

A Safe Place to Talk

When Controversial Speech or Actions Affect the Workplace

State Bar of Texas

27th Annual Labor Law Institute

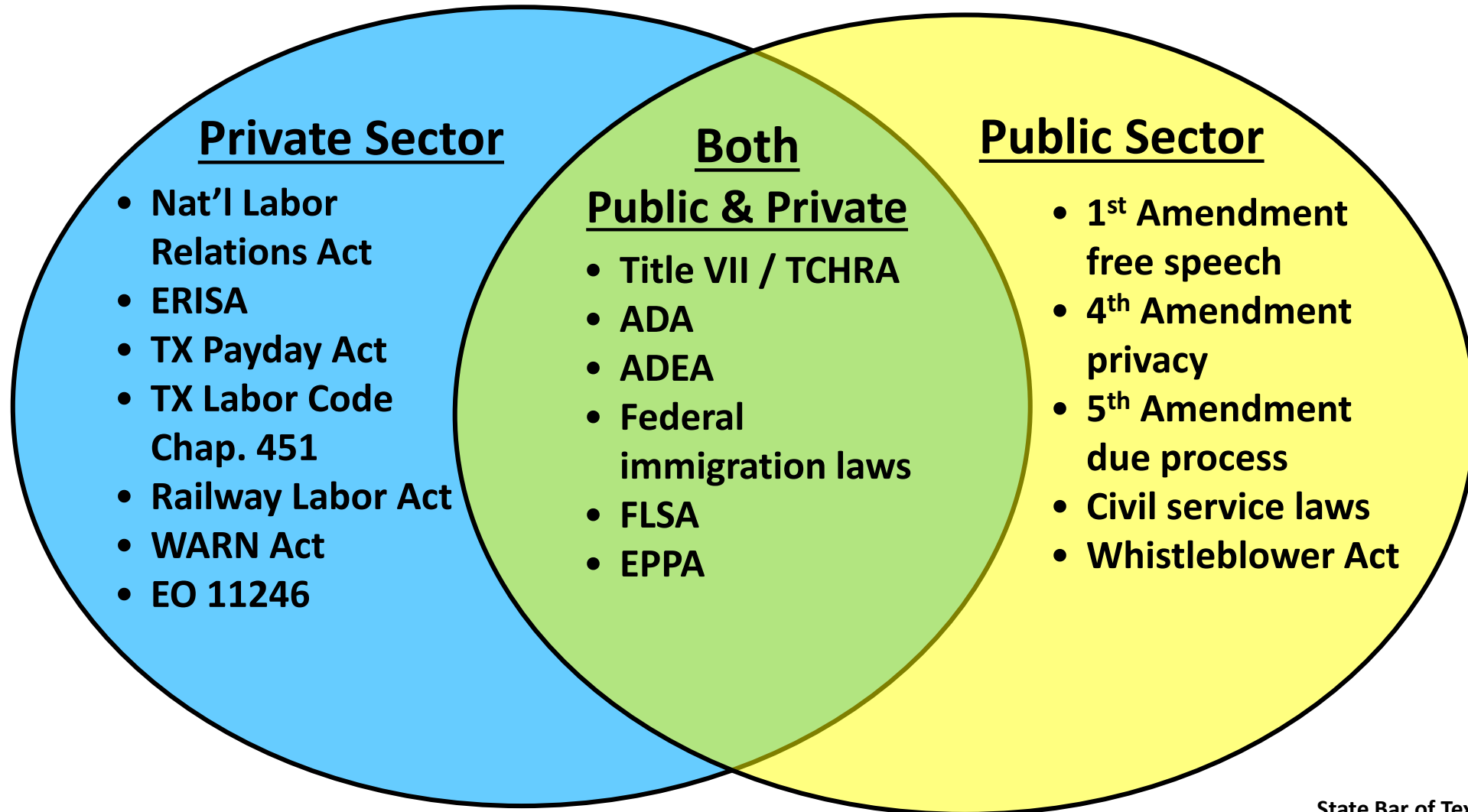
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Statutory Sources of Employment Laws – Private vs. Public Sector



PRIVATE SECTOR – IN THE WORKPLACE	PUBLIC SECTOR – IN THE WORKPLACE
<ol style="list-style-type: none"> 1. <u>Free speech</u>: no general free speech right in the private sector workplace 2. <u>Politics</u>: at-will employees can be disciplined for expressing partisan political views 3. <u>Working conditions</u>: employees cannot be disciplined for speech about working conditions if the speech is “protected concerted activity” under NLRA 4. <u>Business communication channels</u>: employers can limit use of employer-owned work computers, bulletin boards, etc. to business purposes 5. <u>Speech during working time</u>: employers can adopt policies restricting political speech during work time and in work areas, and restricting clothing with political messages in the workplace 6. <u>“Civility” policies</u>: employers can adopt and enforce “civility policies” 7. <u>Hostile workplace claims</u>: controversial speech that implicates race, religion, ethnicity, or gender can create hostile work environment under Title VII or TCHRA if “severe or pervasive” 	<ol style="list-style-type: none"> 1. <u>Free speech</u>: employees have limited First Amendment free speech right in the workplace 2. <u>Politics</u>: most employees (both at-will and for-cause) protected from discrimination based on political affiliation and political activity 3. <u>Working conditions</u>: NLRA rules for “protected concerted activity” don’t apply to public employers 4. <u>Business communication channels</u>: employers can limit use of employer-owned work computers, bulletin boards, etc. to business purposes 5. <u>Speech during working time</u>: employers can adopt policies restricting political speech during work time and in work areas, and restricting clothing with political messages in the workplace 6. <u>“Civility” policies</u>: employers can adopt and enforce “civility policies” 7. <u>Hostile workplace claims</u>: controversial speech that implicates race, religion, ethnicity, or gender can create hostile work environment under Title VII or TCHRA if “severe or pervasive”

PRIVATE SECTOR – OUTSIDE THE WORKPLACE	PUBLIC SECTOR – OUTSIDE THE WORKPLACE
<ol style="list-style-type: none"> <li data-bbox="435 401 1240 715">1. <u>Off-duty conduct – generally:</u> Texas at-will employees have no legal protection against discipline based on off-duty speech or conduct, including content of social media posts (unless protected under Title VII, ADA, ADEA or NLRA) <li data-bbox="435 772 1240 1029">2. <u>Social media:</u> cyber-bullying of a co-worker through social media can create/contribute to hostile workplace under federal or state law if it affects working conditions 	<ol style="list-style-type: none"> <li data-bbox="1240 401 2038 815">1. <u>Off-duty conduct - generally:</u> in addition to anti-retaliation protection in discrimination statutes, public employees have broad First Amendment protection for off-duty speech/ conduct on issues of public concern, unless it involves the employee’s job responsibilities <li data-bbox="1240 872 2038 1115">2. <u>Social media:</u> cyber-bullying of a co-worker through social media can create/contribute to hostile workplace under federal or state law if it affects the working conditions