



Mission Statement

The mission of the Civil Rights Division is to reduce discrimination in employment and housing through education and enforcement.

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

Ruth R. Hughs - Chair
Commissioner Representing Employers

Julian Alvarez
Commissioner Representing Labor

Robert D. Thomas
Commissioner Representing the Public



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Houston Hotel Conducts Proactive EEO Training as “An Ounce of Prevention”

By: Edward J. Hill, CRD Training and Outreach Specialist

In today’s economy, business leaders recognize the importance of maintaining a positive environment for a diverse workforce, ensuring equal employment opportunity, and avoiding sexual harassment in the workplace. Recently, the TWC Civil Rights Division (CRD) assisted a Houston hotel by providing equal opportunity training and sexual harassment prevention training for its employees.

Hotel Alessandra is one of Valencia Group’s newest hotels and recently celebrated its first year of operation in downtown Houston. Ryan Gullion and Safet Dokara, General and Assistant General Manager of Hotel Alessandra in Houston, asked Human Resources Manager Gabriela Escobedo to coordinate and execute proactive equal employment opportunity (EEO) and sexual harassment prevention training for the hotel’s staff.

After all – as Benjamin Franklin once said – “An ounce of prevention is worth a pound of cure.”

“Due to the nature of our hospitality business, we have employees from all nationalities, races, and genders,” Escobedo said. “Since the hotel has been open for a year now, our executive team decided to research harassment training classes that included EEO for all managers and supervisors. We decided to reach out to the Texas Workforce Commission, for they are the experts on these topics.”

Escobedo contacted CRD’s Training and Monitoring Unit to set up a proactive in-person diversity and EEO training event at the hotel. Escobedo told TWC about the hotel staff’s broad diversity, involving both sexes, multiple ages, religions, races, national origins, and

cultures and requested comprehensive EEO training with heavier concentration on race, religion and sex discrimination (including sexual harassment).

On November 27, 2018, CRD training staff conducted a comprehensive 2.5-hour diversity, EEO and sexual harassment training event at the hotel to a highly motivated staff using training scenarios, role playing exercises, and thought-provoking games to help participants digest course materials. Following the class, CRD training staff opened the floor for questions and answers concerning federal and state EEO laws, which spawned several group discussions. Upon completion of the course, Escobedo said, “Overall, it was a very educational course and we all were engaged on the important materials!”

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DIRECTOR'S CORNER

By: Lowell A. Keig, Civil Rights Division Director

New Commissioner Representing the Public Robert D. Thomas



Three commissioners oversee the Texas Workforce Commission (TWC): the Commissioner Representing Employers, Ruth Ruggero Hughs, who also serves as Chair; the Commissioner Representing Labor, Julian Alvarez; and the Commissioner Representing the Public, Robert D. Thomas, who recently was appointed by Governor Greg Abbott.

Commissioner Thomas, of Austin, is founder and principal of the Thomas Consulting Group. He is a member of the State Bar of Texas and the Greater Austin Chamber of Commerce, and is a former member of the Real Estate Council of Austin and the Entrepreneur Organization – Austin Chapter. He was a gubernatorial appointee and chair of the Texas Facilities Commission and former gubernatorial appointee to the Texas Department of Housing and Community Affairs (TDHCA). In fact, Thomas replaced me on the TDHCA Board when I stepped aside to assume my current role.

Thomas also is a member of the Austin Community College Bond Oversight Committee and the Downtown Austin Vision Steering Committee, former member of the Travis County Civil and Family Courts Committee, and former board member of the African American Cultural Heritage District.

Commissioner Thomas received a Bachelor of Arts in Political Science and German from Loyola University, a Juris Doctorate from the University of Texas School of Law and a Master of Business Administration from the University of Texas at Austin.

New Housing Supervisor Joe Rosser



Chalisa Warren, formerly one of the two housing supervisors, has moved to the Dallas Metroplex and vacated her management position, but she remains with the division as an investigator. Joe Rosser is her replacement. Rosser has been an investigator with TWC since 2013, and prior to that time, with Child Protective Services. He served as a housing investigator in our division from 2013 to 2016, and then transferred to the Regulatory Integrity Division – Office of Investigations where he investigated allegations of fraud, waste and abuse in TWC programs.

Rosser is also a licensed Master Peace Officer and received his Bachelor's Degree in Criminal Justice from Sam Houston State University. In his spare time, he likes to ride his motorcycle and volunteer at the City of Granger Police Department to maintain his peace officer licensure.

