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### 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

**Andres Alcantar** - Chairman  
*Commissioner Representing the Public*

**Ruth R. Hughs**  
*Commissioner Representing Employers*

**Julian Alvarez**  
*Commissioner Representing Labor*

## Civil Rights Division Recap of Fiscal Year 2015

The Texas Workforce Commission’s Civil Rights Division (CR D) receives, investigates and seeks to mediate, settle, conciliate or litigate employment discrimination complaints filed on the basis of race, color, sex, national origin, age, religion disability, genetic information or state military training/duty.

In FY 2015, CRD investigated and closed 1,087 employment complaints. The majority of employment cases

were closed due to no reasonable cause for discrimination with CRD and statewide. However, approximately one-quarter of CRD’s employment cases were closed with resolutions other than without merit.

These resolutions consist of cases with outcomes favorable to complainants, including cause findings, successful conciliations, settlement agreements, and withdrawals with settlement. The average

processing time for employment complaints resolved by CRD in FY 2015 was 148 days, down from 161 days in FY 2014. For more details, please see the tables and charts below. ■

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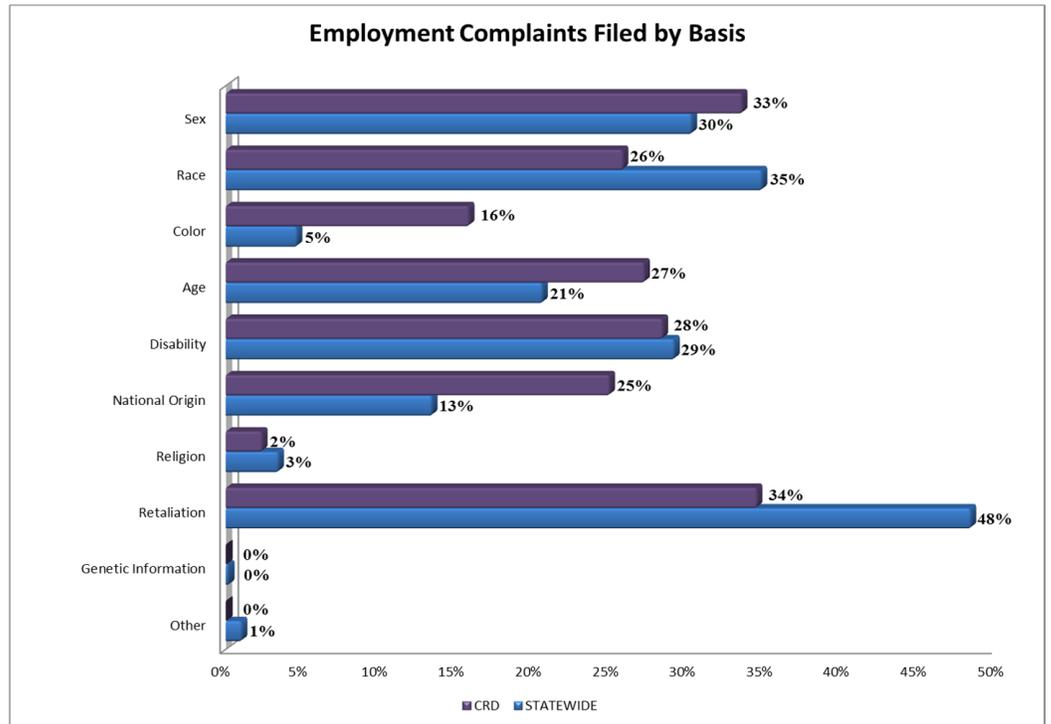
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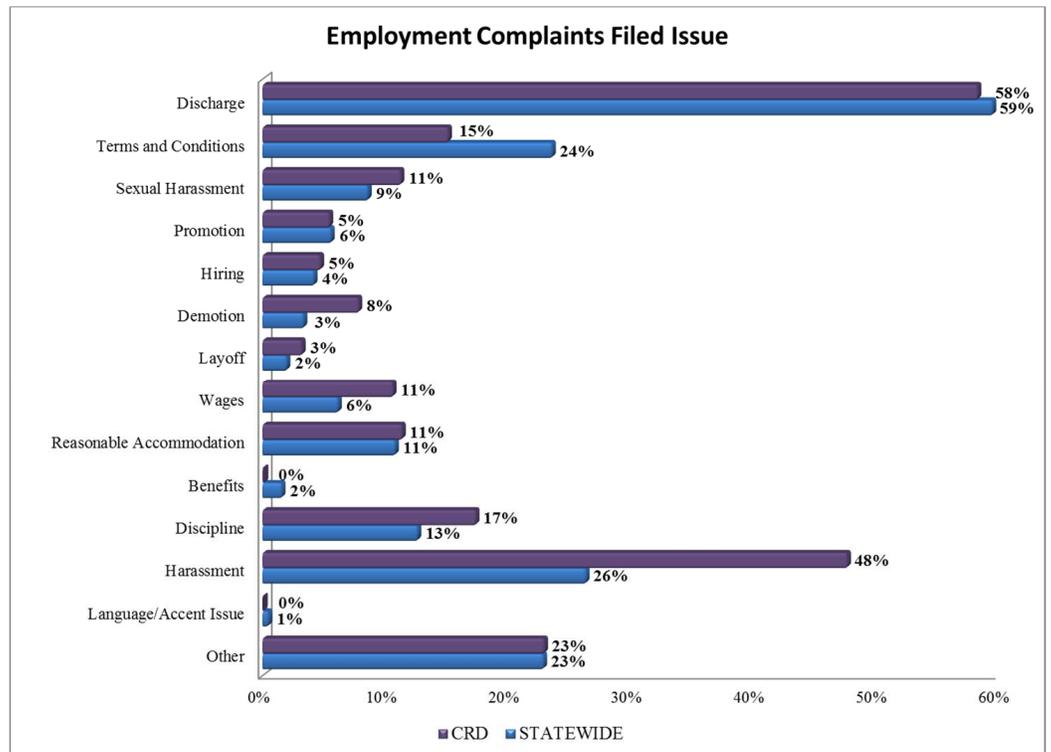
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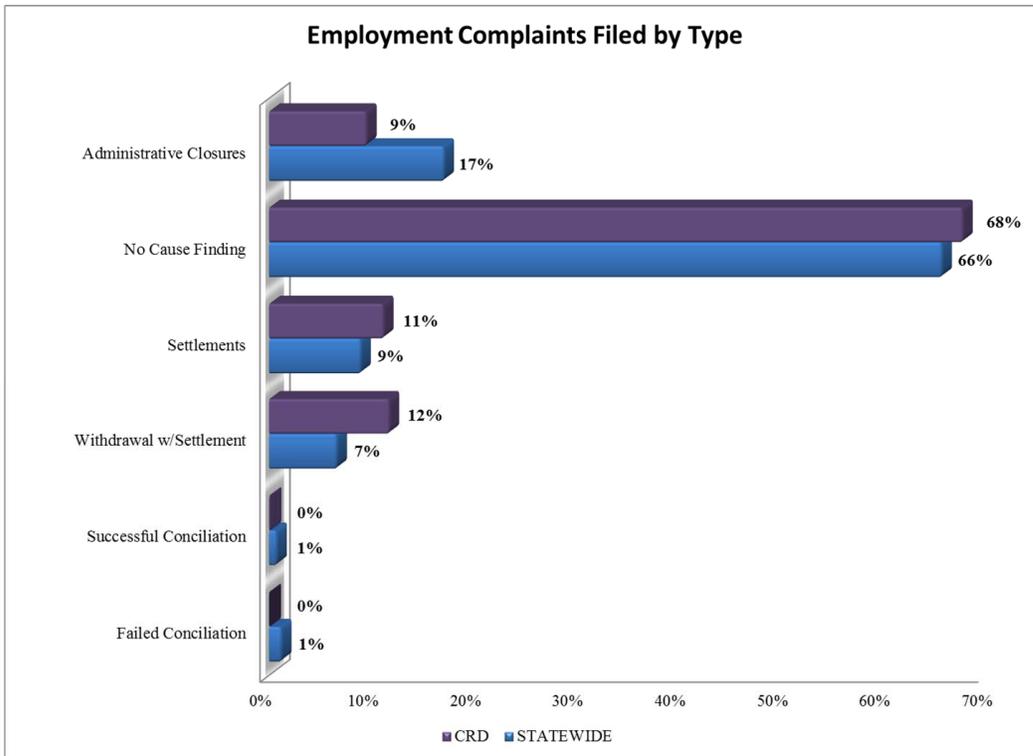
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Note: CRD numbers are a subset of the state numbers. There were a total of 932 CRD Charges and a total of 9,483 State Charges in FY 2015. Some charges filed involve multiple bases. Therefore, the percentages were calculated based on the number of charges filed.



