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EMPLOYMENT LAW'S LATEST PLOT TWISTS

Sarah T. Glaser and Claire A. Wills

Federal employment law has seen several notable developments over the past year, many of them coming from federal agencies and the executive branch rather than Congress. The Equal Employment Opportunity Commission ("EEOC") has changed its enforcement posture, the Department of Justice's Office of Legal Counsel ("OLC") has issued a significant opinion on disparate-impact liability under Title VII, and the Department of Labor's 2024 overtime rule has been vacated, restoring the prior salary thresholds for the white-collar exemptions.

For employers, the main point is not that compliance obligations have disappeared. Title VII, the Americans with Disabilities Act ("ADA"), the Fair Labor Standards Act ("FLSA"), the Pregnant Workers Fairness Act ("PWFA"), and other employment statutes remain in effect. What has changed is the federal enforcement environment. Employers should pay attention to those shifts while continuing to document employment decisions, apply policies consistently, and evaluate risk under the statutes and case law that remain controlling.

DOJ Weighs in on Disparate Impact

One of the most significant recent developments is the June 9, 2026 opinion from the OLC addressing disparate-impact liability under Title VII.[1] The opinion was requested by EEOC Chair Andrea Lucas and asked whether the EEOC's disparate-impact provisions, including the Uniform Guidelines on Employee Selection Procedures, are constitutional as currently interpreted and applied.[2]

Disparate-impact theory has long allowed plaintiffs to challenge facially neutral employment practices that disproportionately affect members of a protected group, even without proof of intentional discrimination. Classic examples include physical tests that exclude female employees and criminal background searches or credit checks that disproportionately exclude minority applicants. Employers typically defend the practice as based in business necessity. The theory began with the Supreme Court's decision in *Griggs v. Duke Power Co.* and was later codified by Congress in the Civil Rights Act of 1991.[3]

The OLC opinion takes the position that the EEOC's existing approach is unconstitutional because, in OLC's view, it permits liability based on disproportionate adverse effects alone, without requiring a sufficient connection to intentional discrimination.[4] The opinion also states that employment practices should generally be treated as job-related when they rationally serve a valid business purpose, that plaintiffs must identify the specific practice causing the disparity, and that plaintiffs must point to an equally effective alternative practice with less disparate impact.[5]

That is a significant shift in the federal government's enforcement position, but it is important to be precise about what the opinion does and does not do. An OLC opinion binds the executive branch, but it is not a court ruling and does not bind federal courts. The Supreme Court has not held that disparate-impact liability is unconstitutional, and private plaintiffs may still bring disparate-impact claims. For now, the opinion primarily signals that federal agencies like the EEOC are unlikely to prioritize disparate-impact enforcement in the way they have in the past.[6]

For employers, this is not a reason to abandon careful review of hiring, promotion, testing, background-check, or other selection practices. The better takeaway is to make sure those practices are tied to actual job needs, applied consistently, and supported by clear documentation.

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Based in Austin, the Firm's attorneys represent clients before major utility and environmental agencies, in arbitration proceedings, in all levels of state and federal courts, and before the Legislature. The Firm's clients include private businesses, individuals, associations, municipalities, and other political subdivisions.

The Lone Star Current reviews items of interest in the areas of environmental, utility, municipal, construction, and employment law. It should not be construed as legal advice or opinion and is not a substitute for the advice of counsel.

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FIRM NEWS

Sarah Glaser will give an "Employment Law Update" at the Advanced Government Law 2026 with TexasBar CLE on July 30 in San Antonio.

Laura Ingram will be presenting "Something to Talk About: Free Speech in the Digital Age" at the Austin SHRM Conference on August 7 in Austin.

Roslyn Warner will be discussing "What's Goin' On? The Latest from the PUC and the RRC" at the TCCFUI Annual Seminar on October 16 in Houston.

Markel Perkins will be presenting "Reading the Binder: A Guide for Reading Rate Filing Packages" at the TCCFUI Annual Seminar on October 16 in Houston.

Jack Klug will be discussing "Vegetation Management 101: Key Issues and What's Ahead..." at the TCCFUI Annual Seminar on October 16 in Houston.

COMING SOON!!

SEASON 8

Lloyd Gosselink Rochelle & Townsend, P.C. is looking forward to its eighth season of Listen In With Lloyd Gosselink: A Texas Law Firm, featuring various topics/attorneys throughout the Firm's practice groups. You can listen to the previous seven seasons by visiting lg.buzzsprout.com or our website at lglawfirm.com. You can follow us on LinkedIn, X, Instagram, and Facebook to be notified when the latest episodes are released.

Season 8 Upcoming Topics Include:

- Public Utility Agencies
- Road Bond Validation Suits
- Employment Law Updates
- Consumer Complaint Process
- Lead and Copper Rule
- Injunctive Relief and Extraordinary Remedies
- Looking Ahead at the Upcoming Legislative Session

Have a topic you'd like us to cover? We welcome suggestions from our listeners. Please send your topic requests or questions to **editor@lglawfirm.com** for consideration in a future episode.

Conflicts Between the City of Austin's Proposed Energy Code and the Texas Utilities Code. Tex. Att'y Gen. Op. KP-0521 (2026).

The Attorney General evaluated a possible conflict between provisions in the City of Austin's ("the City") Energy Code and the Utilities Code.

The City's Energy Code requires the installation of "electric ready" infrastructure in buildings with equipment or appliances that use natural gas for space heating, service water heating, cooking, clothes drying or lighting. Subsection 181.903(b) of the Utilities Code prohibits the City of Austin from adopting or enforcing a code that has the purpose, intent, or effect of directly or indirectly discriminating against a utility service based on the type or source of energy.

The City's Energy Code could conflict with the Utilities Code by having "the purpose, intent, or effect of directly or indirectly . . . discriminating against" a utility service "based on the type or source of energy." By looking at the common meaning of the word "discriminate," the Attorney General found it clear that the City's Energy Code has the "purpose, intent, or effect of directly or indirectly" discriminating against natural gas utility services. As a result, the Attorney General concluded that the Utility Code's broad prohibition renders the City's ordinance unenforceable.

County Employment Practices. Tex. Att'y Gen. Op. KP-0522 (2026).

In response to a request by the Stephens County Commissioners Court, the Attorney General opined regarding several aspects of the role of a commissioners court in employment matters.

The opinion notes that a commissioners court is the county's principal governing body exercising only such powers as the law specifically confers. Other elected officials also manage and control county affairs. A commissioners court may not usurp or unreasonably interfere with an official's sphere of authority.

While recognizing there may be instances when an elected official must publicly advertise an employment position, the Attorney General found no general statute that imposes such a requirement on county elected officials. The Attorney General cautioned that the Stephens County Commissioners Court may use an elected official's failure to advertise a position or decision to advertise in a limited area as evidence to assert that hiring practices are discriminatory.

The opinion further observed that a commissioners court may not dictate a person be hired or override an elected official's decision about who to hire because the commissioners court has no legal right to screen applicants for a position in the office of an elected official.

