overseen by the 28 Local Workforce Development Boards around the state.

WIA offers unique programs for individuals who have lost their jobs in mass layoffs or plant closings, or who have been laid off and are unlikely to return to their former jobs.

The regular Dislocated Worker program under WIA offers employment and training programs for eligible workers who are unemployed through no fault of their own, or who have received official notice of a layoff. This program allows for individualized re-employment services.

Rapid response is a program which provides short-term, early intervention and immediate assistance with layoffs and/or plant closures affecting a significant number of workers.

As noted above, Texas is divided into 28 Workforce Development Areas. Persons seeking services should contact their local Workforce Centers which can be found at the TWC's Web site, www.texasworkforce.org.

Services are offered to any company and its employees, and



The Dislocated Worker Services Department (DWSD) of the Texas Workforce Commission receives notices of plant closures and mass layoffs, including those covered under the Worker Adjustment and Retraining Notification Act (WARN). When the DWSD or a local Workforce Development Board obtains information about a mass layoff, immediate on-site services are provided to assist workers facing job losses. *Photo by Workforce Solutions Tarrant County.*

are tailored to the needs of the affected workers.

Rapid Response

The Dislocated Worker Services Department (DWSD) of the Texas Workforce Commission receives notices of plant closures and mass layoffs, including those covered under the Worker Adjustment and Retraining Notification Act (WARN). When the DWSD or a local Workforce Development Board obtains information about a mass layoff, immediate on-site services are provided to assist workers facing job losses. This early intervention assistance is designed to transition workers to their next job as soon as possible.

Program Eligibility

Rapid response was originally

designed to offer services:

- When layoffs involved 50 or more workers, or
- When plant closings or mass layoffs affected fewer than 50 employees, but occurred in a business or industry which formed the economic base of a small community with a population of 50,000 or less.

Today, it is up to each local Workforce Development Board to make Rapid Response services available as often as possible to any employer requesting such assistance. In the case of a relatively small lay-off which affects only a few workers, it may not be necessary to conduct a grand scale Rapid Response activity. For example, it would not be feasible to conduct Rapid Response services

for a very small group when they could just as easily receive the required help by visiting their local Workforce Center. Rapid Response Services must be made available to affected workers if a Trade Petition has been filed.

Core Services Available

Rapid Response provides the following services:

- WorkInTexas.com serves as a focal point for many of the workshops offered, and participants are required to register in WorkInTexas.com before receiving Unemployment Insurance Benefits.
- Job Search Assistance may include accessing community resources, job application and resume preparation training, assessing accomplishments and skills, resume development lab, honing interviewing skills and learning and practicing effective interviewing techniques, and coping with job loss.
- Labor Market Information is furnished to all registrants to include a list of target and high-demand occupations, along with information on other occupational resources. Job postings are also made available through WorkInTexas.com.
- Group Stress Management Seminars are to be made available on a regular and/or as needed basis. The focus of these seminars is to develop strategies to manage the stress associated with job loss, its impact on the family unit, and on maintaining community relationships.
- Group Financial Management Seminars primarily focus



Job Search Assistance may include accessing community resources, job application and resume preparation training, assessing accomplishments and skills, resume development lab, honing interviewing skills and learning and practicing effective interviewing techniques, and coping with job loss. *Photo by Workforce Solutions Tarrant County.*

on helping affected workers develop financial planning skills in order to maintain household and consumer finances. A specific focus is placed on learning to negotiate manageable payment schedules with mortgage, finance and other various lending institutions.


Worker Adjustment and Retraining Notification Act (WARN)

The Texas Workforce Commission Dislocated Worker Services Department receives notices of plant closures and mass layoffs, including those covered under the federal WARN Act. The WARN Act offers protection to workers, their families and communities by requiring employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs.

