



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

Vacant
Commissioner Representing
the Public



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CRD Introduces State's EEO Program to Texas-based Troops

By: Edward J. Hill, CRD Trainer and Outreach Coordinator

While traveling and teaching Equal Employment Opportunity (EEO) courses throughout the state, I realized many of the training participants believed the terms “veterans’ preference” related to veterans as one of the protected classes for EEO. Although the federal government and many states offer veterans’ preference for government positions, veterans are not a protected class as defined by the *U.S. Civil Rights Act (1964)*, *Age Discrimination in Employment Act (1967)*, *Americans with Disabilities Act (1990)*, *Americans with Disabilities Act Amendments Act (2008)* or Chapter 21 of the Texas Labor Code. However, veterans do receive specific employment protections under the *Uniformed Services Employment and*

Reemployment Rights Act (1994) and *Chapter 437 of the Texas Government Code*.

The Department of Defense does an excellent job of ensuring that the troops receive Equal Opportunity (EO) training that focuses on diversity, anti-discrimination, equal treatment for all, consideration of others, and prevention of sexual harassment among service members and civilian employees.

As a veteran of the U.S. Army and a former Unit EO Representative, I realize these programs are highly effective for actively serving troops, but they do not provide enough information for troops who are separating from

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active duty or converting to a military reserve/guard component and who are seeking employment opportunities.

While Texas is known as one of the most “veteran-friendly” states in the nation and strives to provide maximum employment opportunities for veterans, many veterans still encounter discrimination in the workplace and are unaware of their rights and responsibilities under Texas employment laws.

Because many persons enter the military at a young age and/or retire without much civilian job experience, I found value in reaching out to Texas-based troops through partnerships with the Equal Employment Opportunity Commission, Military Transition

Assistance Programs, Texas Veterans Leadership Program, Texas Veterans Commission, and Warrior Transition Units at Fort Hood and Joint Base San Antonio. These partnerships enable me to provide literature, training, and assistance concerning Texas EEO laws as they relate to race, color, national origin, sex, religion, age, and disabilities in the civilian workplace. This outreach program assists participants in recognizing unlawful employment practices; understanding a complainant’s rights and remedies; utilizing a state-level reporting channel for inquiries, complaints, and free mediation services; and applying knowledge of applicable EEO laws while establishing successful post-military careers.

Article Correction

By: Edward J. Hill, CRD Trainer and Outreach Coordinator

The June 2018 edition of the Civil Rights Reporter article titled, *Dallas Company Takes Proactive Stance Against Sexual Harassment*, contained a numerical error concerning the size of the company’s workforce. After

publishing the article, the owners of Bella Vista Management LP, advised us of our typographical error. The company’s diverse workforce is comprised of 50-plus employees, rather than 30.



DIRECTOR'S CORNER

CHANGES IN LEADERSHIP

By: Lowell A. Keig, CRD Director

As we flow into Fiscal Year 2019, the executive leadership of the Texas Workforce Commission (TWC) has changed and the management of the Civil Rights Division (CRD) has shifted.

I am informing you of changes to our three-member commission to make you aware of how their involvement affects two important steps in our Equal Employment Opportunity (EEO) enforcement process.

First, when I decide after an investigation that there is reasonable cause to believe a violation occurred, we present the case to the commissioners. If at least two of the commissioners vote to concur with my assessment, I issue written determination. Then, we attempt to conciliate the case by and between CRD and the parties. If negotiations reach an impasse, I decide whether to close the case as an unsuccessful conciliation and issue a notice of right to file civil action to the complainant, or to go to the next step.

Second, if I determine that the facts support pursuing a civil lawsuit, we present the case again to the commissioners, but the evaluation is different. The burden of proof for a determination of reasonable cause for discrimination is "reasonable cause." The burden of proof to prevail in a civil lawsuit, however, is by a "preponderance of the evidence," a higher bar. After the commissioners' evaluation of the case for litigation, they vote whether to file a civil action.

So, the commissioners are instrumental in the EEO process. Here is a quick synopsis of both the commissioner and CRD leadership changes over the past few months.

Chair Andres Alcantar Retires



Chairman and Commissioner Representing the Public Andres Alcantar retired from state service effective July 31. "The last ten years of service to the people of Texas through the Workforce Commission has been the highest honor and privilege of my professional life," Alcantar said.

Alcantar was appointed Commissioner by former Governor Rick Perry effective August 4, 2008. Chairman Alcantar previously served as deputy director to former Governor Perry's Budget, Planning, and Policy Division, advising the Governor on federal, state, and local issues and providing executive oversight to state boards and commissions. He also served as an adviser to former Governor George W. Bush in the Office of Budget and Planning and was a director for the Texas Health and Human Services Commission. Alcantar is a proud graduate of Texas Tech University. He holds both a Bachelor's and a Master's degree in public administration.

