

## **6.0 EMPLOYER/EMPLOYEE ISSUES**

### **6.1 Overview**

This section provides practical advice for assisting persons who have temporarily or permanently lost employment or are facing other employment-related issues as a result of a disaster.

### **6.2 Most Common Questions**

Common employment-related questions arising from a disaster are:

- What unemployment benefits are available for persons whose employment is interrupted or lost due to a disaster (or whose family income is affected by a disaster)?
- Can health benefits be continued after an employment loss has occurred?
- Can my employer fire me because a natural disaster has occurred?
- What obligations does my employer have to pay me if I cannot work because of the disaster?
- Is leave available if I become ill or a family member becomes ill as a result of the disaster or its aftermath?
- How do I get my pay?

### **6.3 Summary of the Law**

#### ***Unemployment Compensation***

A person may be entitled to receive unemployment compensation benefits if he becomes unemployed as a result of a disaster (e.g., because his employer's business was closed or destroyed, his employment was terminated, or he is unable to reach the place of employment because of the disaster). A person must apply for regular unemployment compensation with the Texas Workforce Commission (TWC) and be denied regular unemployment before he can be eligible for federal Disaster Unemployment Assistance (DUA). If a disaster victim is not eligible for regular unemployment compensation, he may be entitled to federal DUA.

In the event of a disaster, the TWC will publish announcements about the availability of DUA benefits and the deadline to apply for benefits. The TWC's page on disaster unemployment is available here: <https://twc.texas.gov/jobseekers/disaster-unemployment-assistance>.

To be eligible for regular (nondisaster) unemployment compensation under the Texas Unemployment Compensation Act (Texas Labor Code Title 4), an individual must meet all of the following requirements: (1) the individual must have earned sufficient wages to qualify for

benefits in the “base period” (The base period is defined as the first four calendar quarters of the five calendar quarters immediately preceding the date the individual files a claim for unemployment benefits); (2) the individual must be unemployed or partially unemployed; (3) the individual cannot have been fired for misconduct or voluntarily quit without good cause; (4) the individual must be able and available to work; and (5) the individual must be actively seeking work. For more information regarding these requirements, see <http://www.twc.state.tx.us/jobseekers/eligibility-benefit-amounts>.

### *Continuation of Group Health Coverage*

After a disaster, some individuals may lose their employer-provided group health plan coverage as a result of either a voluntary or an involuntary termination or a reduction in work hours that would render the employee unable to continue his coverage as an active employee. An employer may be required to extend COBRA continuation coverage to such an individual and his dependents (Qualified Beneficiaries) previously covered under the employer’s group health plan. The death of the covered employee would also be a qualifying event that would trigger an employer’s obligations under COBRA. [26 U.S.C. § 4980B\(f\)\(3\)](#). COBRA coverage is not available if the termination was for gross misconduct.

If applicable, COBRA requires an employer to extend to Qualified Beneficiaries the right to continue their health coverage under the same group health plan under which the beneficiaries were covered prior to their coverage loss. [26 U.S.C. § 4980B\(f\)\(2\)\(A\)](#). If the employer no longer offers the same health plan under which the Qualified Beneficiary was covered, the Qualified Beneficiary may still be able to elect coverage under another group health plan maintained by the employer. Group health plans include, but are not limited to, medical, dental, and vision plans. *See* [26 C.F.R. § 54.4980B-2](#), Q&A-1. Each Qualified Beneficiary may make a separate election with respect to coverage. *See* [26 C.F.R. § 54.4980B-6](#), Q&A-6. For example, if an employee previously covered a spouse and a dependent child through family coverage under an employer-provided group health plan, either the spouse or the dependent child could separately elect COBRA continuation coverage under a single, rather than family, plan while the remaining family members waived coverage.