The WARN Act covers:

- Employers with 100 or more employees

- The shutdown of an employment site with 50 or more employees
- The mass layoff of 50 to 499 employees if that constitutes at least 33% of the company’s workforce
- The employer must give at least a 60 day advance notice of the layoff, or else must make a payment of wages in lieu of notice corresponding to the time period for which notice was not given
- TWC is the state reporting agency for mass layoffs and plant closings in Texas.

For additional information on all of the Dislocated Workers’ Programs discussed above, you may call 512-305-9639, Fax 512-463-5047, or visit the agency’s Web site at www.texasworkforce.org and type “Dislocated Workers’ Programs” in the search box. 

U.S. Small Business Administration Announces Disaster Loans

Whether you own your own business, rent or own your own home, or own a small agricultural cooperative located in a declared disaster area, and are the victim of a disaster, you may be eligible for financial assistance from the U.S. Small Business Administration (SBA) for the following types of loans:

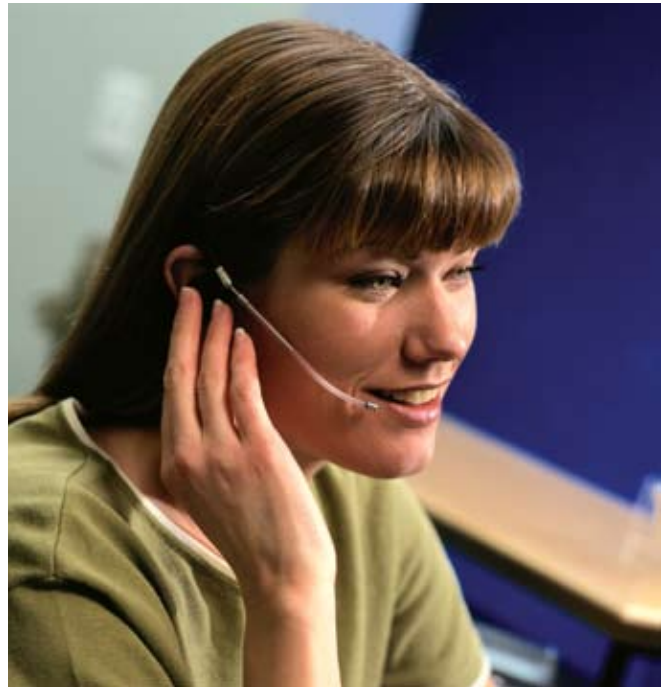
- Home Disaster Loans – Loans to homeowners or renters to repair or replace disaster-damaged real estate or personal property owned by the victim. Renters are eligible for their personal property losses, including automobiles.
- Business Physical Disaster Loans – Loans to businesses to repair or replace disaster-damaged property owned by the business, including real estate, inventories, supplies, machinery and equipment. Private, non-profit organizations such as charities, churches, private universities, etc., are also eligible.
- Economic Injury Disaster Loans (EIDLs) – Working capital loans help small businesses, small agricultural cooperatives and most private, non-profit organizations of all sizes meet their ordinary and necessary financial obligations that cannot be met as a direct result of the disaster. These loans are intended to assist through the disaster recovery period.

Business Briefs

- EIDL assistance is available only to entities and their owners who cannot provide for their own recovery from non-governmental sources, as determined by the SBA.

To learn more about mitigation loans, credit requirements, interest rates, loan terms and limits, restrictions on loan eligibility, refinancing help and insurance requirements, contact the SBA Disaster Assistance Customer Service Center at 1-800-659-2955. You may also learn more online at www.sba.gov/services/disasterassistance.

Whether you own your own business, rent or own your own home, or own a small agricultural cooperative located in a declared disaster area, and are the victim of a disaster, you may be eligible for financial assistance from the U.S. Small Business Administration.



The IRS recently opened a toll free number dedicated to helping people deal with identity theft. *Photo illustration.*

IRS Opens Toll Free Hotline for Identity Theft Victims

The IRS recently opened a one-stop toll free number (1-800-908-4490) dedicated to those individuals who believe they are at risk of identity theft to help them get solutions to their problems. The IRS will flag the affected accounts so that identity theft issues may be resolved more quickly and to reduce the burden of resolving any related issues in future years.

