



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



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Governor Abbott Issues Proclamation Recognizing the 26th Anniversary of the Americans with Disabilities Act (ADA)

July 26th is often regarded as America's second Independence Day for the estimated 56 million Americans with disabilities. On that day, many agencies and organizations around our state observed the anniversary of the ADA with local celebrations to raise awareness of the rights of Texans with disabilities and the many contributions they make to our state.

The Texas Governor's Committee on People with Disabilities (GCPD) is honored to share Governor Abbott's ADA proclamation and best wishes to the state for the 26th Anniversary of the ADA.

The State of Texas - Governor

To all to whom these presents shall come,

Greetings: Know ye that this official certificate is presented in recognition of the:
26th Anniversary of the Americans with Disabilities Act

In Texas, we understand that everyone deserves the opportunity to pursue their American Dream. In 1990, President George H.W. Bush – a Texan – signed the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in many areas, including employment, public accommodations, transportation, housing and education. The ADA is critical to ensuring accessibility and full inclusion for men and women with disabilities. Through continued commitment to fairness and equality of opportunity, we can ensure a bright future for all residents of the Lone Star State.

As you gather to celebrate the anniversary of this historic legislation, First Lady Cecilia Abbott joins me in sending best wishes.

In testimony whereof, I have signed my name and caused the Seal of the State of Texas to be affixed at the City of Austin, this the 30th day of June, 2016.

Greg Abbott
Governor of Texas

A printable copy of the official 26th ADA Anniversary Proclamation is available on the Governor's website.
Resource: Texas Governor's website ■

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Relay Texas: 800-735-2989
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Legal Rights And Responsibilities Involving Pregnant Workers Under State Law

Zanna Clore was told to obtain a doctor's note after her employer, *Your Health Team*, a home health agency, learned of her pregnancy. Shortly thereafter, Clore provided *Your Health Team* with a release from her physician stating Clore could perform all job duties with the only limitation being that she should not lift or pull more than 25 lbs. Despite the medical release to work, the employer terminated her employment just minutes after she furnished the required note. The EEOC brought a lawsuit against *Your Health Team*, which was settled for \$29,000, promulgation of pregnancy policies and training.

If someone is pregnant, has been pregnant, or may become pregnant, and if the employer has 15 or more employees, the pregnant employee is protected against pregnancy-based discrimination and harassment at work under Texas and federal laws. The individual may also have a legal right to work adjustments that will allow the employee to do her job without jeopardizing her health.

Does the law only cover an employee while she is pregnant?

Under the Chapter 21 of the Texas Labor Code, employers are not allowed to discriminate against an employee based on the fact that the person-

- Is pregnant
- Was pregnant
- Could become pregnant, or intend to become pregnant
- Has a medical condition that is related to pregnancy

In general, this means that an employee cannot be fired, rejected for a job or promotion, given lesser assignments, or forced to take leave for any of these reasons. An employer does not have to keep an employee in a job that the individual is unable to do or in which the individual would pose a significant safety risk for others in the workplace. However, an employer cannot remove a person from her job or place her on leave because the employer believes that work would pose a risk to her or her pregnancy.

Is pregnancy-related harassment prohibited by law?

Harassment based on pregnancy or a pregnancy-related medical condition is not allowed under federal or state law. Staff should report to their employer's management or HR department about any harassment, and follow any organizational reporting procedures. If an employee reports harassment, the employer is legally required to take action to prevent it from occurring in the future.



Photo courtesy of Thinkstock.

What if a person is having difficulty doing her job because of pregnancy or a medical condition related to her pregnancy?

An employee may be able to get an accommodation from the employer that will allow the employee to do her regular job safely. Examples include altered break and work schedules (e.g., breaks to rest or use the restroom), permission to sit or stand, ergonomic office furniture, shift changes, elimination of marginal or non-essential job functions, and permission to work from home.

An employee may be able to obtain an accommodation if the employer gives accommodations to employees who have limitations that are similar, but are not caused by pregnancy.

In addition, a pregnant employee may be entitled to an accommodation under the federal Americans with Disabilities Act and

Texas Labor Code, Chapter 21, if the person has a pregnancy-related medical condition that meets the laws' definition of "disability."

An employee does not need to have a particular accommodation in mind before asking for one, though the individual can ask for something specific. However, the disability discrimination laws do not require an employer to make changes that involve an undue hardship on the operation of the business, which involves considering the reasonableness of the cost and the availability of alternatives.

Also, if more than one accommodation would work, the employer can choose which one to provide.

What should I do if a pregnancy-related problem arises?

If you are an employee, the Texas Workforce Commission Civil Rights

Division (TWCCRD) will help you to decide what to do next, and conduct an investigation if you decided to file a charge of discrimination. Because you must file a charge within 180 days of the alleged violation in order to take further legal action, it is best to begin the process early.

If you are an employer, TWCCRD will provide you with technical assistance to get into compliance and provide you with any best practices for your situation.

