

Navigating High Risk Employee Situations

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Risk Triage: 5 Questions to Ask Immediately

- 1) Who is the decision-maker—and are they conflicted?
- 2) Is there a protected activity trigger (complaint, leave, report, union/association)?
- 3) Is there a confidentiality/transparency collision (PIA, council inquiries, media)?
- 4) Is the allegation safety-sensitive or criminal?
- 5) What will look retaliatory if we act today?

The 8-Step HR Playbook (Use in Every High- Risk Case)

- 1) Intake + preserve (who/what/when; hold relevant texts/emails)
- 2) Stabilize: interim measures (separate parties; no-contact; schedule changes)
- 3) Diagnose: complaint / performance / leave / political / ethics
- 4) Assign roles: HR lead, investigator, legal, comms, council liaison
- 5) Investigate fast + fair (scope, witnesses, credibility, documentation)
- 6) Decide + document (facts found, policy violated, rationale)
- 7) Carefully communicate (need-to-know only)
- 8) After-action: fix process, train, and audit for retaliation

Red Flags for HR (Checklist)

- Council member wants HR to 'handle it quietly' or 'make it go away'
- Threats of 'defamation' or 'lawsuit' appear before the facts are gathered
- You are asked to disclose medical info or leave status to 'explain staffing'
- The employee recently engaged in protected activity (complaint, report, leave)
- Pressure for immediate discipline/termination without investigation
- Decision-maker is the subject of the complaint or a close ally
- Election season: any use of city resources or city messaging near a measure/candidate
- Inconsistent treatment compared to similar past cases

Scenario A (Hypothetical): Complaint Against a Council Member

Scenario: At a city-sponsored event, an employee reports a council member made repeated comments and touched their shoulder/waist. The employee asks HR to stop it but says they fear retaliation. The council member calls the City Manager demanding the employee be disciplined for 'lying.'

Discuss:

- What are your first 3 actions in the next 24 hours?
- Who should NOT be making decisions here?
- What interim measures are appropriate?
- What will look retaliatory even if it's 'true'?

Key authorities: Title VII; Faragher/ Ellerth; Vance; Texas Gov't Code Ch. 551; Texas Gov't Code Ch. 552; Texas Gov't Code Ch. 554; City of Denton v. Grim (Tex. 2024)

Scenario A: Practical HR Playbook

- Confirm receipt; set expectations; stop side conversations
- Pick the investigator with independence (outside investigator if needed)
- Define reporting line: council member is NOT HR's boss; follow charter/policy
- Interim measures: no-contact, schedule separation, event attendance controls
- Document: intake notes + preservation steps + rationale for interim measures
- Avoid 'public council discussion' of personnel matters—plan communications

HR Implications

- Supervisor/authority harassment liability framework
- Hostile Work Environment standard
- Texas Whistleblower Act
- Ethics/role conflicts/council manager government

Scenario A: What to Say

- To complainant: 'We received this. We'll take steps to stop contact and review promptly.'
- To council member: 'We will follow established process. Please route communications through HR/CM.'
- To managers: 'Need-to-know only. Do not discuss; preserve documents.'
- To workforce: 'Staffing adjustments are being handled. We won't discuss personnel matters.'

Scenario B: Electioneering and City Resources

Scenario: Two weeks before an election on a city bond measure, a department head drafts an email using city letterhead urging employees to 'vote YES.' A council member asks a city employee to post campaign graphics on the city's social media page. Another employee prints campaign flyers on the city copier after hours.

Discuss:

- What are the immediate do/don't actions for HR?
- Who needs to be notified (and why)?
- What is your 'stop the bleed' plan for communications?
- How do you handle employees' off-duty political speech?

Key authorities: Tex. Elec. Code §255.003; Texas Ethics Commission guidance; Pickering; Garcetti; Heffernan

Scenario B: Practical Guardrails

- Centralize election-related messaging (one designated channel + approval)
- Immediate stop: remove posts, halt distribution, lock templates/letterhead use
- Investigate resource misuse like any policy violation (facts + consistency)
- Train managers: never direct employees to support/oppose candidates/measures
- Document corrective steps taken (timing matters)

Scenario B: Laws + Case Examples

- Unlawful use of public funds/resources for political advertising: Tex. Elec. Code §255.003
- Texas Ethics Commission practical guide on political subdivision resources
- Public employee speech balancing:
- Speech pursuant to job duties not protected as citizen speech
- Discipline based on perceived political activity can trigger claims

Scenario C (Hypothetical): Multiple Protected Classes and Performance

- Scenario: A long-tenured employee (age 62) with a documented disability requests accommodations. They are also on intermittent FMLA. Performance has slipped, supervisors are frustrated, and the employee recently filed a discrimination complaint. Leadership wants termination this week.

Discuss:

- What must you do before any discipline/termination?
- How do you separate performance facts from protected status?
- What documentation is missing most often?
- What is your retaliation-risk mitigation plan?

Scenario C: Practical Approach

- Build the timeline (performance, complaints, leave, accommodations)
- Confirm essential functions + objective metrics
- Interactive process: document requests, options considered, and outcomes
- Use consistent progressive discipline (unless safety/egregious)
- Decision memo: 'same decision absent protected status'—with facts
- Final check: retaliation optics + comparators

Scenario C: Laws + Case Examples

- Broader view of actionable discrimination in 'terms/conditions'
- Retaliation standard
- But-for causation for Title VII retaliation
- Harassment liability depends on supervisor status

Scenario D (Hypothetical): Communicating About Leave

Scenario: A department is short-staffed. Coworkers ask HR why an employee is out. A council member requests details so they can answer constituents. The local newspaper calls asking whether the employee is on paid leave and for the reason.

Discuss:

- What can you say internally?
- What can you say to council?
- What must be kept in separate confidential files?
- How do you reduce gossip and resentment without disclosing medical info?

Scenario D: What You Can Say

- To coworkers: 'They're away from work. We're covering duties. Please direct work items to __.'
- To supervisors: 'Here are the work restrictions/accommodations you must follow.'
- To council: 'We do not discuss personnel medical matters; operational impacts are being managed.'
- To media: 'We don't comment on personnel matters.'

Scenario D: Practical Tools

- FMLA records must be kept as confidential medical records in separate files; limited disclosures
- ADA medical information confidentiality
- Texas Public Information Act: personnel privacy exceptions

Bonus
Lightning
Round:
Other High-
Risk
Situations

- Public records vs personnel files: emails/texts on personal devices
- Social media posts by employees or associations
- Whistleblower / retaliation overlap during investigations
- Fitness-for-duty and safety-sensitive roles

Key Takeaways

- Use one playbook: intake → interim measures → independent investigation → documented decision
- Facts + process are your defense
- Retaliation risk management starts on Day 1
- Confidentiality/discretion: share only what's necessary to run operations

Q&A

- Questions, scenarios, and what you're seeing right now

Thanks!

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