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Notes: The total number of closures reported by CRD and statewide above is derived from a report generated by the EEOC from the EEOC's Integrated Mission System. This figure is preliminary and pending release of final EEOC official data. Also, note that cause finding cases do not necessarily close within the same fiscal year. Of the three cause findings for CRD, one case was also counted as a successful conciliation and fully closed during FY 2015, so it appears in the total of 1,087; the other two cause cases were not closed during FY 2015 and thus do not appear in the total of 1,087. Further, note that Administrative Closures include Right to Sue Issued, Failure to Cooperate, Lack of Jurisdiction, and Failure to locate.



Photo courtesy of Thinkstock.

# Recent Equal Employment Texas Case Summaries

By Corra Dunigan, TWC Asst. General Counsel

***Chau v. Harlingen Med. Ctr.***  
2016 Tex. App. LEXIS 2733  
(Corpus Christi – March 17, 2016)

Chau, a registered nurse of Vietnamese decent was hired to work the night shift by Elizabeth Yzaguirre, the director of ICU Nursing Center of the Harlingen Medical Center (The Center). Payton McCloskey, a registered nurse was assigned to help train and mentor Chau. Chau claims that on her first night of work, McCloskey asked her if she was Filipino. Chau replied that she was Vietnamese. McCloskey allegedly stated that she hates Filipinos. Chau further claims that McCloskey refused to train or assist her.