The commissioners court determines the number of employees that may be appointed by a district, county, or precinct officer and sets the salaries of most county employees. Courts have upheld a commissioners court's mid-year reduction of an elected official's staff and salaries pursuant to the commissioners court's authority to amend the budget; however, a commissioners court may not, for instance, reduce an elected official's staff or salaries "in a manner that prevents the elected officer from performing the duties of office" or in contravention of a law that "governs the compensation for the" particular staff position.

As related to timekeeping, the Attorney General found that the Stephens County Commissioners Court does not have implicit authority to require an elected official's employees use a certain method of timekeeping, such as a time clock.

A county's commissioners court has the authority to confer employment benefits like vacation and sick leave upon county officers and employees. However, it is generally up to an elected county official to approve what activities constitute a legitimate use of an employee's official time, like work time rather than vacation time. The Local Government Code authorizes a commissioners court to establish a sick leave pool from which an eligible employee, facing catastrophic injury or illness, may draw when the employee exhausts all accrued paid leave and compensatory time to which the employee is entitled. The commissioners court must restrict the amount of time an employee may contribute to and withdraw from the pool as provided in this subchapter.

The opinion further concludes that the authority to discipline or terminate an employee who works for an elected official generally lies with the elected official, and a commissioners court may not usurp or unreasonably interfere with an elected county officer's authority to require a bond for the officer's deputies, assistants, and clerks.

The Attorney General also stated that in some circumstances, it may be inadvisable for a single employee to serve multiple county officials as this practice may violate the prohibition against a commissioners court influencing the appointment of a deputy, assistant, or clerk.

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EEOC's New National Enforcement Plan

The EEOC's new National Enforcement Plan for fiscal years 2025 through 2029 reflects a similar shift.[7] Approved on June 4, 2026, the plan replaced the prior Strategic Enforcement Plan and sets the agency's enforcement priorities for the next several years.[8]

Several features are especially important for employers. First, the plan directs EEOC staff to eliminate the use of disparate-impact theories in investigations "to the maximum degree possible" and states that the agency will not commence, develop, or continue litigation advancing disparate-impact claims.[9] Second, the plan identifies facially discriminatory policies, practices, and programs as priorities, including programs labeled as "diversity, equity, and inclusion" or similar terms.[10] Third, the plan prioritizes cases involving recent Supreme Court precedent and unresolved questions of statutory interpretation.[11]

For public employers, this matters because changes in EEOC priorities can affect how charges are investigated, conciliated, and referred. But employers should resist treating agency priorities as though they are law. The statutes remain in force, and courts may continue to evaluate claims differently from the current enforcement position of the EEOC.

Harassment Guidance Rescinded, But Harassment Law Remains

The EEOC also voted on January 22, 2026 to rescind its 2024 Enforcement Guidance on Harassment in the Workplace in its entirety.[12] The 2024 guidance had been the agency's first comprehensive harassment update in more than twenty years and addressed harassment based on race, religion, disability, national origin, age, sex, sexual orientation, and gender identity.[13] The guidance used current-day examples (such as remote work issues) and recent case law to outline the parameters of harassment law.

Before the rescission, a federal court in the Northern District of Texas vacated portions of the guidance addressing gender identity, including provisions related to repeated intentional misgendering and restroom access.[14] After the EEOC regained a quorum, the Commission voted to rescind the full guidance, not just the provisions addressed by the court.[15]

The rescission does not eliminate employer obligations to prevent and correct unlawful harassment. EEOC Chair Lucas stated that rescinding the guidance does not give employers permission to engage in unlawful harassment and that federal employment laws and Supreme Court precedent remain in place.[16] The Supreme Court's decision in *Bostock v. Clayton County* also remains controlling law on Title VII's protection against discrimination based on sexual orientation and gender identity.

The practical change is that employers now have less current EEOC-issued guidance on certain workplace issues, including what conduct rises to the level of actionable harassment. Those questions should be handled carefully, with attention to the facts, applicable court decisions, and the employer's own policies.

Other Areas of Activity

Although the EEOC has shifted some priorities, it has not become inactive. Since January 2025, the agency has filed sixteen religious discrimination lawsuits and recovered more than $63 million on behalf of religious workers.[17] That makes religious discrimination and religious accommodation an important area for employers to watch.

The PWFA also remains an active compliance focus. The PWFA requires employers with fifteen or more employees to accommodate known limitations related to pregnancy, childbirth, or related medical conditions, unless doing so would impose an undue hardship.[18] Although a Louisiana federal district court vacated the portion of the EEOC's PWFA rule requiring accommodation of elective abortions, the core PWFA accommodation obligation otherwise remains intact.[19]

The Department of Labor has also restored the 2019 salary thresholds for the executive, administrative, and professional exemptions under the Fair Labor Standards Act after the 2024 overtime rule was vacated.[20] The current federal threshold is $684 per week, or $35,568 annually, for white-collar employees, and $107,432 annually for highly compensated employees.[21] Employers should remember that salary level is only one part of the exemption analysis; the employee's actual job duties still matter.[22]

Takeaways

Employers should continue reviewing selection procedures, documenting legitimate business reasons for employment decisions, and ensuring that supervisors know when to involve human resources or legal counsel. Accommodation requests, harassment complaints, religious accommodation issues, pregnancy related limitations, and classification questions should still be handled through ordinary, documented processes.

Federal agency priorities may change with administrations, but courts, private plaintiffs, and state laws remain part of the employment law landscape. In that environment, the best risk management tools remain familiar ones: clear policies, consistent application, good documentation, and careful attention to the facts before making employment decisions.

[1]*Opinion Letter on Constitutionality of Disparate-Impact Liability Under Title VII*, 50 Op. O.L.C. __ (June 9, 2026), https://www.

justice.gov/olc/media/1444871/dl?utm_medium=email&utm_source=govdelivery.

[2] *Id.*

[3] *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

[4] *Opinion Letter on Constitutionality of Disparate-Impact Liability Under Title VII*, 50 Op. O.L.C. __ (June 9, 2026), https://www.justice.gov/olc/media/1444871/dl?utm_medium=email&utm_source=govdelivery.

[5] *Id.*

[6] U.S. Equal Emp. Opportunity Comm'n, DIRECTIVES TRANSMITTAL NO. 600.001, *Rescission of Strategic Enforcement Plan Fiscal years* 2024-2028 and *Replacement Thereof with National Enforcement Plan Fiscal Years* 2025–2029 (June 4, 2026), https://www.eeoc.gov/sites/default/files/2026-06/NEP_-_signed.pdf.

[7] *EEOC Release New National Enforcement Plan*, U.S. EQUAL EMP. OPPORTUNITY COMM'N (June 4, 2026), https://www.eeoc.gov/newsroom/eeoc-releases-new-national-enforcement-plan.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] *EEOC Commission Votes to Rescind 2024 Harassment Guidance*, U.S. EQUAL EMP. OPPORTUNITY COMM'N (Jan. 2026), https://www.eeoc.gov/newsroom/eeoc-commission-votes-rescind-2024-harassment-guidance.

