

INTRODUCTION TO 2025 EDITION

This Practice Guide is written for attorneys with several purposes in mind. First, it is meant to introduce Texas laws to a practitioner who has not been exposed to these laws before. Second, it is designed to assist Texas practitioners in learning new areas of law that may be outside their normal practice. Third, it is meant to provide all attorneys with practical advice, checklists and forms to help in structuring one of the subject transactions.

This Practice Guide covers the essential substantive law, and offers indispensable practical knowledge. The text explains the applicable statutes and cases to provide overall direction. Then, “Practice Tips,” comments, checklists and relevant forms are provided to assist in drafting.

Of course, no book is a substitute for thorough research and analysis in a particular case. However, we think the information in this Practice Guide will give you a strong framework for dealing with employment issues in Texas. The general principles presented in this text are subject to statutory and court revisions. This book does not constitute specific legal advice, and should be relied upon only as a starting point and practice guide.

Highlights of the 2025 Edition include:

- § 4:306.1 Texas Commission on Human Rights Act, generally—Who must comply—Licensed professional employer organizations (PEOs)
- § 5:285.1 Borrowed Employee Doctrine

Presidents have issued Executive Orders addressing employment discrimination in federal contracting for over 80 years. President Roosevelt issued the first such EO in 1941, Executive Order 8802, requiring all government contracting agencies to include a clause prohibiting discrimination based on race, creed, color, or national origin in defense contracts. Subsequent EOs expanded these protections. President John F. Kennedy issued two such orders. Executive Order 10925 (1961) introduced the requirement that contractors take “affirmative action” to ensure nondiscriminatory hiring and employment practices. Executive Order 11114 (1963) extended nondiscrimination provisions to federally assisted construction contracts. See Right to maintain private employment discrimination action under Executive Order 11246, as amended, prohibiting employment discrimination by government contractors and subcontractors, 31 A.L.R. Fed. 108 (Originally published in 1977) for more information.

On September 24, 1965, President Lyndon B. Johnson, with Executive Order 11246, consolidated and expanded prior mandates, transferring enforcement authority to the Secretary of Labor. It retained the affirmative action requirement and extended coverage to federally assisted construction contracts. Under Executive Order 11246, the Department of Labor implemented the “Philadelphia Plan,” which required government contractors to establish specific affirmative action goals—expressed as target percentages of minority workers in particular construction trades. Contractors could not be awarded federal contracts unless their plans included these goals. Subsequent Executive Orders have amended Executive Order 11246. See *Contractors Asso. of Eastern Pennsylvania v Secretary of Labor* (1971, CA3 Pa) 442 F2d 159, cert den 404 US 854, 30 L Ed 95, 92 S Ct 98 for a more complete history of the Executive Orders prohibiting employment discrimination in government contracts.

Executive Order 11246, as amended, and its applicable implementing regulations (41 CFR §§ 10-12.801 et seq., 41 CFR §§ 60-1 et seq., 45 CFR §§ 82.1 et seq.), have the force and effect of federal law.

At least, that was true until January 21, 2025. President Donald J. Trump revoked Executive Order 11246 by Executive Order No. 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, 90 FR 8633. However, that revocation was then enjoined by *Nat’l Ass’n of Diversity Officers in Higher Educ. v. Trump*, 2025 WL 573764 (D. Md. Feb. 21, 2025), opinion clarified, 2025 WL 750690 (D. Md. Mar. 10, 2025), which was appealed to the Fourth Circuit on February 27, 2025. The regulations that implemented Executive Order 11246 (1965) (41 CFR §§ 10-12.801 et seq., 41 CFR §§ 60-1 et seq., 45 CFR §§ 82.1 et seq.) were still operable as of this update. This publication has added Cautions to remind readers to proceed with care in litigation involving employment discrimination in government contracts. This area of law is in a state of significant upheaval, with rapid and unpredictable developments unfolding at both the federal and Texas levels. Stakeholders should proceed with heightened caution and closely monitor ongoing legal shifts.