

Nepotism

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Agenda

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What is Nepotism

- ▶ According to the Oxford Dictionary, nepotism means the practice among those with power or influence of favoring relatives, friends, or associates, especially by giving them jobs.



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“Nepo Baby”

- ▶ “Nepo baby” is a term used to refer to the children of celebrities who have succeeded in careers similar to those of their parents.



Nepotism in the workplace

- ▶ Nepotism takes place when someone with power ignores more qualified candidates to hire or advance a family member.
- ▶ Nepotism also occurs when employers treat the related employee better than other workers. Some clear examples of this are:
 - Assigning less work to the related employee than others
 - Promoting a family member over other more deserving employees
- ▶ Other examples exist, but the prevailing theme is the preferential treatment of family members.

Small vs Large Businesses

- ▶ **Small business:** The owners of a mom-and-pop restaurant may hire their children even if they're not fully qualified. This is nepotism but it makes sense. Small businesses like this type are created to stay within the family. It is also a good way for the owner's family to understand the business as in most cases family members start in low paying positions.



- ▶ **Large Business:** When people in managerial positions hire unqualified family members. In this scenario, we are not talking about a business that is owned by the person in that management position, so there is no real justification behind this type of nepotism. This affects employees as jobs within large businesses are merit-based so the opportunity to move up is destroyed.



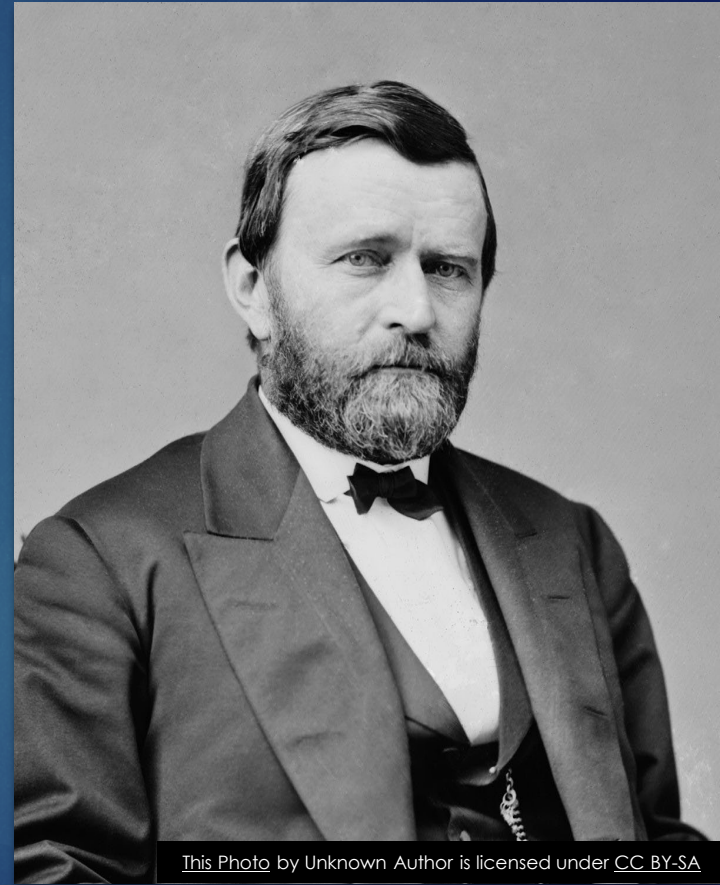
Is nepotism a new thing??

- ▶ It is not.
- ▶ **John Adams**: appointed his son as U.S. minister to Prussia, appointed his son-in-law to several federal positions, named his brother-in-law as postmaster for Quincy, Massachusetts, etc.



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- ▶ **Ulysses S. Grant:** appointed and employed over 40 of his relatives.
- ▶ Prior to being elected president, Grant somehow convinced President Andrew Johnson to appoint his son Fred, a failing student, to West Point. Fred graduated last in his class and was notorious for bullying the first black Student to attend West Point



- ▶ **George W. Bush**: appointed Secretary Colin Powell's son as Chairman of the F.E.C., appointed Justice Antonin Scalia's son as the Justice Department's chief labor attorney, appointed Senator Mitch McConnell's wife as Secretary of Labor, etc.



