

Civil Rights Reporter

JOURNAL OF THE TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

Issue
12
October
2024



Mission Statement

Our mission is to reduce discrimination in employment and housing through education and enforcement of state and federal laws.

Vision

Our vision is to help create an environment in which citizens of the State of Texas may pursue and enjoy the benefits of employment and housing that are free from discrimination.

Texas Workforce Commissioners

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The Relevance of Day-to-Day Processes May Vary with Each Investigation

Jason S. Denney
Housing Investigator

A recent case involving the inner workings of the bar industry highlighted the occasional need to delve deeply into the day-to-day operations and processes of a particular industry. Often, a minimal understanding of business practices suffices for our purposes. For instance, when a charging party works on a production line, we may only need to know that parts enter one side, people along the line assemble them, and a finished product, such as a car, emerges from the other side. However, sometimes more detailed knowledge is necessary—not just what happens, but why it happens.

In a recent case, the responding party had a “benching policy,” which allowed managers to remove employees with performance or behavioral issues from their team. These employees were placed in a benched status, and other managers could elect to try them on their own teams based on their needs. In this case, the charging party could not explain the process beyond stating that they were benched, while others were not. The responding party provided an explanation of the benching policy and the policy itself. A reading of the first two paragraphs (Purpose and Scope) was sufficient for the investigator’s needs.

In another case, the charging party worked as a bartender. She claimed that after informing the responding party that she would be off for two to three months after delivering her baby, she was fired on her next shift. The charging party stated she was told she was fired for putting drinks on the “spill tab” and giving them to customers, an action she claimed all the bartenders did, and that she was fired without prior warnings. Her attorney provided over 600 pages of “Checkout Reports,” which were used to close out the bar at the end of the night and listed names at the top. Several reports showed spills ranging from 6 to 154 individual drinks, with totals exceeding \$1,000. The charging party’s attorney argued that this demonstrated the practice was “common, widespread, and accepted.”

The responding party stated that its bartenders were given a “comp tab” to give away drinks up to \$30 for business relations, such as offering a regular customer a birthday drink. However, placing comp drinks on the spill tab after exceeding their comp limit was prohibited. A manager noted suspicious activity on the spill tab, investigated, and found that the charging party had given away three drinks totaling \$13.50 (of a \$67 total spill tab), placing them on the spill tab. The responding party considered this stealing and terminated the charging party.

Based on this account, several questions remained unanswered: What is the purpose of a comp tab and a spill tab? What is permissible on the spill tab? How much is considered acceptable on the spill tab? Why were spill tabs over \$1,000 not deemed suspicious when the \$67 tab was? Why was only \$13.50 of the suspicious total accounted for? Why wasn’t the rest of the tab considered suspicious? If giving away drinks on the comp tab was permissible, why wasn’t it allowed on the spill tab?

Further investigation and interviews provided clarity. Why is the spill tab important? Every drink is taxed, whether fit for consumption or not. The responding party is responsible for paying the taxes on lost drinks. Comped drinks have taxes built into their cost and are considered a benefit for bartenders, which is why there’s a dollar limit.

What goes on the spill tab?

The spill tab is used for broken bottles, spoiled kegs, drinks spilled during preparation, drinks containing foreign objects (such as a fly), improperly mixed drinks, or large batches of premade cocktails that spoil before they can be sold.

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How much is considered acceptable on the spill tab? There is no specific amount; it depends on the day's circumstances. At this bar, managers were required to approve drinks placed on the spill tab, giving them oversight of the tab's total. The charging party failed to follow this procedure, leading to a discrepancy between the actual total and what the manager expected. This is why the \$13.50 on the \$67 tab was deemed suspicious.

If giving away drinks on the comp tab was permissible, why wasn't it allowed on the spill tab?

The comp tab is a benefit provided to bartenders to show appreciation to customers, with the hope they will spend more money. It is limited because it is a gift from the business. Placing non-wasted drinks on the spill tab not only deprived the business of the product but also left the business responsible for the associated taxes.

At this bar, the spill tab was not specific to individual bartenders. The checkout reports covered all bartenders working on a given day, not just the one whose name appeared on the report. The 600 pages of reports did not reveal any discernible pattern. Large spill tab amounts were random and appeared unrelated to specific managers or days, consistent with incidents like accidents or refrigeration failures.

Nearly all interviewees stated that abusing the spill tab would be considered theft, a standard across the industry.

Initially, this case seemed to have the potential to be "for cause." However, identifying what the investigator did not know about the industry was crucial in formulating the right questions and strategy to move forward. As the saying goes, "Ignorance is bliss," but only until you identify exactly what knowledge you lack. Once recognized, this should become the focus of fact-finding before analyzing the harms. If necessary, detailed information about basic day-to-day operations should be gathered. The facts of the case, the allegations, and the life experiences of the investigator will all dictate the extent of fact-finding required before any analysis can be conducted.

