

## Equal Employment & Fair Housing

### Texas Workforce Commission Commissioners

Bryan Daniel - Chairman and Commissioner Representing the Public  
Julian Alvarez - Commissioner Representing Labor  
Aaron Demerson - Commissioner Representing Employers

## Targeting Employees

By: Ross Brennan, TWC Equal Employment Investigator



One thing we deal with frequently at Texas Workforce Commission - Civil Rights Division (TWCCRD) are cases involving employees who feel they have been treated in an unfair manner by a supervisor. Employees sometimes refer to this as “targeting.”

This usually involves the employee

feeling as if a supervisor subjects them to heightened scrutiny as compared to the employee’s peers. For example, a supervisor might write an employee up for being late, while not writing up another employee who is equally late the following day. This type of unfair treatment, sometimes referred to as “disparate treatment,” can take many forms. However, not all disparate treatment falls under the umbrella of the civil rights laws that TWCCRD enforces. TWCCRD is concerned with disparate treatment that is based on an employee’s protected group or groups. Examples of protected groups are race, national origin, gender, religion, disability, etc. Thus, if a supervisor is targeting an employee because they do not like that employee, it would likely not be a violation of the civil rights laws that TWCCRD enforces. However, if a supervisor is targeting an employee because of their race, it likely would be a violation of the civil rights laws that TWCCRD enforces.

Unfortunately, supervisors can and do target employees from time to time. And just because an employee falls within a protected group does not necessarily mean they are being targeted because of their protected group. TWCCRD investigates that distinction to determine if any civil rights law have been violated. If TWCCRD investigates and determines there is not enough evidence of discrimination, it does not necessarily mean the employee was treated fairly. It just means that we could not find evidence that the civil rights laws that we enforce were broken.



### 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.



## Director's Corner

By: Bryan D. Snoddy, CRD Director



For many people it is rare to view the ultimate impact of their work on the lives of others, but the work that we do within the Texas Workforce Commission (TWC) and the Civil Rights Division has a great deal of consequence and effect on Texans.

One initiative that has a direct and profound impact on the lives of our fellow Texans, and helps support Texas's bustling economy, is Hiring Red White and You - TWC's Veteran-focused statewide job fair.

As an Air Force veteran, I have a great deal of appreciation for the impact this effort makes in the lives of those who served. Last year, I attended my first Hiring Red White and You in San Antonio with Commissioner Aaron Demerson (then, TWC's Director of Office of Employer Initiatives). Walking through the fairgrounds facility we happened upon a sharply dressed young lady. She said that she was wrapping up her degree in cybersecurity and departing the Air Force. Commissioner Demerson immediately recognized her as a person with valuable skills ready to launch her career. We let her know she was important and asked her to stop by the TWC booth and drop off a copy of her resume so that we could connect her with one of our IT staff at our recruiting table. Later that morning, our recruiter interviewed her onsite. Today, she has a new career in keeping TWC systems and information safe and secure. It felt great assisting a fellow Air Force veteran.

This year, I had the great pleasure to attend the Hiring Red White and You Veteran's job fair in my hometown of Longview. The staff contacted my executive assistant and requested specifically for me to address the businesses, job seekers and staff. There has been no greater professional pleasure that I have enjoyed in my life. The opportunity to serve your fellow Texans is a high honor, but when you have

the privilege of going back home to highlight the valuable contributions and efforts on behalf of TWC, there is no equal. There were approximately 100 employers filling the Maude Cobbe Convention Center, and there were hundreds of hopeful veterans and civilian jobseekers. It was a joy to deliver a message on the "Power of Purpose." This theme resonated intrinsically with the veterans because the bottom line is that every one of them, if asked, would subordinate their lives to the calling of defending this nation. That is a high purpose.

It is also a part of the cloth of the same purpose for which we exist and why we serve. Our calling is to extend the "Texas Miracle" to all in Texas and provide continued opportunity to businesses, employees, small employers and those seeking employment. In short, our purpose is to dynamically and positively change and affect lives. Seeing the impact first-hand on your hometown makes it just that much more meaningful.



## Employment Case Summary

By: Corra Dunigan, TWC Assistant General Counsel



Knuppel v. Texas Health and Human Services Commission 2019 U.S. Dist. LEXIS 188023  
Plaintiff Haylie Brock Knuppel

Knuppel (“Knuppel”) began her employment with the Texas Health and Human Services Commission (“HHSC”) in early January of 2016. Specifically, she was hired as a Psychiatric Nursing Assistant I (“PNA I”) at the Waco Center for Youth (“WCY”). WCY is a psychiatric treatment facility serving teenagers with severe emotional and/or behavioral disorders. The job requirements for the PNA I include the following: “Initiate and perform

physical holds (restraints) of combative patients for up to 15 minutes; help place combative patients into a restraint chair; be left alone for hours to monitor an assaultive or self-injurious patient who is under doctor’s order for special observations, and initiate restraint if needed; intervene with combative or aggressive people; perform CPR; participate in strenuous physical training for prevention or management of aggressive behavior; and perform job functions in an often loud and chaotic environment.”