Generally, a Qualified Beneficiary may continue his or her coverage for up to eighteen months. [26 U.S.C. § 4980B\(f\)\(2\)\(B\)\(i\)](#). However, COBRA coverage can be very costly. An employer may charge up to 102 percent of the actual cost of providing the coverage to a similarly situated active employee (not just the contribution for coverage that the employee paid while actively employed). [26 U.S.C. § 4980B\(f\)\(2\)\(C\)](#). COBRA continuation coverage is not available in all situations. For example, COBRA generally only applies to private sector employers with at least twenty employees, governmental employers, and certain employee organizations. [26 C.F.R. § 54.4980B-2](#), Q&A-4. Further, an employer is not required to offer COBRA coverage if it ceases providing any group health plan to its active employees. [26 U.S.C. § 4980B\(f\)\(2\)\(B\)\(ii\)](#). For example, if an employer closes operations entirely and no longer offers any group health plans, a Qualified Beneficiary has no rights under COBRA to continuation coverage.

An individual who is eligible for COBRA coverage and wishes to elect COBRA coverage should contact the employer providing the group health plan coverage. Employers are generally required

to send a notice regarding COBRA rights to the last known mailing address of the Qualified Beneficiary. Therefore, those who have been dislocated by the disaster may not promptly receive notice from their employers regarding COBRA continuation coverage. Qualified Beneficiaries only have sixty days in which to elect COBRA coverage from the later of the date of the COBRA notice or the loss of coverage. 26 U.S.C. § 4980B(f)(5). For further information, see “An Employee’s Guide to Health Benefits Under COBRA,” available at <http://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/an-employees-guide-to-health-benefits-under-cobra.pdf>.

### ***Employer’s Wage Payment Obligations***

Under the federal Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, the Texas Minimum Wage Act (TMWA), *Tex. Lab. Code § 62.001 et seq.*, and common law, employees must be paid for all work performed and for all time worked. This is true regardless of immigration status. It is not a valid defense to FLSA and TMWA claims that the work was done slowly, poorly, etc., or that the employer cannot afford to pay. Work time includes time that an employee has been engaged to wait, as well as travel time between job sites. In general, there are no exceptions made in the case of disasters. See “Employment & Wages Under Federal Law During Natural Disasters & Recovery,” available at <https://www.dol.gov/whd/regs/compliance/whdfs72English.pdf>.

In general, employees who are exempt from the FLSA’s minimum wage and overtime provisions because they are bona fide executive, administrative, professional, outside sales, or certain computer employees and are paid a salary of at least \$455 per week must be paid their full salary if the business shuts down for less than a full work week or if the employer does not have work available for the employee for the full work week. When the business is open and work is available, deductions from a salaried employee’s salary may be made if the employee is absent from work for one or more full days for personal reasons. In addition, a full day’s absence may be deducted if it occurred because of sickness or disability, as long as the deductions are made pursuant to a *bona fide* sick or disability leave plan, policy, or practice. *See 29 C.F.R. § 541.602.* For further information, see “Salary Basis Requirement and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)” (available at [https://www.dol.gov/whd/overtime/fs17g\\_salary.pdf](https://www.dol.gov/whd/overtime/fs17g_salary.pdf)) and “Frequently Asked Questions Regarding Furloughs and Other Reductions in Pay and Hours Worked Issues” (available at [https://www.dol.gov/whd/overtime/fs17g\\_salary.pdf](https://www.dol.gov/whd/overtime/fs17g_salary.pdf)).

A number of U.S. Department of Labor Fact Sheets relating to wages, including explanations of the different requirements for different categories of workers (migrant and seasonal agricultural workers, workers on visas, first responders, etc.) are available at <https://www.dol.gov/whd/fact-sheets-index.htm>.

The Texas Payday Law requires employers to pay employees who are exempt from the FLSA’s overtime provisions at least once a month, and employees who are not FLSA-exempt must be paid at least twice a month on the paydays designated by the employer. *Tex. Lab. Code § 61.011.* Wages may be paid by (1) delivering them to the employee, or a person designated by the employee in writing, at the employee’s regular place of employment, during regular work hours,

or at a place and time agreed by employer and employee; (2) sending them to the employee, or a person designated by the employee in writing, by registered mail, to be received no later than payday; or delivering them to the employee by any reasonable means authorized by the employee in writing. Employers with a direct deposit plan may also pay wages by direct deposit. [Tex. Lab. Code § 61.017](#). Employers whose employees may have been displaced by a natural disaster should take steps to ensure that pay is delivered in a manner that ensures receipt by the employee.