Calling Balls and Strikes The Role of the Umpire

BRYAN SNOODY - DIVISION DIRECTOR

In the fall of 1974, on September 7th, during a baseball game against the Chicago White Sox at Anaheim Stadium (now Angel Stadium), Nolan Ryan of Refugio, Texas, stood atop the mound in the 9th inning. During the at-bat, Ryan threw the first ever recorded and confirmed pitch to exceed 100 miles per hour. Modern science suggests that the primitive radar gun, positioned ten (10) feet in front of home plate, likely misrepresented the pitch's speed, which is now calculated to have been 108 mph.

At the time, no baseball had ever been thrown so fast, and it posed a serious challenge for the umpires. The pitches came so fast and frequently that it changed the game. As one ball crossed (or came near) the plate—there was some dispute—the umpire called it a “ball.” Later, after the game, the media asked the umpire whether he had even seen the pitch. The umpire famously responded, “It sounded low.”

The Civil Rights Division (CRD) operates very much like a modern-day baseball umpire—though without the guessing. Each of our cases is defined by legal and evidentiary standards that have been thoroughly tested. We are trained to know what falls within the strike zone and to display the integrity needed to make the correct call under pressure. We carry the high honor and responsibility of ensuring fair housing and equal employment in Texas. But, like many sports contests, referees and umpires often feel the heat and face scrutiny.

The role of the umpire is often misunderstood, even vilified, in modern sports. The CRD, however, has a relatively straightforward test: get it right every time. Yet, we frequently face the challenge of working hard to convince the players on the field that we did our job impartially and without bias.

We understand that life is not a sport. We deal with serious issues concerning earning a living and securing or maintaining housing. These issues are core to self-sufficiency and, more critically, touch the very depths of our dignity and respect—whether it's about work or the ability to choose where to call home.

Yet, there is tremendous satisfaction in ensuring a level playing field and that everyone gets a fair chance in life. While we don't get dirt kicked at us or have coaches yelling directly in our faces, the gravity of the issues we handle brings its own weight. The role of the umpire is to remain calm, enforce the rules, and fairly call the ball—in or out.

The Civil Rights Division's efforts this year resulted in over 2,000 housing and employment resolutions at the fastest rate achievable, without sacrificing customer service. I am proud to be part of a team that handles nearly 20,000 inquiries per year, trains another 20,000 individuals, reviews all state agencies every six years, and strives to get every call right. When it comes to equal employment and fair housing, we understand that our work impacts the lives of Texans. This is no game—we must get it right.

Improving Our Services Employment Complaints

Patrick Williams - Housing Manager

The art of fair housing conciliations is a delicate dance between legal expertise, human compassion, and effective negotiation. By mastering these elements, investigators can contribute to a more just and equitable housing landscape for all. Fair housing conciliations are a crucial part of ensuring equal access to housing for all. They offer a powerful tool to resolve discriminatory housing practices without the need for lengthy and costly litigation.

In Performance Year 2024, the Texas Workforce Commission-Civil Rights Division (TWCCRD) closed 37% of its fair housing complaints through conciliation or withdrawal with resolution. This demonstrates the effectiveness of conciliation as a preferred method for resolving complaints, favored by both HUD and TWC due to its efficiency and speed.

Conciliation agreements do not constitute an admission of wrongdoing or liability by the respondent of any kind, including but not limited to violations of the TFHA, FFHA or Title VII of the Civil Rights Act, as amended. We are all aware that litigation is lengthy, expensive, and uncertain. Conciliation offers a quicker resolution, saving time and resources for both the complainant and the respondent. It allows for a mutually agreeable solution that addresses the complainant's concerns while avoiding the adversarial nature of court proceedings. The respondent avoids the potential negative publicity and legal costs associated with a trial. The complainant gets redress without the stress and uncertainty of litigation.

The foundation of a successful conciliation lies in building trust and mutual understanding between the parties involved. The investigator should approach the process with a spirit of collaboration, aiming to find a fair solution that addresses the concerns of all parties. Active listening is paramount, this will allow the investigator to fully understand the perspectives of both the complainant and the respondent. The investigator should actively seek creative solutions that address the root of the issue. Thinking outside the box and exploring alternative approaches can lead to more effective and lasting resolutions.

If the parties are genuinely committed to reaching an agreement, they must be prepared to compromise. A successful conciliation may involve concessions from both sides. The investigator should guide the parties towards solutions that

are both equitable and practical, ensuring that the agreement is fair to all involved. Throughout the entire investigation and conciliation process, the investigator must remain completely neutral. This means avoiding any bias or favoritism towards either the complainant or the respondent. Information gathered during the conciliation process is strictly confidential and cannot be used for investigative purposes, and vice versa.

Lead Investigator Keith Cooper, one of the division's most successful conciliators, emphasizes the importance of understanding the complainant's perspective and needs. The introductory call is a crucial opportunity to build rapport and determine whether the complainant seeks personal redress or systemic change. This information can inform the framework for a potential conciliation agreement. If a complainant is only asking for a simple reasonable accommodation, such as an ESA or a parking spot to accommodate their disability, a phone call to the respondent may result in a quick agreement. If it doesn't, the investigator will continue with the investigative process.