In closing, both employers and employees also should note that it is illegal for an employer to retaliate against an employer for opposing a discriminatory practice; making or filing a charge or complaint; or testifying, assisting, or participating in an investigation, proceeding, or hearing.

For more information, visit twc.state.tx.us/jobseekers/how-submit-employment-discrimination-complaint, call 888-452-4778 (voice) or 800-735-2989 or EEOIntake@twc.state.tx.us (email).

Resources:

Your Health Team, L.L.C. To Pay \$20,000 To Settle EEOC Pregnancy Discrimination Suit

Texas Labor Code, Chapter 21;

Federal Pregnancy Discrimination Act ■

Recent Equal Employment Texas Case Summaries

University of Texas v. Kearney
2016 Tex.App. LEXIS 4583 (May 3, 2016)
By Texas Workforce Commission
Assistant General Counsel,
Corra Dunigan

Beverly Kearney brought suit against the University of Texas at Austin, her former employer, alleging constructive discharge based on disparate treatment and retaliation. In this interlocutory appeal, the University challenges the trial court's denial of its plea to the jurisdiction on the grounds that Kearney failed to exhaust her administrative remedies and failed to assert a viable discrimination or retaliation claim.

Kearney, who is African American, was the head coach of the women's track and field team for approximately 21 years. In October 2012, a report was made that she engaged in a personal relationship with a former student athlete in 2002. Kearney admitted to the relationship and was put on administrative leave pending investigation. On December 28, 2012 she met with University attorneys and raised complaints alleging past incidents of race and sex discrimination for which she had not filed charges of discrimination. On December 28, 2012 she alleges

that she knew was going to be fired, and thus resigned in lieu of termination on January 5, 2013. On March 8, 2013 she filed a charge of discrimination with the Texas Workforce Commission (TWC), and received a right to sue from TWC on October 30, 2013. She then filed suit on November 14, 2013. In this appeal, the University challenged her claims of retaliation and disparate treatment, and alleged that she failed to first exhaust administrative remedies on these claims.

The Court noted that before filing suit in state court under Chapter 21 of the Texas Labor Code f/k/a the Texas Commission on Human Rights Act (TCHRA), an employee must first exhaust her administrative remedies by filing a complaint with TWC within 180 days of the alleged discriminatory act; failure to do so is a jurisdictional defect. The University cited Kearney's allegations of harassment and discrimination prior to the investigation that resulted in her termination and argued that she cannot sue for those acts because they occurred prior to September 9, 2012 (which was 180 days before she filed suit). Kearney referenced those acts not as causes of actions themselves, but rather as

evidence in support of her claims for retaliation and disparate treatment. On this issue, the Court overruled the University's arguments as she did not fail to exhaust her remedies as to the constructive discharge claim stemming from her separation in December of 2012.

As to the claim of retaliation, the University argued that Kearney failed to state a prima facie claim for retaliation because her own allegations negated one of the required elements, specifically the causal connection between the employee's protected activity and the alleged adverse employment action; specifically, the University contended that her own pleadings negated cause. The Court agreed with the University on this point stating that since Kearney affirmatively asserted that the University fired her for having a relationship with a student athlete, she could not show a "but for" causal connection between her complaints of prior discrimination and her alleged constructive discharge (i.e., in non-legal terms, Kearney failed to show she would not have been separated from employment, "except for" her prior discrimination complaints).

As to the disparate treatment claim, the University challenged only the fourth required prima facie element, namely, whether Kearney was treated less favorably than similarly situated members of the opposing class. Kearney alleged that as an African American woman, qualified in her former position, she was treated less favorably than other coaches who were white males and were involved with students or direct subordinates. Specifically, she mentioned a former volleyball coach who married a former student athlete and was not terminated. The University contended that as a matter of law, Kearney could not show she was treated less favorably than similarly situated members of the opposing class because the other employees were employed in different capacities by different departments with different supervisors. The Court was not persuaded by these arguments, based on the fact that there was insufficient evidence in the pleadings to refute the claims she made, concluding that Kearney had in fact

pleaded the elements of her cause of action. Essentially, the Court said that it could not determine from the pleadings alone whether “other coaches within the University’s Athletic Department,” in particular the former football coach, or for that matter the former volleyball coach, (whose employment overlapped with Kearney’s) were subject to different employment standards or ultimate supervisors from Kearney. Nor could the Court determine from the pleadings whether the former football or volleyball coaches’ conduct was of comparable seriousness or nearly identical to Kearney, or whether any of these coaches had a similar violation history.

DIRECTOR’S UPDATE:
Jones v. Angelo State Univ.
2016 Tex. App. LEXIS 6200 (June 10, 2016)

This case involving allegations of religious discrimination was previously reported in Issue 2, Feb. 2016 of the Civil Rights Reporter.