McCloskey observed several incidents of unsatisfactory work performed by Chau, which she reported to Yzaguirre. Chau was reassigned to the telemetry unit on the night shift while McCloskey remained in the ICU. On October 10, 2010 Yzaguirre counseled Chau on her work performance, and she reassigned her to the day shift where she could monitor her more

closely. During this meeting Chau told Yzaguirre about the comments McCloskey made. Over the next couple of weeks, several other incidents involving Chau's work performance were reported. Chau was terminated on November 23, 2010.

Chau sued, alleging claims of discrimination based on age, national origin, hostile work environment, and retaliation. The Center filed a motion for summary judgment which was granted, however the basis for granting that motion was not stated. Chau appealed and the Court of Appeals affirmed the trial court's decision on the following grounds: As to National Origin, Chau did not provide sufficient evidence of discrimination because McCloskey was not a decision maker in the termination, nor were the statements made close in time to her termination. They were simply "stray remarks" made by a non-decision maker. The Center provided several instances of poor performance by Chau, many for which she was counseled. The Center was able to establish by

a preponderance of the evidence that that they would have made the same decision as to her termination regardless of any discriminatory animus by McCloskey (McCloskey denied making that statement).

As to Hostile Work Environment, the court determines whether a hostile work environment exists using a totality of the circumstances test that focuses on the discriminatory conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance. The Court found that based on the evidence, Chau was not able to establish a hostile work environment.

As to Retaliation, Chau stated that she could establish a causal connection between her protected activity and her termination; however, temporal proximity is insufficient alone to establish but-for causation. Chau failed to rebut the Center's legitimate non-discriminatory reasoning for her termination. ■

# TWCCRD Issues Determination of Cause on Sexual Harassment Claim

On May 24, 2016, the Texas Workforce Commission issued a determination of reasonable cause on a sexual harassment complaint. The matter had been fully investigated. The case was presented to the Commissioners for evaluation, and the Commissioners made a unanimous determination that there was reasonable cause to support a violation.

The Charging Party, a male employee, alleged that his male supervisor repeatedly touched and/or grabbed Charging Party's genitals several times a week over the course of a few years—despite his repeated protests. The Charging Party asserted that he made it clear to his supervisor that the conduct was unwelcome, including telling him, “Men don't do that. You are not supposed to do that because you are a manager.” Three male witnesses noted that the supervisor routinely rubbed his genitals against their buttocks when

approaching them from behind. And, two male witnesses articulated that the supervisor suggestively rubbed their shoulders and slapped their buttocks, as well as grabbed their genitals. Moreover, there was no evidence that the supervisor engaged in such sexual harassment of any female employees.

The Charging Party further alleged that he reported the inappropriate touching to the former Human Resources (HR) Director, the subsequent HR Director, and the supervisor's superior, and another supervisor, but nothing was done, so he was forced to resign due to the hostile work environment. The former HR Director claimed to have called together a group and informed all of them to refrain from such behavior, but witnesses stated that no such meeting occurred. Furthermore, there was evidence that when employees tried to complain later about the supervisor's continuing sexual harassment, the former HR

Director refused to hear or accept any additional complaints from that group, unless it concerned payroll. The other supervisor acknowledged being told of the harassment, yet he did not further report his fellow supervisor's behavior because he considered it “horseplay.” The Division concluded that this lack of action by the employer constituted a failure to exercise reasonable care to prevent, and correct promptly, the harassing behavior.

In accordance with the duty set out in Texas Labor Code Section 21.207, the Division will be attempting to resolve the alleged unlawful employment practice by informal methods of conference, conciliation and persuasion. If those efforts to resolve the matter are unsuccessful, the Commission may evaluate whether filing a civil action would achieve the purposes of Chapter 21 of the Texas Labor Code.



# Texas Company Fired Two Pregnant Employees

Pharmacy Solutions, an Arlington, Texas pharmaceutical compounding company will pay \$85,000, and establish and implement a written policy prohibiting discrimination to settle a pregnancy discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC).

Specifically, the suit alleged that the owner of the business made negative remarks to two different employees on two different occasions upon learning that they needed to attend doctors' visits in connection with their pregnancies. Further, both women were fired in the same month following the negative remarks.

The Pregnancy Discrimination Act is an amendment to Title VII of the Civil Rights Act of 1964.

Discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful sex discrimination under Title VII and Chapter 21, Texas Labor Code. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

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.

## Learn More

TWC CRD provides low-cost, fee-based trainings and technical assistance programs throughout the State of Texas. For more information, availability and training designed for your needs please complete and send the CRD Training Request Form at [www.twc.state.tx.us/businesses/equal-employment-opportunity-presentations-training](http://www.twc.state.tx.us/businesses/equal-employment-opportunity-presentations-training) or email [CRDTraining@twc.state.tx.us](mailto:CRDTraining@twc.state.tx.us)

### Article Resources:

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Texas Labor Code, Chapter 21, [www.statutes.legis.state.tx.us/Docs/LA/htm/LA.21.htm](http://www.statutes.legis.state.tx.us/Docs/LA/htm/LA.21.htm) ■