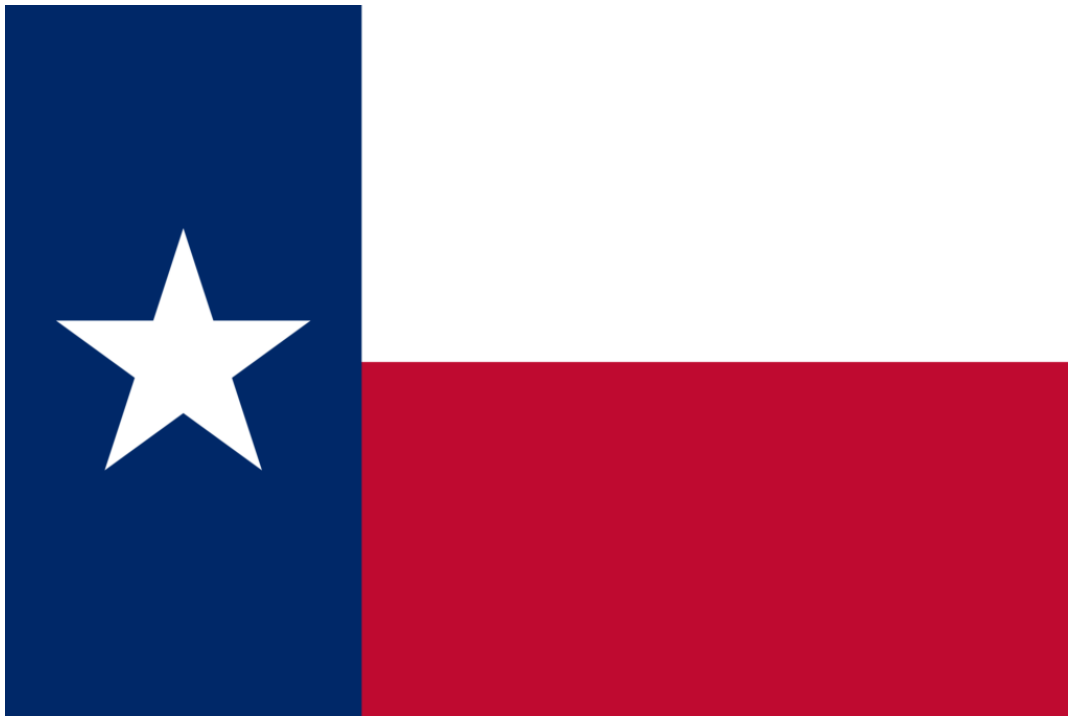


# Recent Texas Court Decision Highlights the Risks of Defamation in Internal Misconduct Investigations

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By [Lawrence D. Smith](#)

Employers understand they have an obligation to investigate complaints of workplace misconduct. However, communications made during internal investigations are not totally without risk. Reports of misconduct, such as theft, assault, or abuse of others, can raise the specter of defamation claims if the employer does not properly manage the communications. Further, while a qualified privilege exists for potentially defamatory statements made during misconduct investigations, such privilege is not absolute and can be lost.



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properly manage the communications. Further, while a qualified privilege exists for potentially defamatory statements made during misconduct investigations, such privilege is not absolute and can be lost. In [\*Reynolds v. Hargrave\*](#), No. 10-19-00255-CV, the Tenth Court of Appeals in Waco, Texas recently provided guidance on how to navigate misconduct investigations while preserving this qualified privilege.

Louisa Hargrave, a certified nurse assistant, worked at a senior living residential facility in Centerville, Texas. During one evening shift, Hargrave allegedly observed what she believed to be inappropriate sexual conduct between the plaintiff and a resident. She immediately went to her supervisor, the charge nurse, and asked to whom she should report the incident. The charge nurse referred her to the facility administrator. Hargrave reported the incident to the administrator, who initiated an investigation and notified the Texas Department of Aging and Disability Services.

The employer immediately terminated the plaintiff's employment, and the state conducted an investigation that substantiated the allegation of abuse. The plaintiff subsequently filed a lawsuit against Hargrave and his former employer alleging that the statements accusing him of abuse constituted actionable defamation. The district court granted summary judgment in favor of the defendants, finding that the statements made during the investigation were protected by the qualified privilege.

### **The Appellate Court's Ruling**

In reviewing the trial court's dismissal of the plaintiff's defamation claim, the appellate court observed that an employer has a qualified privilege that attaches to potentially defamatory communications made during an investigation following a report of employee wrongdoing. According to the appellate court, "[t]his privilege remains intact if the communications pass only to persons having an interest or duty in the matter to which the communications relate." In order to defeat the qualified privilege, the court continued, "the employee must show that the statement was motivated by actual malice existing at the time of the publication," which means that the statement was made with "knowledge of its falsity or with reckless disregard as to its truth."

In this case, the appellate court rejected the plaintiff's argument that the qualified privilege had been lost. First, the defamatory statement had not been communicated beyond those necessary. The court noted that Hargrave specifically asked about the proper procedure to report the potential abuse and that the employer followed its chain in command related to reporting such abuse. Hargrave had a duty to report the abuse allegations, and the employee to whom she reported also had a duty to report such abuse. Therefore, the court found that the defendants established the existence of the qualified privilege because the information had only been communicated to people who had the duty to know or report the allegations of abuse.

Second, the plaintiff did not raise any evidence to suggest that the qualified privilege was lost because the report of conduct was made with actual malice. While the plaintiff disputed the allegation of abuse, there was no evidence that Hargrave acted with actual malice. Further, the state agency's findings that the abuse existed

supported the defendants' argument that the statements were made without malice. Based on this evidence, the appellate court affirmed the dismissal of the plaintiff's defamation claim.

### **Lessons From the Decision**

This case illustrates a sound process for investigating matters of misconduct, especially when they involve communications that could be considered defamatory. First, employers should consider creating a system through which employees can report misconduct and a system to investigate such reports. These systems provide a clear path for reporting misconduct that help establish who has a duty to report misconduct and the channels through which misconduct is reported.

Second, employers should consider providing training to all employees on how to report alleged misconduct and to supervisors on what to do when they receive such reports. In this case, while the employee did not know the reporting process, she went to the appropriate person to determine the process. Finally, employers may want to limit communications about the alleged misconduct. In this case, the employer did not communicate the information to individuals outside of those within the investigative scope. As described by the court, having these steps in place will minimize the risk of defamation suits following reports of misconduct.

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