Texas Workforce Commission

Facts About National Origin Discrimination

Chapter 21, Texas Labor Code and Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of national origin as well as race, color, religion and sex. It is unlawful to discriminate against any employee or applicant because of the individual's national origin. No one can be denied equal employment opportunity because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. Equal employment opportunity cannot be denied because of marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group.

Speak English-Only Rule: A rule requiring employees to speak only English, at all times, on the job may violate Title VII, unless an employer shows it is necessary for conducting business. If an employer believes the English-only rule is critical for business purposes, employees have to be told when they must speak English and the consequences for violating the rule. Any negative employment decision based on breaking the English-only rule will be considered evidence of discrimination if the employer did not tell employees of the rule.

Accent: An employer must show a legitimate nondiscriminatory reason for the denial of employment opportunity because of an individual's accent or manner of speaking. Investigations will focus on the qualifications of the person and whether his or her accent or manner of speaking had a detrimental effect on job performance. Requiring employees or applicants to be fluent in English may violate Title VII if the rule is adopted to exclude individuals of a particular national origin and is not related to job performance.

Harassment: Harassment on the basis of national origin is a violation of Title VII. An ethnic slur or other verbal or physical conduct because of an individual's nationality constitute harassment if they create an intimidating, hostile or offensive working environment, unreasonably interfere with work performance or negatively affect an individual's employment opportunities. Employers have a responsibility to maintain a workplace free of national origin harassment. Employers may be responsible for any on-the-job harassment by their agents and supervisory employees, regardless of whether the acts were authorized or specifically forbidden by the employer. Under certain circumstances, an employer may be responsible for the acts of non-employees who harass their employees at work.

Immigration-Related Practices Which May Be Discriminatory: The Immigration Reform and Control Act of 1986 (IRCA) requires employers to prove all employees hired after November 6, 1986, are legally authorized to work in the United States. IRCA also prohibits discrimination based on national origin or citizenship. An employer who singles out individuals of a particular national origin or individuals who appear to be foreign to provide employment verification may have violated both IRCA and Title VII. Employers who impose citizenship requirements or give preference to U.S. citizens in hiring or employment opportunities may have violated IRCA, unless these are legal or contractual requirements for particular jobs. Employers also may have violated Title VII if a requirement or preference has the purpose or effect of discriminating against individuals of a particular national origin.

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Facts About Age Discrimination

Chapter 21, Texas Labor Code and The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment -- including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA. The ADEA applies to employers with 20 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Apprenticeship Programs: It is generally unlawful for apprenticeship programs, including joint labor-management apprenticeship programs, to discriminate on the basis of an individual's age. Age limitations in apprenticeship programs are valid only if they fall within certain specific exceptions under the ADEA or if the EEOC grants a specific exemption.

Job Notices and Advertisements: The ADEA makes it unlawful to include age preferences, limitations, or specifications in job notices or advertisements. As a narrow exception to that general rule, a job notice or advertisement may specify an age limit in the rare circumstances where age is shown to be a "bona fide occupational qualification" (BFOQ) reasonably necessary to the essence of the business.

Pre-Employment Inquiries: The ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth. However, because such inquiries may deter older workers from applying for employment or may otherwise indicate possible intent to discriminate based on age, requests for age information will be closely scrutinized to make sure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by the ADEA.

Benefits: The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Waivers of ADEA Rights: At an employer's request, an individual may agree to waive his/her rights or claims under the ADEA. However, the ADEA, as amended by OWBPA, sets out specific minimum standards that must be met in order for a waiver to be considered knowing and voluntary and, therefore, valid. Among other requirements, a valid ADEA waiver: (1) must be in writing and be understandable; (2) must specifically refer to ADEA rights or claims; (3) may not waive rights or claims that may arise in the future; (4) must be in exchange for valuable consideration; (5) must advise the individual in writing to consult an attorney before signing the waiver; and (6) must provide the individual at least 21 days to consider the agreement and at least 7 days to revoke the agreement after signing it. In addition, if an employer requests an ADEA waiver in connection with an exit incentive program or other employment termination program, the minimum requirements for a valid waiver are more extensive.

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Facts About Pregnancy Discrimination

The Pregnancy Discrimination Act is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful sex discrimination under Title VII and Chapter 21, Texas Labor Code. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

Hiring: An employer cannot refuse to hire a woman because of her pregnancy related condition as long as she is able to perform the major functions of her job. An employer cannot refuse to hire her because of its prejudices against pregnant workers or the prejudices of co-workers, clients or customers.

