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Mission Statement

The mission of the Texas Workforce Commission Civil Rights Division is to make Texas an even greater place to live, work, play and raise our families by reducing discrimination in employment and housing through education and outreach programs, and the enforcement of Chapter 21 of the Texas Labor Code and Chapter 301 of the Texas Property Code.

Texas Commission on Human Rights Commissioners

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Bark Up the Right Tree

Staying within the Fair Housing Law for Assistance Animals

On April 25, 2013, the U.S. Department of Housing & Urban Development (HUD) issued Notice FHEO-2013-01 on “Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs.” See http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf

This article will provide a brief overview of the requirements detailed in the Notice to provide both complainants and respondents with a working knowledge of what is required in this area.

Keeping the laws clear in your mind

CRD has noticed some confusion on the part of housing providers between the requirements of the Americans with Disabilities Act (ADA) on the one hand and the Rehabilitation Act of 1973 (Section 504) and the

Fair Housing Act (FHA) on the other. The Department of Justice limits the definition of “service animal” under the ADA to include only dogs, and further defines “service animal” to exclude emotional support animals. However, the FHA and Section 504 are not similarly limited; persons with disabilities may request a reasonable accommodation for any type of assistance animal, including an emotional support animal. Furthermore, in situations where the ADA and the FHA/Section 504 apply at the same time (e.g., a sales/leasing office), housing providers must meet their obligations under both the FHA/Section 504 reasonable accommodation standard and the ADA service animal provisions.

As a memory aid, housing providers and consumers will want to keep these laws clear:

- ADA Title II applies to public

entities, including public entities that provide housing.

- ADA Title III applies to public accommodations, such as rental offices.
- Section 504 covers housing providers that receive HUD financial assistance.
- FHA covers virtually all types of housing, including privately-owned and federally assisted.

Remember that the Texas Fair Housing Act (Chapter 301 of the Texas Property Code) and the Federal Fair Housing Act are substantially equivalent. Section 301.025 of the Texas Property Code and Texas Workforce Commission Rule §819.134 in Title 40 of the Texas Administrative Code address reasonable accommodation.

Assistance animals are not pets

The reasonable accommodation provisions of the FHA and Section 504 must be followed when

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800-669-9777
or 817-978-5922

EEOC National Contact:
800-669-4000

For more information or to
subscribe to this newsletter,
please visit:
civilrightsreporter@twc.state.tx.us

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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persons with disabilities use or seek to use assistance animals in housing and the provider forbids residents from having pets or otherwise imposes restrictions or conditions on pets and other animals. Assistance animals, however, are not pets. They work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates one or more identified symptoms or effects of a person's disability.

Assistance animals are often referred to as:

- service animals
- assistive animals
- support animals and
- therapy animals.

To avoid confusion with the defined term "service animal" under the ADA, HUD uses the term "assistance animal" in connection with reasonable accommodation under the FHA and Section 504.

Assistance animals are not required to be trained or certified

Neither the FHA or Section 504 require an assistance animal to be trained or certified. Although dogs are the most common type of assistance animal, other animals may constitute assistance animals.

Considerations for a reasonable accommodation request

If a reasonable accommodation request is made for an assistance animal, the housing provider should consider:

1. Does the person seeking to use and live with the animal have a disability – i.e., a physical or mental impairment that substantially limits one or more major life activities?
2. Does the person

making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

If the answer to either question 1 or 2 is "no," then the reasonable accommodation request may be denied.

If both questions are answered "yes," then the FHA and Section 504 require the housing provider to modify or provide an exception to a "no pets" rule or policy to permit a person to use an assistance animal in all areas of the

premises where persons are normally allowed to go, unless doing so would:

- impose an undue financial and administrative burden or
- fundamentally alter the nature of the housing provider's services.

The request may also be denied if the specific assistance animal in question:

- poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or
- would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

Conditions and restrictions



Assistance animals are not pets. They work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. *Huntstock/Thinkstock*

that housing providers apply to pets may not be applied to assistance animals, such as:

- breed, size and weight limitations, and
- pet deposits.

