



Mission Statement

The mission of the Civil Rights Division is to reduce discrimination in employment and housing through education and enforcement of state and federal laws.

Vision

The vision of the Civil Rights Division is to help create an environment in which the people of the State of Texas may pursue and enjoy the benefits of employment and housing that are free from discrimination.

Texas Commission on Human Rights Commissioners

Thomas M. Anderson, JD, SPHR
Chair

Michelle Diggs
Commissioner

Toni Rhodes Glover
Commissioner

Shara Michalka
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Commissioner



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Celebrating the 25th Anniversary of the Americans with Disabilities Act

This year is the 25th Anniversary of the signing of the Americans with Disabilities Act (ADA). The ADA will turn twenty-five on July 26, 2015. The ADA is an important milestone in the history of the disability rights movement in the United States.

The vision and leadership for bringing about the ADA came straight from the heart of Texas. Proud Texan and former Chair of the Texas Governor’s Committee on People with Disabilities, Justin Dart’s passion is the heart and soul of the ADA. Lex Frieden, a disability policy expert from Houston, defined the vision for Congressional action, which paved the way for the passage of the ADA. Thousands of Texans—from members of Congress

to people living in state institutions—worked tirelessly to make the dream a reality. And another Texan, President George H. W. Bush, signed the ADA into law. The ADA is a key piece of civil rights



President George Bush signs the Americans with Disabilities Act at the White House July 26, 1990. (file photo © AP/WWP)

legislation that applies to all sectors of life. It guarantees equal access for millions of individuals to goods, services and opportunities. It has opened doors and changed lives in the first 25 years of its existence.

The ADA became law in 1990. It prohibits discrimination against individual with disabilities in all areas of public life, including employment, housing, schools, transportation and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else.



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For more information or to
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Equal Opportunity Employer/
Program Auxiliary aids and
services are available upon
request to individuals with
disabilities.

Relay Texas: 800-735-2989
(TTY) and 711 (Voice).

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with the State Depository
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public use through the Texas
State Publication Depository
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Library and other state
depository libraries.

www.texasworkforce.org

Throughout the year and
on the ADA's Anniversary
– July 26th, celebrate the
Americans with Disabilities
Act in your community. While
much progress has been
made, much remains to be done.

Resources:

No-cost Outreach and
Education Programs:
TWCCRD representatives
are available on a limited

basis at no cost to
make presentations and
participate in meetings
with stakeholders, and
their representative groups,
as well as community
organizations and other
members of the general public.

**TWCCRD Education Training
& Technical Assistance:**
TWCCRD provides low-
cost, fee-based trainings

and technical assistance
programs via webinars
and in-person sessions
throughout the State
of Texas.

For more information,
availability and training
designed specifically for your
needs, contact TWCCRD at
(888) 452-4778, (512) 463-
2642 or [CRDTraining@twc.
state.tx.us](mailto:CRDTraining@twc.state.tx.us). ■

Office of the Governor – Greg Abbott *Committee on People with Disabilities*



The Atlantic Hurricane Season
began on June 1 and continues
through November 30th of
every year. An individual's
ability to recover from an
emergency tomorrow may
depend on the planning and
preparation done today.
The following information
provides tips that individuals
with disabilities and the
people who assist and support
them can take to prepare
for emergencies before they
happen.

**Get Ready: Planning for a
Disaster: Individuals with
disabilities and others with
Access and Functional Needs**
- [http://www.ready.gov/
individuals-access-functional-
needs](http://www.ready.gov/individuals-access-functional-needs)

**Video: (Captioned) Preparing
Makes Sense for People with
Disabilities and Other Access
and Functional Needs** - [http://
www.fema.gov/media-library/
assets/videos/78827](http://www.fema.gov/media-library/assets/videos/78827)

Preparedness Videos and Information

- Importance of Preparedness
for the Disability
Community– Marcie Roth,
Director of FEMA's Office of
Disability Integration and
Coordination [www.fema.
gov/media-library/assets/
videos/78827](http://www.fema.gov/media-library/assets/videos/78827).
- Northeast Texas Public
Health District Accessible
Emergency includes Braille
and Large Print versions of
documents.
- Get valuable information
on **Making a Plan, Building
a Kit that meets your
families' needs and viewing
Texas specific Videos on
importance of preparation:**
www.texasprepares.org.
- Texas Key Laws and
Resources related to
Emergency Management -
[gov.texas.gov/disabilities/
resources/emergency_
management](http://gov.texas.gov/disabilities/resources/emergency_management).

