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# Fair Employment Laws Overview

Employees are generally protected from discrimination in the workplace under both federal and state laws. For example, federal law provides the following discrimination protections for employees:

- Title VII of the Civil Rights Act prohibits discrimination on the basis of race, color, sex, religion and national origin and applies to employers with 15 or more employees.
- The Age Discrimination in Employment Act (ADEA) protects individuals who are at least 40 years of age from employment discrimination based on age. Employers with 20 or more employees are covered by the ADEA.
- The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability and covers employers with 15 or more employees.
- The Equal Pay Act (EPA) requires that men and women receive equal pay for equal work in the same establishment. The EPA applies to virtually all employers.

More information on federal nondiscrimination laws is available from the [U.S. Equal Employment Opportunity Commission \(EEOC\)](#).

In addition to federal fair employment laws, Texas law prohibits employers from engaging in certain discriminatory employment practices. The following Texas laws provide discrimination protections for employees:

- **Texas Commission on Human Rights Act**
- **Employment Discrimination for Participating in Emergency Evacuation**

This Employment Law Summary provides a high-level overview of Texas' fair employment laws and suggests compliance steps for employers.

## COMMISSION ON HUMAN RIGHTS ACT

### *Covered Employers*

The Texas Commission on Human Rights Act (Act) covers employers that have **15 or more employees** for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

### *General Discrimination Prohibitions*

The Act makes it an unlawful employment practice to discriminate against any individual because of:

Race or color	Disability	Religion
Sex	National Origin	Age

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. It broadly summarizes state statutes and regulations generally applicable to private employers, but does not include references to other legal resources unless specifically noted. Readers should contact legal counsel for legal advice.

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## ***Actions that Constitute Discrimination***

The following actions are considered unlawful employment practices if they are based on an individual's race, color, disability, religion, sex, national origin or age:

- To fail or refuse to hire, discharge or discriminate in any other manner against an individual in connection with compensation or the terms, conditions or privileges of employment; or
- To limit, segregate or classify an employee or applicant in a manner that would deprive him or her of employment opportunities or adversely affect the employee's status in any other manner.

The Act prohibits discrimination based on an individual's **disability** only when the discrimination is due to a mental or physical condition that does **not** impair the individual's ability to reasonably perform a job. An employer must make reasonable workplace accommodations for a known physical or mental limitation of an otherwise qualified individual with a disability, unless the employer can demonstrate the accommodation would impose an undue hardship on the operation of the business.

## **Definition of Disability**

"Disability" means, with respect to an individual, the following: a mental or physical impairment that substantially limits at least one major life activity of that individual; a record of such an impairment; or being regarded as having such an impairment. The term does **not** include:

- A current addiction to the use of alcohol, a drug, an illegal substance, or a federally controlled substance; or
- A currently communicable disease or infection as defined in Section 81.003, Health and Safety Code, or one that is required to be reported under Section 81.041, Health and Safety Code, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of his or her employment.

**Sex discrimination** includes discrimination based on pregnancy, childbirth or a related medical condition. A woman affected by pregnancy, childbirth or a related medical condition must be treated in the same manner for all employment purposes as an individual not affected by pregnancy, but similar in the ability or inability to work.

## ***Prohibited Discrimination in Training Programs***

An employer commits an unlawful employment practice if it discriminates against an individual because of race, color, disability, religion, sex, national origin or age in the participation in a training or retraining opportunity or program. An employer that controls an apprenticeship, on-the-job training or other training or retraining program must keep records to show nondiscriminatory operation of the program. The [Texas Workforce Commission Civil Rights Division](#) (Commission) may request a detailed description of the manner in which individuals are selected to participate.

In regards to admission or participation in a training program, the prohibition against discrimination because of age only applies to discrimination against an individual who is **at least 40 years of age, but younger than 56 years of age**. In all other instances, age discrimination refers to discrimination against an individual 40 years of age or older.

## ***Job Advertisements***

An employer commits an unlawful employment practice if it prints or publishes a notice or advertisement for employment that indicates preference, limitation, specification or discrimination based on race, color, disability, religion, sex, national origin or age. An exception may apply if disability, religion, sex, national origin or age as a bona fide occupational qualification.