In determining whether a specific assistance animal might be a direct threat to health and safety or might cause substantial property damage, an individualized assessment based on the specific animal's actual conduct – not on the speculation about what other animals may have done (e.g., no blanket prohibition of allegedly “aggressive

breeds”) – must be made.

Documentation for a reasonable accommodation

Housing providers may ask an individual to submit reliable documentation of either or both of the following factors:

- a disability that is not readily apparent or known to the provider and
- a disability-related need for an assistance animal that is not readily apparent or known to the provider.

For example, if there is a requested accommodation for an assistance animal that

provides emotional support, a housing provider is within its rights to ask the consumer for documentation from a health care provider, such as a physician, psychiatrist, social worker, or other mental health professional that the individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

Note: A housing provider may not ask an applicant or tenant to provide access to medical records or provide detailed or extensive

information or documentation of a person's physical or mental impairments.

Enjoyment

If we follow the above requirements of the FHA/ Section 504 and the ADA, housing providers will enjoy the comfort of knowing they are in compliance and consumers will know how to enjoy their housing within the laws' limits. For Samuel Butler is quoted as saying, “All animals except man know that the principal business of life is to enjoy it.” ■

Civil Rights Division Staff Celebrates State Service Anniversaries



Rikki Pfouts – Five years

Lowell Keig – Five years

Cynthia Washington – 25 years

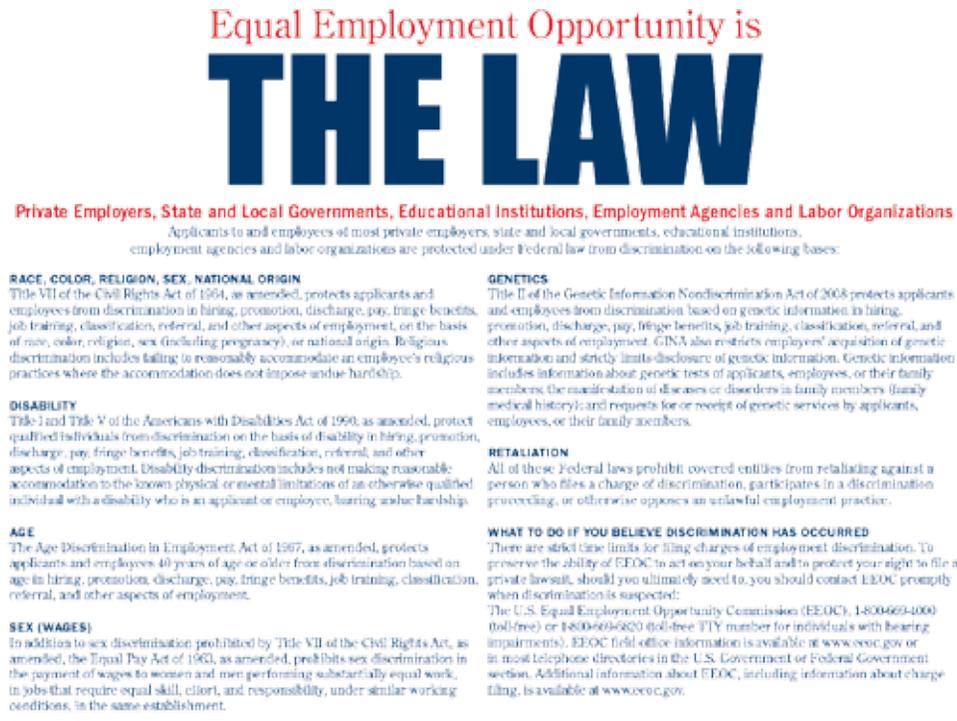
Penalty up for employers who fail to post “EEO is the Law” poster