State Laws and Policies

- ▶ In Texas, anti-nepotism laws prohibit a governmental entity from hiring certain close relatives of a public official.
- ▶ The nepotism laws are contained in Chapter 573 of the Government Code.



Applicability

- ▶ The nepotism statutes apply to any public official who is the final hiring authority or is a member of the governing body that has final hiring authority. A public official is:
 - a) an officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state;
 - b) an officer or member of a board of this state or of a district, county, municipality, school district, or other political subdivision of this state; or
 - c) a judge of a court created by or under a statute of this state.

Tex. Gov't Code §573.001 (3)

Hiring Authority

- ▶ For nepotism purposes, the hiring authority is the individual or entity that may exercise control over the hiring decision. If the governing body is the hiring authority, then nepotism limitations would apply to close relatives of any of the members of the governing body. If an employee, such as the city manager, possesses the hiring authority, then the members of the governing body may not hire persons who are close relatives of that employee.



It is prohibited to

- ▶ The nepotism statutes prohibit a public official from appointing, confirming the appointment of, voting for the appointment or confirmation of the appointment of a close relative of certain public officials to a paid public position or employment.

Tex. Gov't Code §573.041



- ▶ A close relative under nepotism laws is someone related to the official within a prohibited degree by consanguinity (relationship by blood) or a prohibited degree by affinity (relationship by marriage).

Tex. Gov't Code §573.002



Relationship by blood

- ▶ Relatives related within the first degree by consanguinity include a public official's mother, father, sons and daughters.
- ▶ Relatives related within the second degree by consanguinity include a public official's brothers, sisters, grandmothers, grandfathers, grandsons and granddaughters.
- ▶ Relatives related within the third degree by consanguinity include a public official's great-grandfathers, great-grandmothers, aunts, uncles, nephews, nieces, great-grandsons and great-granddaughters.

Relationship by affinity

- ▶ Relatives related within the first degree by affinity include a public official's husband, wife, father-in-law, mother-in-law, sons-in-law, daughters-in-law, stepsons and stepdaughters.
- ▶ Relatives related within the second degree include a public official's sisters-in-law (brother's spouse or spouse's sister), brothers-in-law (sister's spouse or spouse's brother), spouse's grandmothers, spouse's grandfathers, spouse's granddaughters, and spouse's grandsons.

Nerd Nuggets

- ▶ The nepotism statute does not apply to cities with fewer than 200 people.

Tex. Gov't Code §573.061(7)

- ▶ Nepotism laws apply only to paid positions.



How does this apply to Cities?

- ▶ The “applicability of the nepotism law depends on whether an officer or the governing body may exercise control over hiring decisions.”
- ▶ A city council would still be considered the hiring authority if it could exercise control over a hiring decision, even though it delegated the hiring decision to another person or entity by ordinance. In one instance, the attorney general reviewed a city council’s attempt, by city ordinance, to delegate the hiring authority for city staff to a city administrator.
- ▶ The attorney general concluded that this delegation did not relieve the members of the city council from being considered the hiring authority for purposes of the nepotism statutes.

Cont.

- ▶ Texas law distinguishes between the power of a home-rule city to delegate hiring authority through its city charter versus a delegation that is done by city ordinance.
- ▶ If the delegation of the hiring authority is contained in the city charter, it is recognized for nepotism purposes as a valid delegation of the hiring power. However, if a city simply delegates the hiring authority by ordinance, it would not, for nepotism purposes, change who was considered the hiring authority.
- ▶ This conclusion is based on the fact that the council could amend or repeal an ordinance at any time, while it would take an election to amend a city charter. For example, the attorney general has concluded that the nepotism statutes did not preclude a city from hiring a relative of a city council member where the city charter provided that the city manager was the final hiring authority.

