

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

2  
3 **ADOPTED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**  
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**  
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY**  
6 **OF STATE.**

7  
8 The Texas Workforce Commission (TWC) adopts amendments to the following sections of  
9 Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:

- 10  
11 Subchapter B. Equal Employment Opportunity Provisions, §819.11 and §819.12  
12 Subchapter D. Equal Employment Opportunity Complaints and Appeals Process, §819.41  
13 Subchapter E. Equal Employment Opportunity Deferrals, §819.73  
14

15 The amendments are adopted *without changes* to the proposed text as published in the August  
16 26, 2022, issue of the *Texas Register* (47 TexReg 5086), and, therefore, the adopted rule text will  
17 not be published.

18  
19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

20 The purpose of the adopted amendments to Chapter 819 is to implement House Bill (HB) 21 and  
21 Senate Bill (SB) 45, 87th Texas Legislature, Regular Session (2021), relating to sexual  
22 harassment complaints filed against employers. HB 21 amended the statute of limitations for  
23 filing sexual harassment discrimination complaints and SB 45 broadened the definition of  
24 "Employer" as it relates to the filing of a sexual harassment discrimination complaint.

25  
26 HB 21 amended Texas Labor Code, §21.202 to include a deadline for filing complaints alleging  
27 sexual harassment. Under new Texas Labor Code, §21.202(a-1), complaints must be filed with  
28 TWC within 300 days after the alleged sexual harassment occurred.

29  
30 SB 45 amended Texas Labor Code, Chapter 21 by adding Subchapter C-1, §21.141 and §21.142,  
31 relating to Sexual Harassment. New Texas Labor Code, §21.141 defines "Employer" and  
32 "Sexual harassment" and new Texas Labor Code, §21.142 includes sexual harassment as an  
33 unlawful employment practice.

34  
35 Texas Government Code, §2001.039 requires that every four years each state agency review and  
36 consider for re adoption, revision, or repeal each rule adopted by that agency. TWC reviewed the  
37 rules in Chapter 819 and determined that the rules are needed, reflect current legal and policy  
38 considerations, and reflect current TWC procedures. The reasons for initially adopting the rules  
39 continue to exist and any changes to the rules are described in Part II of this preamble.

40  
41 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

44  
45 **CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION**

46 TWC adopts the following amendment to the title of Chapter 819:

1  
2 The Chapter 819 title is amended to remove "Texas Workforce Commission" for consistency  
3 with the titles of other TWC chapters.  
4

5 **SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS**

6 TWC adopts the following amendments to Subchapter B:  
7

8 **§819.11. Definitions**

9 Section 819.11 is amended to expand the definition of "Employer" to include provisions relating  
10 to sexual harassment, modify the definition of "Complaint" to include the statute of limitations to  
11 file a complaint for sexual harassment to within 300 days of the alleged unlawful employment  
12 practice, and add the definition of "Sexual Harassment."  
13

14 **§819.12. Unlawful Employment Practices**

15 Section 819.12 is amended to add new subsection (k) to include sexual harassment as an  
16 unlawful employment practice.  
17

18 **SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND**  
19 **APPEALS PROCESS**

20 TWC adopts the following amendments to Subchapter D:  
21

22 **§819.41. Filing a Complaint**

23 Section 819.41(e) is amended to include that a complaint alleging sexual harassment must be  
24 filed within 300 days of the alleged unlawful employment practice. Section 819.41(h) is  
25 amended to include if a perfected complaint alleging sexual harassment is not received within  
26 300 days of the alleged unlawful employment practice, the respondent shall be notified that a  
27 complaint has been filed and the process of perfecting the complaint is in progress.  
28

29 **SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS**

30 TWC adopts the following amendments to Subchapter F:  
31

32 **§819.73. Deferral to Local Commission**

33 Section 819.73(b)(2) is amended to expand jurisdiction over sexual harassment complaint  
34 allegations.  
35

36 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be  
37 within TWC's legal authority to adopt.  
38

39 **PART III. PUBLIC COMMENTS**

40 The public comment period closed on September 26, 2022. TWC received a comment from an individual.  
41

42 **COMMENT:** The individual asked what was new in the rule regarding sexual  
43 harassment and for guidance on what to do if they know of someone who may have been  
44 sexually harassed in the workplace.  
45

46 **RESPONSE:** TWC proposed amendments to Chapter 819 to add the definition for

1 sexual harassment, include a deadline for filing complaints alleging sexual harassment,  
2 and include sexual harassment as an unlawful employment practice. TWC advises that  
3 any employee who has been affected by sexual harassment may file a discrimination  
4 complaint with the TWC Civil Rights Division. No changes were made in response to  
5 this comment.  
6