Do You Really Need to See That Social Security Card? Introducing the SSN Verification Service

Since 1936, the Social Security Administration has issued over 30 different versions of the Social Security number (SSN) card. Recently, the card's issuance date has been added to the front of the card. This is the date that the Social Security Administration processed the application for that particular card, not the individual's date of birth. Also, at the request of employer groups, the individual's last name is now on a separate line directly below the first and middle names on the card. Even with these recent changes, it's important to remember that all prior versions of the Social Security card are still valid.

Luckily, employers no longer need to be document



experts. Using the free Social Security Number Verification Service (SSNVS), registered employers can now quickly verify whether a job applicant's name and social security number match. For more about SSNVS, visit www.socialsecurity.gov/employer.



In 2008, more than 50 military vets in Texas secured construction industry careers through the program, a 100% increase over 2007. Photo by Texas Workforce Commission

Helmets to Hardhats Doubles its Placements of Texas Veterans in 2008

Helmets to Hardhats is a nonprofit, national program connecting transitioning active-duty, National Guard, and Reserve military members to job opportunities in the construction industry. By visiting the program's Web site, www.helmetstohardhats.org, veterans can learn about federally-approved apprenticeship training programs, current career opportunities, and how to access GI Bill benefits to cover living costs while learning a new trade. And, employers are encouraged to register with the program to find qualified employees with the skills, discipline and work ethic instilled during their military careers.

In 2008, more than 50 military vets in Texas secured construction industry careers through the program, a 100% increase over 2007, and a promising indicator of growing support among employers and transitioning military job seekers for this non-profit program.

TWC Recognizes Time Warner Cable for Providing Public Service Announcements to Help Veterans


A partnership between the Texas Workforce Commission (TWC) and Time Warner Cable has enabled veterans throughout Texas to better utilize job-search resources that TWC provides.

Time Warner Cable has donated more than \$2.5 million in public service air time to TWC to support the Texas Veterans Leadership Program (TVLP), a comprehensive program that assists returning veterans from Iraq and Afghanistan as they resume civilian life in Texas.

In January, TWC Chairman Tom Pauken recognized Time Warner Cable Regional Vice President of Government Affairs Ron McMillan and the company's contribution of public service announcement air time to increase TVLP visibility at a ceremony in Austin.

"Through assistance from Time Warner Cable with public service announcements about TWC's Texas Veterans Leadership Program, TWC can spread the word about services available to our returning veterans," Pauken said. "Texas can serve as the model for the nation in welcoming our veterans home and putting in place a road map for their successful reintegration into civilian life."

TVLP is modeled on the successful Vietnam Veterans Leadership Program which Pauken, himself a Vietnam veteran, established during the Reagan administration.

The program is led by Retired U.S. Marine Corps Gunnery Sgt. Jason K. Doran, whose military service includes Operation Iraqi Freedom, Desert Shield/Storm in the Middle East, and Operation Noble Obelisk and Guardian Retrieval in Africa, JTF-6 Counter Drug Operations, and service in the Philippines and Korea. 



TWC Chairman Tom Pauken (far left) presents a commemorative Texas Veterans Leadership Program (TVLP) poster to Time Warner Cable Regional Vice President of Government Affairs Ron McMillan. They are joined by TVLP Director Jason Doran (second from right) and Workforce Solutions Capital Area Veterans Resource and Referral Specialist Sherman Weeks (far right).

Dress codes and grooming standards: Yes, employers may still set both

Confusion exists as to what is appropriate in today's workplace

Judging by the large number of telephone calls received on the hotline here at the Employer Commissioner's office of the Texas Workforce Commission (1-800-832-9394) regarding employee dress and hygiene, there seems to be a great deal of confusion regarding what constitutes appropriate 21st Century workplace attire. Many individuals don't seem to have any idea what to wear on "casual Fridays," much less the rest of the week. It may be because there are four generations working side by side for the first time in the history of work, and that they frequently do not share the same views regarding what appropriate attire looks like, or the fact that Americans, as a whole, tend to dress more casually today than in the past.