[13] *Id.*

[14] *Texas v. EEOC*, 785 F. Supp.3d 170 (N.D. Tex. 2025).

[15] *EEOC Commission Votes to Rescind 2024 Harassment Guidance*, U.S. EQUAL EMP. OPPORTUNITY COMM'N (Jan. 2026), https://www.eeoc.gov/newsroom/eeoc-commission-votes-rescind-2024-harassment-guidance.

[16] *Id.*

[17] *EEOC Delivers on Administration Priorities and President Trump's Executive Orders*, U.S. EQUAL EMP. OPPORTUNITY COMM'N (May 2026), https://www.eeoc.gov/newsroom/eeoc-delivers-administration-priorities-and-president-trumps-executive-orders.

[18] *Position of Acting Chair Lucas Regarding the Commission's Final Regulations Implementing the Pregnant Workers Fairness Act*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/wysk/position-acting-chair-lucas-regarding-commissions-final-regulations-implementing-pregnant.

[19] *Louisiana v. EEOC*, 784 F. Supp.3d 886 (W.D. La. 2025).

[20] *State of Texas v. U.S. Dep't of Labor*, No. 4:24-cv-468-SDJ (E.D. Tex. 2024).

[21] U.S. DEP'T OF LABOR, WAGE & HOUR DIV., Earnings thresholds for the Executive, Administrative, and Professional exemption from minimum and overtime protections under the FLSA, https://www.dol.gov/agencies/whd/overtime/salary-levels.

[22] 29 U.S.C. § 213(a)(1); 29 C.F.R. pt. 541.

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NAVIGATING SB 1883: KEY CHANGES TO WATER AND WASTEWATER IMPACT FEE REQUIREMENTS

by Samantha T. Tweet

Regulation of water was an important focal point for the 89th Texas Legislature, and the ripples from those newly enacted laws have been washing ashore over the past year. Among the most significant developments from the 89th Legislative Session are changes to the laws governing water and wastewater impact fees. During the regular session, Senate Bill ("SB") 1883 introduced substantial and noteworthy modifications to the process by which a political subdivision, such as a municipality or water district, adopts land use assumptions, capital improvements plans, and impact fees. Then, during the second called special session of the 89th Texas Legislature, SB 14 created a new requirement for political subdivisions to provide a credit against water and wastewater impact fees for certain water conservation and reuse projects. Now, approximately 10 months after the Texas Legislature adjourned *sine die*, the practical implications, and potential pitfalls, of these new requirements are becoming increasingly apparent. Given the significant revenue associated with impact fees, it is critical for political subdivisions to understand and properly implement these requirements to ensure compliance and avoid costly missteps.

An impact fee is a charge or assessment imposed by a political subdivision on new development to fund or recoup the costs of capital improvements or facility expansions necessitated by and attributable to that development. Chapter 395 of the Texas Local Government Code establishes a procedural and substantive framework that political subdivisions must follow when adopting a new impact fee or amending an existing one. Chapter 395 also governs how political subdivisions calculate, assess, collect, and use impact fees. Through SB 1883 and SB 14, the 89th Texas Legislature implemented sweeping changes to Chapter 395, substantially altering the requirements and procedures for adopting and amending impact fees and creating a new requirement for water conservation credits against those fees. The following is a summary of some of the key changes.

- **Additional Public Notice Requirements:** The first change brought about by SB 1883 concerns the public notice requirements for adopting or amending an impact fee. As amended, Chapter 395 requires a political subdivision to make its land use assumptions and capital improvements plan—the documents supporting the amount of a proposed impact fee—available to the public at least 60 days before the first publication of notice of the public hearing to review and consider approval of those documents. Further, SB 1883 repealed a provision stating that an impact fee would not be invalidated for failure to comply with public notice requirements if the political subdivision made good-faith efforts to substantially comply, making it more important than ever that a political subdivision carefully reviews public notice requirements before adopting or amending an impact fee.

- **Need for an Impact Fee Audit:** Perhaps the most substantial change resulting from SB 1883 is the addition of a new independent financial audit requirement, which adds an entirely new step to the impact fee process. Before a political subdivision may increase an impact fee or adopt a new impact fee for service area where one has not previously been adopted, the political subdivision must engage a certified public accountant who has not provided other services to the political subdivision within the preceding year to audit the political subdivision's existing impact fee program. SB 1883 specifies what the audit must include and allows the political subdivision to use revenues collected from impact fees to pay for the audit. Once the audit is complete, the political subdivision must hold a public hearing on the results of the audit and post a copy on its website at least 30 days before adopting an order setting a public hearing on the proposed impact fee or publishing notice of that hearing.

- **Increased Approval Threshold for Initial Imposition of an Impact Fee:** SB 1883 also raised the approval threshold for a political subdivision to impose an impact fee in the first instance. Previously, the governing body of a political subdivision could approve imposing an impact fee by simple majority vote. Now, approval requires an affirmative vote of two-thirds of the governing body's members, requiring a more aligned board or city council to adopt a new impact fee.

- **New Limitation on Adopting Amendments to Existing Impact Fees:** Under Chapter 395, as amended by SB 1883, a political subdivision must wait three years after an impact fee is adopted or amended to increase the amount of that impact fee. However, SB 1883 makes two important clarifications. First, the limitation does not prevent a political subdivision from adopting a phased approach to collecting the maximum allowed impact fee. Second, it applies only to the increase of impact fees adopted on or after SB 1883's September 1, 2025 effective date.

- **New Timeframe for Public Hearing on Amendments:** SB 1883 further provides that once a political subdivision receives an updated land use assumption and capital improvements plan, it must adopt an order setting a public hearing to discuss and review the update and determine whether to amend the plan within 120 days.

- **New Requirements for Composition of the Impact Fee Advisory Committee:** SB 1883 also changed the composition requirements for an impact fee advisory committee. Under Chapter 395, at least 50 percent of the advisory committee must now be representatives from the real estate, development, or building industries who are not employees or officials of the political subdivision, increased from the previous 40 percent requirement.

- **Potential for Attorney General Involvement in Impact Fee Action:** SB 1883 added a Chapter 395 provision authorizing the Texas Attorney General to bring an action on behalf of a property owner to contest an impact fee or recover a refund of an impact fee.

- **New Requirement for Conservation and Reuse Credits Against Water and Wastewater Impact Fees:** SB 14 created a new requirement for political subdivisions to provide a credit against water and wastewater impact fees to builders or developers who construct, contribute, or dedicate an eligible system or facility that results in water reuse, conservation, or savings. Under Chapter 395, as amended by SB 14, a political subdivision will establish procedures for calculating and applying water conservation credits in a fair and consistent manner and for reviewing and approving such credits.

Adopting or amending an impact fee is a worthwhile exercise for political subdivisions seeking to shift the burden of costly water or wastewater projects from existing customers to new development. Given these new changes to the impact fee process, political subdivisions should work closely and early with impact fee consultants, including staff, demographers, engineers, rate consultants, and attorneys, to review and successfully implement these new requirements.

