



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 Workforce Commission Commissioners

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Fair Chance Hiring

Equal Employment Opportunity relevant to the use of criminal history

By *Ellena E. Rodriguez*

Having a criminal record severely limits a person's ability to seek higher education, employment, qualify for credit and secure affordable housing. The majority of individuals in our prisons will one day return to our communities. In Texas, approximately 70,000 people leave prisons every year, while hundreds of thousands return from local jails. Many barriers and restrictions prevent these same people from successfully transitioning into our communities, forcing many back into confinement.

There are two ways in which an employer's use of criminal history information

may violate Texas and federal equal employment opportunity laws. First, state and federal law prohibits employers from treating job applicants and/or employees with the same criminal records differently because of their race, color, religion, sex or national origin ("disparate treatment discrimination").

Second, even when employers apply criminal record exclusions or neutral policy uniformly, the exclusions may still disproportionately and unjustifiably exclude people of a particular race or national origin ("disparate impact discrimination"). If the employer cannot show

that such exclusion is "job related and consistent with business necessity" for the position, the exclusion may be unlawful under Title VII of the Civil Rights Act of 1964 and Texas Labor Code, Chapter 21.

In general, it's a good employer practice to eliminate policies or practices that automatically exclude people from employment based on any criminal record. Employers should train managers, hiring officials, and decision makers about the law and best practices in this area.

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Civil Rights Division 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, locally (512) 463-
2642, or [CRDTraining@twc.
state.tx.us](mailto:CRDTraining@twc.state.tx.us).

Article Resources:
Texas Criminal Justice
Coalition (TCJC), [Solutions for
Confinement & Reentry](#)
Texas Dept. of Criminal
Corrections (TDCJ), [Statistical
Report](#)
Equal Employment
Opportunity Commission
(EEOC), [Enforcement
Guidance](#) and [Q&A Reference
Guide](#)
National Employment Law
Project (NELP), [Ban the Box:
U.S. Cities, Counties, and](#)

[States Adopt Fair Hiring
Policies](#)
Houston Forward Times,
[City of Houston Joins Growing
List of Cities Who've Chosen
to "Ban the Box"](#) ■

Mediator's Moment

By *Marcia Y. Anavitarte-Jordan*



Photo of Marcia Y. Anavitarte-Jordan
Photo courtesy of CRD.

I have been mediating
equal employment
opportunity (EEO) cases
for the Civil Rights Division
since May of 2013. I have
mediated multiple religious
discrimination complaints
during my tenure, and
it is a "hot" EEO area,
particularly with the U.S.
Supreme Court's decision
in the case last year
involving clothing retailer,
Abercrombie & Fitch.

As an experienced
mediator, I have often
discovered that the real
issue is a lack of effective
communication between
the parties (employer and
employee/applicant). The
legal term for effective
communication is an
interactive accommodation
process. The interactive
process may involve
multiple considerations,
such as exploring
reasonable options to
allow the employee to
continue to practice his/
her faith. Also, there must
be a balance of allowing
an employee to practice
his/her faith, while making
sure that the employee
does not impose his/her
religious beliefs on others
who may not share those
beliefs.

The law requires an
employer to reasonably
accommodate an
employee's religious belief
or practices, unless doing
so would cause more than
a minimal burden on the
operation of the employer's
business. Such things
as flexible scheduling,
voluntary substitutions or
swaps, so that employees
can attend religious
services or take religious
holidays are examples of
accommodations.

Job reassignments or
lateral transfers and
exceptions to workplace
policies or practices might
also be used. For example,
an employer might also be
required to accommodate
an employee's need to
say prayers during the

workday. This accommodation might involve scheduling the employee's break times to coincide with prayer times and helping the employee find a suitable place to pray.

A common issue that arises involves religious garb or grooming. The law is clear that once an employer is aware that a religious accommodation is needed, the employer must reasonably accommodate an employee who's sincerely held belief, practice, or observance conflicts with a work requirement, unless doing so would create an undue hardship.

In other words, if an employer's dress and grooming policy or preference conflicts with an employee's known religious beliefs or practices, the employer must make an exception to allow the religious practice unless that would be an undue hardship on the operation of the employer's business.

An employer should not assume that the accommodation would pose an undue hardship. In many instances, there may be an available accommodation that will allow the employee to adhere to religious practices and permit the employer to avoid undue hardship.