An employee who is discharged from employment must be paid in full no later than the sixth day after the date of discharge. Employees who are not discharged but leave employment voluntarily must be paid in full no later than the next regularly scheduled payday. [Tex. Lab. Code § 61.014](#).

Under certain circumstances, employees who lose employment as a result of a plant closing or mass layoff are entitled to sixty days' advance notice under the federal Worker Adjustment and Retraining Notification (WARN) Act, [29 U.S.C. § 2101 et seq.](#) If the closing or layoff is a direct result of a natural disaster, employers must still give as much notice as possible, even if that notice comes after the disaster. Employees who do not receive proper notice may be due back pay and benefits for up to the sixty-day notice period. The WARN Act notice requirement applies only to employers with at least 100 employees. The employer must give written notice to the bargaining representative of affected union employees and to unrepresented individual workers who may reasonably be expected to experience an employment loss. Notice must include whether the layoff or closing is permanent or for six months or less, the date (within a fourteen-day period) that the employee's employment will end, and the name and contact information of a person in the company who can provide additional information. For more information, see <https://www.doleta.gov/layoff/warn.cfm>.

A worker who is treated as an independent contractor by an employer may, in fact, be an employee, and may therefore be entitled to the protections of the FLSA, the TMWA, the Texas Payday Law, etc. While the Internal Revenue Service (IRS) considers many factors when determining whether a worker is an independent contractor or an employee, *control* is among the most important; a worker is likely an employee if the employer controls when and how the work is performed. The IRS additionally considers how the worker is paid, whether the worker has the potential to realize significant financial gain or loss, and whether the worker uses the employer's tools or supplies, among other factors. For more information, see <https://www.irs.gov/businesses/small-business-self-employed/independent-contractor-self-employed-or-employee>.

### ***Prohibited Employment Discrimination & Wrongful Termination***

Generally speaking, Texas is an employment-at-will state. This means that if an employer doesn't like the way the employee performed aspects of the job or if the employee has failed to follow workplace policies (or if the employee's services are simply no longer needed), an employer can fire the employee unless the firing is otherwise unlawful. Although "at-will" employment is the general rule, there are many exceptions, including the following:

- An employee cannot be fired because of the employee’s race, sex (including LGBT status or pregnant status), religious preference, ethnicity, national origin (including language), age, or disability (For further information, see “Equal Employment Opportunity is the Law,” available at [http://www.eeoc.gov/employers/upload/poster\\_screen\\_reader\\_optimized.pdf](http://www.eeoc.gov/employers/upload/poster_screen_reader_optimized.pdf));
- An employee cannot be fired for complaining about the employee’s rights under employment laws providing for minimum wage, overtime, medical leave, discrimination, workers’ compensation, and workplace safety (among others);
- If the employee is covered by the Family and Medical Leave Act (FMLA, described in the following section), the employee cannot be fired for taking leave because of a serious illness, maternity leave, paternity leave, time off to adopt a child, or time off to help take care of a seriously ill close family member;
- An employee cannot be fired for refusing an order to do something illegal;
- An employee cannot be fired for discussing pay or working conditions with co-workers, or complaining with or on behalf of coworkers about pay or working conditions;
- An employee cannot be fired for being a member of, joining, or trying to form a union;
- An employee cannot be fired for reporting an employer’s violation of a law to appropriate law enforcement authorities (known as “whistleblowing”); and
- If an employee has an employment contract specifying the grounds for termination, the employee cannot be fired in violation of that contract (this includes a collective bargaining agreement negotiated by a union in the employee’s workplace).