Pregnancy and Maternity Leave: An employer may not single out pregnancy related conditions for special procedures to determine an employee's ability to work. However, an employer may use any procedure used to screen other employees' ability to work. For example, if an employer requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements. If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee; for example, by providing modified tasks, alternative assignments, disability leave or leave without pay. Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth. An employer may not have a rule which prohibits an employee from returning to work for a predetermined length of time after childbirth. Employers must hold open a job for a pregnancy-related absence the same length of time jobs are held open for employees on sick or disability leave.

Health Insurance: Any health insurance provided by an employer must cover expenses for pregnancy related conditions on the same basis as costs for other medical conditions. Health insurance for expenses arising from abortion is not required, except where the life of the mother is endangered. Pregnancy-related expenses should be reimbursed exactly as those incurred for other medical conditions, whether payment is on a fixed basis or a percentage of reasonable and customary charge basis. The amounts payable by the insurance provider can be limited only to the same extent as costs for other conditions. No additional, increased or larger deductible can be imposed. If a health insurance plan excludes benefit payments for pre-existing conditions when the insured's coverage becomes effective, benefits can be denied for medical costs arising from an existing pregnancy. Employers must provide the same level of health benefits for spouses of male employees as they do for spouses of female employees.

Fringe Benefits: Pregnancy-related benefits cannot be limited to married employees. In an all-female workforce or job classification, benefits must be provided for pregnancy related conditions if benefits are provided for other medical conditions. If an employer provides any benefits to workers on leave, the employer must provide the same benefits for those on leave for pregnancy related conditions. Employees with pregnancy related disabilities must be treated the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases and temporary disability benefits.

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Facts About Retaliation

Chapter 21, Texas Labor Code and Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of race, color, national origin, sex or religion as well as retaliation. Employees have a right to be free from retaliation for their opposition to discrimination or their participation in an Equal Employment Commission (EEOC) proceeding by filing a charge, testifying, assisting, or otherwise participating in any manner in an n investigation, proceeding, or hearing under Title VII. An employer may not fire, demote, harass or otherwise "Retaliate" against an individual for filing a charge of discrimination. In addition to the protections against retaliation that are included in all of the laws enforced by EEOC, the American with Disabilities Act (ADA) also protects individuals from coercion, intimidation, threat, harassment, or interference in their exercise of their own rights or their encouragement of someone else's exercise of rights granted by the ADA.

There are three (3) main elements that are used to describe a retaliation claim:

Element 1 - Employee Protected Activity

- Opposition to a practice believed to be unlawful discrimination. Opposition is informing an employer that you believe that he/she is engaging in prohibited discrimination. Opposition is protected from retaliation as long as it is based on a reasonable, good-faith belief that the complained of practice violates anti-discrimination proceeding. Participation means taking part in an employment discrimination proceeding. Participation is a protected activity even if the proceeding involved claims that ultimately were found to be invalid. A protected activity can also include requesting a reasonable accommodation based on religion or disability.

Element 2 - Employer Adverse Action

- An adverse action is an action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. Examples include termination, refusal to hire, and denial of promotion. Can also include threats, unjustified negative evaluations, unjustified negative references, or increased surveillance. Adverse actions do not include petty slights or annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history. Even if the prior protected activity alleged wrongdoing by a different employer, retaliatory adverse actions are unlawful. Of course, employees are not excused from continuing to perform their jobs or follow their company's legitimate workplace rules just because they have filed a complaint with the EEOC, Texas Workforce Commission Civil Rights Division, or oppose discrimination.

Element 3 - Causal Connection

- Between the protected activity and the adverse action

  Retaliation Example: Pedro files a charge alleging discrimination because of his race, Black, and his national origin, Dominican. In the months following his charge, Pedro begins receiving less and less overtime work. He files another charge challenging that the denial of overtime is retaliatory. Other employees with similar qualifications as Pedro have continued to be assigned overtime at approximately the same rate. These facts establish that Pedro has been subjected to retaliation for filing a charge, in violation of Title VII.