Effective April 18, 2014, the penalty for employers that fail to post the “EEO is the Law” poster, as required by Title VII, the American with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act (GINA), will increase from \$110 to \$210. The Federal

Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires every agency to adjust for inflation civil monetary penalties that may be imposed pursuant to that agency’s statutes. The purpose of the

adjustment is to maintain the remedial impact of civil monetary penalties and promote compliance with the law. Although section 710 of Title VII will continue to reference a \$100 penalty, EEOC’s regulation implementing it will now say \$210 pursuant to the Federal

Civil Penalties Inflation Adjustment Act of 1990. The Final Rule, published in the Federal Register at 79 FR 15220 (3/19/14), can be viewed at the following link: www.federalregister.gov/agencies/equal-employment-opportunity-commission ■



Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN
Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES
Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS
The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within

three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

RETALIATION
Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by email at OFCCP@hhs.gov or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

Programs or Activities Receiving Federal Financial Assistance

RACE, COLOR, NATIONAL ORIGIN, SEX
In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or race cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

INDIVIDUALS WITH DISABILITIES
Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

EEOC 9/02 and OFCCP 8/08 Version: Unable With 11/09 Supplement

EEOC/P/E-1 (Revised 11/09)

Recent State Employment Case Summaries

Hall v. RDSL Enterprises LLC d/b/a Jack in the Box

2014 Tex. App. LEXIS 1957 (February 20, 2014)

Ruby Lucille Hall sued Jack in the Box for age discrimination. She lost a motion for summary judgment and appealed.

The Fort Worth Court of Appeals – Second District focused its analysis on the fourth prong of the McDonnell Douglas prima facie burden shifting analysis, which requires that the plaintiff was either replaced by someone outside the protected class, replaced by someone younger, or was otherwise discharged because of her age. The Court concluded that a modified prima facie standard applied to the facts as alleged in this case. The Court altered the fourth prong to require the plaintiff to produce “evidence, circumstantial or direct, from which a factfinder might reasonably conclude that the employer intended to discriminate in reaching the decision at issue.”

Hall presented evidence that her hours were reduced while younger employees’ hours stayed the same and that Jack in the Box terminated her while retaining younger employees. She also presented evidence that other employees in her protected class met the same fate. Further, Hall presented evidence that younger employees were trained to move into positions that assumed the duties of Hall’s position, which was being phased out, and that she was not trained for those other positions, but that younger employees were. Based on this evidence, the Court reversed the trial court’s summary judgment.

Texas Department of Aging & Disability Services v. Iredia

2014 Tex. App. LEXIS 2590 (March 6, 2014)

Esther Iredia, a Qualified Mental Retardation Professional (QMRP) at a state supported living care center, sued the Tex. Dep’t of Aging & Disability Services (DADS) alleging sexual harassment, and racial and national origin discrimination. The trial court denied a plea to the jurisdiction filed by DADS to seek dismissal of the case for lack of subject matter jurisdiction, and DADS appealed to the Houston, 1st

District, Court of Appeals.

Iredia had testified in her deposition to the following incidents:

- In a conversation about a patient transfer, her supervisor, Kenny Sowemimo, told her she was too “skinny” and to get out of his face.
- Sowemimo told another employee that he hated Nigerian women; and when questioned why, since he himself is Nigerian, Sowemimo said that his mother was dead and that he did not speak to his sister.
- Upon meeting Iredia’s son, Sowemimo asked her if she had eaten, called her “skinny,” asked her how this could be her son, and questioned the son whether this was his mother.
- Whenever Sowemimo visited Iredia’s office, he kicked the door open.
- When Sowemimo saw Iredia take pizza to her office, he said she was taking it for her children because they did not have enough to eat.
- Iredia said that there was no day in which Sowemimo did not call her names.
- In the presence of others, Sowemimo said that he did not like skinny women, but that he liked fat women, and made a verbal reference and hand gesture of a sexual nature.
- Sowemimo repeatedly told Iredia that he was going to fire her.
- Iredia claimed that one of the nurses pulled up Iredia’s pants leg to show visiting nursing students how skinny she was.
- Sowemimo treated other QMRP’s more favorably than he treated her, pointing out that he allowed the other QMRPs to represent the unit in his absence even though Iredia had seniority.