Additional Emergency Supplies

[www.ready.gov/individuals-
access-functional-needs](http://www.ready.gov/individuals-access-functional-needs)
**State of Texas Emergency
Assistance Registry (STEAR)**
Call 2-1-1 for a voluntary
registry called State of Texas
Emergency Assistance Registry
or STEAR for people who need
assistance and evacuation
in the case of a hurricane or
natural disaster. The public
may register year-round.
Registry information will be
forwarded to local Offices
of Emergency Management
(OEMs). Local OEMs have the
responsibility for coordinating
evacuations. You can also
register online at [publicregistry.
csr.utexas.edu/enroll/newuser](http://publicregistry.csr.utexas.edu/enroll/newuser).

Any Texan is eligible to register.

- Dial 2-1-1 to register in
advance for a ride.
- If you have a disability or a
medical health care need
which requires assistance to
get out.
- If you cannot drive
and cannot arrange
transportation.
- If you do not have a vehicle
and you have no one else to
help you evacuate. ■

84th Texas Legislative Wrap-Up

During the 84th Legislative Session, the TWC Civil Rights Division (CRD) monitored various bills related to civil rights. CRD management served as a resource witness to the Legislature, including providing testimony in several committee hearings “on the bill”—meaning CRD was not testifying “for” or “against” the bill. Three equal employment-related bills were passed by the Legislature and signed by the Governor.

House Bill 577 by Rep. Dan Flynn amends Section 437.212 of the Texas Government Code to provide that claims of discrimination by service members on state active duty will be processed in accordance with military regulations and procedures of the Texas military forces. The bill further specifically exempts such discrimination claims from the jurisdiction of CRD.

House Bill 1151 by Rep. Senfronia Thompson amends the Texas Labor Code by adding Section 21.1065, which expands current law to make it an unlawful employment practice to sexually harass unpaid interns. The bill defines sexual harassment and unpaid intern, and specifies the conditions under which an employer commits an unlawful employment practice involving sexual harassment of an unpaid intern.

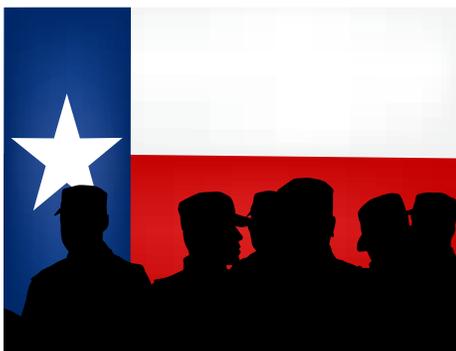


Photo courtesy of Thinkstock

House Bill 3547 by Rep. Lyle Larson amends the Texas Labor Code by adding Chapter 23 to provide that a private employer may adopt and implement a written policy for veteran’s preference under which the employer gives a preference in employment decisions regarding hiring, promotion or retention to a veteran over another qualified applicant or employee. An employer shall apply the adopted policy reasonably and in good faith in employment decisions regarding hiring, promotion or retention during a reduction in the employer’s workforce. The employer may require documentation from a veteran to verify eligibility for veteran’s preference. An employer who grants a veteran’s preference in accordance with this new chapter does not violate Texas Labor Code, Chapter 21.

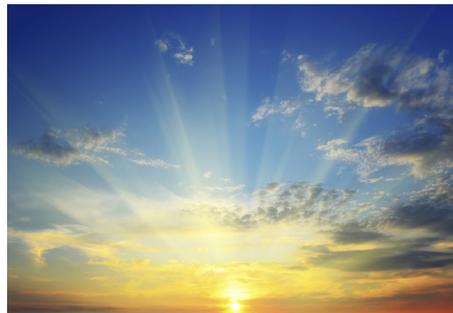


Photo courtesy of Thinkstock

Governor Abbott signed into law Senate Bill 208 called the “Sunset” Bill, relating to the continuation and functions of the Texas Workforce Commission. The bill makes several changes affecting CRD as follows:

- Transfers the powers and duties exercised by the Commission on Human Rights to the Texas Workforce Commission
- Directs TWC to develop rule-based risk-assessment criteria to determine when TWC may review a

state agency’s personnel policies and procedures systems (PPPS) more often than the required six-year time period, which must include:

- Data on complaints against a state agency
 - Previous review findings; and
 - Other information collected and maintained by TWC
- Mandates that TWC annually review reimbursements received for conducting PPPS reviews and make adjustments as needed to recover reasonable and necessary expenses (which codifies current practice)
 - Requires CRD to collect and analyze information on state agencies and annually report the following:
 - discrimination complaints, other than complaints determined to be without merit, including number and type
 - key findings or trends CRD identifies during PPPS reviews (which codifies current practice)
 - Removes the requirement that CRD conduct reviews of initial testing conducted by fire departments ■



