



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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Sharon Breckenridge Thomas appointed by Gov. Perry to the Commission on Human Rights

The commission provides oversight to TWC's Civil Rights Division

Sharon Breckenridge Thomas of San Antonio is a visiting associate professor of law at Liberty University School of Law, and a board certified attorney in labor and employment law by the Texas Board of Legal Specialization. She is a member of the State Bar of Texas,

International Bar Association and the Center for International Legal Studies Congress of Fellows. She is past chair of the State Bar of Texas Board of Legal Specialization, Labor and Employment Law Exam Commission, past president of the St. Mary's University Law Alumni

Association and a past member of the St. Mary's University Board of Trustees. Thomas served the U.S. Air Force as a civilian Judge Advocate General (JAG). She received a bachelor's degree and a law degree from St. Mary's University.

Jury awards \$240 million for long-term abuse of workers with intellectual disabilities

Historic verdict against Henry's Turkey Service

www.eeoc.gov

WASHINGTON - A Davenport, Iowa jury on May 1, 2013, awarded the U.S. Equal Employment Opportunity Commission (EEOC) damages totaling \$240 million - the largest verdict in the federal agency's history - for disability discrimination and severe abuse.

The jury agreed with the EEOC that Hill County Farms, doing business as Henry's Turkey Service subjected a group of 32 men with intellectual disabilities to severe abuse and discrimination for a period between 2007 and 2009, after 20 years of similar mistreatment.

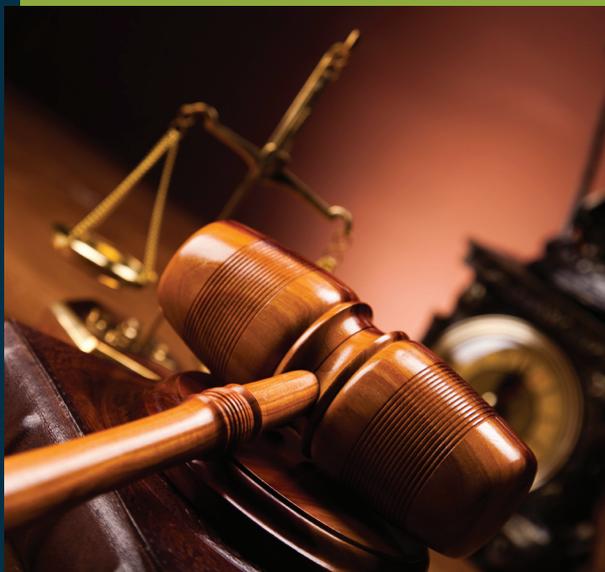
"The verdict sends an important message that the conduct that occurred here is intolerable in this nation, and hopefully will help to restore dignity and acknowledge the humanity of the workers who were mistreated for so many years," said EEOC Chair Jacqueline A. Berrien.

The company is based in Goldthwaite, Texas, but the work and abuse occurred in West Liberty and Atalissa, Iowa. The jury awarded each of the men \$2 million in punitive damages and \$5.5 million in compensatory damages. This verdict follows a September 2012 order from the district court judge that Henry's Turkey Service pay the men \$1.3 million for unlawful disability-based wage discrimination, thus making the total judgment \$241.3 million.

EEOC presented evidence to the jury that Henry's Turkey Service exploited these workers, whose jobs involved eviscerating turkeys, because their intellectual disabilities made them particularly vulnerable and unaware of the extent to which their legal rights were being denied. The affected men lived in Muscatine County, Iowa, where they worked for 20 years as part of a contract between Henry's Turkey Service and

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Did you know? The Texas Workforce Commission Civil Rights Division investigates housing discrimination based on race, color, sex, national origin, religion, disability, and familial status.



From the Cover

West Liberty Foods, an Iowa turkey processing plant.

"This historic verdict marks one of the EEOC's finest moments in its ongoing efforts to combat employment discrimination, especially discrimination against vulnerable and historically underserved populations," said EEOC General Counsel David Lopez. "The fact that the jury rendered the largest verdict ever obtained by the EEOC says volumes about the severity of the violation and it illustrates this agency's resolve to vindicate the rights of all discrimination victims."

