

## **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 SEPTEMBER 11, 2012, 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*: **September 28, 2012**

Estimated End of Comment Period: **October 29, 2012**

The Texas Workforce 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 Chapter 819 rule change is to limit the release of certain personally identifiable information related to complaints filed under Texas Labor Code §21.201.

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

(Note: Minor editorial changes are 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 removed. Pursuant to Texas Labor Code §21.305 and §819.92 of this chapter, the Commission currently must allow, upon written request, a party to a complaint filed under Texas Labor Code §21.201 reasonable access to Commission records relating to the complaint. These records often include personally identifiable information and sensitive medical information of persons other than a party to the complaint.

House Bill 2463, 82nd Texas Legislature, Regular Session (2011), amended Texas Labor Code §21.305 to state that the following information is not considered public information and must not be disclosed to a party to a complaint filed under §21.201:

--Identifying information of persons other than the parties and witnesses to the complaint;

- Identifying information about confidential witnesses, including any confidential statement given by witnesses;
- Sensitive medical information about the charging party or a witness to the complaint that is:
  - provided by a person other than the person requesting the information; and
  - not relevant to issues raised in the complaint, including information that identifies injuries, impairments, pregnancies, disabilities, or other medical conditions that are not obviously apparent or visible;
- Identifying information about a person other than the charging party that is found in sensitive medical information regardless of whether the information is relevant to the complaint;
- Nonsensitive medical information that is relevant to the complaint if the disclosure would result in an invasion of personal privacy, unless the information is generally known or has been previously reported to the public;
- Identifying information about other respondents or employers not a party to the complaint;
- Information relating to settlement offers or conciliation agreements received from one party that was not conveyed to the other and information contained in a separate alternative dispute resolution file prepared for mediation purposes; and
- Identifying information about a person on whose behalf a complaint was filed if the person has requested that his or her identity as a complaining party remain confidential.

New §819.92(b) states that the information described in Texas Labor Code §21.305(c) is not public information and must not be disclosed to a party to a complaint filed under Texas Labor Code §21.201.

### **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.

#### **Economic Impact Statement and Regulatory Flexibility Analysis**

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

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

Jonathan Babiak, 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 proposed rules will be to protect the personally identifiable information and sensitive medical information of parties to a complaint and persons other than a party to a complaint.

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.

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

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on July 10, 2012.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 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 proposed rules affect Texas Government Code, Chapter 552.

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**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) The information described in Texas Labor Code §21.305(c) is not public information and shall not be disclosed to a party to a complaint filed under Texas Labor Code §21.201.

~~(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.~~