

## **CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION**

PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON **OCTOBER 31, 2006**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **November 17, 2006**  
Estimated End of Comment Period: **December 18, 2006**

The Texas Workforce Commission (Commission) proposes amendments to the following section of Chapter 819 relating to the Texas Workforce Commission Civil Rights Division:

Subchapter F, Equal Employment Opportunity Records and Recordkeeping, §819.92

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

### **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

The purpose of the rule amendment is to clarify in rule the Commission's determination of what materials are available to the parties in a civil rights matter and what materials are beyond what would constitute reasonable access to the file. The Commission's authority for determining the scope of reasonable disclosure of documents is set forth in §21.305, Texas Labor Code, regarding Access to Commission records.

Specifically §21.305 provides that "the commission shall adopt rules allowing a party to a complaint filed under §21.201 reasonable access to commission records relating to the complaint." Furthermore it provides that, "unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records: (1) after the final action of the commission; or (2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law." The rule defines reasonable access to include access to all records in the file, except those excepted from required disclosure under the Public Information Act and investigator notes. The purpose of the change in the rule is to make clear the intent of the Commission, under the authority of §21.305, Texas Labor Code, to exclude investigator notes from the materials in a civil rights matter that may be accessed. By so doing, the Commission is striving to ensure that investigators have the broadest latitude to thoroughly investigate and record their findings, while continuing to ensure that the parties have access to all other parts of the file. This proposal additionally aligns Commission practices with the Equal Employment Opportunity

Commission 's (EEOC) policies regarding release of records in employment discrimination complaints as reflected in the Memorandum of Understanding with EEOC.

Pursuant to §21.305, the Commission has determined what constitutes reasonable access to files. Claimants or respondents to a Civil Rights Division (CRD) investigation often request copies of the complete complaint file including the investigator's personal notes. Generally, while an individual is authorized to have access to copies of the contents in his or her CRD complaint file, the reasonable access does not include documents in the file that may be deemed confidential under the Public Information Act or an investigator's personal notes.

## **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

**(Note: Minor editorial changes have been made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)**

### **SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING**

**The Commission proposes the following amendments to Subchapter F:**

#### **§819.92. Access to CRD Records**

Section 819.92(b) is added to provide that pursuant to the authority granted the Commission in Texas Labor Code §21.305, reasonable access does not include: (1) information excepted from required disclosure under Texas Government Code, Chapter 552; or (2) investigator notes.

The new subsection provides that parties involved in an allegation filed with CRD may obtain copies of all items in the file relating to their claim but that reasonable access does not include documents in the file that may be deemed confidential under the Public Information Act or investigator notes, which will allow for more complete investigations and is consistent with the Commission's Memorandum of Understanding with EEOC.

## **PART III. IMPACT STATEMENTS**

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Robert Gomez, Director, Civil Rights Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure compliance with the Memorandum of Understanding with the Equal Employment Opportunity Commission and ensure consistent treatment of these cases with the EEOC. Furthermore, the benefits would be the consistent treatment of records within a TWC - Civil Rights Division investigation and an EEOC investigation. Specifically, the change would provide consistency with the EEOC policy for withholding investigator notes and would ensure the investigators' freedom to fully and thoroughly investigate and record all complaints, while continuing to ensure that parties get access to all other parts of the file.

#### **PART IV. COORDINATION ACTIVITIES**

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities. The rules are also proposed under Texas Labor Code §21.305, which provides the Commission with the authority to adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to Commission records relating to the complaint.

The rules affect Texas Government Code, Chapter 552.

## CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

### SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

#### §819.92. Access to CRD Records

- (a) Pursuant to Texas Labor Code §21.304 and §21.305, CRD shall, on written request of a party to a perfected complaint filed under Texas Labor Code §21.201, allow the party access to CRD's records, unless the perfected complaint has been resolved through a voluntary settlement or conciliation agreement:
- (1) following the final action of CRD; or
  - (2) if a party to the perfected complaint or the party's attorney certifies in writing that a civil action relating to the perfected complaint is pending in federal court alleging a violation of federal law.
- (b) Pursuant to the authority granted the Commission in Texas Labor Code §21.305, reasonable access shall not include access to the following:
- (1) information excepted from required disclosure under Texas Government Code, Chapter 552; or
  - (2) investigator notes.