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PUTTING PUBLIC UTILITY AGENCY PLANS INTO REGIONAL ACTION

by David J. Klein

Since at least as far back as 1999, the Texas Legislature has enacted statutes providing for the creation and operation of public utility agencies. What is a public utility agency ("PUA")? Historically, a PUA is a political subdivision of the State of Texas, created by the concurrent ordinances of two or more "public entities," for the purposes of acquiring, planning, financing, constructing, owning, operating, and/or maintaining water and wastewater facilities. In other words, it is a governmental entity, made up of other governmental entities, presumably in the vicinity of each other, with a regional focus on developing and delivering water and/or wastewater supplies and service on a wholesale and/or retail basis to potentially tens of thousands of customers. Like regional water districts and river authorities in Texas, a PUA can put on a "master class" of delivering water and wastewater utility services at the lowest rates through economies of scale, typically funded through low-interest tax-exempt debt instruments, and other governmental funding programs.

While these laws have been on the books for over 25 years, they received a significant boost from the Texas Legislature in 2025. Through Senate Bill 1169, approved in the 89th Legislative Session (Regular Session), the applicable laws governing PUAs in Texas Local Government Code (TLGC), Chapter 572, were enhanced by clarifying a PUA's authority in the financing of water and wastewater capital projects. For example, through this Bill, it is now expressly stated that a PUA can leverage financing from the North American Development Bank (NADB). Additionally, SB 1169 made the creation and regulation of PUAs more user-friendly for member entities and the public. From the PUA perspective, the provisions of the Bill have made it easier for public entities to become (or withdraw as) member entities of a PUA, and from a public perspective, there have been clarifications regarding the role of the Public Utility Commission in the regulation over PUAs. Plus, with SB 1169, a public entity now includes a water supply or sewer service corporation.

While the benefits of a PUA are many, it is important to at least note that as of 2025, as to generating revenue, a PUA does not have the power to levy an *ad valorem* tax, but it has the authority to adopt impact fees and rates. Further, a PUA's ability to condemn land is narrow, which is more specifically laid out in TLGC Section 572.0585, where one of those conditions is that it is only available to a PUA domiciled in a county with a population of more than 1.2 million.

Since the enactment of SB 1169, there have been initiatives by governmental entities across the State to explore the advantages of creating a PUA. With the clearer pathways for bringing in public entities to partner up for water and wastewater projects and to finance those solutions through (1) revenue bonds, (2) public-private partnerships, and/or (3) governmental programs from NADB and the Texas Water Development Board programs, it is anticipated by many that we are only at the beginning. The enhancements to this governmental vehicle are timely, as the costs of designing and constructing water and wastewater capital improvements are on the rise and the benefits of economies of scale through regional projects are needed more than ever to drive the local needs and local economies of the State.

David Klein is a Principal in the Firm's Districts and Water Practice Groups. If you would like additional information or have questions related to these or other matters, please contact David at 512.322.5818 or dklein@lglawfirm.com.

ASK SARAH

Dear Sarah,

One of our employees has medical issues and recently asked to work remotely as an accommodation. The problem is, we already have performance concerns. They miss deadlines, need a lot of follow up, and generally are not thriving in the role to say the least. We are worried that letting them work from home will make those issues harder to manage. Do we have to say yes?

Signed,
Remote but Not Relaxed

Dear Remote,

Not automatically but you also should not jump straight to "*no*." With more employers bringing employees back to the workplace, requests for remote work as a disability accommodation are becoming increasingly common. Under the Americans with Disabilities Act, employers must provide reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability, unless doing so would create an undue hardship. In some cases, remote work can be a reasonable accommodation but that does not mean every request to work remotely must be approved.

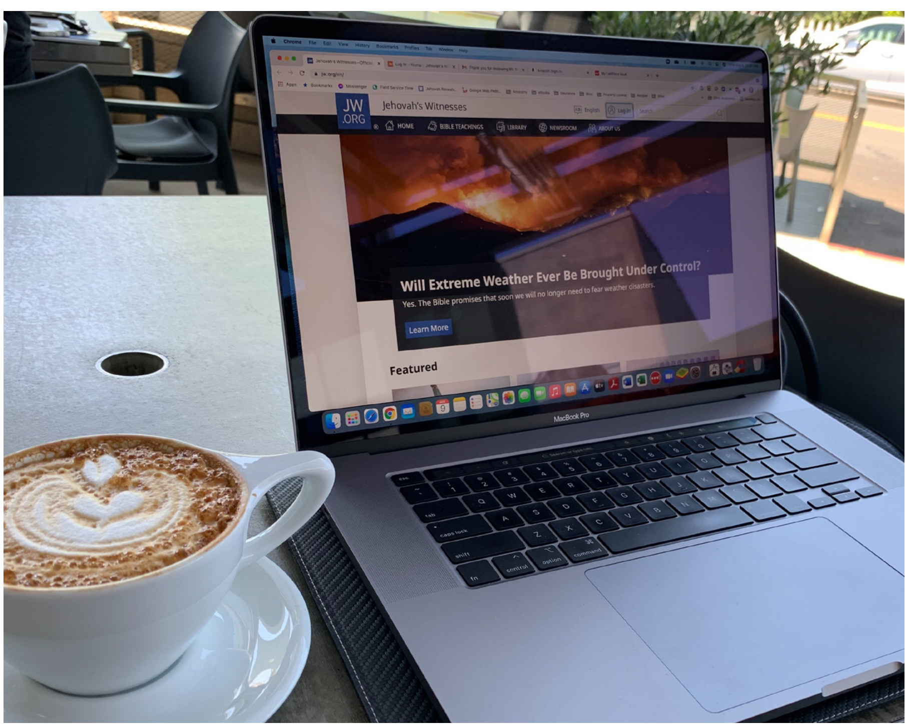
The employee still has to be able to perform the essential functions of the job with the proposed accommodation. If the employee can do that, the employer must provide the requested accommodation or an equally effective alternative, unless doing so would impose an undue hardship on the employer's operations.

So, the question is **not**: "Are we worried this employee will perform worse from home?" The better question **is**: "Can this employee perform the essential functions of the job remotely, and if not, is there another effective accommodation that would allow them to do so?"

Performance concerns do not disappear just because an employee requests an accommodation. Employers may still hold employees to legitimate performance and conduct standards, but performance concerns cannot be used to avoid the ADA process. The employer still needs to engage in the interactive process, which is a good faith, back and forth conversation with the employee about the medical limitation, the accommodation requested, whether the accommodation would allow the employee to perform the essential functions of the job, and whether an alternative accommodation would be equally effective.

This is where employers might err. Saying, "We do not trust this employee to work from home because they already struggle in the office," may be understandable from a management perspective, but it is not part of the ADA analysis. **Instead, you should separate two issues: the employee's performance history and the accommodation request.**

You can continue to manage performance, document missed deadlines, quality concerns, attendance issues, or failure to meet expectations and you do not have to lower standards or remove essential job duties. At the same time, you should still evaluate whether remote work would allow the employee to perform the essential functions of the job going forward. If remote work would not allow the employee to perform those essential functions, you should be prepared to explain why.