The above list does not cover all of the situations in which it is unlawful for an employer to fire an employee, but it covers some of the more common types of terminations that are unlawful. The list is by no means exhaustive. For more information, see [http://www.twc.state.tx.us/news/eft/wrongful\\_discharge.html](http://www.twc.state.tx.us/news/eft/wrongful_discharge.html).

**Prohibited employer discrimination against evacuees:** Texas law also prohibits discrimination for participation in an emergency evacuation. An employer may not discharge or discriminate against an employee who leaves the employee’s place of employment to participate in a general public evacuation ordered under an emergency evacuation order. [Tex. Lab. Code § 22.002](#). Emergency services personnel (including fire fighters, police officers, emergency medical technicians, and other individuals who are required to provide services for the benefit of the general public in emergency situations) are exempt from this provision. [Tex. Lab. Code § 22.004](#).

In addition, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), [38 U.S.C. §§ 4301–4333](#), makes it unlawful for an employer to deny initial employment, reemployment, promotion, or any benefit of employment to a person who is obligated to perform in a uniformed service, including the Reserves and National Guard. This includes a call to active duty as a result of a national emergency. For further information, see “Your Rights Under USERRA,” available at [http://www.dol.gov/vets/programs/userra/userra\\_private.pdf](http://www.dol.gov/vets/programs/userra/userra_private.pdf).

### *Unpaid Leave Entitlement*

In addition to paid leave that may be available under an employer's vacation or sick leave policy, the federal Family and Medical Leave Act (FMLA) requires covered employers to provide up to twelve weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. See 29 U.S.C. § 2601 *et seq.*; 29 C.F.R. pt. 825. Leave is available in part to cover an employee's own serious health condition that renders the employee unable to perform the employee's job, and to care for the employee's spouse, son or daughter, or parent who has a serious health condition. Employees are eligible if they (1) have worked for their employer for at least twelve months (need not be consecutive); (2) worked at least 1,250 hours over the year preceding their need for leave; and (3) if the employer has at least fifty employees within seventy-five miles of the employee's work site. The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances. For the duration of FMLA leave, the employer must maintain the employee's health coverage under any group health plan.

Substitution of paid leave is allowed under the FMLA. 29 U.S.C. § 2612(d)(2). Employees may take, or employers may require employees to use, paid vacation, personal, family, or medical sick leave concurrently with FMLA, subject to certain limitations. The U.S. Department of Labor updated the regulations under the FMLA in 2008, and these regulations now restrict the substitution of paid leave. Under 29 C.F.R. § 825.207, employers can require employees to meet all of the normal requirements of paid leave policies before permitting substitution. For example, if a policy requires that vacation be taken in full day increments, an employer can deny substitution for an employee's one-half day FMLA leave. Similarly, if vacation time cannot be taken during a particular month, substitution could be denied during that time period. For more information, visit <http://www.dol.gov/whd/fmla/index.htm>.

#### **6.4 Regulatory Agency Directives**

The U.S. Department of Labor, in coordination with FEMA, provides funds to state unemployment insurance agencies for payment of DUA benefits. Accordingly, the TWC administers DUA benefits to individuals who lost their jobs or self-employment or who are no longer working as a direct result of a major disaster for which a disaster assistance period is declared. In the event of a disaster, the TWC will publish announcements about the availability of DUA benefits and the deadline to apply for benefits. The TWC's page on disaster unemployment is available at <https://twc.texas.gov/jobseekers/disaster-unemployment-assistance>.

Unemployed disaster victims who are not eligible for regular unemployment compensation should apply for DUA benefits as soon as possible since there are deadlines to apply as well as waiting periods for receipt of benefits. For more information, visit: <http://www.twc.state.tx.us/jobseekers/disaster-unemployment-assistance>.

#### **6.5 FAQs**

***Q. 6-1 What is unemployment compensation?***

Unemployment compensation, such as the benefits provided to Texas workers by the Texas Workforce Commission, provides temporary financial assistance when a worker who has been laid off or fired from a job for a reason other than misconduct or quit a job for “good cause.”