On the sexual harassment claim, the Court held that Iredia’s allegations were not so “severe” as to alter the terms, conditions and privileges of her employment. However, the Court found that a reasonable person could have found the work environment to be hostile or abusive because of the “pervasiveness” of the alleged conduct occurring almost daily for a three-year period; the physically threatening, humiliating and interfering nature of the incidents; and the overtly sexual content

of one comment, and others that could be considered sexual under some circumstances.

On the racial and national origin discrimination claim, the Court found that Iredia’s testimony that other QMRPs were treated more favorably by being allowed to represent the unit and her identification of “Cassandra” as a comparator, did not affirmatively demonstrate that Cassandra or other QMRPs were outside of the protected class and that they were similarly situated. Therefore, the Court let the sexual harassment claim go forward and dismissed the race and national origin claim.

Rodriguez v. City of Poteet

2104 Tex. App. LEXIS 2136 (February 26, 2014)

Adolfo Rodriguez sued the City of Poteet for retaliation and age discrimination. The City won a motion for summary judgment on the claims and Rodriguez appealed to the San Antonio Fourth Court of Appeals.

Rodriguez had previously filed an age discrimination lawsuit against the City after a salary reduction; the suit was settled; and he continued his employment with the City. Subsequently, two of Rodriguez’s subordinates filed written complaints of sexual harassment against him. Outside counsel conducted an investigation, found violations of the policy prohibiting sexual harassment, and recommended termination. The City thus terminated Rodriguez.

The Court found that Rodriguez was terminated for sexual harassment based upon the recommendation of an independent investigator’s report, which was a legitimate, non-retaliatory and non-discriminatory reason for his termination. Also, the Court held that Rodriguez failed to raise a fact issue that the City’s reason for termination was a pretext based upon a statement by a former city council member that she should have gotten rid of him years earlier.

Continued on page 6

Continued from page 5

City of Austin v. Chandler

2014 Tex. App. LEXIS (February 7, 2014)

A group of public safety officers over the age of 40 who worked for the City of Austin's former Public Safety Emergency Management Department sued the City for age discrimination. They alleged that the City's method of consolidating their department into the Austin Police Department disparately impacted the older employees by stripping them of their rank and years of service. The jury found for the plaintiffs, the trial court determined damages, and the City appealed to the Austin Court of Appeals.

The plaintiffs filed letter complaints with the EEOC and the City of Austin Equal Employment & Fair Housing Office. The complaints did not use the phrases "disparate impact" or "facially neutral" policy. However, the Court found that the complaints were sufficient, since they did identify a facially neutral policy and adverse effects, and alluded to age-based disparity by asserting that younger officers with fewer years of service received pay raises.

The Court also held that the plaintiffs made a prima facie case of disparate impact discrimination because the City's decision not to include years of service in setting the pay for employees who were transferred into the police department had a significantly adverse effect on employees over 40, and that the City failed to prove that its decision not to include years of service was based on a factor other than age. The Court affirmed the judgment against the City. ■

CRD Stands Up For Children in Fair Housing Case

Settlement Terms Fulfilled and Case Dismissed

Melissa Magera called Bobby Forrest, a licensed real estate broker for Womack Insurance and Realty Services ("Womack") who was responsible for managing the property for the owner, Agueros Family Living Trust, to inquire about a vacant unit at the Four Seasons Apartments.

She was advised to come and pick up an application at Womack. Magera took her two-year old son with her. Upon their arrival, Magera was told that the Four Seasons does not accept children.

Magera filed a complaint against Forrest and the owners of the property, alleging discriminatory refusal to rent because of familial status.