For example, does the position require regular in-person interaction with the public, clients, students, residents, or coworkers? Does the employee need to access physical files, equipment, or materials that cannot leave the workplace? Does the job require on-site supervision, hands on work, immediate response to in person needs, or coordination that cannot be performed remotely? Those specific facts matter, and keep in mind that under the ADA's framework, it's your job as the employer to be able to produce evidence that makes this showing.

You may also want to consider whether there is an equally effective alternative accommodation. The ADA does not require the employer to provide the exact accommodation the employee requests. Depending on the medical limitation and the job, alternatives might include a hybrid schedule, modified start and end times, a quieter workspace, additional structure or check-ins, temporary remote work, leave, changes to nonessential duties, or other measures that would allow the employee to perform the job's essential functions.

If remote work is approved, you should document the arrangement in writing. The agreement should make clear that the employee remains responsible for meeting deadlines, responding to communications, attending meetings, maintaining confidentiality, and satisfying all ordinary performance expectations. In some cases, a temporary trial period may also make sense, especially where the employer is unsure whether the arrangement will be effective.

So, do you have to say yes? Not necessarily. But before saying no, you must engage in the interactive process, identify the essential functions of the job, consider whether remote work would allow the employee to perform those functions, evaluate equally effective alternatives, document the reasons for your decision, and keep the employee's performance separate.

In short: the ADA does not require you to ignore performance problems or turn every job into a remote job. But it does require you to answer the accommodation question carefully, based on the job's actual duties and the employee's actual limitations, not just the fear that managing the employee from afar will be even more frustrating than managing them from down the hall.

"Ask Sarah" *is prepared by Sarah Glaser, Managing Director and Chair of the Firm's Employment Law Practice Group. If you would like additional information, please contact Sarah at 512.322.5881 or sglaser@lglawfirm.com.*

IN THE COURTS

Water Cases

Texas v. New Mexico (2026).

The United States Supreme Court entered a Compact Decree in late May resolving a long running dispute over the Rio Grande and protecting the State of Texas' interests in surface water from the Lower Rio Grande. Withdrawals from the Rio Grande river, which are shared between Colorado, New Mexico, and Texas, have been under a 1938 agreement known as the Rio Grande Compact. An interstate compact of this kind functions much like a contract between states, and when one state believes another is taking more than its share, the dispute goes directly to the U.S. Supreme Court, which sits as a trial court in these rare cases. A "Compact Decree" is the Court's final, binding order spelling out how the states must comply with the Compact going forward. This ruling put an end to over thirteen years of litigation between Texas, New Mexico and Colorado regarding management of the Rio Grande.

The case was filed by Texas in 2013, which alleged that the water intended for the Rio Grande Project (a federal irrigation system that delivers river water to farms in southern New Mexico and West Texas) was being intercepted and used by New Mexico. Specifically, Texas asserted that New Mexico was improperly reducing the quantity of surface water available to Texas from the Lower Rio Grande because New Mexico increased groundwater pumping from aquifers that are hydrologically connected to the stream system. In plain terms, wells drilled near a river draw from the same connected water supply as the river itself, so heavy pumping in southern New Mexico effectively siphoned off water from the river before it could flow downstream to Texas. The litigation was further complicated when the federal government intervened, citing its role operating the Rio Grande Project and its treaty obligation to deliver river water to Mexico. Texas and New Mexico attempted to settle the case once before, but in 2024 the Supreme Court rejected that proposal in a 5-4 decision, holding that the states could not settle around the federal government's interests.

After the parties returned to negotiations and reached a broader agreement in August 2025, this time with the federal government's support, the Court accepted the recommendation of a special master (a judge appointed to manage the case and advise the Court) to move forward with agreements proposed by New Mexico, Texas, and Colorado. Under the settlement New Mexico must reduce its annual groundwater depletions by 18,200 acre-feet within the next 10 years, which it plans to accomplish by retiring irrigated farmland and investing in conservation, backed by more than $22 million in state funding and over $40 million in federal support. The decree also divides irrigation water below Elephant Butte Reservoir on a 57-43 split favoring New Mexico users and establishes a new water accounting framework so compliance can be measured and enforced.

City of Dall. v. Steven H., No. 05-24-00463-CV, 2026 LX 177774 (Tex. App.—Dallas Apr. 15, 2026, pet. filed).

In April, the Dallas Court of Appeals ruled that governmental immunity protects the City of Dallas from a lawsuit brought by homeowners whose fence the City tore down. Governmental immunity is the doctrine that shields cities and other governmental entities from being sued unless the Texas Constitution or the Legislature has specifically waived that protection for a particular type of claim. The Blocks bought property in 2010 that sat partly within a City floodway easement, a recorded restriction requiring that nothing built on the land obstruct the natural flow of stormwater. In 2013, the City issued them a floodplain-alteration permit to build a fence, relying on their engineer's opinion that the fence would not impede drainage. After the fence went up, neighbors complained of flooding, and a City-commissioned drainage study concluded the fence was diverting stormwater. When the Blocks did not remove it, the City did so itself in August 2018. The Blocks sued the City, seeking a declaration that their permit was still valid, roughly $920,000 they claimed to have spent in reliance on it, and compensation for the taking of their right to develop under the permit (a claim known as inverse condemnation, which arises when the government takes or damages private property for public use without paying for it). The City responded with a plea to the jurisdiction, arguing that immunity stripped the court of any power to hear the case and protected the City. The trial court denied the plea, and the City appealed.

The threshold question was whether the City acted in a "governmental" capacity, meaning as an arm of the state for the public benefit, or a "proprietary" one, meaning for the local benefit of its own residents the way a private business might. A city keeps its immunity only for governmental functions. The Blocks argued the removal was proprietary because the City really acted to appease complaining neighbors, not to manage flooding. The court disagreed. Congress created the National Flood Insurance Program, and the Texas Legislature responded with the Texas Flood Control and Insurance Act, which authorizes cities to adopt and enforce floodplain regulations, including removing structures that violate them. Because Dallas was exercising that state-delegated authority, its permitting and enforcement actions were governmental as a matter of law, and claims that a city misused its regulatory power do not convert governmental conduct into proprietary conduct.

That left the Blocks needing a valid waiver of immunity, and the court found none. Their main theory relied on Chapter 245 of the Local Government Code, a "vested rights" statute that freezes the development rules in place when a permit application is filed so a city cannot defeat a project by changing its rules later on. But the Blocks never claimed the City adopted any new regulation after their 2013 application. Their complaint was that the City misapplied rules already on the books, and Chapter 245 does not reach that. It freezes the rules themselves, not the City's later judgment calls about whether a project complies with them. Because the Chapter 245 claim failed, the inverse condemnation claim built on it failed as well, and Texas courts have repeatedly held that immunity is not waived for promissory estoppel. The court reversed and dismissed those claims with prejudice, although the Blocks' separate takings claim over the City's disposal of their fence materials was not part of the appeal and remains pending in the trial court. The Blocks have filed a petition for review with the Texas Supreme Court.