The most prevalent case that recently made news was the Abercrombie & Fitch case. The EEOC alleged that Abercrombie & Fitch refused to hire Samantha Elauf, a practicing Muslim, because the headscarf that she wore pursuant to her religious obligations conflicted with the company's employee dress policy.

The U.S. Supreme Court held that to prevail in a disparate-treatment claim, an applicant need show only that his/her need for an accommodation was a motivating factor in the employer's decision, not that the employer had knowledge of his/her need. So, the Supreme Court remanded the case to the district court for further proceedings, with the direction that Title VII's disparate-treatment provision required Elauf to show that Abercrombie (1) failed to hire her and (2) because of her religion (including a religious practice). So, employers must be careful to refrain from making decisions to not to hire an applicant based even in part on a rationale that the applicant might need a religious accommodation.

Religious harassment is another common issue. Religious harassment under the law may occur when an employee is required or coerced to abandon, alter, or adopt a religious practice as a condition of employment. Religious harassment may also occur when an employee is subjected to unwelcome statements or conduct based on religion. Harassment may include offensive remarks, verbal, or physical mistreatment that is motivated by the victim's religious beliefs or practices.

Keep in mind that the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious but, such conduct rises to the level of illegal harassment when it is so frequent or severe that it creates a hostile work environment or when it results

in the victim being fired or demoted (adverse employment action).

The harasser can be the employee's supervisor, a supervisor in another department/division, a co-worker, or even a third party who is not an employee of the employer, such as a client or customer. An employer is liable for harassment by co-workers and third parties where it knew about the harassment and failed to take prompt and appropriate corrective action.

All employees should understand their rights and their responsibilities. Employers should make sure that everyone in their organizations understand what their rights and responsibilities are as well. And, if you become involved with an equal employment opportunity complaint, I recommend that you take advantage of our free mediation program in an attempt to resolve the matter amicably and efficiently.

Resources:

*Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc., No. 14-86 (June 1, 2015); http://www.supremecourt.gov/opinions/14pdf/14-86_p86b.pdf
* 29 CFR 1605.2 - Reasonable accommodation without undue hardship as required by section 701(j) of Title VII of the Civil Rights Act of 1964; *<https://www.law.cornell.edu/cfr/text/29/1605.2> ■

Recent Equal Employment Texas Case Summaries

Alamo Heights Indep. Sch. Dist. v. Clark
2015 Tex. App. LEXIS 1087
(Tex. App.—San Antonio, Oct. 21, 2015)

A female physical education teacher's claim that a fellow female coach sexually harassed her by repeatedly making remarks about her female anatomy, using offensive language, making the teacher the target of sexual jokes, and bumping up against her to keep her from moving in and out of the athletic office was sufficient to overcome the school district's plea to the jurisdiction. Although the behavior complained of was directed to all of the female coach's co-workers, including men, she made a significant number of comments to the teacher about her female anatomy, specifically.

The teacher also stated a prima facie case of retaliation because, although she was not terminated until eight months after she filed an EEOC charge, she was warned there would be consequences for her complaint, and she was immediately put on an intervention plan despite her exemplary record.

Yeh v. Chesloff
2015 Tex. App. LEXIS 12866
(Tex. App.—Houston [1st Dist.],
December 22, 2015)

The appellate court ruled that to construe all EEOC intake questionnaires to be Texas Workforce Commission (TWC) complaints under Tex. Lab. Code, Chapt. 21 would ignore the statutorily conferred dual purpose

that the EEOC had recognized, and it would frustrate Chapter 21's stated purpose if the appellate court were to interpret this EEOC questionnaire contrary to the federal courts' understanding and the EEOC's intent. The employee's intake questionnaire did not meet the 180-day deadline for filing a complaint under state law because it was not a charge under federal equal employment opportunity law, since, in her intake questionnaire, she had checked the box that reads as follows:

I want to talk to an EEOC employee before deciding whether to file a charge of discrimination. I understand that by checking this box, I have not filed a charge with the EEOC. I also understand that I could lose my rights if I do not file a charge in time.

As a result, the employee filed no complaint of discrimination within 180 days of the alleged discrimination. Furthermore, the relation-back doctrine did not apply because the employee's intake questionnaire was not a complaint. Finally, the post-termination conduct alleged by the plaintiff did not revive the sexual harassment claim; because she was no longer working in the hostile environment, those post-termination acts were not within her hostile work environment claim.