7 **PART IV. STATUTORY AUTHORITY**

8 The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide  
9 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the  
10 effective administration of TWC services and activities.  
11

12 The adopted rules implement HB 21 and SB 45, relating to sexual harassment complaints filed  
13 against employers.  
14

1       **CHAPTER 819. ~~TEXAS WORKFORCE COMMISSION~~ CIVIL RIGHTS DIVISION**

2  
3       **SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS**

4  
5       **§819.11. Definitions.**

6  
7       The following words and terms, when used in Subchapter B, Equal Employment  
8       Opportunity Provisions; Subchapter C, Equal Employment Opportunity Reports,  
9       Training, and Reviews; Subchapter D, Equal Employment Opportunity Complaints and  
10       Appeals Process; Subchapter E, Equal Employment Opportunity Deferrals; and  
11       Subchapter F, Equal Employment Opportunity Records and Recordkeeping shall have the  
12       following meanings, unless the context clearly indicates otherwise.

- 13  
14       (1)   Bona fide occupational qualification--A qualification:
- 15  
16           (A)   that is reasonably related to the satisfactory performance of the duties of  
17               a job; and
- 18  
19           (B)   for which there is a factual basis for believing that no members of the  
20               excluded group would be able to satisfactorily perform the duties of the  
21               job with safety and efficiency.
- 22  
23       (2)   Civil Rights Act--The Civil Rights Act of 1964, as amended by the Equal  
24       Employment Opportunity Act of 1972 and the Civil Rights Act of 1991; the  
25       Age Discrimination in Employment Act of 1976, as amended; the  
26       Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act  
27       of 1990, as amended; and Texas Labor Code, Chapter 21, regarding  
28       Employment Discrimination.
- 29  
30       (3)   Complaint--A written statement made under oath stating that an unlawful  
31       employment practice has been committed, setting forth the facts on which the  
32       complaint is based, and received within 180 days or, for a complaint alleging  
33       sexual harassment, within 300 days of the alleged unlawful employment  
34       practice.
- 35  
36       (4)   Conciliation--The settlement of a dispute by mutual written agreement in order  
37       to avoid litigation where a determination has been made that there is  
38       reasonable cause to believe an unlawful employment practice has occurred.
- 39  
40       (5)   Disability--A mental or physical impairment that substantially limits at least  
41       one major life activity of an individual, a record of such mental or physical  
42       impairment, or being regarded as having such an impairment as set forth in  
43       §3(2) of the Americans with Disabilities Act of 1990, as amended, and Texas  
44       Labor Code, §21.002(6).
- 45

1 (6) Employer--A person who is engaged in an industry affecting commerce and  
2 who has 15 or more employees for each working day in each of 20 or more  
3 calendar weeks in the current or preceding calendar year and any agent of that  
4 person. The term includes an individual elected to public office in Texas or a  
5 political subdivision of Texas, or a political subdivision and any state agency  
6 or instrumentality, including public institutions of higher education, regardless  
7 of the number of individuals employed. The term excludes a franchisor from  
8 being considered an employer of a franchisee or a franchisee's employees. The  
9 term also exempts the Texas Military Forces from being an employer, as  
10 claims of discrimination against the Texas Military Forces by service members  
11 on state active duty shall be processed in accordance with military regulations  
12 and procedures as authorized by Texas Government Code, §437.212.  
13 Exclusively regarding allegations of sexual harassment, the term "Employer"  
14 includes a person who employs one or more employees or acts directly in the  
15 interests of an employer in relation to an employee.

16  
17 (7) Local commission--Created by one or more political subdivisions acting  
18 jointly, pursuant to Texas Labor Code, §21.152, and recognized as a Fair  
19 Employment Practices Agency by EEOC pursuant to Title VII of the U.S. Civil  
20 Rights Act of 1964, Title VII, §706, as amended by the Equal Employment  
21 Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans  
22 With Disabilities Act of 1990, as amended.

23  
24 (8) Mediation--An alternative dispute resolution process to resolve a dispute by  
25 mutual written agreement among the complainant, respondent, and CRD.

26  
27 (9) Perfected complaint--An employment discrimination complaint that CRD has  
28 determined meets all of the requirements of Texas Labor Code, Chapter 21,  
29 and for which CRD will initiate an investigation.