Specifically, the EEOC presented evidence that for years and years the owners and staffers of Henry's Turkey Service subjected the workers to abusive verbal and physical harassment; restricted their freedom of movement; and imposed other harsh terms and conditions of employment such as requiring them to live in deplorable and sub-standard living conditions, and failing to provide adequate medical care when needed.

Verbal abuses included frequently referring to the workers as "retarded," "dumb ass" and "stupid." Class members reported acts of physical abuse including hitting, kicking, at least one case of handcuffing, and forcing the disabled workers to carry heavy weights as punishment. The Henry's Turkey supervisors, also the workers' purported caretakers, were often dismissive of complaints of injuries or pain.

"These men suffered isolation and exploitation for many years, while their employer cruelly consumed the fruits of their labor," said Robert A. Canino, regional attorney of the EEOC's Dallas District Office, which tried the case. "Our society has come a long way in learning how persons with intellectual disabilities should be fully integrated into the mainstream workplace, without having to compromise their human dignity."

Such abuse violated the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability, including intellectual disabilities, in terms and conditions of employment and wages and bars disability-based harassment. The EEOC filed its lawsuit

(No. 3:11-cv-00041-CRW -TJS, in U.S. District Court for the Southern District of Iowa) after first attempting to settle the case through its conciliation process.

"The ADA provided us with a law-enforcement tool to ensure fair treatment for persons with physical and mental disabilities," said Canino. He told the jury that Henry's Turkey Service treated the men "like property." He added, "The jury heard the human stories of these men, understood what they suffered, and valued their experiences in reaching their verdict." Canino said the men "feel humiliation and suffer distress from their experiences even to this day." Canino urged the jury to think of the "broken lives of 32 hard-working but vulnerable intellectually disabled men" who were employees of Henry's Turkey.

The EEOC enforces the nation's laws prohibiting employment discrimination. Further information about the EEOC is available at www.eeoc.gov.

In support of its case and to detail the human story for each of the victims at trial, the EEOC relied upon a nationally recognized expert in the field of care and treatment of persons with intellectual and developmental disabilities, Dr. Sue Gant. Social workers from the Iowa Department of Human Services, former DHS manager Denise Gonzalez, and the staff of a disability support services provider, Exceptional Persons Inc. of Waterloo, Iowa, also provided in-depth personal perspectives with regard to the victims and the nature of the abuses suffered.

"Inherent in the ADA is the idea of dignity — that people with disabilities have the right to full and productive lives. This was the principle Henry's Turkey Service attempted to take away from these men and the principle the jury so emphatically restored," said Janet V. Elizondo, director of the EEOC's Dallas District Office. "The ADA starts from the idea that people with disabilities can be great employees, if given the opportunity to fairly compete and prove themselves."

In addition to the EEOC's disability-based harassment and discrimination verdict, the EEOC earlier won a \$1.3 million wage discrimination judgment when Senior U.S. District Court Judge Charles R. Wolle found that, rather than the total of \$65 dollars per month Henry's Turkey Service paid to the disabled workers while contracted to work on an evisceration line at the plant, the employees should have been compensated at the average wage of \$11-12 per hour, reflecting pay typically earned by workers without intellectual disabilities who performed the same or similar work. The EEOC's wage claims for each worker ranged from \$28,000 to \$45,000 in lost income over the course of their last two years before the Henry's Turkey Service operation was shut down in February 2009.

Protecting vulnerable workers from disparate pay, harassment, and other discriminatory policies is one of the priorities identified in the EEOC's Strategic Enforcement Plan (SEP).

HUD SETTLES DISCRIMINATION CLAIM WITH COLDWELL BANKER RESIDENTIAL BROKERAGE AND HOME SELLER

Brokerage firm, seller will pay \$90,000 for preventing sale of house

www.hud.gov

WASHINGTON – The U.S. Department of Housing and Urban Development (HUD) announced April 15, 2013, a \$90,000 Conciliation Agreement with Coldwell Banker Residential Brokerage and the seller of a home in Worcester, Massachusetts, settling allegations they violated the Fair Housing Act by preventing the sale of a house to be used as a group home for persons with disabilities. The Fair Housing Act prohibits discrimination in rental or sales transactions based on disability, including preventing a home sale because the home is going to be used by persons with disabilities.

