



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



In this issue:

- 50th Anniversary of the Age Discrimination in Employment Act of 1967 (ADEA).....1
- 27th Anniversary of the Americans with Disabilities Act2
- Equal Employment Related Bills
85th Legislative Session3
- Recent Equal Employment Case Law Summary.....4
- Reasonable Cause Determination.....5
- CRD Resolves Potential Cause Case Involving Demotion Because Employee Wasn't Muslim.....5
- It's Time to Automate and Go Digital.....6
- CRD Education, Training & Outreach.....6

50th Anniversary of the Age Discrimination in Employment Act of 1967 (ADEA)

A half-century has passed since Congress passed the Age Discrimination in Employment Act (ADEA) in 1967. The ADEA was passed after congressional findings that older workers had been denied equal employment opportunities and had been subjected to invalid stereotypes. Following the enactment of ADEA in 1967, the State of Texas in 1983 enacted the Texas Commission on Human Rights Act, now known as Chapter 21 of Texas Labor Code, to prohibit discrimination against several protected classes, including age.

The ADEA and Chapter 21 opened opportunities for older workers by, for example, banning most age limits for jobs. Much has changed in the past 50 years. There are more older persons in the workforce than ever before, as more individuals over the age of 65 continue to work, rather than retire. Also, more jobs today are more knowledge-based and less physically demanding. Still further, as people are generally healthier and living longer, they want to work and need to work longer than previous generations.

Unfortunately, today outdated assumptions about age and work persist as stereotypes and other biases that present barriers to employment for older workers. Many older workers still confront age discrimination in getting or keeping jobs. Nearly two-thirds of workers age 55-64 report their age as a barrier to getting a job, as cited in a 2017 AARP survey. Aside from worker's perceptions about age affecting their employment opportunities, our division has recently investigated cases involving alleged age

**Texas Workforce
Commission
Civil Rights Division**

Mailing Address:

Texas Workforce Commission
Guadalupe CRD
101 E. 15th Street
Austin, Texas 78778-0001

Physical Address:

1215 Guadalupe
Austin, Texas 78701-1829

Phone: 512-463-2642

or 888-452-4778

Fax: 512-463-2643

For more information or to
subscribe to this newsletter,
please visit:

civilrightsreporter@twc.state.tx.us

Equal Opportunity Employer/
Program Auxiliary aids and
services are available upon
request to individuals with
disabilities.

Relay Texas: 800-735-2989
(TTY) and 711 (Voice).

Copies of this publication
(09/2017) have been
distributed in compliance
with the State Depository
Law, and are available for
public use through the Texas
State Publication Depository
Program at the Texas State
Library and other state
depository libraries.

www.texasworkforce.org

discrimination, including the following claim:
A Texas employer learned an employee would soon vacate a leadership position. When an almost 65-year old employee, who worked for the employer over 20 years, learned of the vacancy, he wanted to apply. Knowing he was qualified for the position, the employee contacted management to inquire about the vacancy. In doing so, he learned that the employer never intended to post the job, and instead filled the vacancy with a much younger employee with less experience. The employer contended its non-discriminatory reason was implementation of

a succession plan. The employee, however, asserted this was merely pretext, because he was more qualified for the position, and if not for his age, would have been given an opportunity to apply. The employee filed a complaint against the employer for failure to hire based on age. Based on the results of the investigation, the Texas Workforce Commission Civil Rights Division (CRD) was prepared to issue a preliminary determination of reasonable cause, but the employer agreed to pay the employee approximately \$2,500 in damages to resolve the case.

For 34 years, CRD, preceded by the Texas Commission on Human Rights, has been responsible for enforcing prohibitions against age discrimination. The division has an important role in outreach efforts to reduce age discrimination in the workplace. For additional information, please consult the resource materials available on the [CRD's website](#).

Resources:

[AARP](#)

[American Bar Association](#)

[CRD Facts About Age](#)

[Discrimination](#) ■

27th 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 (ADA), which prohibits discrimination against people with disabilities in many areas, including public accommodations, transportation, education, housing and employment.

