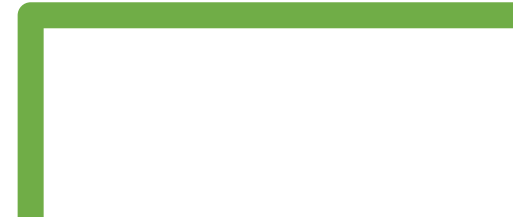


THE HUMAN CANNONBALL - How to Correctly Fire Someone

Presented by:

Clarissa M. Rodriguez, Partner | Shareholder, DNRB&Z

Rebecca Hayward, Partner | Shareholder, DNRB&Z





First Ring- the basics

Get the facts please

Disciplinary vs Performance Related

- Policy violation vs Can't do the Job

At-Will

Progressive Discipline

- Prior incidents

DOCUMENT, DOCUMENT, DOCUMENT

Legal issues

Changing the Acts



Reduction in Force

Budget
Evidence

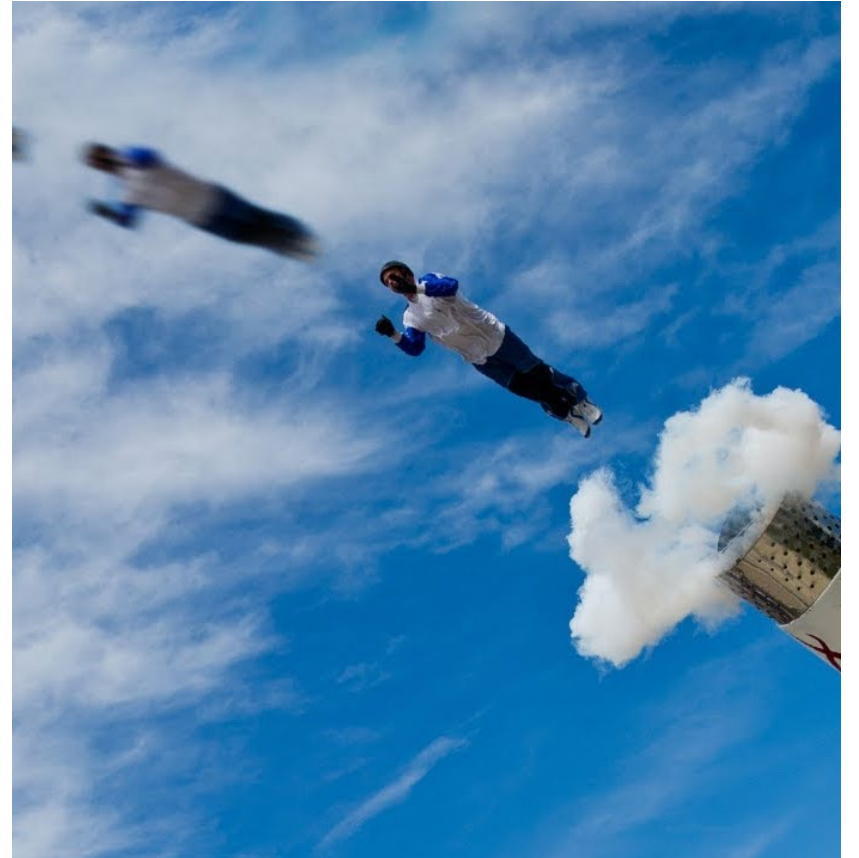


Organizational
Structure Changes

Budget
Evidence
New administration



Council Direction



Police & Fire

- Civil Service
- Non-Civil Service
- Collective Bargaining Agreement or Meet and Confer Agreement
- “Chapter 614 Notice”- What does this mean?!?!
 - Legislative intent behind 614 is to reduce the risk that adverse employment action will be based on unsubstantiated and/or anonymous complaint, ensuring that the affected employee received sufficient information to enable him to defend against the allegations. *See Turner v. Perry*, 278 S.W. 3d 806 (Tex.App. – Houston 14th.Dist., 2009); *see also Treadway v. Holder*, 309 S.W. 3d 780 (Tex. App. -Austin 2010, pet. denied)./See *Harris County Sheriff’s Civil Service Com’n v. Guthrie*, 423 S.W. 3d 523 (holding that termination notice satisfied the elements of 614 TGC).
- Disciplinary vs Performance
 - Accommodation
- HB 471- light duty/line of duty injury leave





The Legal Highwire

- The laws...
 - ADA
 - Light Duty
 - Can't perform essential functions
 - FMLA
 - FLSA
 - Harassment
 - Whistleblower
- New Law ALERT!! (More detail in next slides)
 - PWFA
 - Religious Discrimination
- Investigations
- NO Retaliation
- Defenses
- Consistency in decision making

New Law ALERT!!

- PWFA – Pregnant Workers Fairness Act

- The PWFA would require employers who are otherwise covered under Title VII/ADA (15 or more employees) to provide a “reasonable accommodation” to an employee’s known limitation related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.”

- The intent of the law is to basically fill in the gaps left by Title VII, PDA and the ADA. Under Title VII/PDA, pregnant workers may receive an accommodation but only if they have identified others who are getting similar accommodations. Pregnant employees may also receive an accommodation under the ADA but only if their pregnancy constitutes a disability under the ADA. A “normal” or otherwise healthy pregnancy is not considered a “disability” under the ADA, although some pregnancy related conditions may be disabilities under the law.