Governor Abbott Names Ruth Ruggero Hughs Chair



Governor Greg Abbott appointed Ruth Ruggero Hughs Chair of the TWC effective August 1. Hughs has served as TWC Commissioner Representing Employers since being appointed by the Governor in July 2015. “I am honored to be appointed Chair of the Texas Workforce Commission,” said Chair Hughs.

Prior to her appointment at TWC, Commissioner Hughs served in the private practice of law and was a small business owner. She has previously served in the Texas Attorney General’s Office as the Director of Defense Litigation, advising on federal, state and local matters, and providing executive oversight for the civil litigation divisions. Hughs received a Bachelor of Arts from The University of Texas at Austin and a Juris Doctorate degree from Rutgers Camden School of Law. In 2018, she earned a Certificate in Leader Development at the U.S. Army War College’s National Security Seminar. Raised in Corpus Christi, Hughs resides in Austin with her husband Greg and two children, Sophia and Hudson.

Walter Bryan Selected as New Employment Manager



Walter Bryan was promoted Employment Manager effective August 1. Bryan has been the EEO Supervisor since February 2014. Bryan commented, “I live by the maxim of good, better, best. Never let it rest until your good is better and your better is best.”

Prior to joining CRD, he was an investigator for TWC’s Labor Law Department in the Regulatory Integrity Division (RID); and prior to investigator, he was an account examiner in RID. Bryan’s experience also includes serving as a program specialist for the Texas Commission on Environmental Quality and a senior human resources generalist for All People Are Customers (APAC) Customer Services (call center, contact center and customer care outsourcing). Bryan earned a Bachelor’s degree from the University of Houston in radio/television (journalism) and a Juris Doctorate degree from the University of Houston School of Law. Bryan is also a certified mediator. *By the time this issue went to press, Bryan left the agency for a managerial position with the Health and Human Services Office of Inspector General in Houston. We are in the interviewing process.*

Carrie Mills Promoted to Employment Supervisor



Carrie Mills was promoted from Mediator/Investigator V to EEO Supervisor effective August 1. Mills stated, “I am excited for the opportunity to supervise the EEO investigators. I want to offer Complainants and Respondents more opportunities to engage in settlement discussions during the investigative process.”

Mills earned her Bachelor’s degree at the University of Texas, and her Juris Doctorate at Louisiana State University. She is a certified mediator and a licensed attorney. Mills joined CRD as an investigator in 2015. Prior to joining CRD, she worked on employment discrimination and personal injury cases in the private sector, and served as a TWC Unemployment Benefits Hearing Officer for over two years.

Texas Appellate Court Issues Notable Age Discrimination Decision During ADEA's 50th Anniversary

By: Roberta Swan, TWC Legal Assistant and Corra Dunigan, TWC Asst. General Counsel

The Age Discrimination in Employment Act (ADEA) celebrated its 50th Anniversary in June of 2018. This anniversary was marked by reflection from the EEOC on the changing workforce. Today, older workers are staying in the workforce longer due to improved health and diminished retirement savings. Although the average age of our working population has shifted, many older workers are still faced with discrimination based on perception of physical attributes versus their ability.

A recent Court of Appeals case *Bell Helicopter Textron, Inc. v. Burnett*, No. 02-16-00489-CV, 2018 Tex. App. LEXIS 4363 (App.—Fort Worth June 14, 2018) is a prime example of the evolving trend involving enforcement of the ADEA. In this case, Brian Burnett began his employment with Bell Helicopter at the age of twenty-two as a stock clerk. Burnett worked as a clerk for three years and then was promoted to dispatcher. Thereafter he moved to the data release department, where he worked for over 15 years specializing in manufacturing and assembly. In 2011, he received a 15-year service award.

In 2012, Burnett obtained a position as a Senior Manufacturing Operations Specialist. In this new position Burnett would be responsible for interfacing with the Canadian Division for the final portion of the assembly of Bell Helicopter's 412 Aircraft. The 412 Aircraft was Bell Helicopter's "most profitable helicopter." Burnett's first supervisor for his new position was Carisa Kimbro. Burnett received his first performance evaluation from his supervisor in 2012. Kimbro's evaluation of Burnett's job performance showed him to be "on target" and "solid." Shortly after Burnett became an Operations Specialist, Bell Helicopter instituted a new computer system, which created problems for the entire company. Burnett spent much of his time trying to resolve the computer issues

and interfacing with the Canadian Division to expedite the part orders for assembly of the 412 Aircraft.