Independent Contractors

- ▶ Nepotism laws prohibit the appointment or hiring of an independent contractor by the governing body if the contractor is a close relative of the one of the members of the governing body.
- ▶ Nonetheless, the nepotism prohibition would not prohibit the governing body from executing a contract with a corporation that employs the close relative unless the corporation is in actuality the “alter ego” of an individual who is closely related to an official.

Siblings

- ▶ Nepotism laws do not generally prohibit close relatives from being hired to work together within the same local entity department.
- ▶ The nepotism laws do not apply unless either relative has the final hiring authority like a public official. Local governmental entities might prohibit such arrangements by charter, ordinance or policy.



I got here first!

- ▶ Nepotism laws do not apply to an individual who is employed in the position immediately before the election or appointment of the public official to whom the individual is related in a prohibited degree, and that prior employment of the individual is continuous for at least:
 - 30 days, if the public official is appointed;
 - 6 months, if the public official is elected at an election other than the general election for state and county officers, or
 - 1 year, if the public official is elected at the general election for state and county officers.

Tex. Gov't Code §573.062

Nepotism and Employment Contracts.

- ▶ If an employment contract, when signed, is entered between individuals who are related within a prohibited degree, that makes the contract void from its inception.
- ▶ In the absence of a valid contract for a specified period of employment or with respect to an employee who is an “at will” employee, an individual could remain until the end of the pay period. At the end of the pay period, the individual would have to resign to avoid violation of the nepotism laws.

Is it a crime?

- ▶ An official who violates the nepotism laws commits official misconduct and a misdemeanor, punishable by a fine of not less than \$100 or more than \$1000

Tex. Gov't Code §573.084



Enforcement

- ▶ Removal: an official must be immediately removed from the position if he or she is convicted of violating the nepotism laws and the conviction becomes final.
- ▶ If the official is not removed within 30 days after the conviction becomes final, a proceeding by the local prosecutor may be brought to remove the official.

Tex. Gov't Code §573.081.

Case Law

▶ **Goodyear Tire & Rubber Co. v. Portilla**

Respondent employee worked for petitioner employee for 22 years as an at-will employee. Several years after the beginning of respondent's employment, her brother was employed by petitioner as a manager and directly supervised respondent, in direct violation of petitioner's anti-nepotism policy.

Seventeen years later an audit "revealed" that respondent was managed by her brother and after refusing a transfer, respondent was terminated by petitioner solely for violating the anti-**nepotism** policy.

Result??

- ▶ At trial, the jury found that there was an express waiver of the anti-**nepotism** policy as to respondent, that the situation had been brought to petitioner's attention through an earlier audit, and that an exception had been made to the policy on her behalf. Petitioner challenged the trial court's judgment. On appeal, the court affirmed and held that respondent's at-will status was subject to the contractual exception to the anti-**nepotism** policy. The court found that petitioner had specifically waived its right to enforce its anti-**nepotism** policy against petitioner and then fired her for a violation of the same policy.

Pena v. Rio Grande City Consol. Independent School Dist.

- ▶ Appellant taxpayer brought suit against appellee school district, trustees, superintendent, and wife alleging superintendent's **nepotism** in hiring his wife as a teacher in violation of Tex. Rev. Civ. Stat. Ann. art. 5996a-b (1980-1981). Appellees filed a special exception and argued appellee superintendent was merely an employee and not an officer of the district. The trial court sustained appellees' special exception and dismissed the suit with prejudice. After appeal, the court affirmed the trial court's judgment in favor of appellees and found that appellee superintendent was not an officer under Tex. Rev. Civ. Stat. Ann. art. 5996a-b(1980-1981) and merely performed functions delegated by appellee trustees who were vested with the sole legal authority and exclusive right to appoint or employ teachers.

Result

- ▶ Judgment sustaining the special exception of appellee school district, trustees, superintendent, and wife and dismissal with prejudice of appellant taxpayer's lawsuit for appellee superintendent's official **nepotism** was affirmed because appellee superintendent was not an officer under the anti-**nepotism** statute provisions and merely performed functions delegated by appellee trustees who were vested with the authority and control to hire teachers.