Texas enforces disability discrimination via Chapter 21 of the Texas Labor Code, which is substantially equivalent to the federal law. This year, our office resolved 197 disability discrimination claims, which resulted in settlement recoveries for employees of approximately \$454,000. In one situation, an employee who worked as a clerk, filed a complaint

of wrongful discharge based on his disability. The employee was diagnosed with a mental illness after experiencing a series of panic attacks. Soon after being diagnosed, he experienced another attack in front of co-workers. The employee immediately sought medical assistance. After receiving treatment for his disability, the employee returned to

work the following day and learned he was suspended. The employer considered the employee's behavior during the panic attack disruptive and unprofessional. Four days later, the employee was terminated for violating the company's leadership and conduct policies. The employee argued that if given a chance to receive treatment for his disability, he could manage his behavior and comply with company's guidelines. The company argued that all employees must conduct themselves professionally or face termination. The dispute was resolved after the employer paid the employee over \$55,000 in damages. The state and federal disability laws require Texas employers to

provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer. A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment. Texas employees and employers are encouraged to work together to determine what, if any, accommodation should be provided to an employee. This is what is called the "interactive process" in which the employer and employee are required to participate.

Although the individual with a disability is not required to identify the exact accommodation necessary, the employee does need to describe what work-related problem he or she is having and why he or she believes it is related to a disability. The Civil Rights Division (CRD) is charged with the responsibility of promulgating regulations and overseeing the enforcement of the laws prohibiting disability discrimination. For additional information regarding the ADA, please consult the materials available on the [CRD's website](#). Through continued commitment to fairness and equality of opportunity, we can ensure a bright future for all residents of the Lone Star State. ■

85th Legislature Passes EEO Bills in Regular Session

During the 85th Regular Legislative Session, the Texas Legislature passed two bills related to equal employment opportunity (EEO) affecting the Civil Rights Division (CRD). The Governor signed both bills, which are effective as of September 1, 2017.

Employer's Leave Policy Must Permit Employee to Use Leave to Care for Foster Child

The first bill, HB 88, amends Chapter 21 of the Texas Labor Code to add Section 21.0595 relating to a discriminatory leave policy affecting an employee's entitlement to personal leave to care for a sick

foster child. The new Section makes it an unlawful employment practice for an employer to administer a leave policy under which an employee is entitled to personal leave to care for his/her sick child, but not treat a foster child who resides in the same household as the employee and is in conservatorship in the same manner as a biological or adopted minor child. The new law only applies to a claim of discrimination based on conduct occurring on or after September 1, 2017.

Since the U.S. Equal Employment Commission (EEOC) does not enforce a similar foster child leave

claim under federal law, a claimant cannot file this type of claim with the EEOC and have it automatically filed with CRD. Nonetheless, these foster child leave claims will be investigated under procedures that are substantially similar to those CRD follows for investigation of discrimination based on race, age, color, sex, national origin, religion, disability, retaliation or genetic information.

EEO Policy Statement Submission by the Texas Racing Commission

The second bill, SB 1969, revamped and codified the Texas Racing Commission's enabling legislation

under the Texas Occupations Code. The bill includes a provision under Section 2022.055, which is substantially the same as its predecessor under Article 179e, Section 2.19 of the Texas Revised Civil Statutes, requiring the Texas Racing Commission to maintain a written EEO policy statement, including personnel policies relating

to recruitment, evaluation, selection, appointment, training, and promotion of personnel. Also, the bill requires that the EEO policy statement encompass a workforce analysis, procedures for determining underuse in its workforce of persons for whom state or federal requirements encourage a more equitable balance, and reasonable methods to address

those areas, which we refer to as a “recruitment plan” under Section 21.502 of the Texas Labor Code. The legislation directs the Texas Racing Commission to annually submit these policies and materials to CRD to review for compliance with Chapter 21, as is required of other state agencies. ■

Recent Equal Employment Case Law Summary

Barnes v. Prairie View A&M University. 2017 Tex. App. LEXIS 5481

In 1994 Plaintiff Barnes, was hired to work as an extension agent in the Cooperative Extension Program (CEP) at Prairie View A&M University (Prairie View). In 2007, Barnes began making complaints about alleged harassment and a hostile work environment. The complaints consisted of racial slurs from white colleagues. Specifically, Barnes stated that a secretary in the department told clients to go to the “white” agent’s office because Barnes’ office is the “black” program. Barnes’ complaints of racial slurs also stemmed from her contact with a colleague by the name of Mike Shockey. He made a comment about “tar and feathering” while employees attended a rodeo event. This comment was made as a result of some workers sawing through insulation, and Mr. Shockey stated that it looked like the workers were

“having a good old-fashion tar and feathering party” when the insulation fell and stuck to the people below. When another employee asked what tar and feathering meant, Barnes stated that it was used against African-Americans in slavery and even in more recent times. Barnes alleges that Shockey made the comment again after she explained the meaning.