Selected State Employment Case Summaries

Texas Health and Human Services Commission (HHSC) v. Baldonado

2015 Tex. App. LEXIS 4375
(Corpus Christi - Edinburg – Apr. 30, 2015)

Jose Baldonado applied for a Clerk II position with HHSC, which required a high school diploma or GED. He has a Bachelor of Science degree and prior clerical experience, including customer service, updating customer files, information gathering, interviewing clients and case management. Out of 58 applicants, Baldonado was not selected for an interview.



Baldonado filed a complaint with TWC and EEOC for failure to hire on the basis of age discrimination. Subsequently, he was interviewed by the Department of Aging and Disability Services (DADS) as a Community Care Worker I and offered the job at the end of the interview. Baldonado disclosed that he had a case or grievance against HHSC. DADS staff told him that it did not matter and that he was hired. One month later, he told his supervisor that he had filed a complaint, who in turn informed her supervisor.

The next week he was counseled for working outside of assigned hours and for taking confidential client files home, and then two days later, his supervisor submitted a recommendation for termination, which was approved. However, his supervisor decided to give him a chance to meet her expectations. During the next four weeks, Baldonado's

supervisor held four more conferences with him to address work-related concerns, but then terminated him. Baldonado filed a second TWC complaint for retaliation.

The appellate court held that the plea to the jurisdiction was properly denied by the district court. The appellate court pointed out that Baldonado's application illustrated clerical work experience and that the hiring authority agreed that his background was consistent with the job description; therefore, the evidence was sufficient to create a fact question as to a prima facie case of age discrimination. In addition, the appellate court ruled that Baldonado raised a prima facie case of retaliation due to the temporal proximity of the events, since he disclosed that he had filed a complaint, was counseled five times, and then was terminated within two and one-half months. Finally, the appellate court held that Baldonado's naming HHSC rather than DADS on his claim against DADS did not constitute a failure to exhaust his administrative remedies.

Texas Parks & Wildlife Department v. Gallacher

2015 Tex. App. LEXIS 2024
(Austin – Mar. 4, 2015)

This case was previously reported in the Civil Rights Reporter, Issue 03, April 2014. The Court withdrew the prior opinion dated December 31, 2014 and substituted a new opinion. The final decision is the same, but the difference in the opinions is reported here.

Nancy Gallacher, the employee, failed to establish a prima facie case of disability discrimination because she did not show that she was a qualified individual with a disability. Around the

time when Gallacher alleged she could have returned to work, she attested to her inability to perform her job or comparable work in her application for disability-retirement benefits. Also, Gallacher's retaliation claim lacked proof of causation because her supervisor's decision authorizing less than a requested amount of sick leave did not contravene the agency's policies and there was no showing of very close temporal proximity.

The substituted opinion modified the rationale for rejecting the retaliation claim. The Court added that just because a policy provides that a sick-leave-pool request presented to a supervisor is also coordinated with the sick-leave-pool administrator, who can approve or deny, does not mean that the supervisor is not authorized to approve it in part. The Court cited a case in support. In addition, the Court had previously stated that the time period between the date the employer was made aware of the complaint and the date the employee was terminated was three months. The time period was corrected in the new opinion as two months and one week. The Court went on to cite a different case than it had previously in which the Fifth Circuit concluded that a gap of about two



months and one week was insufficient to infer a causal link.

San Antonio Water System (SAWS) v. Debra Nicholas

2015 WL 1873217 (Tex.); 2015 Tex. LEXIS 344 (Apr. 24, 2015)

[Note: Opinion not released for publication in permanent law reports, so subject to revision or withdrawal.]

Debra Nicholas was SAWS' Chief of Staff. A paralegal complained that Greg Flores, a new vice-president, repeatedly invited her out to lunch and that she was uncomfortable with the invitations.



Nicholas and her CEO testified that they met with Flores. Nicholas also testified that Flores admitted to inviting the paralegal and other women in the office, but denied intending to sexually harass anyone; and that he said he would change his behavior. When Flores testified, he denied any such meeting occurred.

The CEO later resigned; his replacement chose his own chief of staff; and Nicholas was reassigned to an assistant vice-president position that reported to Flores. In what SAWS said was a reorganization, Nicholas' position was eliminated, and she was not interviewed for any other position.