Knuppel was diagnosed with epilepsy in 2011. She informed WCY of this diagnosis after she suffered a seizure there while volunteering, prior to her being hired. She reiterated the diagnosis when she was formally hired

in early January 2016, however she represented that she had the seizures under control at the time of her hire. Within 3 days of her hire, she suffered a seizure. WCY placed her on emergency leave and required a doctor’s note before she could return to work. WCY also gave her a list of the job duties to present to the doctor performing the assessment; additionally, they provided her with paperwork to request a reasonable accommodation. She returned to work with a doctor’s note that had the following 3 restrictions: she could not drive, work in high places or use dangerous equipment. These conditions were accepted and Knuppel returned to work. Knuppel did not request any accommodation or submit reasonable



## Employment Case Summary (cont.)

accommodation paperwork upon her return.

Knuppel suffered another seizure in May 2016 and was followed by one more approximately one month later. HHSC terminated her employment on June 29, 2016, while she was still a probationary employee citing that she could not perform the essential functions of the job. Knuppel alleged that the termination was based solely on her epilepsy and in violation of the Rehabilitation Act and subsequently filed this lawsuit. HHSC filed a motion for summary judgment which the court granted.

In its reasoning, the court stated “Here, the record is clear that HHSC provided Knuppel a single list of her position’s essential functions near the beginning of her employment. Knuppel does not allege that HHSC modified her position’s essential functions to be less favorable to her or epileptic individuals more generally. She does not challenge the essential functions of her position other than to contend that she rarely performed restraints during her almost six-month tenure. But infrequency, on its own, does not diminish essentialness, and even if it did there are several other specific and undisputed essential functions that Knuppel concedes she could not perform. Although Knuppel claims in her Response that she was able to perform all the essential functions of her position, she admitted in her deposition that she was, at times, unable to perform several of the essential functions of her job. She said while having a seizure she could not remain alert at all times; defend against an aggressive resident; perform a restraint; perform CPR; or minimize

unsafe situations, including monitoring an assaultive or self-injurious patient.” Because HHSC articulated a legitimate nondiscriminatory business reason for terminating Knuppel—namely, she could not perform the essential functions of the position with or without reasonable accommodation, Knuppel then had to demonstrate that HHSC’s justification was pretext for discrimination. The court concluded she could not. “There is no evidence to suggest that HHSC harbored any animus towards Knuppel or any other individual suffering from epilepsy. Knuppel concedes that HHSC was aware that she suffered from epilepsy when it hired her. However, it reasonably relied on her representation that she was seizure

free for a substantial period of time and that hiring her would not endanger the people that HHSC is responsible for their safety. After her first seizure that occurred just a few days after she started, HHSC did not terminate her, it placed her on paid leave even though she had been employed less than a week. HHSC reacted in a manner that showed great empathy for Patent License’s condition and quite properly requested medical clearance from Knuppel’s doctor. Once she complied, HHSC allowed her to return to work on conditions consistent with her physician’s findings.” Ultimately Knuppel could not meet the prima facie elements to establish discrimination, and, therefore, her case was dismissed.



## EEO Guidance: Measuring Performance

By: Ellena E. Rodriguez Outreach, Compliance & Resolutions Unit Manager



As a supervisor, measuring the performance of employees is unavoidable. It is an essential part of the job that connects to all other aspects of your work. The question is: Are you ready to measure job performance in a systematic, nondiscriminatory and ethical manner that will help you build a

strong department or organization?

Your success as a supervisor may hinge on your evaluations of employees and how you assess their performance.

Furthermore, you'll find the performance appraisal process both easier and more effective when you're sure what you're measuring and how to measure it accurately.

When job performance is broken down into measurable categories and described in objective and specific language, performance evaluations become more useful to you and more helpful to your employees. This approach also helps keep discrimination and bias out of the evaluation process. The ability to accurately measure job performance is a skill you absolutely must have to succeed in your job. So, let's look closely at how to measure performance in a manner that is accurate, nondiscriminatory and ethical.

### Why measure job performance?

Measuring job performance accurately and consistently is one of a supervisor's most important responsibilities and essential to the success of the whole company.

Accurate measurement provides the foundation for the entire performance evaluation system. Remember, the system is no better than the data on which it is based. Data comes from the supervisor's observations of employee performance.

Measuring job performance also supports quality and productivity. Without an accurate assessment of performance, it's impossible to identify where and how to implement the steps that lead to real improvement.

Job performance measurements allow you to identify star performers and employees who are having trouble keeping up their end and need more supervision or training.