30  
31 (10) Sexual Harassment--An unwelcome sexual advance, a request for a sexual  
32 favor, or any other verbal or physical conduct of a sexual nature if:

33  
34 (A) submission to the advance, request, or conduct is made a term or  
35 condition of an individual's employment either explicitly or implicitly;

36  
37 (B) submission to or rejection of the advance, request, or conduct by an  
38 individual is used as the basis for a decision affecting the individual's  
39 employment;

40  
41 (C) the advance, request, or conduct has the purpose or effect of  
42 unreasonably interfering with an individual's work performance; or

43  
44 (D) the advance, request, or conduct has the purpose or effect of creating an  
45 intimidating, hostile, or offensive working environment.  
46

1       **§819.12. Unlawful Employment Practices.**  
2

3       (a) Discrimination by Employer. An employer commits an unlawful employment  
4       practice if based on race, color, disability, religion, sex, national origin, or age, the  
5       employer:

- 6  
7           (1) fails or refuses to hire an individual, discharges an individual, or discriminates  
8           in any other manner against an individual in connection with compensation or  
9           the terms, conditions, or privileges of employment; or  
10  
11          (2) limits, segregates, or classifies an employee or applicant for employment in a  
12          manner that deprives or tends to deprive an individual of an employment  
13          opportunity or adversely affects in any other manner the status of an employee.  
14

15       (b) Discrimination by Employment Agency. An employment agency commits an  
16       unlawful employment practice if based on race, color, disability, religion, sex,  
17       national origin, or age, it:

- 18  
19           (1) fails or refuses to refer for employment or discriminates in any other manner  
20           against an individual; or  
21  
22          (2) classifies or refers an individual for employment on that basis.  
23

24       (c) Discrimination by Labor Organization. A labor organization commits an unlawful  
25       employment practice if based on race, color, disability, religion, sex, national origin,  
26       or age, it:

- 27  
28           (1) excludes or expels from membership or discriminates in any other manner  
29           against an individual; or  
30  
31          (2) limits, segregates, or classifies a member or an applicant for membership, or  
32          classifies or fails or refuses to refer for employment an individual in a manner  
33          that:  
34  
35            (A) deprives or tends to deprive an individual of any employment  
36            opportunity;  
37  
38            (B) limits an employment opportunity or adversely affects in any other  
39            manner the status of an employee or of an applicant for employment; or  
40  
41            (C) causes or attempts to cause an employer to violate this subchapter.  
42

43       (d) Admission or Participation in Training Program. An employer, labor organization, or  
44       joint labor-management committee controlling an apprenticeship, on-the-job  
45       training, or other training or retraining program commits an unlawful employment  
46       practice if based on race, color, disability, religion, sex, national origin, or age, it

1 discriminates against an individual in admission to or participation in the program,  
2 unless a training or retraining opportunity or program is provided under an  
3 affirmative action plan approved by federal or state law, rule, or court order. The  
4 prohibition against discrimination based on age applies only to individuals who are  
5 at least 40 years of age.  
6

7 (e) Retaliation. An employer, employment agency, or labor organization; commits an  
8 unlawful employment practice based on race, color, disability, religion, sex, national  
9 origin, or age if the employer, employment agency, or labor organization retaliates or  
10 discriminates against an individual who:

11  
12 (1) opposes a discriminatory practice;

13  
14 (2) makes or files a charge;

15  
16 (3) files a complaint; or

17  
18 (4) testifies, assists, or participates in any manner in an investigation, proceeding,  
19 or hearing.  
20

21 (f) Aiding or Abetting Discrimination. An employer, employment agency, or labor  
22 organization commits an unlawful employment practice if it aids, abets, incites, or  
23 coerces an individual to engage in an unlawful discriminatory practice based on race,  
24 color, disability, religion, sex, national origin, or age.  
25

26 (g) Interference with the Agency or CRD. An employer, employment agency, or labor  
27 organization commits an unlawful employment practice if it willfully interferes with  
28 the performance of a duty or the exercise of a power by CRD or by the Agency in  
29 relation to CRD.  
30

31 (h) Prevention of Compliance. An employer, employment agency, or labor organization  
32 commits an unlawful employment practice if it willfully obstructs or prevents an  
33 individual from complying with Texas Labor Code, Chapter 21, or a rule adopted or  
34 order issued under Texas Labor Code, Chapter 21.  
35

36 (i) Discriminatory Notice or Advertisement. An employer, employment agency, labor  
37 organization, or joint labor-management committee controlling an apprenticeship,  
38 on-the-job training, or other training or retraining program commits an unlawful  
39 employment practice if it prints or publishes or causes to be printed or published a  
40 notice or advertisement relating to employment that:

41  
42 (1) indicates a preference, limitation, specification, or discrimination based on  
43 race, color, disability, religion, sex, national origin, or age; and

44  
45 (2) concerns an employee's status, employment, or admission to or membership or  
46 participation in a labor organization or training or retraining program.

1  
2 (j) Bona Fide Occupational Qualification. A bona fide occupational qualification is an  
3 affirmative defense to discrimination.

