

New Texas Law Limits Negligent Hiring, Supervision Claims Against Employers

Michael D. Mitchell and Flynn L. Flesher | June 16, 2013

On June 14, Governor Rick Perry signed a new law that will preclude most causes of action for negligent hiring or negligent supervision against employers, general contractors, and premises owners. The new law ([Texas H.B. 1188](#)) amends the Texas Civil Practice and Remedies Code to prohibit most causes of action “against an employer, general contractor, premises owner, or other third party solely for negligently hiring or failing to adequately supervise an employee, based on evidence that the employee has been convicted of an offense.”

The Texas legislature passed the law in response to its finding that applicants with criminal records seeking employment “receive less than half as many job offers as job seekers without criminal records.” The law’s purposes are to “enhance public safety, raise employment levels, decrease recidivism, and allow job seekers with criminal records to become self-sufficient, law-abiding citizens.” The law should also alleviate most employer concerns about the potential liability of hiring individuals with criminal records, thereby providing “more options when hiring, and thus increas[ing] the employer’s efficiency and profitability.”

The new law does *not* preclude *all* causes of action for negligent hiring or negligent supervision. The statute includes exceptions allowing plaintiffs to raise such claims if the employer knew or should have known its employee was convicted of the following offenses:

- (1) an offense “that was committed while performing duties substantially similar to those reasonably expected to be performed in the employment, or under conditions substantially similar to those reasonably expected to be encountered in the employment”;
- (2) a sexually violent offense; or
- (3) certain offenses identified in [Article 42.12 of the Texas Code of Criminal Procedure](#), including but not limited to murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, and aggravated robbery.

The law also allows negligent hiring or negligent supervision claims in certain situations related to the misuse of funds or property if, on the employee’s date of hire, the employee had been convicted of a crime involving fraud of misuse of funds or property.

The new law will be beneficial both for employers and for individuals with criminal records, who often have difficulties finding employment. The statute is a long time coming. With it, the Texas legislature appears to be trying to protect employers who have decided to give a ‘second chance’ to persons convicted of certain crimes, while at the same time trying to give credence to the rehabilitative efforts of the Texas criminal justice system. At least in theory, it supports the notion that people who have served time in the Texas criminal justice system have paid their debts to society and should be considered rehabilitated.

The bill was passed by the Texas House of Representatives on April 25, 2013, by a vote of 134-2. It was passed by the Texas Senate on May 17 by a unanimous 31-0 vote. The law will become effective on September 1, 2013.

[Michael D. Mitchell](#) is a shareholder in the Houston office of Ogletree Deakins.

[Flynn L. Flesher](#) is knowledge management counsel in the Houston office of Ogletree Deakins.

June 16 | TAGS: [criminal records](#), [Negligent hiring](#), [negligent supervision](#), [Texas Civil Practice and Remedies Code](#), [Texas H.B. 1188](#), [Texas Legislature](#).