RECENT EQUAL EMPLOYMENT CASE LAW SUMMARY

By: Corra Dunigan, TWC Assistant General Counsel

Erving v. Dallas Housing Authority, Eric Robinson, and Stacy Roberts

2018 U.S. Dist. LEXIS 157850

2018 WL 4409797

(N.D. Tex. Sept. 17, 2018)

Plaintiff Patricia Erving (“Plaintiff”) filed suit against the Dallas Housing Authority (DHA), Eric Robinson, and Stacy Roberts (a/k/a Rogers) (“Defendants”), alleging sexual harassment by Robinson, verbal harassment by Rogers and retaliation. Defendants filed a motion for summary judgment, in which they challenged several claims. Defendants first argued that Plaintiff’s claims are time barred, and should therefore be dismissed. Alternatively, Defendants Robinson and Rogers sought summary judgment on all claims, arguing that an individual employee may not be held liable under Chapter 21 of the Texas Labor Code or Title VII of the Civil Rights Act. Additionally, Defendants sought summary judgment by arguing that Plaintiff “...has failed to raise a genuine dispute of material fact with respect to her asserted claims, and that they are, therefore entitled to entry of judgment as a matter of law.” Finally, DHA also sought summary judgment on its *Ellerth/Faragher* affirmative defense as to Plaintiff’s claims of sexual harassment. (Ellerth and Faragher were two cases decided in tandem by the U.S. Supreme Court in which it established this affirmative defense).

Plaintiff was employed by DHA as a Mixed Population Coordinator from approximately 2011-2015. Plaintiff alleges that beginning sometime in 2012, Robinson, her supervisor, began touching her in an unwanted manner. Additionally, when he would urinate in the bathroom, he would leave the door open (even after she asked him to close it) and while in there he would make noises and comments of a sexual nature about her. She overheard him tell others he wanted to kiss her, that her “lips were irresistible,” and that he wanted to “kiss those big, juicy lips.” In addition, he rubbed up against her buttocks and commented about its size; he also made various

comments about her breasts, and tried to look down her shirt. On one occasion, sometime in January of 2015, Robinson showed Plaintiff a sexually graphic video on his cell phone of a woman performing oral sex on a man.

Between February 17, 2015 and May 10, 2015, Plaintiff took a leave of absence for a disability under the Family Medical Leave Act (FMLA). As part of a request for a reasonable accommodation, she returned to work part-time, through June 25, 2015, when she took another leave of absence; for this second leave, she provided DHA medical certification which would require her to take 4-6 weeks off. On June 30, DHA’s benefits administrator sent Plaintiff a letter indicating that they would accommodate her second request for leave, but that DHA needed medical information from her doctor by July 24, 2015 indicating when she would be returning to work, and whether she could perform the essential functions of her job. In this same June 30, 2015 letter, DHA encouraged Plaintiff to request a reasonable accommodation to allow her to perform the essential functions of her job. Finally, the letter indicated that if DHA had not heard from Plaintiff regarding the requested information, or a request for accommodation, they might terminate her employment.

On July 24, 2015, DHA received correspondence from Plaintiff’s doctor, Dr. Moses Ramos, stating, “continue on disability-may need longer than 8 weeks, anticipate pt [patient] will be on long term disability for 6 months due to refractory nature of her illness.” Plaintiff was terminated on August 3, 2015. In her notice of termination, DHA explained “the medical certification dated July 24, 2015 received from your physician’s office indicated that that your leave of absence will continue, did not establish a return to work date, and did not indicate whether you will be able to perform the essential functions of your job.”

Plaintiff filed a charge of sex discrimination with the Equal Employment Opportunity Commission, and

received a Notice of Right to Sue (NRTS) on September 17, 2015. On December 16, 2015 (90 days after receiving her NRTS), her attorney attempted to e-file a lawsuit in the District Court of Dallas County. However, she received notice that the filing was rejected for failure to include a signature block. The suit was re-filed on December 21, 2015, and included the required signature block.



Photos courtesy Getty Images

The Defendants first challenged the suit on the basis that the suit was time barred as it was not filed within the 90-day statute of limitations. While Plaintiff did not “explicitly invoke the doctrine of equitable tolling, examining her arguments in the light most favorable to her, the Court concluded that she was, in effect, asking the Court to equitably toll her claim based on her attempt to file her lawsuit within the 90-day statutory period.” The court denied the motion for summary judgment, concluding that “Under these circumstances...the application of equitable tolling is warranted. The scenario presented is a claimant who has actively pursued her judicial remedies by filing a defective pleading during the statutory period. In the Fifth Circuit, this is one of the limited occasions when equitable tolling may be invoked.”