***Q. 6-2 How do I qualify for unemployment insurance benefits?***

To be eligible for regular (nondisaster) unemployment compensation under the Texas Unemployment Compensation Act (Tex. Lab. Code Title 4), an individual (1) must have earned sufficient wages to qualify for benefits in the “base period”; (2) must be unemployed or partially unemployed; (3) cannot have been fired for misconduct or voluntarily quit without good cause; (4) must be able and available to work; and (5) must be actively seeking work. For more information regarding these requirements, see <http://www.twc.state.tx.us/jobseekers/eligibility-benefit-amounts>.

***Q. 6-3 What is Disaster Unemployment Assistance, or DUA?***

DUA provides financial assistance to individuals whose employment or self-employment has been lost or interrupted as a direct result of a major disaster as declared by the president of the United States, and are not eligible for regular unemployment insurance benefits under any state or federal law program (e.g., self-employed individuals or individuals unavailable to work due to an injury that is the direct result of the disaster). While DUA is a federal program, it is administered by states as agents of the federal government. [42 U.S.C. § 5177](#).

***Q. 6-4 How do I qualify for Disaster Unemployment Assistance?***

DUA may be available to certain unemployed U.S. nationals and qualified aliens who—

- have applied for and used all regular unemployment benefits from any state or do not qualify for unemployment benefits;
- worked or were self-employed or were scheduled to begin work or self-employment in the disaster area; and
  - can no longer work or perform services because of physical damage or destruction to the place of employment as a direct result of the disaster;
  - can no longer work because the individual is not able to reach the place of employment as a result of the disaster;
  - the workplace is inaccessible due to closures by federal, state, or local officials;
  - cannot perform work or self-employment because of an injury as a direct result of the disaster; or
  - became the breadwinner or major supporter of a household because of the death of the head of the household as a result of the disaster; and
- establish that the work or self-employment that they can no longer perform was their primary source of income.

**Disaster Unemployment Assistance for Noncitizens:**

Noncitizens must meet the following requirements (in addition to other DUA requirements) to be eligible for DUA. *See* 20 C.F.R. § 625.6(a)(1):

1. A noncitizen must be authorized to work for the weeks for which he or she is claiming DUA. *See* 56 Fed. Reg. 22800-01.
2. In addition, a noncitizen must have had one of the following statuses during the time he was earning the wages that are used to calculate the weekly benefit amount:
  - a. lawfully admitted for permanent residence in the United States at the time such services were performed;
  - b. lawfully present for purposes of performing such services; or
  - c. permanently residing in the United States under color of law at the time such services were performed.

With some exceptions, an individual's weekly benefit amount is normally calculated using the wage credits earned during the individual's base period (which is usually the first four calendar quarters of the five calendar quarters immediately preceding the date the individual claims unemployment benefits). *See* Tex. Lab. Code §§ 201.011, 207.004. Therefore, the second requirement generally requires the noncitizen to have had one of the three statuses listed above during his base period or a portion of his base period. An individual who qualifies for benefits at the time of the application, but did not have a qualifying status during the base period may be ineligible for benefits. For a more detailed explanation of the base period, see <http://www.twc.state.tx.us/jobseekers/eligibility-benefit-amounts>.

***Q. 6-5 How do I file for Unemployment Insurance (UI) or Disaster Unemployment Assistance (DUA)?***

Please see detailed information available on the TWC website at <https://twc.texas.gov/jobseekers/disaster-unemployment-assistance>.