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Facts About Race/Color Discrimination

Chapter 21, Texas Labor Code and Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of race and color as well as national origin, sex, or religion. It is unlawful to discriminate against any employee or applicant because of race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Also prohibited are employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. Both intentional discrimination and neutral job policies that disproportionately exclude minorities and that are not job-related are prohibited. Equal employment opportunity cannot be denied because of marriage to or association with an individual of a different race; membership in or association with ethnic based organizations or groups; or attendance or participation in schools or places of worship generally associated with certain minority groups.

Race-Related Characteristics and Conditions: Discrimination on the bases of an immutable characteristic associated with race, such as skin color, hair texture, or certain facial features violates Title VII, even though not all members of the race share the same characteristics. Title VII also prohibits discrimination on the basis of a condition which predominantly affects one race unless the practice is job-related and consistent with business necessity. For example, since sickle cell anemia predominantly occurs in African-Americans, a policy which excludes individuals with sickle cell anemia must be job-related and consistent with business necessity. Similarly, a "no-beard" employment policy may discriminate against African-American men who have a predisposition to pseudofolliculitis barbae (severe shaving bumps) unless the policy is job-related and consistent with business necessity.

Harassment: Harassment on the basis of race and or color violates Title VII. Ethnic slurs, racial "jokes", offensive or derogatory comments, or other verbal or physical conduct based on an individual's race/color constitutes unlawful harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the individual's work performance.

Segregation and Classification of Employees: Title VII is violated where minority employees are segregated by physically isolating them from other employees or from customer contact. Title VII also prohibits assigning primarily minorities to predominantly minority establishments or geographic areas. It is also illegal to exclude minorities from certain positions or to group or categorize employees or jobs so that certain jobs are generally held by minorities. Coding applications/resumes to designate an applicant's race, by either an employer or employment agency, constitutes evidence of discrimination where minorities are excluded from employment or from certain positions.

Pre-Employment Inquiries: Requesting pre-employment information which discloses or tends to disclose an applicant's race suggests that race will be unlawfully used as a basis for hiring. Solicitation of such pre-employment information is presumed to be used as a basis for making selection decisions. Therefore, if members of minority groups are excluded from employment, the request for such pre-employment information would likely constitute evidence of discrimination. However, employers may legitimately need information about their employees' or applicants' race for affirmative action purposes and or track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use "tear-off sheets" for the identification of an applicant's race. After the applicant completes the application and the tear-off portion, the employer separates the tear-off sheet from the application and does not use it in the selection process.

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Facts About Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Chapter 21 of the Texas Labor Code and Title VII of the Civil Rights Act of 1964.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Sexual harassment can occur in a variety of circumstances including, but not limited to, the following:

- The victim, as well as the harasser, may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to directly inform the harasser that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, the Texas Workforce Commission Civil Rights Division and the Equal Employment Opportunity Commission look at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incident(s) occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

Texas Workforce Commission

Facts About the Americans with Disabilities Act

Chapter 21, Texas Labor Code and Title I of the Americans with Disabilities Act of 1990, which took effect July 26, 1992, prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment.

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make an accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation, nor is an employer obligated to provide personal use items such as glasses or hearing aids.

Medical Examinations and Inquiries

Employers may not ask job applicants about the existence, nature or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job-related and consistent with the employer's business needs.

Drug and Alcohol Abuse

Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA, when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

Texas Workforce Commission

Facts About Religious Discrimination

Chapter 21, Texas Labor Code and Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. The Act also requires employers to reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer (see also 29 CFR 1605). Flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers are examples of accommodating an employee's religious beliefs.

Employers cannot schedule examinations or other selection activities in conflict with a current or prospective employee's religious needs, inquire about an applicant's future availability at certain times, maintain a restrictive dress code, or refuse to allow observance of a Sabbath or religious holiday, unless the employer can prove that not doing so would cause an undue hardship.

An employer can claim undue hardship when accommodating an employee's religious practices if allowing such practices requires more than ordinary administrative costs. Undue hardship also may be shown if changing a bona fide seniority system to accommodate one employee's religious practices denies another employee the job or shift preference guaranteed by the seniority system.

An employee whose religious practices prohibit payment of union dues to a labor organization cannot be required to pay the dues, but may pay an equal sum to a charitable organization.

Mandatory "new age" training programs, designed to improve employee motivation, cooperation or productivity through meditation, yoga, biofeedback or other practices, may conflict with the non-discriminatory provisions of Title VII. Employers must accommodate any employee who gives notice that these programs are inconsistent with the employee's religious beliefs, whether or not the employer believes there is a religious basis for the employee's objection.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on religion or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.