Next, the defendants challenged Plaintiff’s claims against Defendants Robinson and Roberts, arguing that they could not be held liable individually under Title VII. The court granted Defendants’ motion, holding that Title VII (and Chapter 21 of the Texas Labor Code) provides for liability only as to an employer, and not an individual supervisor or colleague.

The Court next addressed the Defendants’ challenge to Plaintiff’s claims of sexual harassment. Plaintiff claims that she was subjected to *quid pro quo* sexual harassment by Robinson, which resulted in her termination, and sexual harassment based on a hostile work environment. As to the *quid pro quo* harassment claim, Defendants argued that Plaintiff presented no evidence to establish a nexus between her termination and Robinson’s alleged harassment. They maintain that Plaintiff was terminated because she was not able to establish a return to work date from her leave of absence. “To establish a *quid pro quo* sexual harassment claim, the plaintiff must show that she suffered a tangible employment action, that resulted from [her] acceptance or rejection of [her] supervisor’s alleged harassment. When a plaintiff establishes that a tangible employment action resulted from a refusal to submit to a supervisor’s sexual demands, he or she establishes that the employment decision itself constitutes a change in the terms and conditions of the employment that is actionable under Title VII.” The Defendants do not dispute that her termination constituted a tangible employment action; however, the Court must determine whether a reasonable trier of fact could conclude that Plaintiff’s refusal of Robinson’s sexual advances resulted in her termination.

Plaintiff did not introduce any evidence that Robinson was the decisionmaker as to her termination. In *Briseno v. McDaniel*, the court held “That the decisionmaker was not also the harasser, [] is not fatal to the plaintiff’s claim. It simply means that the plaintiff cannot avail herself of the inference of causation created by a common identity of a harasser and a decisionmaker.” 2004 U.S. Dist. LEXIS 19690, 2004 WL 2203255, at *3 (N.D. Tex. Sept. 30, 2004). Here, the Court stated that, Plaintiff must present evidence which would allow a trier of fact to find that Robinson’s discriminatory behavior resulted in DHA’s decision to terminate her employment. Plaintiff provided examples of Robinson telling her that he would fire her, and telling residents of Audelia Manor that he would fire her. The Court concluded that this evidence was sufficient to create a genuine issue of material fact as to whether Robinson had the power to hire and fire, and otherwise control the terms and conditions of her employment.

As to her claim of sexual harassment based on a hostile work environment, Defendants argued that Plaintiff failed to raise "a genuine dispute of material fact that the alleged harassment affected a 'term, condition, or privilege' of her employment." The court, however, in reviewing all the evidence in the light most favorable to Plaintiff concluded that she did raise a genuine dispute of material fact as to all elements of her hostile work environment claim. She presented evidence that she perceived Robinson's behavior to be hostile and/or abusive, and that she was unable to perform her job because of his conduct; namely, she took the FMLA leave because of the stress at work. She provided multiple examples of incidents of sexual harassment by Robinson over a period of several years.

Then, the Court analyzed Defendants' argument that it was entitled to summary judgment on its Ellerth/Faragher affirmative defense. The Court stated that an employer is strictly liable for a supervisor's harassment, but the Ellerth/Faragher affirmative defense is an exception, and is only available when the harassment does not result in a tangible employment action. The Court recited that the Ellerth/Faragher defense has two elements: First, the employer must demonstrate that it took reasonable care to prevent and correct sexual harassment. Second, the employer must show that the employee unreasonably failed to take advantage of preventative of remedial opportunities provided by the employer.

The Court sided with Plaintiff that the Defendants were not able to rely upon this affirmative defense, since the harassment resulted in her termination—a tangible employment action. In the alternative, the Court also analyzed Plaintiff's evidence showing that in 2014, she complained to DHA manager Sam Sally about Robinson's behavior towards her, and that she expressed concerns that that he would retaliate against her if she would not comply. She claimed that Sally told her he would address the situation, but never did. Plaintiff also filed a written report with DHA on June 25, 2015 concerning Robinson's behavior, but again, DHA did nothing. Thus, the Court concluded "...the above-referenced deposition testimony is sufficient to raise a genuine dispute of material fact as to whether Erving unreasonably failed to avail herself of any preventive

or corrective opportunities provided by DHA. While DHA is correct that prior to June 2015, Erving did not file any written complaints about Robinson's alleged sexual harassment, viewing the evidence in the light most favorable to Erving, a reasonable trier of fact could find that she has raised a genuine dispute of material fact that she took advantage of DHA's preventive or corrective opportunities."