To file a claim for unemployment insurance or DUA, please consider the following:

- You must file for regular benefits before filing for DUA. As a practical matter, the TWC may take your applications for both regular benefits and DUA at the same time.
- You may file for regular and disaster unemployment benefits online at <http://www.twc.state.tx.us/ui/uiclaim.html>.
- If you cannot file online, call one of the phone numbers listed below, Monday through Friday, from 8:00 a.m. to 5:00 p.m. (Central Time):

Austin local:	(512) 340-4300
Dallas local:	(972) 339-6200
El Paso local:	(915) 832-6400

Fort Worth local:	(817) 420-1600
Houston local:	(281) 983-1100
McAllen local:	(956) 984-4700
San Antonio local:	(210) 258-6600
Others call toll free:	1-800-939-6631
Relay Texas (TDD):	1-800-735-2989
Relay Texas (Voice):	1-800-735-2988

You will need your Social Security number, a copy of your most recent federal income tax forms or check stubs, or documentation to support that you were working or self-employed when the disaster occurred.

You must complete your work search registration at [WorkinTexas.com](http://WorkinTexas.com) or your local Workforce Solutions Office within three days of applying for DUA. You do not have to register if you were self-employed at the time of the disaster and are taking steps to reopen your business. If you do not plan to reopen your business, you must complete a work search registration and seek work.

To receive DUA benefits, you must submit proof of employment with the employer that was affected by the disaster (a pay stub, earnings statement, written statement from your employer or notarized statement from a co-worker) to the TWC within twenty-one days of the date the DUA application is filed. Failure to submit the required documentation within the twenty-one-day time period may result in denial of eligibility for DUA. For more detailed information, see <http://www.twc.state.tx.us/jobseekers/disaster-unemployment-assistance>.

***Q. 6-6 How do I get proof of prior wages or earnings?***

To obtain proof from the Internal Revenue Service (IRS) of prior income/earnings, file IRS Form 4506-T with the IRS. Write the appropriate disaster designation, such as “DISASTER [name of storm],” in red letters across the top of the forms to expedite processing. Fax or mail the form to the appropriate IRS Campus found in the instructions on the form. The anticipated response time is twenty-four to forty-eight hours from IRS receipt of the fax. For additional assistance from the IRS, call the IRS Disaster Assistance Hotline at (866) 562-5227.

***Q. 6-7 Are unemployment insurance benefits taxable?***

Any UI benefits you receive are taxable income. You will be issued a Form 1099-G at the end of January showing the amount of benefits paid to you, as well as any federal income tax withheld at the time the benefits were paid. The amount on the 1099-G is not reduced by any repayments you may have made for overpaid benefits. Therefore, if you repaid any benefits, you must maintain your own record of payment, such as reimbursement receipts or canceled check notices to make adjustments to your taxable income and as documentation for the federal Internal Revenue Service and State Tax Office when you file your tax returns.

***Q. 6-8 What DUA benefits are available?***

DUA is available to individuals for weeks of unemployment beginning after the date the president makes a disaster declaration and for up to twenty-six weeks after the major disaster. DUA benefits are available as long as an individual's unemployment continues to be the result of the major disaster, capped at twenty-six weeks following the disaster. The maximum weekly benefit amount is determined under the provisions of the state law for unemployment insurance in the state where the disaster occurred. For more information, see <http://www.twc.state.tx.us/jobseekers/disaster-unemployment-assistance>.

***Q. 6-9 What help is available to find new employment?***

Reemployment services are available through Texas Workforce Centers. For more information, see <http://www.WorkInTexas.com>.

For victims of wage theft from new or temporary employers, the Texas Legislature has amended the Penal Code to provide victims of wage theft from new/temporary employers with greater protection. As amended, [Tex. Penal Code § 31.04](#) now categorizes conduct as theft of service when an employer “intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make full payment after receiving notice demanding payment.” Most importantly, under the amended law, the partial payment of wages alone is not sufficient evidence to negate an employer's intent to avoid payment for a service.

***Q. 6-10 What is an employer's obligation with respect to a group health plan?***

In certain situations, COBRA may require an employer to extend COBRA continuation coverage under a group health plan to an employee and his dependents (Qualified Beneficiaries) following coverage loss due to certain qualifying events. Qualifying events include loss of coverage due to—

- most voluntary or involuntary terminations,
- a reduction in hours triggering a coverage loss, or
- the death of the covered employee.