Litigation Cases

Oksuz v. Harmony Pub. Sch., No. 03-25-00325-CV, 2026 LX 129890, at *1 (Tex. App.—Austin Mar. 11, 2026, no pet. h.).

In *Oksuz*, the Third Court of Appeals reversed the trial court's granting of a public charter school's plea to the jurisdiction ("PTJ"). A PTJ is the principle mechanism in which a party seeks to dismiss a claim against it, by arguing that a court has no subject-matter jurisdiction. For governmental entities, like Harmony Public School ("Harmony"), it is a method to assert governmental immunity.

Oksuz was an employee of Harmony, which is a school system affiliated with a movement associated with Sunni Islam. After some time, Oksuz, who is Turkish-American, left the movement, but was still employed at Harmony. Afterwards, Oksuz was terminated from Harmony. He then sued for religious discrimination under the Texas Commission on Human Rights Act ("TCHRA"). If a claimant can establish a *prima facia* case for a violation, then TCHRA may waive governmental immunity.

Although Harmony presented some evidence that Oksuz stated that the movement was not a religion, the *Oksuz* Court reversed the dismissal of the religious-discrimination case. The Court found that because it should not test the sincerity of a person's religious beliefs under federal guidance, it would "credit evidence favorable to Oksuz and draw all reasonable inferences in his favor." *Id*. at 11. By presenting evidence that Oksuz did view the movement "in his own scheme of things, religious," Oksuz did create a genuine issue of material fact and therefore concluded that the plea to the jurisdiction should have been denied.

A court's reluctance to test a person's religious beliefs has long been standard practice in federal courts. Here, the Third Court of Appeals applied that deference and will make it more difficult for a governmental entity to dispute jurisdiction by challenging a *bona fide* religious belief—a requisite for a religious-discrimination violation under the TCHRA.

Boerschig v. Rio Grande Elec. Coop., Inc., No. 24-0213, 2026 LX 262581, at *1 (Tex. May 22, 2026).

The *Boerschig* case concerns an unrecorded easement and whether Rio Grande's upgrades to the distribution line exceeds the scope of the easement, if any. In 1947, Rio Grande acquired a document titled "Right of Way Easement" signed by the executor of the property now at issue. That document was not recorded and did not specify which corporation the executor was granted an easement to. Afterwards, Rio Grande constructed an electric distribution line that crossed about 1.6 miles of the property described in the document—which provided electricity to approximately 1,000 people.

In 2002, Boerschig bought property, which included the property crossed by Rio Grande's electric line. In 2006, a dispute arose involving Rio Grande removing trees along the line. In 2012, Rio Grande notified Boerschig that it planned to redevelop and upgrade its line situated on a portion of Boeschig's property. The Supreme Court held that Rio Grande did retain an easement by estoppel, because the writing reflected the parties' intent and Rio Grande reasonably acted in reliance to the document's representations. However, the Court held that Rio Grande's upgrades and development of the line at issue were in excess of the original easement, because an easement-by-estoppel's scope is strictly limited by law as "to prevent injustice." *Id*. at 22. Accordingly, the Court used the original document and Rio Grande's original development as limits to the scope, which Rio Grande's redevelopment exceeded.

Because easements by estoppel are, almost be definition, less defined and clear than recorded easements, such holders should be wary from departing from their original exercise of that easement, its reliance, or the grantor's representations.

Paxton v. City of Austin, No. 24-1078, 2026 LX 221174, at *3 (Tex. May 22, 2026).

The *Paxton v. City of Austin* case has relatively complex facts: Austin attempted to raise funds for a light-rail plan through the issuance of bonds under Texas Government Code Sections 1205.00–.152. The Attorney General challenged Austin's ability to do so, and filed a plea to the jurisdiction.

The crux of this opinion is what the trial court decided to do with that plea to the jurisdiction: nothing. Instead of granting or denying the plea—which would have made the ruling appealable—the trial court took the plea under advisement and proceeded with trial. The Attorney General appealed the non-order. The Court of Appeals dismissed the appeal. The Supreme Court agreed that the Attorney General's appeal was defective, but instead treated the appeal as a *writ of mandamus*. Under the writ's standard, the Supreme Court held that by failing to rule on the plea to the jurisdiction, the trial court abused its discretion, because it did not determine whether it has jurisdiction to hear the case at all.

The *Paxton* case seems to give parties challenging subject-matter jurisdiction grounds to fully litigate and review a grant or denial of a plea *prior* to trial.

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AGENCY HIGHLIGHTS

United States Environmental Protection Agency ("EPA")

EPA Proposes to Rescind Regulatory Determinations and Deadlines for Six PFAS Compounds. EPA recently published two proposed rules that would scale back portions of the "National Primary Drinking Water Regulation" ("NPDWR") which previously established the maximum contaminant levels ("MCLs") for six PFAS compounds. The first proposed rule, published on May 20, 2026, would extend the compliance deadline from 2029 to 2031 for public water systems to meet the MCLs for perfluorooctanoic acid ("PFOA") and perfluorooctanesulfonic acid (PFOS). This would provide additional time for public water systems to invest in treatment, infrastructure, monitoring, and other capital improvements. The second proposed rule would rescind the regulatory determinations and individual MCLs for the four remaining PFAS compounds originally included in the NPDWR: hexafluoropropylene oxide dimer acid ("HFPO-DA," also known as GenX), perfluorononanoic acid ("PFNA"), perfluorohexanesulfonic acid (PFHxS), and the Hazard Index MCL for mixtures of these substances plus perfluorobutanesulfonic acid (PFBS). The EPA stated that the proposed recission is the result of the agency's prior procedural missteps and does not reflect any reassessment of the science underlying EPA's prior MCL determinations. EPA's public comment period on both proposed rules ended on July 20, 2026.

EPA Proposes Rule to Update PFAS Reporting and Monitoring Requirements for Publicly Owned Treatment Works Under National Pollutant Discharge Elimination System ("NPDES") Permits. The Clean Water Act ("CWA") prohibits any person or entity from discharging any pollutant from a point source to a water of the United States unless the discharge is authorized by a NPDES permit. However, NPDES applicants are only required to report the discharge of pollutants specifically listed in the NPDES application, a list that has not been updated since 1987. The list currently does not include per- and polyfluoroalkyl substances ("PFAS"). This proposed rule would require publicly owned treatment works plants and other wastewater treatment plants to monitor and report PFAS discharges as part of the NPDES permit program. The final rule is expected in May 2027.