Finally, the Court took up Plaintiff's retaliation claim. Defendants argued that Plaintiff failed to establish a causal connection between filing a written complaint on June 25, 2015, and her August 3, 2015 termination. Defendants also contended that even if she satisfied her prima facie case, they had a legitimate, non-discriminatory reason for terminating her. With respect to Plaintiff's prima facie case, Defendants did not challenge her on the first two elements, namely that she engaged in protected activity and that an adverse employment action occurred. As to the third element, "... although Plaintiff may not ultimately be able to establish at trial a nexus between her complaint to management about Robinson's sexual harassment and the retaliatory acts of which she complains, [the Court found that] the evidence is sufficient to preclude summary judgment on this element of her prima facie case." Further, the Court opined that Plaintiff had introduced sufficient evidence to raise a genuine dispute of material fact that the legitimate, nondiscriminatory reason proffered by the Defendants for her termination was false or was a pretext to fire her for complaining about Robinson's sexual harassment.

The Court granted a defense motion to strike experts and denied objections to Plaintiff's summary judgment evidence, which will not be discussed in detail here. In summary, Defendants' motions for summary judgment were denied as to the sexual harassment and retaliation claims, except for Plaintiff's claims against Defendants Robinson and Rogers, individually.

CRD Education, Training & Outreach

The Texas Workforce Commission Civil Rights Division (CRD) is committed to providing training and technical assistance, outreach and education programs to assist state agencies, institutions of higher education, private businesses, and employees in understanding and preventing discrimination. We believe that discrimination can be averted if everyone knows their rights and responsibilities.

CRD Outreach and Education Programs and Activities

In October of 2018, CRD's Trainer and Outreach Coordinator, Ed Hill partnered with Texas Military Department's (TMD) Equal Opportunity (EO)/Equal Employment Opportunity Office and Maria Morrow of TWC's Vocational Rehabilitation Services (VRS) during TMD's Camp Mabry Disability Awareness Month observance. During this event, Hill provided information to TMD personnel and family members about CRD's EEO and Fair Housing compliance, complaint procedures, training, investigation, and mediation programs which aim to reduce employment and housing discrimination within the state. In addition, Morrow, a TWC VRS Specialist, provided valuable information about rehabilitative services offered to adults with disabilities to overcome substantial employment barriers or obtain, retain, and advance in employment.

During the 2018 American Planning Association Conference, held in Galveston, TX by the Texas Chapter in October, Hill staffed CRD's information booth and partnered with Michael Lyttle of the Texas Department of Housing and Community Affairs (TDHCA) as a co-presenter to discuss fair housing considerations for state and local land use/zoning and TDHCA housing programs.

Recently, Hill represented CRD at the 22nd Annual Texas Workforce Conference. During the conference, Hill staffed CRD's information booth to spread EEO and fair housing awareness to the agency, Workforce Solutions representatives, and other workforce stakeholders.

For more information about inviting CRD to an upcoming event, please contact CRD at (888) 452-4778 or by email at CRDTraining@twc.state.tx.us.

Meet Us at Upcoming Texas Business Conferences (TBCs)

TWC's Office of the Chair and Commissioner Representing Employers sponsors the Texas Business Conferences, a series of employer seminars held each year throughout the state. Employers who attend the seminars learn about state and federal employment laws and the unemployment claim and appeal process. TWC Chair Ruth Hughs and her staff assemble excellent speakers to guide you through ongoing matters of concern to Texas employers and to answer any questions you have regarding your business.

Each conference is geared toward small business owners, HR managers and assistants, payroll managers, and anyone responsible for the hiring and managing of employees. CRD outreach personnel regularly participate in these events by staffing an information booth to provide details about the state's EEO and Fair Housing programs and provide technical assistance to conference participants. Please see listing of upcoming TBCs and dates below:

Houston, TX: January 25, 2019 – Hyatt Regency Houston

Corpus Christi, TX: April 25-26, 2019 – Omni Corpus Christi Hotel

San Antonio, TX: June 7, 2019 – Hyatt Regency San Antonio

Midlothian, TX: August 30, 2019 – Midlothian Conference Center

Longview, TX: September 20, 2019 – Maude Cobb Convention Center & Activity Complex

For more information and registration, go to <http://www.twc.state.tx.us/texas-business-conferences>.