Jones v. Angelo State Univ.
2015 Tex. App. LEXIS 12805
(Tex. App.—Austin, December 18, 2015)

In a case under Tex. Lab. Code § 21.051 for discriminatory discharge, the trial court did not make an error in granting summary judgment on a disparate treatment claim by an "Evangelical Christian" professor, since there was no evidence that his protected-class status—as opposed to his refusal to comply with a condition of his employment—was a motivating factor in the university's decision not to reappoint him to his faculty position. Also, the professor presented no evidence that the person who replaced him did not also share his religious beliefs.

The court also found that the professor timely filed his complaint with the Texas Workforce Commission under Tex. Lab. Code § 21.201(a) for failure to accommodate his religious beliefs. The Court ruled that the discriminatory act triggering the 180-day deadline occurred not when the professor was informed that he was expected to comply with a requirement which conflicted with his religious practice, but when he was informed of the adverse employment decision of non-reappointment that was made as a consequence of his failure to comply. Furthermore, because the university did not move for summary judgment on the professor's failure to accommodate claim, the trial court erred in granting summary judgment on this claim. ■

Blindness Awareness Activity

By Faith N. Penn



Photo of Faith Penn, Civil Rights Investigator/Mediator
Photo courtesy of CRD.

October is a month that is shared with several commemorative and awareness campaigns such as National Breast Cancer Awareness, LGBTQ History, National Domestic Violence Awareness, National Information Literacy Awareness, and National Disability Employment Awareness Month--just to name a few. In addition, October has been named "Meet the Blind Month" by the National Federation of the Blind of which I am a proud member.

The purpose of "**Meet the Blind Month**" is to help educate the public and create greater awareness of the capabilities of people who are blind. Additionally, October 15th is "White Cane Safety Day," which recognizes the use of white canes by blind individuals.

Across the country, groups of blind and low vision individuals and their friends and family observe this month through various outreach activities such as participating in public events, speaking in public venues like schools, civic clubs, church groups, passing out literature, hosting meet and greets, conducting

blindness awareness activities, and volunteering service in their communities.

During the month of October, I was approved to e-mail one or two questions a day to select Texas Workforce Commission (TWC) staff, Civil Rights Division (CRD) staff, and the TWC Executive Director regarding blindness. Once the questions were received, participants had the option to respond with their best guess. Use of the internet was strongly discouraged. The questions were designed to be fun, to further educate staff regarding blindness, and to explain different daily techniques blind individuals use to ensure independence.

Later in the day, I e-mailed the answers to each question in addition to a short explanation or summary regarding each answer. Participation was voluntary, but I hoped everyone would participate and find the activity to be fun, innovative and informative. I wanted to create an exciting, educational activity where people could enjoy themselves while gaining knowledge about blindness.

Additionally, I gave a presentation to CRD staff regarding different tools and techniques blind individuals use to assist with living independently. During the presentation, I demonstrated two devices to write Braille, three different types of canes, a device that determines colors, Braille playing cards and a refreshable Braille display. CRD Director, Lowell Keig, assisted by passing out Braille alphabet cards, and acted as the guinea pig with the demonstration of the color identifier. Staff members stayed after to

ask questions and to test several devices.

We as humans tend to shy away from anything different or that is unfamiliar. Based on statements my co-workers and friends have made, some people are hesitant to ask blind individuals questions regarding blindness for fear of coming across as rude or insensitive. One of my goals for this activity was to try to break down those barriers and help people understand that a blind person is not any different than the next person, and to help people realize that it is acceptable to ask questions to educate themselves regarding something unfamiliar. I am of the opinion that we all have certain "characteristics," that is what makes the world so unique.

Since I started the activity, I have found that people are more willing to broach questions with me regarding blindness; and I love it! I truly hope this activity helps people to see me as me, Faith--not a person in need of coddling or a person with a condition.

Try Yourself on These Blindness Awareness Questions (see answers on page 7):

1. What blind sport is played with a 16 inch ball with an implanted sound module?
 - A. Sound Lacrosse
 - B. Bell Soccer
 - C. Beep Baseball
 - D. Golf for the Blind
2. Scenario: You and your co-workers are on your way out to lunch when you come across David,

a blind individual from the fourth floor. You've seen him around the building, but you and he have never had a conversation. David is walking in front of you and your associates using his cane. The group heads toward the main entrance, but David veers left and is now walking toward a row of occupied chairs. Specifically, he is headed straight for a woman holding a newborn baby who is unaware of the impending danger. What is the best technique to offer assistance to David?