And, it puts you in the best position to give all your employees valuable feedback on how they're doing and on the areas in which they can improve. There are a few additional reasons why measuring job performance is essential.

First, measuring job performance offers a sound basis for

making good managerial decisions about important concerns such as compensation and promotions. When you have the right data, you can make better decisions and defend them. Measuring performance also helps you identify training needs for individual employees and for your entire work group or department.

It assists you in coaching, counseling and disciplining employees with verifiable facts and observations at hand to back you up.

Finally, effective measurement of job performance helps you to ensure that you are treating employees fairly and avoiding any discrimination or bias. In fact, accurate measurement helps you to avoid even the appearance of unfair treatment.

### Measuring Components

Measuring job performance involves several key elements or components.

First, it entails consistently applying the same basic standards to everyone in the same job. This even-handed approach leads to fair treatment and sound decisions. However, high quality measurement also involves viewing each employee as an individual and setting individual performance standards for each worker that are in line with the basic job standards.

Individual performance standards must also support department goals, which must be in line with the organization's mission and goals. All standards and goals should be clearly communicated to employees.

Measuring job performance involves making observations of employee behavior over a reasonable time period. Your observations should be representative of the employee's real performance over time, not just the most recent or the most conspicuous behavior.

Finally, measuring job performance involves evaluating the data you gather in terms of job functions, standards and different levels of goals.

### Objective and Specific

To be fair to employees and useful to you, job performance measurements must be as objective as possible and refer to specific facts or behaviors.

You need to record facts, not impressions, conclusions or interpretations. Strive to be objective, not subjective.

For example, saying that an employee shows a good attitude is rather subjective. The employee may only show a good

## EEO Guidance: Measuring Performance (cont.)

attitude to you, as you are the supervisor, or maybe you just observed the employee on a day when they were in a good mood. Saying that the same employee meets all work deadlines and makes few errors is more objective as it is based on evidence. It becomes still more objective if you have records to back it up.

To say that a worker is sensitive to the needs of his co-workers is a subjective judgment unless you added instances in which the employee demonstrated cooperation and concern for co-workers. Check to make sure trainees understand the concept of becoming more objective by using data.

Focusing on behavior, not attitudes or personalities, will help you be more objective and stick to the facts. When it comes to measuring job performance, it's what you can see an employee doing that counts, not what you think might be going on in the employee's head or heart. Don't speculate. Make specific observations whenever you can. Don't generalize or be vague. Focus on specific instances in which a work behavior was displayed or not displayed.

### Fact or Impression?

Restricting yourself to facts and behavior can be difficult. We often hardly notice our subjective thinking. That's why it's so important to review your thoughts and statements about employees. Here's an exercise that will help. You'll have to decide whether each of the following statements describes an actual behavior based on fact or merely an unsupported impression about an employee. I'm also going to ask you to think of ways in which the impressions could be restated to become factual observations.

- *Example:* Chris has not shown an interest in our safety program.
  - Do you think that is a **fact** or **impression**?
    - *Answer:* It's an Impression.
    - *Why?*

Impression. Possible Revision: Chris has failed to attend two safety meetings and on three occasions I have had to remind him to wear required protective equipment.

- *Example:* Tom has a bad attitude.
  - Do you think that is a **fact** or **impression**?
    - *Answer:* It's an Impression.
    - *Why?*

There are a few reasons. One is because assessment of what constitutes a good or bad attitude varies from person to person. Also, it may be that Tom just doesn't like me. Perhaps his attitude is much better when I'm not around. Furthermore, I can't get into Tom's head and measure his attitude. I'm just guessing.

However, I can measure his behavior, which may or may not be based on what I consider a "bad attitude." If Tom comes to work late and leaves early, if his production is down, if the quality of his work is below standard, if I can cite instances when he's ignored rules or failed to attend key meetings, or if I can cite occasions when he's failed to cooperate with me or his co-workers, then I have a fact-based job performance measurement. Now, let's try some other statements.



## EEO Guidance: Measuring Performance (cont.)

- *Example:* Sue does not take her work seriously.
  - Do you think that is a **fact** or **impression**?
    - *Answer:* It's an Impression.
    - Why?

Impression. Possible Revision: Sue's error rate continues to be high, although I have spoken to her about it and she has promised to be more careful. Instead of focusing on the job while she works, she talks to co-workers or talks on the phone to friends and family — something she has admitted doing despite a rule against it.

That brings us to Terry. Terry has demonstrated leadership by developing a new employee orientation program for use with plant employees. (Behavioral observation supported by facts.)

In short, we are focusing on backing up judgments with specific, verifiable examples, not just relying on impressions. OK. Let's try a few more examples:

- *Example:* Pat does a poor job of following up.
  - Do you think that is a **fact** or **impression**?
  - *Answer:* That's an impression.