In the first quarter of 2013, Rebecca Rosenbaum replaced Kimbro as Burnett's supervisor. Rosenbaum stated that she noticed many problems with Burnett's work performance and communication skills, and after talking with him extensively over the following months, finally wrote him up in June 2013. In her letter Rosenbaum stated that she expected Burnett to meet deadlines and provide accurate reports to the Canadian representatives. This written warning surprised Burnett although he signed the letter agreeing that he needed to make the improvements. Burnett stated that he made the improvements requested by Rosenbaum.

In July of 2013, Rosenbaum provided Burnett with his mid-year evaluation. The evaluation stated that Burnett has met some of the requirements in Rosenbaum's June 2013 letter; however, he still needed to improve his communication skills. After issuing Burnett his mid-year evaluation, Rosenbaum decided to terminate Burnett; he was thirty-nine years old. Rosenbaum did not immediately inform him of the decision because she needed to discuss it with Bell Helicopter's Human Resources Department. On August 20, 2013, sixteen days after Burnett turned 40, Bell Helicopter terminated Burnett's employment. Burnett was replaced by Candice Sharp who was twenty-nine years old and, according to Burnett, had a more youthful appearance.

As this case was fully litigated as an age discrimination claim, the Court's review of Bell Helicopter's appeal was to "...ask 'whether the evidence is . . . sufficient to support the [factfinder's] ultimate finding' that unlawful discrimination was a motivating factor for the employment decision." Bell Helicopter asserted it would have terminated Burnett regardless of his age.

Burnett's first response to this claim was to provide supporting witness testimony by Russell Creamer. Creamer was an employee who worked next to Burnett daily. In his testimony, Creamer stated that Burnett's hair was greying and he also had grey in his beard. He further stated that "Rosenbaum 'popp[ed] the whip' with Burnett." Her treatment and attitude towards Burnett were different than younger employees who performed the same job functions.



Photo courtesy of Getty Images

Burnett's second response to Bell Helicopter's claim was that Kimbro's evaluation of his work performance in 2012 showed him "on target" and "solid." Kimbro further stated in her evaluation that Burnett "would be considered a 'major team player' in the future at Bell Helicopter." Kimbro did state that Burnett should continue to work on his communication skills, but, overall, evaluated Burnett's performance positively.

Burnett's final response to Bell Helicopter's claim was that Bell Helicopter's institution of the new computer system created difficulties in coordinating the department's assembly of the gearboxes, and that these factors were "beyond his control, or insignificant." He further stated he worked side by side with Greg Isler, a younger co-worker, who performed the same job functions and struggled with the same issues as Burnett, but Isler was not written up nor disciplined by

Rosenbaum. Rosenbaum did discuss with Isler areas that needed improvement, but not in the same manner as she conducted herself with Burnett. Rosenbaum also provided Isler opportunities to attend training, but did not offer Burnett the same training opportunities, even though he had requested them.

Based on the assertions above by Burnett, the Court overruled Bell Helicopter's appeal and "affirm(ed) the trial court's judgment." Although Bell Helicopter provided a defense stating that Burnett did not file a complaint with Bell Helicopter for age discrimination and that Rosenbaum did not discipline other older employees, the evidence presented by Burnett through his witness testimony and the evidence presented to the Court regarding Rosenbaum's attitude and treatment of Burnett was compelling enough to substantiate Burnett's assertion of age discrimination.

It is worth noting that the Court addresses the contention in the dissenting opinion that all of the circumstantial evidence relied upon by Burnett related to facts occurring before he turned 40. Although the circumstances of this case took place before Burnett turned 40, the court concluded that the employee must prove that "the employee was at least 40 when the ultimate act of discrimination—termination—occurred."

In 1968 when the ADEA was enacted, the socio-economic conditions and the workforce were very different. Although the ADEA has been in effect for the last 50 years, some would argue that the changes in attitudes around older workers have not kept pace with the changes in the economy, and that we are entering a new chapter in the established history of anti-age discrimination enforcement.

An Open Letter to Texas Employers

By: Ellena E. Rodriguez, CRD Compliance Monitor

Dear Texas Employer:

As the Equal Employment Monitor for state agencies and institutions of higher education, and based upon my experiences in public monitoring, I wanted to share my thoughts with you all in the private sector on certain pitfalls to avoid.

In July of 2018, during a live broadcast from Enchanted Rock and with Governor Greg Abbott in attendance, CNBC unveiled Texas as the top state for business. Texas was highlighted for its "...impressive economic success, superior workforce and robust infrastructure investments." This extensive study was conducted in all 50 states, and was based on 64 metrics in 10 different categories of competitiveness.

Yet despite Texas' success, it's very easy to become complacent about policies and existing, but outdated employee handbooks. In wake of the "#MeToo" movement, employers must operate their businesses with the utmost integrity and respect for those they employ. The reality is, there is no such thing as a "perfect" policy manual or employee handbook. The good news is that perfection is not statutorily required.