If applicable, COBRA generally requires the employer to extend coverage under the group health plan for a period of eighteen months. However, the employer may charge the Qualified Beneficiaries up to 102 percent of the cost of providing coverage to a similarly situated active employee under the group health plan.

COBRA coverage is not available in all cases. Certain employers, including small employers, may be exempt from COBRA. Further, if an employer terminates all group health plans for active employees, the employer is not required to extend COBRA coverage to any Qualified Beneficiaries. For more detailed information, see <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/an-employees-guide-to-health-benefits-under-cobra.pdf>.

***Q. 6-11 If a worksite must close temporarily, are there alternatives to a layoff?***

In some circumstances, it may make sense for an employer to place its employees on unpaid administrative leave status while the office or other worksite regroups. If the employer's benefits plan permits continuation of coverage during such leave, employees may be able to maintain coverage. Employers should check the applicable plan documents before making this decision.

***Q. 6-12 Can my employment be terminated without notice or cause?***

Generally speaking, Texas is an employment-at-will state. This generally means that if an employer doesn't like the way the employee performed aspects of the job or if the employee has failed to follow workplace policies (or if the employee's services are simply no longer needed), an employer can fire the employee unless the firing is otherwise unlawful. Although "at-will" employment is the general rule, there are many exceptions. See "***Prohibited Employment Discrimination & Wrongful Termination***" above for more information.

The WARN Act, [29 U.S.C. § 2101 et seq.](#), requires that employers with 100 or more employees provide sixty days' notice before a mass layoff or a plant closing of at least thirty days. A mass layoff occurs when a third of employees are fired at worksites of fifty or more or when 500 or more employees are fired at a large worksite.

If the closing or layoff is a direct result of a natural disaster, employers must still give as much notice as possible, even if that notice comes after the disaster. Notice should be in writing and should tell the employee whether the layoff or closing is permanent or for six months or less, the date (within a fourteen-day period) that the employment will end, and the name and contact information of a person in the company who can provide additional information. The employer must give written notice to the bargaining representative of affected union employees and to unrepresented individual workers who may reasonably be expected to experience an employment loss.

Employees who do not receive proper notice may be due back pay and benefits for up to the sixty-day notice period. For more information, see <https://www.doleta.gov/layoff/warn.cfm>.

***Q. 6-13 Are there any legal restrictions against firing, suspending, or disciplining employees?***

Various state and federal laws prohibit discrimination in hiring, discipline, discharge, and other terms and conditions of employment for other reasons. Please see "***Prohibited Employment Discrimination & Wrongful Termination***" above for more information.

***Q. 6-14 Am I entitled to take leave to deal with my own or a family member's serious health problem?***

Your employer may have a sick leave or vacation policy that entitles you to a period of paid leave. In addition, the federal Family and Medical Leave Act (FMLA) may provide up to twelve

weeks of unpaid leave to eligible employees for certain family and medical reasons. The FMLA applies to employers with at least fifty employees. To be eligible, you must have worked for your employer for at least twelve months (need not be consecutive), and worked for at least 1,250 hours over the year preceding their need for leave. You can take leave for a serious health condition that prevents you from performing your job or to care for a spouse, child, or parent who has a serious health condition. You can continue your existing group health coverage and are entitled to reinstatement at the end of the leave. You will need to let your employer know that you or a family member has a serious health condition for which you require leave.

***Q. 6-15 I had to evacuate and need to get my pay. What do I do?***

If your wages are not direct deposited in your bank account, make sure your employer has your current address. Direct your employer to send your pay to you by registered mail. If you want to have someone receive or pick up your wages on your behalf, you must provide written consent to your employer to send or give your pay to that person.

***Q. 6-16 My employment has been terminated. When will I get my final paycheck?***

If your employer has discharged you, you must be paid no later than the sixth day after the date of your discharge. If you quit, you are entitled to your final paycheck no later than the next regular payday. For more information, see [http://www.twc.state.tx.us/news/efte/final\\_pay.html](http://www.twc.state.tx.us/news/efte/final_pay.html).