Barnes further asserted that she suffered hostile working conditions as she was the only black female extension agent. She stated that her supervisor degraded her in front of clients, took over her meetings, kept files and related program paperwork from her, requested that Barnes repeatedly resubmit documentation and refused to sign documentation that needed approval.

In 2009, CEP conducted an investigation into Barnes’ complaints. At the conclusion of the investigation, Barnes’ employment

was terminated, which took effect on April 15, 2010. Barnes sued Prairie View alleging employment discrimination based on a hostile work environment. Prairie View filed a Motion for Summary which was granted by the Court, and Barnes appealed.

There was no dispute that the comments were made by Barnes’ colleagues; however, Prairie View asserted that after they conducted their investigation they found these comments were “miscommunications” and not harassing conduct. Barnes’ argument was that she asserted many times that there were “material facts” to show that this was unwelcomed harassment. The Court defined a work environment as hostile when it is “permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to affect term, condition or privilege of employment.” The Court found that these two

isolated incidents were non-threatening and “not sufficiently severe or pervasive to affect term, condition, of the Plaintiff’s employment.” Plaintiff Barnes was the only African-American employed as an extension agent in the CEP at Prairie View; however, this fact was

not enough to support her claim of discrimination based on her race. The Court further found that the allegations of harassing conduct by the supervisor were not race related or part of a pattern for “race based harassment.”

Therefore, the Court affirmed the previous Court’s judgment. ■

Reasonable Cause Determination

On August 17, 2017, the Texas Workforce Commission approved a reasonable cause determination in an equal employment case. An employee who has an asthma disability made a reasonable accommodation request to move a meeting out of one building and

into another building. A year prior to the accommodation request, the employer had found mold in the building in which the meeting was to be held, and taken remediation measures at that time. The employer, however, ignored the employee’s

accommodation request, without offering any alternatives, such as attending by phone, nor re-testing the building for mold. The three commissioners voted two to one in favor of staff’s recommendation, with Commissioner Hughs dissenting. ■

CRD Resolves Potential Cause Case Involving Demotion Because Employee Wasn’t Muslim

On June 26, 2017, the Civil Rights Division (CRD) issued a preliminary determination that there was reasonable cause in a religious discrimination case. The Complainant filed a complaint with CRD alleging he was discriminated against due to his religion. Complainant stated Respondent’s Chief Executive Officer informed Complainant that he was demoted because he was not Muslim. Complainant alleged

it was reasonable for him to feel forced to quit his job after the demotion. Although Respondent denied Complainant’s allegations, Complainant presented credible witnesses who supported his contention that he was demoted because he was not Muslim. After the preliminary determination was issued, Complainant and Respondent voluntarily participated in a conciliation process and agreed to a monetary settlement.

Respondent also agreed that its management level employees will complete EEO training within the next 90 days. The Division is not able to provide the names of the parties or other identifying details of this complaint, due to confidentiality safeguards required by Chapter 21 of the Texas Labor Code. ■

electronic format that can be utilized by screen-reading technology or read to applicants or employees with disabilities that limit seeing or reading ability.

Remember, Texas employers do not need to purchase required posters from private vendors. Government-issued compliance posters do not have to be laminated to satisfy an employer's regulatory obligation.

Self Help Library

Access the CRD [Self-Help Library](#) to learn the facts about the various types of discrimination prohibited by law, available resources, and by topic.

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 public. We believe that discrimination can be averted if everyone knows their rights and responsibilities.

For more information, contact CRD at (888) 452-4778 or by email at: CRDTraining@twc.state.tx.us ■