An Overview

Regardless of the reasons for this ongoing confusion, employers are still free to set reasonable

standards of employee dress and hygiene and hold their employees to those standards. The simple fact remains that your employees are the human face of your business in the community, and you want them to be a positive reflection on the company. The way they are dressed, groomed, and present themselves can go a long way toward creating the image you hope to convey to your clients, customers, patients, vendors or anyone else who comes into contact with the business.

This article discusses a few dress and hygiene issues that tend to arise again and again, and may serve as a useful starting point for discussion in your company.

Dress codes and grooming standards, even those that distinguish between men and women, are acceptable under Equal Employment Opportunity Commission guidelines as long as they bear a reasonable relationship to legitimate business needs and are enforced fairly.

Employers can always require employees to appear at work with a neat and clean appearance, including combed or brushed hair, bathed, and wearing clean clothes.

- A no facial hair policy for men is permissible under the above guidelines (business image, safety rules, etc.), but an employer may need to make a reasonable accommodation for certain



Dress codes and grooming standards, even those that distinguish between men and women, are acceptable under Equal Employment Opportunity Commission guidelines as long as they bear a reasonable relationship to legitimate business needs and are enforced fairly. Photo by Texas Workforce Commission and illustrations.

individuals, such as men with *pseudofolliculitis barbae*.

This is a skin inflammation occurring in as many as 60% of African American men and others with curly hair. These razor bumps occur when highly curved hairs grow back into the skin, and over time can result in keloidal scarring of the neck and beard area; letting the beard grow is a 100% effective treatment for this condition.

Accommodation can also be made for those workers whose religious practices may require wearing of a beard. Questions of these types should be discussed with an experienced employment law attorney.

- A no-tattoo or body-piercing policy may be enforceable under the above guidelines. Most employers have a middle ground: they allow such items if they do not interfere with the safe operation of equipment or can be concealed with clothing.
- Poor hygiene: no employer is obligated to tolerate an employee whose dirty appearance cannot be explained by the needs of the job. It is more complicated if an employee appears clean, but has an odor about him or her that is offensive and cannot be explained by the working conditions. In such a case, it would be best to have a discreet, one-on-one talk with the employee to explore the issue and give the employee a chance to explain what the problem might be. If the employee gives what amounts to a medical explanation for the odor, the employer has the right to require the employee to furnish medical documentation of that fact. If, however, the employer

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has 15 or more employees and is thus subject to the Americans with Disabilities Act, it would be prudent to be prepared to address the issue of what, if anything, might constitute a reasonable accommodation under the circumstances. If the employee does not claim a medical condition as the cause of the odor, the employer may address the issue through the corrective action process.


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Make sure, however, that the rules are uniformly enforced as to all employees within each particular group in a fair and consistent manner.

If a dress code results in what basically amounts to a uniform that is required for the job, there may be a minimum wage issue if not reimbursing the employees for the extra costs would result in their wages effectively going below the minimum wage (currently \$6.55

per hour; beginning July 24, 2009, minimum wage will rise to \$7.25 per hour), and/or below time and a half of their regular rate of pay in case of overtime hours worked.

- In that situation, the company would have to reimburse enough to bring employees up to minimum wage and/or the proper level of overtime pay for the hours worked that week, if applicable. That would be an issue only for the workweek in which the required clothing was purchased. The company could, of course, require the affected employees to submit receipts documenting their clothing costs, and staggering the purchases over two or more weeks, in order to minimize the chance that a given purchase would have an effect on minimum wage and/or overtime pay.

Make it clear that failing to abide by the dress code would be a rule violation; address such violations according to the company's progressive discipline policy, up to and including termination for failing to abide by the policy. 

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