EPA to Begin Revisions to Establish Sixth Unregulated Contaminant Monitoring Rule for Public Water Systems. Section 1445(a)(2) of the Safe Drinking Water Act ("SDWA") requires the EPA to establish a list of unregulated contaminants for monitoring purposes every five years. This action allows the EPA to meet the SDWA's statutory requirement by establishing the terms for the next (sixth) cycle of monitoring and identifying the new unregulated contaminants to be monitored during the next five-year period during 2027-2031. Monitoring preparations are anticipated in 2027, with sample collection between 2028-2030 and reporting concluding in 2031. To prepare for this future action, the EPA: (1) solicited public input on the development of drinking water analytical methods for emerging contaminants in drinking water, particularly those listed on the agency's Fifth Contaminant Candidate List, that might support monitoring efforts under the Sixth Contaminant List; (2) held a pre-proposal public webinar to discuss potential approaches to develop the Sixth Contaminant List and included time for public discussion; (3) hosted an informational webinar for Tribal government representatives to discuss the development of the Sixth Contaminant List; and (4) held an informational webinar for State representatives to discuss potential approaches to the development of the Sixth Contaminant List and the implementation of the rule. The EPA will seek public comment throughout the publication of the proposal.

EPA Prepares to Update the Water Quality Certification Rule. On July 7, 2026, the EPA finalized its update to the agency's Water Quality Certification Rule required under Section 401 of the CWA. The CWA prohibits federal agencies from issuing a license or permit to conduct any activity that may result in a discharge into a water of the United States unless a state or authorized Tribe issues a water quality certification. The EPA last revised the Water Quality Certification Rule in 2023, and the latest proposed revisions will address challenges cited by EPA with implementing the 2023 revisions. EPA's latest proposed revision would limit the scope of certification to a standardized list of contents required for certification requests across states, tribes, and industries. EPA expects the rule to be finalized around July 2026.

EPA Presents Draft Rule to Revise the Existing Definition of "Begin Actual Construction" and Add Definition of "Pollutant-Emitting Activities" Under the Clean Air Act. On May 11, 2026, EPA published proposed revisions to its New Source Review ("NSR") air permitting regulations which would discern between construction of a stationary source and non-emitting components or structures. This distinction, if finalized, would allow non-emitting components or structures to be constructed prior to the owner or operator receiving an NSR air permit for a new or a major modification to a major stationary source. The current regulations prohibit these sources from "begin[ing] actual construction" without first obtaining an NSR permit, with "begin actual construction" being defined as "the initiation of physical on-site construction activities on an emissions unit which are of a permanent nature," including ancillary construction such as installing building supports and foundations or laying underground piping. While guidance published in 2020 recommended the allowance of certain construction, the proposed rule seeks to codify current practices. This effort encompasses revision of the existing definition of "Begin Actual Construction" and adds the definition of "Pollutant-Emitting Activities" applicable to both Nonattainment New Source Review and Prevention of Significant Deterioration regulations. A virtual hearing was held on May 28, 2026, and comments were accepted through June 29, 2026. 91 *Fed. Reg*. 26958.

EPA Revises its Interim Guidance on the Destruction and Disposal of PFAS and Associated Materials. On April 20, 2026, EPA published updated Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances. This update to the previously issued 2024 guidance provides slight revisions to the recommended management framework for Perfluoroalkyl and Polyfluoroalkyl ("PFAS") materials, detailing recent practice and available technologies, thereby reducing the risk of PFAS exposure to the environment during destruction and disposal. The guidance does not provide for a specific or preferential choice, but rather an evaluation of each practice and respective ability to minimize PFAS introduction to the environment. The categories of disposal include underground injection and landfilling, with thermal treatment being the only destruction method provided.

In this revised guidance, EPA maintains its recommendation of hazardous waste landfills for disposal, citing facility controls of landfill gas and leachate that limit environmental releases. For municipal landfills, EPA does not recommend the disposal of materials containing high concentrations of volatile and soluble PFAS, finding that risk of environmental release may be higher than previously thought. However, the revised guidance still finds that municipal landfills may be appropriate disposal sites for PFAS such as Teflon. New findings since 2024 also demonstrate that certain operating conditions for thermal treatment units may effectively destroy PFAS completely and minimize human exposure and environmental release. Comments were accepted through June 29, 2026. Moving forward, the EPA Administrator announced on April 28, 2025 that EPA intends to provide annual updates, rather than the three-year updates required by the National Defense Authorization Act. 91 *Fed. Reg*. 22815.

EPA Withdraws Proposed Rule "Definition of Hazardous Waste Applicable to Corrective Action for Releases from Solid Waste Management Units". On May 8, 2026, EPA withdrew its previously proposed "Definition of Hazardous Waste Applicable to Corrective Action for Releases From Solid Waste Management Units." Originally published on February 8, 2024, the rule sought to amend the formal definition of "hazardous waste" targeting corrective action for releases originating from solid waste management units at treatment, storage, and disposal facilities permitted under the Resource Conservation and Recovery Act ("RCRA") in an effort to help streamline oversight. The proposed rule was also designed to inject the statutory corrective action authorities into existing regulations, providing formal notice that statutory definitions themselves, rather than narrow regulatory derivatives, shall govern emerging contaminants that have not yet been officially listed, thereby expanding the scope of EPA under applicable RCRA provisions.

EPA received a significant number of public comments and after review determined that the proposed rule was inherently unnecessary as years of program implementation show that most existing corrective actions available already handle regulatory hazardous wastes and hazardous constituents that have not yet been listed or identified by regulation. Additionally, EPA has other existing regulatory tools to require cleanup in RCRA permits of any hazardous waste that are outside official listing but are a risk to human health and the environment subject to modification as deemed necessary.

EPA found that rather than simplifying the corrective action process as intended, the proposed rule would hinder implementation and likely create regulatory uncertainty, opening the door for disruption of the existing regulatory processes for facility operators. 91 *Fed. Reg*. 25266.

Public Utility Commission of Texas ("PUC")

Oncor Files Unified Tracker Mechanism Application. On April 22, 2026, Oncor Electric Delivery Company LLC ("Oncor" or "Company") filed an application with the PUC for Approval of a

Single Unified Tracker Mechanism ("UTM"). The UTM, which is authorized under Public Utility Regulatory Act § 36.216, authorizes eligible utilities to file a single annual proceeding to adjust nonfuel rates on a system-wide basis to reflect changes in transmission and distribution invested capital. The UTM consolidates Oncor's distribution cost recovery factor ("DCRF"), interim transmission cost of service, and transmission cost recovery factor. Additionally, the DCRF portion of the filing includes deferred distribution costs related to Oncor's implementation of its Commission-approved System Resiliency Plan.

Overall, Oncor's UTM seeks a cumulative increase in its transmission and distribution revenue requirements of at least $1 billion on the heels of the utility receiving in April a net $560 million increase in its total base rate revenue requirement. The Steering Committee of Cities Served by Oncor ("OCSC") and stakeholders have conducted discovery on the Company's UTM Application and are scheduled to file direct testimony in July. More information can be found in Docket No. 59249.

Ongoing Texas-New Mexico Power Company ("TNMP") Rate Case. In November 2025, TNMP filed an Application for Authority to Change Rates. TNMP requested a net increase in transmission and distribution rates of approximately $34 million over adjusted test-year revenues, or an approximately 5% increase over the adjusted test-year revenues of $673 million. TNMP also requested a capital structure of 52.46% debt and 47.54% equity and a return on equity of 10.4%. If TNMP's original request was approved unchanged, residential customers would have seen a monthly increase of $5.20 to their average electric bill. Cities Served by Texas-New Mexico Power Company and stakeholders conducted discovery and filed direct testimony recommending adjustments to TNMP's Application.