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## ***Non-retaliation***

Employers are prohibited from retaliating or discriminating against any person who opposes a discriminatory practice, makes or files a charge, files a complaint or testifies, or assists or participates in any manner in an investigation, proceeding or hearing.

## ***Lawful Exceptions***

The Act provides that an employer may lawfully apply different standards of compensation or different terms, conditions or privileges of employment under:

- A bona fide seniority system, merit system or employee benefit plan (such as a retirement, pension or insurance plan) that is not a subterfuge to evade the Act; or
- A system that measures earnings by quantity or quality or production.

However, a seniority system or employee benefit plan may not require or permit involuntary retirement on the basis of age unless the employee is:

- At least 65 years of age;
- Employed in a bona fide executive or high policy-making position for the two years preceding retirement; and
- Entitled to an immediate, non-forfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan (or a combination of plans of the employee's employer) that equals at least \$27,000.

In addition, an employer may lawfully impose a minimum or maximum age requirement for **peace officers or fire fighters**.

## ***Genetic Information Discrimination***

An employer may not fail or refuse to hire, discharge or otherwise discriminate against an individual with respect to compensation or the terms, conditions or privileges of employment:

- On the basis of genetic information concerning the individual; or
- Because of the refusal of the individual to submit to a genetic test.

"Genetic test" does not include a blood test, cholesterol test, urine test or other physical test used for a purpose other than determining a genetic or chromosomal variation, composition or alteration in a specific individual.

The Act also provides strict rules for keeping genetic information confidential. Failure to keep genetic information confidential can result in a civil penalty of no more than \$10,000, plus reasonable attorney's fees and court costs.

## ***Enforcement***

The Act is enforced by the [Texas Workforce Commission Civil Rights Division](#) (the Commission). A complaint must be filed with the Commission no later than the 180th day after the date of the alleged unlawful employment practice. At the request of a party or at the direction of the Commission, the matter may be referred to the Office of Alternative Dispute Resolution (established by the Commission).

The Commission may bring a civil action against an employer if it determines there is reasonable cause to believe that the employer engaged in an unlawful employment practice and the Commission's efforts to resolve the discriminatory practice through conciliation have been unsuccessful.

An individual also has the right to file a civil action against an employer and may intervene in a civil action brought by the Commission.

If a court finds that an employer engaged in an unlawful employment practice, it may:

- Prohibit the employer by injunction from engaging in an unlawful employment practice; and
- Order additional equitable relief as appropriate.

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Additional equitable relief may include hiring or reinstating with or without back pay, upgrading an employee with or without pay, admitting to or restoring union membership, reporting on the manner of compliance with the terms of a final order and paying court costs. A court may also award **compensatory damages and punitive damages**.

## EMPLOYMENT DISCRIMINATION FOR PARTICIPATING IN EMERGENCY EVACUATION

An employer with **one or more employees** may not discharge or otherwise discriminate against an employee who leaves his or her place of employment to participate in a general public evacuation ordered under an emergency evacuation order. This rule does not apply to individuals who are employed as emergency services personnel, if the employer provides adequate emergency shelter for those individuals.

An employee who is discharged for participating in an emergency evacuation may be entitled to reinstatement including lost wages and employer-provided benefits.

## COMPLIANCE STEPS FOR EMPLOYERS

In general, state employment nondiscrimination laws provide similar, but not identical, protections to employees as the federal employment nondiscrimination laws. For example, state laws may protect different individuals, cover small employers who are not subject to the federal provisions, and/or provide different exemptions from their discrimination prohibitions. Employers should become familiar with how both federal and state laws apply to their employment practices.

Additionally, employers can help protect themselves from discrimination claims by creating a work environment that discourages employment discrimination and encourages diversity. To create this type of working environment, employers should consider the following steps:

- Confirm that workplace nondiscrimination policies are complete, accurate and up to date, and that such policies are actually being followed;
- Update the policies as necessary to include a strict “no tolerance” policy for prohibited discrimination, and include information on how employees can report incidents of discrimination to the employer;
- Train managers and supervisors on the updated policies and educate employees regarding employment discrimination, including sexual harassment training; and
- Respond to employee complaints in a timely and professional manner.