Nicholas filed suit claiming retaliation for confronting Flores, and that Flores' action was delayed until he had authority over her. Also, Nicholas complained that she was not interviewed for other positions despite being qualified. The jury found in favor

of Nicholas and awarded her nearly \$1 million.

The Court of Appeals ruled that Nicholas demonstrated a good faith belief that Flores may have engaged in sexual harassment and that her belief was objectively reasonable. The Supreme Court disagreed, stating that "no reasonable person would believe that a handful of lunch invitations amounted to sexual harassment," and that the invitations were not so severe or pervasive as to alter the conditions of employment or create an abusive work environment. Thus, the Supreme Court concluded Nicholas' counseling of Flores was not a protected activity and her retaliation claim failed.

Waworsky v. Fast Group Houston, Inc.
2015 Tex. App. LEXIS 1522; 2015 WL 730819 (Houston [1st Dist.] – Feb. 17, 2015)

Karl Waworsky, a Caucasian male, was a long-time employee of FAST. He showed a co-worker a bullet and said it had the co-worker's "name on it." Their supervisor reported the incident to the human resources (HR) director. The HR director determined the conduct violated the company's policies prohibiting "possession of firearms, weapons, explosives, or incendiary or other destructive devices on company property" and "intimidating, coercive, violent, abusive, or hostile behavior."

Waworsky filed a charge of discrimination based on race with the EEOC. He received an EEOC finding of no statutory violations and a notice of right to sue. Waworsky then filed suit alleging that he was terminated on the basis of race and age discrimination.

After addressing some discovery issues, the appellate court ruled that his age claim was barred due to his failure to exhaust his administrative

remedies. The appellate court stated that a plaintiff can bring claims in court that could reasonably be expected to grow out of an underlying charge, but not if the claim was a specific form of discrimination that was not alleged in the underlying charge.

As to Waworsky's race claim, the appellate court held that FAST presented evidence of a legitimate, non-discriminatory reason for terminating Waworsky. Furthermore, he failed to present any evidence to raise a fact issue as to the HR director's good faith belief that Waworsky had violated the company's policies and should be terminated.

In shifting the burden back to Waworsky to show that the employer's reason for terminating was a mere pretext, the appellate court ruled that Waworsky did not provide more than a scintilla of evidence that the true reason he was fired was due to racial discrimination. The appellate court noted that the equal employment opportunity law is not intended to protect against "unfair business decisions," but rather discriminatory decisions. Waworsky pointed to a co-worker whose policy violations were investigated, while Waworsky's were not. The appellate court stated that Waworsky was an at-will employee, and thus FAST was not required to conduct an investigation before terminating him. In addition, the appellate court posited that unfair treatment regarding an investigation does not constitute a basis for discrimination because it is not an ultimate employment decision.

The appellate court, therefore, affirmed the trial court's granting of summary judgment for the employer. ■

CRD Education, Training & Outreach

Upcoming Schedule of Events



Most Valuable Player (MVP) awarded to Employment Investigation Intake Team. Pictured (Left) Nick Barrett, (Middle) Hector Macias, and (Right) Faith Penn. Photo courtesy of CRD.

The Texas Workforce Commission Civil Rights Division (TWCCRD) is committed to providing training and technical assistance, outreach and education programs to assist employers, employees and other stakeholders in understanding and preventing discrimination. We believe that discrimination can be averted if everyone knows their rights and responsibilities. Please come

and visit with us at the following upcoming scheduled events:

- **July 10, 2015** - Texas Business Conference at the Double Tree by Hilton, 600 N. El Paso St. El Paso, TX 79901.
- **July 24, 2015** - Texas Business Conference at the Lake Jackson Civic Center, 333 HWY 332 E., Lake Jackson, TX 77566.
- **August 7, 2015** - Texas Business Conference at the Waco Convention Center, 100 Washington Ave., Waco, TX 76701.
- **August 28, 2015** - Texas Business Conference at the Wyndham Houston West Energy Corridor, 14703 Park Row Boulevard, Houston, TX 77079.

To register for upcoming events, visit www.texasworkforce.org/tbc or call 512-463-6389.

No-Cost Outreach and Education

Programs: TWCCRD representatives are available on a limited basis at no cost to make presentations and participate in meetings with employees and employers, and their representative groups, as well as community organizations and other members of the general public.

TWCCRD Education Training &

Technical Assistance: TWCCRD provides low-cost, fee-based trainings and technical assistance programs via webinars and in-person sessions throughout the State of Texas.

For more information, availability, and training designed for your needs, contact TWCCRD at (888) 452-4778, (512) 463-2642, or CRDTraining@twc.state.tx.us. ■



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