Now, let's talk about how to make it more specific. What kinds of behaviors indicate poor follow-up? Possible answer: Pat's failure to follow up with a customer caused a complaint, and we have lost an important customer as a result.

- *Example:* Sam solved the late shipment problem by

reviewing all incidents and talking to shipping personnel, truck drivers and customers.

- **Impression** or **fact**?
- *Answer:* That's a fact.

Let's call this a "behavioral observation supported by facts." As a supervisor evaluating employees, that's an example of the type of data you need for a sound evaluation. By first understanding why performance measurement is so important, and then by demonstrating how to make your observations of employees more objective, we hope this guidance assists you in having the right mindset for effective measurement of performance. The Texas Workforce Commission Civil Rights Division (CRD) is committed to providing training and outreach to employers, employees, housing providers, housing consumers and other stakeholders. We believe that discrimination can be averted if everyone knows their rights and responsibilities. For more information, speaking engagements or inviting the CRD to an upcoming event, please contact CRD at (888) 452-4778 or by email at [CRDTraining@twc.state.tx.us](mailto:CRDTraining@twc.state.tx.us).



# What's Happening at the Civil Rights Division

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



The Texas Workforce Commission Civil Rights Division (CRD) is committed to providing training and outreach to employers,

employees, housing providers, housing consumers and other stakeholders. Our mission is to protect the dignity of Texas residents at home and in the workplace by providing through education, conciliation, mediation, investigation, in efforts to avoid litigation. Together, we can decrease employment and housing discrimination if everyone knows and exercises their rights and responsibilities.

## Recent CRD Outreach and Education Activities

This past quarter presented many challenges for the CRD training team as it underwent numerous transitions, personnel changes, an aggressive training and travel events. During this past quarter, the Outreach Coordinator has started a "sidekick" program with CRD Employment and Housing Investigators to enable them to participate in outreach and external training events. This program enables the investigators to work more closely with federal and other state partners, share experiences and refresh their knowledge of discriminatory practices and remedies.

Marilyn Diaz, CRD's new Training Assistant, joined the team during the first week of September and participated in two training events, a contracting class, an open house, and a business conference in Longview, TX before then end of her third week in the agency. Nor-

mally, we would have completed all our training for the year before Thanksgiving, but this year has been different; we just finished our last training event on December 13<sup>th</sup> and are already setting up training dates into March of 2020.

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

## Texas Business Conferences rebranded to Texas Conference for Employers

Recently, TWC Commissioner for Employers, Aaron Demerson, decided to rebrand the Texas Business Conferences by changing the name to Texas Conference for Employers (TCE). These conferences provide opportunities for Commissioner Demerson and his staff to assemble excellent speakers to address ongoing issues concerning Texas employers their businesses.

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 Equal Employment Opportunity (EEO) and Fair Housing programs and provide technical assistance to conference participants. For more information about TCEs, go to <https://twc.texas.gov/texas-conference-employers>

**FREE Fair Housing Computer Based Training** CRD offers a free Fair Housing Overview Computer-Based Training (CBT) module for housing providers,

consumers, realtors and lenders. This CBT enables participants to learn about fair housing at their own pace and location using personal computers. Use the following link and instructions to begin training: <https://www.softchalkcloud.com/lesson/serve/gkrJy0FX7bIMil/html>

From September of 2019 until January of 2020, CRD has conducted sustainment and professional development training for its housing team members. In September, the Division completed their annual combined investigator training, a type of train-the trainer that allows team members to use their experiences to teach fellow investigators. Additionally, the division began rotating members through classes such as the Fair Housing Outreach Specialist, Fair Housing Basic Investigator, Advanced Investigator, and Mediator courses in Silver Spring, MD and later hosted an additional Advanced Investigator course in Austin, TX.



Training facilitated by trainers from the Mr. Jeffery P. May, MURP (the "Bowtie Guy"), and Michael D. Mitchell, JD from the International Development and Planning LLC.

# What's Happening at the Civil Rights Division

## EEOC Training

In early October of 2019, CRD representatives attended a one-day EEO training seminar update in New Braunfels, TX provided by its federal partner, the U.S Equal Employment Opportunity Commission. The seminar provided updates on EEO laws and best practices relating to hiring religion in the workplace, the EEO process and ADA reasonable Accommodations.



## CRD Hosts an Open House

On September 18, 2019 The Civil Rights Division held an open house for its partners and local community. Guests included TWC Commissioners, Executive Director, federal partners (HUD and EEOC), local partners, community members and other TWC employees.



## CRD Visits LBJ Library

Approximately 20 CRD personnel attended a tour through history at the LBJ Library at the University of Texas in Austin, TX. The tour highlighted the many civil rights trials and triumphs of President Lyndon Baines Johnson and his administration. It Especially focused on how he never allowed tragedy to deter his efforts to fix a broken government and system.



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