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Case of the Month

Holiday bonuses for community college employees must comply with applicable state and federal requirements.

During the winter holiday season, community colleges may consider rewarding employees with bonuses in recognition of their hard work and the important services they provide to students. This month, the Legal Update is highlighting an important restriction on spending public funds that affects employee bonuses.

State law includes restrictions on spending public funds. Texas Constitution [article III, section 53](#) prohibits a college from granting any extra compensation, fee, or allowance to an officer, employee, or contractor after service has been rendered, or a contract has been entered into, and wholly or partially performed. [Tex. Const. art. III, § 53](#). The purpose of this restriction is to prevent colleges and other political subdivisions from giving away public money for services previously rendered, for which no valid legal authorization exists or for which the public would receive no return.

For contract employees, this restriction means that a college may not increase a salary for work that has already been performed under the contract or increase a salary after the contract rate has been settled, including by paying a one-time bonus. However, some types of mid-year salary or compensation increases may be permissible, depending on the specific circumstances. For example, a college board may enter a separate agreement or amend the existing contract to compensate an employee for additional duties. The contract or a board-adopted policy or compensation plan may also provide for additional compensation for an employee before performance under the contract begins. For at-will employees, a college may not pay for services already rendered, including by paying a one-time bonus, but may raise future salary between pay periods.

Additional state law restrictions apply to colleges' expenditures, and federal restrictions may also apply depending upon the source of funds. As a helpful resource regarding state law, [TASB College eLaw](#) includes [Use of Public Funds by Community Colleges](#), which details restrictions applicable to staff compensation and other types of expenditures and provides references to pertinent case law and attorney general opinions. TASB Community College Services recommends that colleges consult their local counsel with any legal questions regarding any particular expenditure.

Highlights

Update 42 to the [Community College Policy Reference Manual](#) is now available.

Join us at the TACCA Conference in Austin on Jan. 27-28, 2022. Register [here!](#)

Updated on eLaw: [Social Media Guidelines for Community College Board Members](#)

Resources

[Texas Higher Education Coordinating Board](#)
[Texas Legislature](#)
[Texas Statutes](#)
[Texas Attorney General](#)
[U.S. Department of Education](#)



From the Courts and the Attorney General

Governance

Court held that Texas Election Code sections 61.003 and 85.036, which prohibit a person from electioneering within 100 feet of an entrance to a polling place, violated the First Amendment and were unconstitutional. The challenge to the statutes was filed by a voter who wore inside a city polling place a T-shirt bearing an insignia related to an active ballot measure and was ordered by an election worker to turn the T-shirt inside-out. [Ostrewich v. Hudspeth](#), No. 4:19-CV-00715, 2021 WL 4480750 (S.D. Tex. Sept. 30, 2021) (adopting report and recommendation in [Ostrewich v. Hudspeth](#), No. 4:19-CV-00715, 2021 WL 4170135 (S.D. Tex. Sept. 14, 2021)).

Personnel

Former university professor failed to provide sufficient evidence that the university's non-renewal of his contract and hiring of a younger professor was motivated by age discrimination in violation of the [Texas Commission on Human Rights Act](#). [Univ. of Tex. Health Sci. Ctr. at Houston v. McNeely](#), No. 06-21-00041-CV, 2021 WL 4953238 (Tex. App.—Texarkana Oct. 26, 2021) (mem. op.).

Former university professor's claim that the university discriminated against her based on her gender in violation of [Title VII of the Civil Rights Act of 1964](#) was dismissed because she had not exhausted her administrative remedies before filing suit by making the allegation to the Equal Employment Opportunity Commission. She provided sufficient evidence that the university's nonrenewal of her contracts was discriminatory against her based on her race and in retaliation for making complaints in violation of Title VII, but the university did not discriminate based on her age in violation of the [Age Discrimination in Employment Act](#) by assigning her work to slightly younger employees. [Miller v. Upper Iowa Univ.](#), No.

1:19-CV-00039, 2021 WL 5232558 (W.D. La. Nov. 9, 2021) (mem. op.).

Former college employee failed to provide sufficient evidence that the college did not renew her employment contract in retaliation for referring other employees' complaints to the college's central office in violation of Title VII because documents and sworn declarations showed that the decision was made months before she engaged in the Title VII-protected activity. [Kinard v. Crew](#), No. 20-2803, 2021 WL 5023339 (2d Cir. Oct. 29, 2021).

Former university employee who was terminated for disobeying her supervisor's instructions failed to provide sufficient evidence that the termination was in retaliation for her speech protected by the U.S. Constitution [First Amendment](#) because her speech was related to her employment rather than matters of public concern and was not protected and the termination was not in response to the speech. [Royster v. Robinson](#), No. 20-14877, 2021 WL 5105810 (11th Cir. Nov. 3, 2021) (per curiam).