During the investigation, Forrest confirmed the owner had an occupancy standard of one or two adults and does not lease to residents with children.

The Civil Rights Division (CRD) issued

a Determination of Reasonable Cause and Charge of Discrimination.

The Office of the Attorney General filed a lawsuit by CRD on behalf of the State of Texas and Magera against Forrest and the Agueros Family Living Trust under the Texas Fair Housing Act and the Texas Workforce Commission Rules.

The lawsuit was settled in January 2014 on these terms:

- A \$5,100 payment split between Magera, CRD, and the Attorney General.
- Fair Housing Training for Forrest and owners of Agueros Family Living Trust
- Forrest and owners of Agueros Family Living Trust will comply with the Texas Fair Housing Act and refrain from committing discriminatory housing practices prohibited by the Act.

The terms of the agreement have been fulfilled and the lawsuit was dismissed. ■



The Texas Workforce Commission's Civil Rights Division Director Lowell Keig provided the keynote address at the City of Garland Fair Housing Month Luncheon on April 8. The conference was free and open to anyone with an interest in fair housing or civil rights issues. Photo courtesy of The City of Garland



Texas Department of Housing & Community Affairs (TDHCA) & U.S. Department of Housing and Urban Development

Fair Housing Accessibility Training

FREE ADMISSION



DETAILS:

May 29, 2014
8:00AM – 4:15PM

University of Texas
Thompson Conference Center
2405 Robert Dedman Dr.
Austin, TX 78712
(512) 471-3121

REGISTER & GET

INFO:

John Ritzu at
jritzu@lcmarchitects.com
(312) 913-1717 x228

AGENDA – May 29th

- 8:00 – 8:30 Registration
- 8:30 – 8:45 Welcome and Opening Remarks
- 8:45 – 10:15 Design & Construction Requirements of the Fair Housing Act, Technical Overview – Module 10 – Part I
- 10:15 – 10:30 Break
- 10:30 – 12:00 Design & Construction Requirements of the Fair Housing Act, Technical Overview – Module 10 – Part II
- 12:00 – 1:15 Lunch (not provided, plan accordingly)
- 1:15 – 2:45 Strategies for Compliant Kitchens – Module 5 and Strategies for Compliant Bathrooms – Module 6
- 2:45 – 3:00 Break
- 3:00 – 4:30 Accessible Routes – Module 7 and Accessible Public & Common-Use Areas – Module 8



HUD’s Fair Housing Accessibility FIRST:

Promote compliance with the Fair Housing Act design and construction requirements. The program offers comprehensive and detailed instruction, useful online web resources, and a toll-free information line for technical guidance.

FOR TECHNICAL GUIDANCE:

HUD supports a dedicated call center, the FIRST Design and Construction Resource Center

Sponsored by the Texas Department of Housing & Community Affairs

Co-sponsored by Austin Tenants Council Inc., the Fair Housing Council of Greater San Antonio and the Civil Rights Division of Texas Workforce Commission

(888) 341-7781 or visit www.fairhousingfirst.org



**This program is registered with the American Institute of Architects. Architects will receive up to 6 continuing education credits per day.*

Fair Housing Accessibility FIRST

Design & Construction Training Session Registration Form

Name:

Title:

Organization:

Phone:

Fax:

E-mail:

Please place a check by your responses:

1. Would you like to receive an information update from FIRST? Y ___ N ___

2. My occupation is:

Architect

Builder/Developer

Attorney

Contractor

Advocate

Engineer

Other (please specify): _____

3. How did you find out about this training?

Colleague

Conference

Advocacy Group

Marketing Material

Website

HUD Training

Federal Government Agency _____

Trade Agency

Other (please specify): _____

4. Are you interested in posting a link to fairhousingfirst.org on your website? Y ___ N ___

5. How many dwelling units are you currently constructing, designing, managing or advising a client on? ___

Send Registration Form to:

John Ritzu • jritzu@lcmarchitects.com • 312-913-1717 ext. 228