4  
5 (k) Sexual Harassment. An employer commits an unlawful employment practice if  
6 sexual harassment of an employee occurs and the employer or the employer's agents  
7 or supervisors:

8  
9 (1) knows or should have known that the conduct constituting sexual harassment  
10 was occurring; and

11  
12 (2) fails to take immediate and appropriate corrective action.

13  
14 **SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND**  
15 **APPEALS PROCESS**

16  
17 **§819.41. Filing a Complaint.**

18  
19 (a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD or a  
20 local commission office recognized by EEOC as a Fair Employment Practices  
21 Agency to obtain information on filing a complaint with CRD.

22  
23 (b) At the complainant's request, CRD:

24  
25 (1) shall confer with the complainant about the facts and circumstances that may  
26 constitute the alleged unlawful employment practice;

27  
28 (2) shall assist the complainant in perfecting the complaint if the facts and  
29 circumstances appear to constitute an alleged unlawful employment practice;  
30 or

31  
32 (3) may advise the complainant if the facts and circumstances presented to CRD  
33 do not appear to constitute an unlawful employment practice.

34  
35 (c) The complaint shall be filed in writing and either signed under oath or subscribed by  
36 the person making the declaration as true under penalty of perjury and in  
37 substantially the form prescribed by Texas Civil Practice and Remedies Code,  
38 Chapter 132, or its successor statute. It may be filed with CRD by mail, electronic  
39 communication, fax, or in person with:

40  
41 (1) the CRD office on a CRD-provided form;

42  
43 (2) an EEOC office; or

44  
45 (3) a local commission office recognized by EEOC as a Fair Employment  
46 Practices Agency.



- 1  
2 (d) The complaint shall set forth the following information:  
3  
4 (1) Harm experienced by the complainant as a result of the alleged unlawful  
5 employment practice;  
6  
7 (2) Explanation, if any, given by the employer to the complainant for the alleged  
8 unlawful employment practice;  
9  
10 (3) A declaration of unlawful discrimination under federal or state law;  
11  
12 (4) Facts upon which the complaint is based, including the date, place, and  
13 circumstances of the alleged unlawful employment practice; and  
14  
15 (5) Sufficient information to enable CRD to identify the employer, e.g., employer  
16 ID, business address, and business phone.  
17  
18 (e) A complaint shall be filed within 180 days [or, for a complaint alleging sexual](#)  
19 [harassment, within 300 days](#), after the date on which the alleged unlawful  
20 employment practice occurred.  
21  
22 (f) A complaint may be withdrawn by a complainant only with the consent of the CRD  
23 director.  
24  
25 (g) A perfected complaint may be amended by the complainant to cure technical defects  
26 or omissions, or to clarify and amplify allegations made therein. Such amendment or  
27 amendments alleging additional acts that constitute unlawful employment practices  
28 related to or growing out of the subject matter of the original complaint shall relate  
29 back to the date the complaint was first filed. CRD shall provide a copy of the  
30 perfected complaint to the respondent. An amended perfected complaint shall be  
31 subject to the procedures set forth in applicable law.  
32  
33 (h) A respondent shall be mailed a copy of the perfected complaint within 10 days after  
34 CRD receives the perfected complaint. If CRD receives a complaint that is not  
35 perfected within 180 days [or, for a complaint alleging sexual harassment, within 300](#)  
36 [days](#), of the alleged unlawful employment practice, CRD shall notify the respondent  
37 that a complaint has been filed and the process of perfecting the complaint is in  
38 progress.  
39  
40 (i) The complainant and respondent shall be advised upon request by CRD of the status  
41 of their perfected complaint, unless doing so would jeopardize an undercover  
42 investigation by another state, federal, or local government.  
43

1 **SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS**

2  
3 **§819.73. Deferral to Local Commission.**

4  
5 (a) Texas Labor Code, §21.155 grants to a local commission the exclusive right to take  
6 appropriate action within the scope of its power and jurisdiction to process a  
7 complaint deferred by CRD pursuant to the requirements of Texas Labor Code,  
8 §21.155, and this chapter.

9  
10 (b) CRD shall not assume jurisdiction over a complaint deferred to a local commission,  
11 pursuant to Texas Labor Code, §21.155, except:

12  
13 (1) where the local commission defers a complaint under its jurisdiction to CRD;

14  
15 (2) where the complaint is received by CRD within 180 days of the alleged  
16 violation or, for a complaint alleging sexual harassment, within 300 days of the  
17 alleged unlawful employment practice, but beyond the period of limitation of  
18 the appropriate local commission; and

19  
20 (3) where the local commission has not acted on the complaint pursuant to the  
21 requirements of Texas Labor Code, §21.155(c), and this chapter.