- PUMP ACT – This type of protection existed back in 2010 under the FLSA, however, there was some confusion as its applicability to exempt employees; the PUMP Act expands existing employer obligations under the FLSA to provide an employee with reasonable break time to express milk for up to one year after child’s birth. A place other than the bathroom, shielded from view and free from intrusion from coworkers and the public.

WOMEN'S



PWFA – Continued...

- Lots of similar language between the ADA and the PWFA but note some very specific differences:

Under the ADA, the individual seeking an accommodation has to demonstrate they are “qualified” to do the job – that they can perform the essential functions with or without an accommodation. However, under the PWFA the employee can be “qualified” even if the employee cannot perform some of the essential functions of the position so long as the inability is temporary, the function will be able to be performed in the near future, and the inability to perform can be reasonably accommodated. In short, under the PWFA, one of the accommodations can be waiving some of the essential functions that would otherwise be necessary for a worker to be qualified, because there is a recognition that pregnancy is a temporary condition.

- TAKEAWAY: The intent here is to basically skip the question of whether the pregnant employee is entitled to an accommodation, but to jump straight to analyzing what that accommodation should be without incurring undue hardship.





NEW LAW ALERT!!

- Religious Accommodation – KIND OF A NEW STANDARD
 - *Groff v. DeJoy*, 143 S.Ct 2279 – June 29, 2023
 - Standard used to be a *de minimus* standard. Employers did not have to provide a religious accommodation if it would impose more than a *de minimus* burden on the business. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977) “Requiring an employer to ‘bear more than a de minimus cost’ to provide a religious accommodation is an undue hardship.”
 - New standard: “substantial increased cost” – “Title VII requires an employer that denies a religious accommodation to show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.” – *Groff v. DeJoy*, 143 S.Ct 2279

NEW LAW ALERT CONT...

- “substantial cost” or “expenditures” used in *Hardison*.
- “In describing an employer’s “undue hardship” defense, *Hardison* referred repeatedly to “substantial” burdens, and that formulation better explains the decision.”
- Taking into consideration the effect on other employees
- Case by case basis

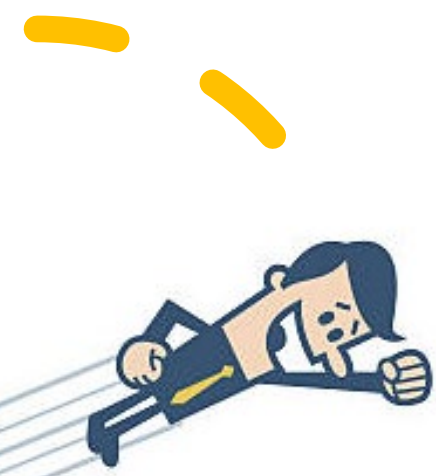




Policies & Options

- WHAT DO YOUR POLICIES SAY?
- Performance Improvement Plan (PIP)
- Home Rule vs. General Law
- Admin Leave With Pay [or Without]
- City Manager vs. City Council
- Grievance/Appeal
- Retirement Option

Final Pay Issues



How were they terminated?

- With/without cause
- Severance?
- What level- management vs. non-management
- Sick/Vacation Pay out

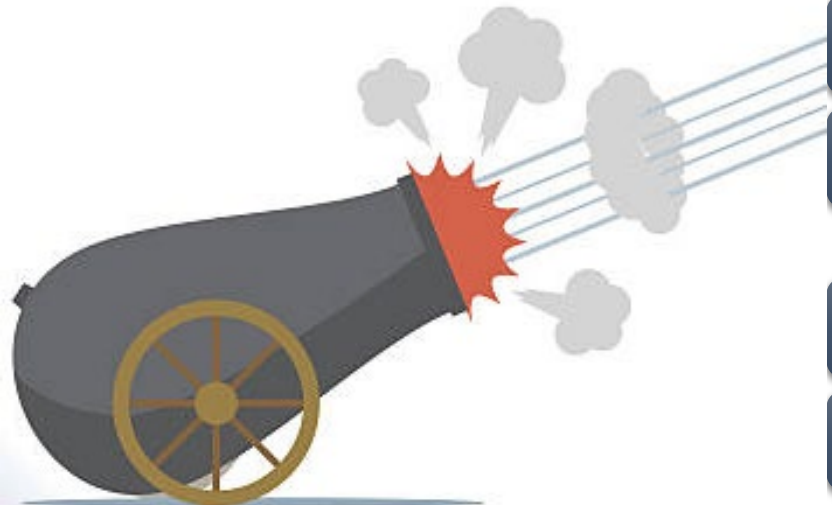
Vacation/Sick Leave

Get their equipment (tools, access codes, keys, etc)

- (Even on admin leave)

Unemployment

Benefits (ie: COBRA)



Final Act: Best Practices

- IN WRITING
- Plan Ahead
- Privacy discussion
- Short and to the point
- Terminate early in week & end of the day
 - Safety Issues
- Pack it up...
 - IT!
- NO Retaliation or Pretext
- Do not discuss anything if threat of a claim/suit (even if not but there is a hint)
- Remote termination
- Advise other employees: morale
 - Who's going to do their job in the interim?
- AT-WILL!



Questions?

- **Clarissa M. Rodriguez**
(210) 227-3243
2517 N. Main
San Antonio, TX 78212
cmrodriguez@rampagelaw.com
 - **Rebecca Hayward**
(956) 421-4904
701 East Harrison Ave, Suite 100
Harlingen, TX 78550
rshayward@rampagelaw.com
-