Students and Instruction

Former medical student's subjective beliefs that a failing grade was motivated by racial discrimination and claims that he informed a faculty member of another student's feelings of racial animus were insufficient evidence of discrimination by the medical school in violation of Title VI of the Civil Rights Act of 1964. The former student's claim that an instructor violated the First Amendment by failing him in a course in retaliation for speech made in the course was dismissed because the grade was justified on other grounds and there was no evidence of retaliatory intent. [Mandawala v. Northeast Baptist Hosp., Counts 1, 2, & 11](#), No. 20-50981, 2021 WL 4956422 (5th Cir. Oct. 26, 2021).

University medical student failed to provide sufficient evidence that the university discriminated against him because of his sex or retaliated against him for complaining of sexual harassment in violation of Title IX of the Education Amendments of 1972. The student failed to show that evaluations of his conduct or evaluations for a residency program violated his rights to due process under the U.S. Constitution Fourteenth Amendment because he was not terminated from the medical school program, prevented from completing his education, or otherwise deprived of notice or hearing. [Doe v. Univ. of Tex. Health Sci. Ctr. at Houston](#), No. 4:20-CV-03200, 2021 WL 5163123 (S.D. Tex. Nov. 5, 2021) (adopting report and recommendation in [Doe v. Univ. of Tex. Health Sci. Ctr. at Houston](#), No. 4:20-CV-03200, 2021 WL 5167741 (S.D. Tex. Sept. 28, 2021)).

University did not intentionally discriminate against a graduate student by dismissing him from its clinical psychology program because of his race in violation of Title VI because the evidence showed the dismissal was based on his unsatisfactory progress and inability to gain

the required clinical competence, despite supervisors' comments regarding his English fluency. [Yu v. Idaho State Univ.](#), 15 F.4th 1236 (9th Cir. Oct. 20, 2021).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings¹ based on requests from Texas community colleges related to:

- Video footage related to a specified incident. Tex. Att'y Gen. [OR2021-29086](#) (Oct. 21, 2021);
- Information pertaining to electricity bills. Tex. Att'y Gen. [OR2021-29355](#) (Oct. 25, 2021);
- Information pertaining to the requestor. Tex. Att'y Gen. [OR2021-29708](#) (Oct. 27, 2021); and
- Information relating to a specified license. Tex. Att'y Gen. [OR2021-29959](#) (Oct. 28, 2021).



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) amended a [regulation](#) clarifying that student absences are excused for required military service, not active military service, in response to legislation enacted by the 87th Texas Legislature.

THECB amended a [regulation](#) allowing students to exceed limits on dropping courses due to a disaster, in response to legislation enacted by the 87th Texas Legislature.

THECB amended a [regulation](#) regarding community colleges offering baccalaureate degree programs, in response to legislation enacted by the 87th Texas Legislature.

THECB amended a [regulation](#) concerning employees responsible for academic advising on dual credit courses.

The Texas Health and Human Services Commission amended regulations concerning minimum standards for school-age and before- or after-school [programs](#) and for child-care [centers](#).

The Texas Bond Review Board [corrected](#) an error related to recent [amendments](#) to regulations concerning applications for the state's Private Activity Bond program.

The Texas Department of Information Resources (DIR) amended and adopted new

¹ Open record letter rulings are limited to the particular records at issue and the facts as presented to the attorney general. These rulings must not be relied upon as a previous determination regarding any other records or any other circumstances.

[regulations](#) concerning information security standards for community colleges and other institutions of higher education, including amendments in response to legislation enacted by the 87th Texas Legislature.

The Texas Commission of Licensing and Regulation amended [regulations](#) concerning

safety requirements for certain outdoor outlets for air-conditioning and heating equipment.

The Texas Department of Motor Vehicles amended [regulations](#) concerning license plates and parking placards for disabled persons, including disabled veterans.



In the News

The U.S. Department of Education (DOE) [announced](#) it is accepting applications for fiscal year 2022 for the Fulbright-Hays Group Projects Abroad (GPA) Program, providing grants to support the study of modern foreign languages and area studies, until January 11, 2022.

DOE [announced](#) it is accepting applications for the Rural Postsecondary and Economic Development Grant Program through December 13, 2021.

The U.S. Department of Labor [announced](#) the redesign of the Employer Assistance and Resource Network on Disability Inclusion website.

The Equal Employment Opportunity Commission [updated](#) its COVID-19 technical assistance regarding employer retaliation in pandemic-related employment situations.

The Centers for Disease Control and Prevention [updated](#) its guidance regarding COVID-19 vaccine booster shots.