

1 **CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION**

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

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

7 Estimated Publication Date of the Proposal in the *Texas Register*: **April 3, 2020**
8 Estimated End of Comment Period: **May 4, 2020**

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

11 Subchapter B. Equal Employment Opportunity Provisions, §819.12

- 12 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- 13 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- 14 PART III. IMPACT STATEMENTS
- 15 PART IV. COORDINATION ACTIVITIES

16 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

17 The purpose of the proposed Chapter 819 rule change is to align TWC's Chapter 819 Texas
18 Workforce Commission Civil Rights Division rules with amendments to Texas Labor Code
19 §21.054, pursuant to House Bill (HB) 1074, enacted by the 86th Texas Legislature, Regular
20 Session (2019), signed into law effective September 1, 2019.

21 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

24 **SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS**

25 **TWC proposes the following amendments to Subchapter B:**

26 **§819.12. Unlawful Employment Practices**

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 HB 1074 repealed Texas Labor Code §21.054(b),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

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

33 **PART III. IMPACT STATEMENTS**

34 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the
35 rules will be in effect, the following statements will apply:

1 There are no additional estimated costs to the state and to local governments expected as a result
2 of enforcing or administering the rules.

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

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

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

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

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

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

16 Takings Impact Assessment

17 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
18 affects private real property, in whole or in part or temporarily or permanently, in a manner that
19 requires the governmental entity to compensate the private real property owner as provided by
20 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
21 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
22 would otherwise exist in the absence of the governmental action, and is the producing cause of a
23 reduction of at least 25 percent in the market value of the affected private real property,
24 determined by comparing the market value of the property as if the governmental action is not in
25 effect and the market value of the property determined as if the governmental action is in
26 effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under
27 Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action,
28 as discussed elsewhere in this preamble, is to align §819.12(d) with amendments to Texas Labor
29 Code, §21.054, pursuant to HB 1074, enacted by the 86th Texas Legislature, Regular Session
30 (2019), and signed into law effective September 1, 2019.

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

38 Government Growth Impact Statement

39 TWC has determined that during the first five years the proposed amendments will be in effect:

- 1 --the proposed amendments will not create or eliminate a government program;
- 2 --implementation of the proposed amendments will not require the creation or elimination of
- 3 employee positions;
- 4 --implementation of the proposed amendments will not require an increase or decrease in future
- 5 legislative appropriations to TWC;
- 6 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
- 7 --the proposed amendments will not create a new regulation;
- 8 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
- 9 --the proposed amendments will not change the number of individuals subject to the rules; and
- 10 --the proposed amendments will not positively or adversely affect the state's economy.

11 Economic Impact Statement and Regulatory Flexibility Analysis

12 TWC has determined that the proposed rules will not have an adverse economic impact on small
13 businesses or rural communities, as the proposed rules place no requirements on small businesses
14 or rural communities.

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

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

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

22 **PART IV. COORDINATION ACTIVITIES**

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

26 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
27 Program Policy, attn.: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas
28 78778; faxed to (512) 475-3577; or emailed to TWCPolicyComments@twc.state.tx.us.
29 Comments must be received or postmarked no later than 30 days from the date this proposal is
30 published in the *Texas Register*.

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

34

1 **CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION**

2 **SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS**

3 **§819.12. Unlawful Employment Practices.**

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

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

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

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

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

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

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

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

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

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

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

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

32 (d) Admission or Participation in Training Program. An employer, labor organization, or
33 joint labor-management committee controlling an apprenticeship, on-the-job
34 training, or other training or retraining program commits an unlawful employment

1 practice if based on race, color, disability, religion, sex, national origin, or age, it
2 discriminates against an individual in admission to or participation in the program,
3 unless a training or retraining opportunity or program is provided under an
4 affirmative action plan approved by federal or state law, rule, or court order. The
5 prohibition against discrimination based on age applies only to individuals who are
6 at least 40 years of age ~~but younger than 56 years of age~~.

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

11 (1) opposes a discriminatory practice;

12 (2) makes or files a charge;

13 (3) files a complaint; or

14 (4) testifies, assists, or participates in any manner in an investigation, proceeding,
15 or hearing.

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

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

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

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

33 (1) indicates a preference, limitation, specification, or discrimination based on
34 race, color, disability, religion, sex, national origin, or age; and

35 (2) concerns an employee's status, employment, or admission to or membership or
36 participation in a labor organization or training or retraining program.

- | 1 (j) Bona Fide Occupational Qualification. A bona fide occupational qualification is an
2 affirmative defense to discrimination.