3. Scenario: you are a huge dog lover and you happen to see a blind person with a guide dog and you feel inclined to pet the dog. What is the best way to handle this situation?

- A. Approach the dog with your hand out allowing it to get your scent, then pet the dog.
- B. Whistle at the dog to try to get its attention
- C. Speak to the blind individual and ask if you can pet the dog.
- D. Inform the blind individual you are going to pet their dog.
- E. None of the above

4. True or False: A person's other senses become more acute after the onset of blindness or visual impairment.

5. How does a blind individual who uses a service animal (guide dog) know when it is safe to cross the street?

- A. The dog watches the light to see when it turns green, then signals his owner that it is safe to cross.
- B. The owner listens to traffic and gives the dog a signal when it is safe to cross
- C. The owner asks someone when it is safe to cross.
- D. The dog barks once when it is safe to cross and barks twice when it is not safe to cross.

Answers to Blindness Awareness Questions:

1. C. Beep Baseball. "In 1964, Charley Fairbanks, an engineer with Mountain Bell Telephone, . . . implanted a small beeping sound module inside a normal sized softball." Visit nbba.org to learn more.

2. Under no circumstances is it appropriate for anyone to grab a blind person's cane or their guide dog's harness to lead them. It is not only embarrassing but dangerous for the blind individual. Give directions such as "to your right, to your left, behind you or in front of you." Cardinal directions such as North, South, East, and West are also appropriate. If you do not feel comfortable offering directions, offer your arm to the person, allow them to accept your assistance, and lead them to their destination or an indicated place or area.

3. C. Speak to the blind individual and ask if you can pet the dog. It's important for a "working" dog to stay focused for the safety of the team and maintenance of training standards. However, most guide dog owners enjoy interacting with the public when they have the time. It's an essential courtesy to first ask for permission to pet a guide dog.

4. False. Blindness does not entail compensatory powers. Although one may learn to pay greater attention to one's hearing, for example, the hearing does not actually spontaneously improve or become more acute to compensate for the one lost sense.

5. B. The owner listens to traffic and gives the dog a signal when it is safe to cross. Blind people listen for the surge of parallel traffic and tell their guide dogs when it is safe to cross the street. A hand signal

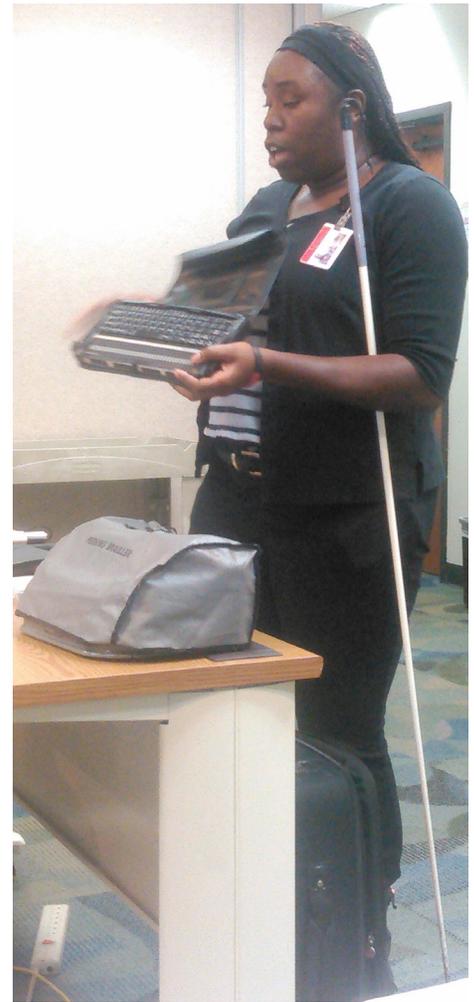


Photo of Faith N. Penn demonstrating assistive tools for blind individuals. Photo courtesy of CRD.

is given to the dog when it is time to cross. Dogs are color blind so they can't see the traffic light or the cross signals. The dogs are trained not to walk into on-coming traffic, no matter if a command is given.... ■