The Court issued this substitute opinion. The new opinion adds a footnote 7 addressing federal cases cited by the University on the issue of the charge filing deadline in the failure-to-accommodate context. The Court did not agree that the cases were determinative in the subject dispute. Moreover, the rulings of the Court did not change. The Director notes that the Court does not mention the U.S. Supreme Court opinion of *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. __ (2015). In that opinion, the Court held that “the intentional discrimination provision prohibits certain *motives*, regardless of the state of the actor’s knowledge.” This holding may call into question the *prima facie* elements used by the *Jones* Court, which included an element that he “informed the employer of this belief or practice;” however, this difference in all likelihood not have affected the outcome. ■

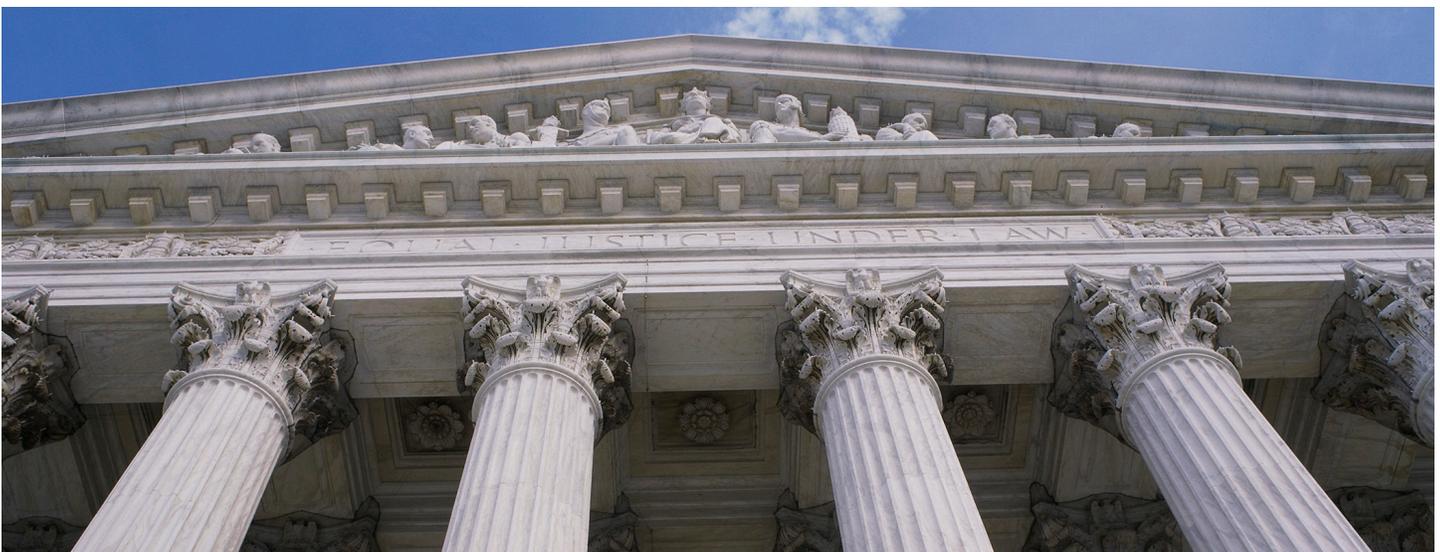


Photo courtesy of Thinkstock.

Background Checks: Arrest and Convictions Update

An employer's use of criminal history information of job applicants and employees has once again grabbed national attention. In April 2012, the EEOC issued enforcement guidance that challenged the State's policy of not hiring convicted felons for many state jobs. Texas sued the EEOC in November 2013, seeking an injunction to block the EEOC from enforcing the guidance on the state. According to the Office of the Attorney General of Texas, the State has "the sovereign right to impose categorical bans on the hiring of criminals, and the EEOC has no authority to say otherwise." In August 2016, the U.S. District

Court for the Northern District of Texas agreed with the EEOC that the issue was not ripe and that Texas lacked standing, and issued an order granting the EEOC's motion to dismiss the State of Texas' lawsuit. Texas quickly appealed the decision to the 5th Circuit Court of Appeals on the grounds that the EEOC's "felon-hiring" guidance attempts to preempt state law. On June 27, 2016, the Court reversed the lower court's decision finding that Texas did not have standing to file suit against the EEOC over its criminal background check guidance. The Court reasoned that "...the guidance forces Texas to alter its hiring

policies or incur significant costs." With this decision, the lower court must determine the case based on the facts presented by the State and the EEOC. As this issue is "one to watch," we will continue to keep you updated.

Resources:

Split 5th Circ. Revives Texas Suit Over 'Felon-Hiring' Rule
Law360, June 27, 2016

State of Texas v. EEOC, 14-10949 (5th Cir. 2016)
www.ca5.uscourts.gov/opinions%5Cpub%5C14/14-10949-CV0.pdf ■

CRD Education, Training & Outreach

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

No-cost Outreach and Education

Programs: CRD 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: 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, contact CRD at (888) 452-4778, or CRDTraining@twc.state.tx.us. ■