“HUD is committed to promoting housing opportunities for people with disabilities in mainstream settings,” said John Trasviña, HUD Assistant Secretary for Fair Housing and Equal Opportunity. “We’re pleased the parties in this case were willing to resolve this matter in a way that advances that goal.”

HUD General Counsel Helen Kanovsky added, “This case emphasizes that no one is above the law. Sellers of property, as well as their real estate agents and law firms who assist them, are all required to adhere to the Fair Housing Act.”

The prospective buyer planned to rent the house to a non-profit organization that provides supportive housing for persons with disabilities. When Erwin Miller, the executor of the estate learned the house would be used as a rental property, he agreed to sell the home on the condition a restrictive covenant was attached to the property. Miller stated in an email, “If they rent to a responsible family it is okay, BUT no unrelated individuals, students, dorm! Neighbors will fight this.” Donna Truex, Miller’s attorney, at Bowditch & Dewey, LLP, recorded a restrictive covenant prohibiting the use of the house as a group home for disabled persons. Miller’s real estate agent, an independent

contractor associated with Coldwell Banker Residential Brokerage, then emailed the restrictive covenant to the prospective purchaser’s sales agent, thereby prompting the prospective purchaser to withdraw from the sale.

The prospective purchaser and his sales agent subsequently filed a complaint with HUD, alleging the restrictive covenant that prohibited future owners of the home from using it as a group home for individuals with disabilities. After receiving the complaint, HUD filed its own Secretary-initiated housing discrimination complaint alleging that the actions of the seller, real estate agent Maureen Kelleher, and attorney Donna Truex violated the Fair Housing Act.

Under the terms of the agreement, which was negotiated by HUD’s Regional Counsel in Boston, Coldwell Banker Residential Brokerage and Bowditch & Dewey will each pay \$39,000 to the prospective buyer and \$6,000 to his sales agent. Coldwell Banker Residential Brokerage and Bowditch & Dewey, LLP, will provide their employees with fair housing training. In addition, Bowditch & Dewey, LLP, will donate 100 hours of free legal services directly related to fair housing and 100 hours of free legal services directly related to the promotion of disability rights.

HUD’s mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination; and transform the way HUD does business. More information about HUD and its programs is available on the Internet at www.hud.gov and <http://espanol.hud.gov>.



Eloise Reynolds received her certificate for 15 years of service for the State of Texas. Reynolds has been with the Civil Rights Division for more than six years.



Julie Smith received her certificate for 5 years of service for the State of Texas. Smith has been with the Civil Rights Division for more than a year.

Did you know?

Chapter 21 of the Texas Labor Code applies to Texas employers that have at least 15 employees for each working day in 20 or more weeks in the current or previous calendar year.

Upcoming Events

LBJ's Birthday August 27

Labor Day –
Offices Closed September 2

TCHR Meeting October 23

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Equal Opportunity
Employer/Program

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<http://www.texasworkforce.org>

Supreme Court makes it harder to sue businesses for discrimination, retaliation

Washington Post
June 25, 2013

WASHINGTON — A sharply divided Supreme Court on Monday decided to make it harder for Americans to sue businesses for retaliation and discrimination, leading a justice to call for Congress to overturn the court's actions.

The court's conservatives, in two 5-4 decisions, ruled that a person must be able to hire and fire someone to be considered a supervisor in discrimination lawsuits, making it harder to blame a business for a co-worker's racism or sexism. The court then decided to limit how juries can decide retaliation lawsuits, saying victims must prove employers would not have taken action against them but for their intention to retaliate.

Justice Ruth Bader Ginsburg wrote both dissents for the court's liberal wing, and in a rare move, read them aloud in the courtroom. She said the high court had "corralled Title VII," a law designed to stop discrimination in the nation's workplaces.

"Both decisions dilute the strength of Title VII in ways Congress could not have intended," said Ginsburg, who then called on Congress to change the law to overturn the court.

