CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.

ON MARCH 17, 2020, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.

Estimated Publication Date of the Proposal in the Texas Register: April 3, 2020

Estimated End of Comment Period: May 4, 2020

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:


PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 819 rule change is to align TWC's Chapter 819 Texas Workforce Commission Civil Rights Division rules with amendments to Texas Labor Code §21.054, pursuant to House Bill (HB) 1074, enacted by the 86th Texas Legislature, Regular Session (2019), signed into law effective September 1, 2019.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of the Individual Provisions)

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

TWC proposes the following amendments to Subchapter B:

§819.12. Unlawful Employment Practices

Texas Labor Code §21.101 prohibits age discrimination against individuals ages 40 and older. Section 21.054 prohibits age discrimination as it relates to on-the-job training programs, retraining, apprenticeships, and other training. HB 1074 repealed Texas Labor Code §21.054(b), which limited this provision to individuals between the ages of 40 and 56.

Section 819.12(d) is amended to align with Texas Labor Code, Chapter 21, which prohibits age discrimination against individuals ages 40 and older.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:
There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by HB 1290, 85th Texas Legislature, Regular Session (2017)—to be codified at Texas Government Code, §2001.0045—does not apply to this rulemaking.

**Takings Impact Assessment**

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to align §819.12(d) with amendments to Texas Labor Code, §21.054, pursuant to HB 1074, enacted by the 86th Texas Legislature, Regular Session (2019), and signed into law effective September 1, 2019.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

**Government Growth Impact Statement**

TWC has determined that during the first five years the proposed amendments will be in effect:
--the proposed amendments will not create or eliminate a government program;
--implementation of the proposed amendments will not require the creation or elimination of
employee positions;
--implementation of the proposed amendments will not require an increase or decrease in future
legislative appropriations to TWC;
--the proposed amendments will not require an increase or decrease in fees paid to TWC;
--the proposed amendments will not create a new regulation;
--the proposed amendments will not expand, limit, or eliminate an existing regulation;
--the proposed amendments will not change the number of individuals subject to the rules; and
--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis
TWC has determined that the proposed rules will not have an adverse economic impact on small
businesses or rural communities, as the proposed rules place no requirements on small businesses
or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
significant negative impact upon employment conditions in the state as a result of the rules.

Bryan Snoddy, Director, Civil Rights Division, has determined that for each year of the first five
years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed
rules will be to align TWC's rules with recent amendments to the Texas Labor Code.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES
In the development of these rules for publication and public comment, TWC considered all
information gathered in order to develop rules that provide clear and concise direction to all
parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
Program Policy, attn.: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas
78778; faxed to (512) 475-3577; or emailed to TWCPolicyComments@twc.state.tx.us.
Comments must be received or postmarked no later than 30 days from the date this proposal is
published in the Texas Register.

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide
TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
effective administration of TWC services and activities.
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SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS


(a) Discrimination by Employer. An employer commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that deprives or tends to deprive an individual of an employment opportunity or adversely affects in any other manner the status of an employee.

(b) Discrimination by Employment Agency. An employment agency commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) fails or refuses to refer for employment or discriminates in any other manner against an individual; or

(2) classifies or refers an individual for employment on that basis.

(c) Discrimination by Labor Organization. A labor organization commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) excludes or expels from membership or discriminates in any other manner against an individual; or

(2) limits, segregates, or classifies a member or an applicant for membership, or classifies or fails or refuses to refer for employment an individual in a manner that:

(A) deprives or tends to deprive an individual of any employment opportunity;

(B) limits an employment opportunity or adversely affects in any other manner the status of an employee or of an applicant for employment; or

(C) causes or attempts to cause an employer to violate this subchapter.

(d) Admission or Participation in Training Program. An employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment
practice if based on race, color, disability, religion, sex, national origin, or age, it
discriminates against an individual in admission to or participation in the program,
unless a training or retraining opportunity or program is provided under an
affirmative action plan approved by federal or state law, rule, or court order. The
prohibition against discrimination based on age applies only to individuals who are
at least 40 years of age but younger than 56 years of age.

(e) Retaliation. An employer, employment agency, or labor organization, commits an
unlawful employment practice based on race, color, disability, religion, sex, national
origin, or age if the employer, employment agency, or labor organization retaliates or
discriminates against a person who:

(1) opposes a discriminatory practice;
(2) makes or files a charge;
(3) files a complaint; or
(4) testifies, assists, or participates in any manner in an investigation, proceeding,
or hearing.

(f) Aiding or Abetting Discrimination. An employer, employment agency, or labor
organization commits an unlawful employment practice if it aids, abets, incites, or
coerces a person to engage in an unlawful discriminatory practice based
on race, color, disability, religion, sex, national origin, or age.

(g) Interference with the Agency or CRD. An employer, employment agency, or labor
organization commits an unlawful employment practice if it willfully interferes with
the performance of a duty or the exercise of a power by CRD or by the Agency in
relation to CRD.

(h) Prevention of Compliance. An employer, employment agency, or labor
organization commits an unlawful employment practice if it willfully obstructs or prevents a
person from complying with Texas Labor Code, Chapter 21, or a rule
adopted or order issued under Texas Labor Code, Chapter 21.

(i) Discriminatory Notice or Advertisement. An employer, employment agency, labor
organization, or joint labor-management committee controlling an apprenticeship,
on-the-job training, or other training or retraining program commits an unlawful
employment practice if it prints or publishes or causes to be printed or published a
notice or advertisement relating to employment that:

(1) indicates a preference, limitation, specification, or discrimination based on
race, color, disability, religion, sex, national origin, or age; and
(2) concerns an employee’s status, employment, or admission to or membership or
participation in a labor organization or training or retraining program.
(j) **Bona Fide Occupational Qualification.** A bona fide occupational qualification is an affirmative defense to discrimination.