Too often, employers simply allow company policies to evolve on a case by case basis. As a result, policies and procedures crafted on such an "off-the-cuff" basis can lead to confusion, chaos, inconsistent treatment, and sometimes claims of discrimination or wrongful termination. If that happens, it can be an expensive and time-consuming experience for the employer.

While a well-written personnel policies and procedures manual is a valuable tool (to simplify the day-to-day operations of managing employees and minimizing possible legal liability), a poorly written policy manual can spell disaster. Poorly written policies can result in such unintended consequences as modifying the company's employment at will status, creating an implied contract, or omitting crucial disclaimers and information. An unhealthy and damaging situation can arise when you choose to ignore, selectively enforce, or simply forget about your policies.

New developments in employment law are occurring constantly. What is valid and permissible today can subject you to serious liability tomorrow. Personnel policies and procedures can also be an invaluable tool if a workplace situation evolves into an unemployment claim, discrimination charge, or a harassment lawsuit. The workplace rules and expectations contained in your policy manual are a critical foundation for proving work-related misconduct or defending the legality of your actions.

In the absence of written policies, day-to-day company practices can carry the weight of a written policy. In other words, what you and your managers do and say in the workplace while dealing with employees can eventually become policy through action.

Again, there are many advantages to having a well written, well thought out policy manual. Simply put, a

straightforward, clearly written, well-organized personnel policies and procedures manual is your best and most effective tool for introducing common sense into the workplace and communicating with your employees.

The State of Texas has a responsibility to provide employers with the tools required to operate a business legally, ethically and responsibly. Please visit <https://twc.texas.gov/news/eft/e/especially-for-texas-employers.html> to download *Epecially for Texas Employers*, a handy reference by Ruth Hughs, Texas Workforce Commission Chair and Commissioner Representing Employers. This book provides information on important workplace issues and samples of policies and procedures. If you have any questions involving equal employment compliance, training, etc., please feel free to visit the Civil Rights Division webpage at <https://twc.texas.gov/partners/civil-rights-discrimination>.

I wish you a productive fourth quarter of 2018.

Resources:

<https://gov.texas.gov/>

<https://twc.texas.gov/partners/civil-rights-discrimination>

<https://twc.texas.gov/businesses/employment-law-discrimination-wages-child-labor>

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

CRD recently released the *Recognition and Prevention of Sexual Harassment with Equal Employment Opportunity (EEO) Overview* self-paced computer-based training (CBT) for use by all state agencies and institutions of higher education. This module is a training alternative for CRD's current *Diversity, EEO, and Discrimination Prevention* and focuses on sexual harassment prevention and satisfies State of Texas standard EEO training requirements pursuant to 40 Texas Administrative Code § 819.24 and Texas Labor Code §21.010. Both courses are free to all state agencies and institutions of higher education.

All state agencies/institutions of higher learning that elect to create customized versions are required to submit copies of their equivalent training materials to the CRD Training and Monitoring Unit for evaluation and certification bi-annually or following any changes in state EEO laws or significant changes in course content. For registration information, eligibility and scheduling curriculum reviews, please send an email to CRDTraining@twc.state.tx.us subject: EEO 1.0 CBT and or EEO Training Curriculum Certification.

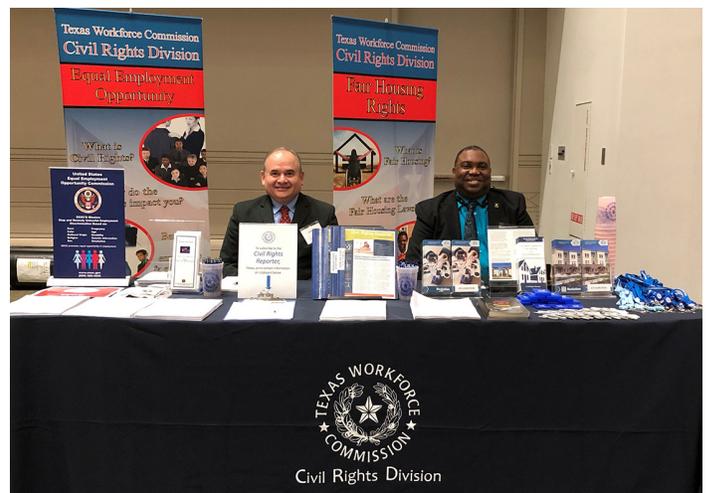
Additionally, CRD offers at cost, Instructor-Led, Equal Employment Opportunity EEO compliance and sexual harassment training to state and other public agencies, institutions of higher learning, and private entities via in-person and webinar methods. For more information, contact CRD at (888) 452-4778 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 R. 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.

Meanwhile, 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.

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



Jaime Valdez (EEOC) and Ed Hill (CRD) share a booth at a TBC in Arlington. Photo courtesy of Civil Rights Division