On May 29, 2026, parties filed an Unopposed Stipulation and Settlement Agreement ("Agreement"). The parties agreed that TNMP's total base revenue requirement should be set at $677.2 million, which is an increase of approximately $4.5 million when compared to the Company's present revenues. Additionally, the Agreement proposes a revised regulatory capital structure of 55% debt and 45% equity and authorized return on equity of 9.65%.

Assuming the PUC approves the Agreement, final rates will be effective for electricity bills on and after 45 days from the date of the final order. More information can be found in Docket No. 58964.

Lone Star Transmission, LLC ("Lone Star" or "Company") Rate Case. On February 6, 2026, Lone Star filed a Statement of Intent and Application for Authority to Change Rates. In the Application, Lone Star seeks approval of a total revenue requirement of $115,900,133, which represented a $5,785,530, or a 5.25%, increase over its current revenues. Lone Star also requested a 10.55% return on equity and a capital structure of 55% long-term debt and 45% equity. On February 10, OCSC intervened in this proceeding. This motion was granted on February 25, 2026. OCSC and other stakeholders have conducted discovery and filed direct testimony. On June 24, 2026, the parties reached a settlement in principle, and the proceeding thereafter was abated to allow the parties to prepare the necessary settlement documents. More information can be found in Docket No. 59245.

Electric Transmission Texas, LLC ("ETT" or "Company") Rate Case. On April 20, 2026, ETT filed a Statement of Intent and Application for Authority to Change Rates. In the Application, ETT sought approval of a total revenue requirement of approximately $439.3 million, which represents a $42.1 million, or a 10.6% increase over its current revenues. ETT has also requested a 10.5% return on equity and a capital structure of 55% long-term debt and 45% equity. On April 22, 2026, OCSC intervened in this proceeding. OCSC and other stakeholders are conducting discovery while preparing their direct testimony. More information can be found in Docket No. 59642.

PUC Rulemaking Update. In January 2026, PUC Staff updated its calendar to reflect projected rulemaking timelines for the 2026 year. The calendar is a robust list of projects covering changes to the PUC's electric and water rules. The 2026 calendar can be found on the PUC's Interchange under Docket No. 59212.

As of June 24, 2026, the following calendar rulemakings are in progress:

- Project No. 58481 – Rulemaking to Implement Large Load Interconnection Standards Under PURA 37.0561
- Project No. 58000 – Rulemaking to Update Wholesale and IOU Retail Transmission Cost Recovery in the ERCOT Region
- Project No. 59557 – Streamlined Complaint Process
- Project No. 59288 – Review of §25.107
- Project No. 59523 – Implementation of PURA 35.153 – TDU and PGC Contracts for Electric Energy Storage Facility Capacity
- Project No. 58482 – Rulemaking to Develop Reliability Service to Competitively Procure Demand Reductions from Large Load under PURA 39.170
- Project No. 59432 – Transmission and Distribution Pole Structural Integrity and Service Quality Standards
- Project No. 59431 – Distribution Pole Management and Inspection Plans
- Project No. 59086 – Implementation of HB 2712 (89R) – Future and Combined Test Years (Water and Sewer)
- Project No. 59564 – Review of §24.153 – Customer Requests for Water and Sewer Service Changes
- Project No. 59528 – Implementation of HB 3092 (89R) – Minimum Transmission Line Length for CCN Amendments

The following rulemakings since the publication of the 2026 rulemaking calendar have been completed and new rules are in effect:

- Project No. 58480 – Rulemaking to Establish Large Load Criteria Forecasting Criteria PURA 37.0561
- Project No. 58434 – Rulemaking for Firm Fuel Supply

- Project No. 58400 – CY2025 Updates to Chapter 22 – Procedural Rules, Subchapters A-F
- Project No. 58401 – CY2025 Updates to Chapter 22 – Procedural Rules, Subchapters G-J
- Project No. 58402 – CY2025 Updates to Chapter 22 – Procedural Rules, Subchapters K-O
- Project No. 58392 - Implementation of SB 231 (89R) – Temporary Emergency Electric Energy Facilities
- Project No. 58391 – Implementation of SB 740 (89R) – System Improvement Charge
- Project No. 57883 – Commission Directives to ERCOT
- Project No. 58479 – Rulemaking for Net Metering Arrangements Involving a Large Load Co-Located with an Existing Generation Resource under PURA 39.169
- Project No. 59042 – Texas Energy Fund – Texas Backup Power Package Program
- Project No. 59332 – Review of §§ 24.245 and 24.259

Electric Reliability Council of Texas' ("ERCOT") Updates

PUC Approves ERCOT Batch Study Revision Requests. On June 18, 2026, the PUC approved ERCOT Batch Zero revision requests – PGRR145 *Batch Zero Process for Large Load Interconnections* and NPRR1325 *Related to PGRR145, Batch Zero Process for Large Load Interconnections*. This marks a significant step in Texas' effort to manage the growing volume of large load interconnection requests.

The new rules are meant to accelerate approvals for data centers seeking to connect to the state's power grid. More specifically, the batch study process will allow ERCOT to conduct a single interconnection study for all the loads across the system included in a particular batch. Previously, many loads found themselves in a situation where their potential impacts on the grid were subject to restudies by ERCOT because of potential offsetting impacts from nearby loads also seeking interconnections. The ERCOT Board approved the Batch Zero process framework at its June Board of Directors meeting.

According to information released by ERCOT, projects that are further along in the developmental process will be prioritized for interconnections. The first group of applicants under the new system—otherwise known as "Batch Zero"—will be notified in August whether they will be included in the batch, according to ERCOT.

"This new process represents a fundamental shift in how ERCOT manages the significant growth of large load interconnection, providing a structured, transparent path forward that protects reliability for Texans while supporting the state's continued economic growth," ERCOT CEO Pablo Vegas said in a prepared statement.

With the rule framework, ERCOT and the PUC hope to address the staggering influx of grid interconnection requests from data centers and other large energy consumers. Under some projections, power demand could reach anywhere from 138 gigawatts to 209 gigawatts inside ERCOT by 2030. For context, 138 GW would reflect an increase of 62 percent over ERCOT's current peak energy use.

In addition to the new batch study framework, the rules include provisions to facilitate interconnections for large customers seeking to build their own onsite generation to self-supply some or all of their electricity. Additionally, the framework creates a pathway to connect for large customers who agree to let ERCOT curtail their power use in response to local transmission constraints.

Going forward, ERCOT expects to notify Batch Zero applicants of their project classification in August 2026, at which point the full scope of Batch Zero will be known. A final transmission plan covering the entire batch of projects across the state is expected to be published sometime in the fall of 2027. While not all interconnection requests will result in built projects, ERCOT data shows the majority expect to be operational by 2030.

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