In the first case, the University of Texas Southwestern Medical Center wanted a discrimination lawsuit won by Dr. Naieel Nassar thrown out. Nassar, after complaining of harassment, left in 2006 for another job at Parkland Hospital, but the hospital withdrew its job offer after one of his former medical center supervisors opposed it. Nassar sued, saying the medical center retaliated against him for his discrimination complaints by encouraging Parkland to take away his job offer. A jury awarded him more than \$3 million in damages.

The medical center appealed, saying the judge told the jury it only had to find that retaliation was a motivating factor in the supervisor's actions, called mixed-motive. Instead, it said, the judge should have told the jury it had to find that discriminatory action wouldn't have happened "but-for" the supervisor's desire to retaliate for liability to attach.

Justice Anthony Kennedy, who wrote the opinion, agreed with the lower court and the university, saying people "must establish that his or her protected activity was a but-for cause of the alleged adverse action by the employer." But he didn't rule completely for the medical center, sending the case back to the lower courts after saying a decision on the resolution of the case "is better suited by courts closer to the facts of this case."

Karen Harned, executive director of the National Federation of Independent Business' Small Business Legal Center, cheered the decision.

"If courts were allowed to label employees with little managerial authority as 'supervisors,' that would have substantially increased the number of frivolous lawsuits brought against small businesses and would have done little, if anything, to reduce harassment," she said. "For small businesses, the increased possibility of liability and ensuing costs would have been devastating. We are very

pleased with the Supreme Court's decision."

In the second case, Maetta Vance, who was a catering specialist at Ball State University, accused a co-worker, Shaundra Davis, of racial harassment and retaliation in 2005. Vance sued the school under the Civil Rights Act of 1964, saying the university was liable since Davis was her supervisor. But a federal judge threw out her lawsuit, saying that since Davis could not fire Vance, she was only a co-worker, and since the university had taken corrective action, it was not liable for Davis' actions. The 7th U.S. Circuit Court of Appeals upheld that decision, and Vance appealed to the Supreme Court.

But Justice Samuel Alito, who wrote the majority opinion, said for the university to be liable, Davis must have had the authority to "hire, fire, demote, promote, transfer, or discipline" Vance.

"We hold that an employee is a 'supervisor' for purpose of vicarious liability under Title VII if he or she is empowered by the employer to take tangible employment actions against the victim," Alito said. "Because there is no evidence that BSU empowered Davis to take any tangible employment actions against Vance, the judgment of the Seventh Circuit is affirmed."

Alito shook his head as Ginsburg read her dissent of his opinion. "The court's disregard for the realities of the workplace means that many victims of workplace harassment will have no effective remedy," she said.

Alliance for Justice President Nan Aron said the court made the wrong decision.

"Deferring to the powerful at the expense of the powerless, the Supreme Court majority has imposed a heavier burden for victims of workplace harassment and discrimination seeking justice in our courts," she said. "This decision makes

it far easier for employers to evade responsibility for discrimination and harassment in the workplace."

Alito, Kennedy, Chief Justice John Roberts, and Justices Antonin Scalia and Clarence Thomas voted together in those cases.

Ginsburg, and Justices Stephen Breyer, Sonia Sotomayor and Elena Kagan dissented together both times.

Ginsburg said she hopes Congress intervenes in both cases. For example, President Barack Obama in 2009 signed the Lilly Ledbetter Fair Pay Act, which effectively overturned a Supreme Court decision that had strictly limited workers' ability to file lawsuits over pay inequity.

"Today, the ball again lies in Congress' court to correct this court's wayward interpretations of Title VII," she said.

Ginsburg's call was soon joined by other organizations.

"The rulings are a step backwards in our efforts to ensure equal economic opportunity and to fulfill the promise of Title VII of the Civil Rights Act of 1964," said Sherrilyn Ifill, president of the NAACP Legal Defense and Educational Fund, Inc. "We call on Congress to once again take action to correct the court's flawed and narrow interpretations of Title VII, just as Congress has done repeatedly in the past."

*"Both decisions dilute
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**Justice Ruth Bader
Ginsburg**