HUD mandates that investigators attempt conciliation in all appropriate cases. These attempts must occur early, and during every discussion with both the complainant and respondent. Investigators must actively facilitate communication between the parties, explaining the benefits of conciliation, such as avoiding lengthy administrative proceedings, achieving a quicker resolution, and securing a tailored remedy. Successful conciliation agreements can address not only the complainant's immediate concerns but also broader systemic issues through respondent commitments to training, policy changes, or other corrective actions.

Addressing fair housing complaints that involve systemic issues or require policy changes requires a multifaceted approach that extends beyond individual remedies. Public interest relief aims to prevent future discrimination and create a more equitable housing system for all. Here are some examples: 1) policy changes or implementation; 2) systemic remedies; 3) capacity building and community empowerment; and 4) compensation. For FHAPs, public interest relief is primarily achieved through policy changes, change

to a city ordinance, distributing policies to all tenants, and posting policies so they are visible to the public to name a few. By pursuing public interest relief measures, FHAPs can impact the greater public to decrease systemic barriers to fair housing and create a more equitable housing system for all.

To equip investigators with skills to facilitate the conciliation process, TWC began sending investigators to a 40-hour Basic Mediation Training Course in 2023. This course, designed to provide individuals with the skills and credentials necessary to become certified mediators in Texas, emphasizes the community-based mediation model. In November 2023, TWC sent two housing investigators to the course, followed by five more in 2024. An additional four investigators are scheduled to attend in Fiscal Year 2025.

For complaints potentially involving discrimination or those requiring more experienced handling, the investigator may request an attorney from the Office of General Counsel to lead the conciliation discussion.

Detailed recordkeeping is essential throughout the conciliation process. The investigator should document all discussions, including offers, counteroffers, and any agreements reached. This detailed record serves as a valuable reference point, preventing future disputes or misunderstandings. All conciliation discussions should be recorded in the HEMS conciliation section.

While conciliations are not always successful, they offer a significant opportunity for a fair and efficient resolution to fair housing discrimination complaints, benefiting all parties involved and the overall goal of eliminating discriminatory housing practices. If conciliation fails, litigation remains an option.

Fair housing compliance monitoring is a crucial process that ensures that housing providers, including landlords, property management companies, and real estate agents, are complying with the Fair Housing Act (FHA) and other federal, state, and local fair housing laws. Overall, fair housing compliance monitoring plays a vital role in ensuring a level playing field in housing and guaranteeing that everyone can find safe and affordable housing without facing discrimination.

I will delve deeper into compliance in a next article.

Accommodations in the Workplace

Jeffrey Riddle, Editor and Trainer

If you've been in one of my in-person sessions, you might recognize this parable and smile. If not, don't worry—you might hear it one day. But for now, read on.

When dealing with employees' disability requests, also known as reasonable accommodations, it's important to remember that the process doesn't always work the same way for everyone. An employer can deny a request if it's deemed unreasonable, but there's no fixed standard for what counts as "unreasonable" since it's determined case by case. Even if you, as an employer, can't fulfill the specific request, your responsibilities don't end with the denial. You're still obligated to try to accommodate the employee in some way.

Now, imagine you're a small-town realtor. When I say "small town," I mean really small—maybe one stoplight, right next to the Dairy Queen, the only restaurant in town. I've driven through at least ten towns like this in my travels around the state. In this example, let's say I'm leasing out a home in the downtown area that's been converted into a commercial property. The main floor is all business—no kitchen, no living room, and no bathroom. The only bathroom is upstairs.

I have one employee, and that's all I can afford because, let's be honest, I'm probably not making commissions off million-dollar homes. This employee has trouble going up and down the stairs to use the bathroom due to a disability. One day, they come to me and say they saw on TikTok that people are installing elevators in their homes. They found a company in Dallas (or Houston, or Austin) that could install one as an accommodation, so they can use the bathroom without difficulty.

Well, that's not going to happen. I can't afford to install an elevator in the house I'm leasing—I'd never financially recover from it. So, I tell them no, as the law allows. But I still have a responsibility to try to accommodate my employee in another way.

At this point, someone usually suggests I put a port-a-potty in the backyard. I would strongly advise against that as an accommodation. If you've ever used a port-a-potty between mid-April and late October, you know it's not a pleasant experience.

Fortunately, there are other options. I could reinstall a bathroom on the first floor. A chair lift could also work—if you don't know what that is, watch the movie *Gremlins*. (Don't worry, chair lifts in real life don't do what happens in the movie!) Lastly, since we're in a small town, I could allow my employee extra breaks to go home and use their own bathroom.

The bottom line is this: Employers need to keep working toward a solution if the initial request is not feasible. It's not a case of "If I can't do that, figure something else out or go work somewhere else." As long as employers and employees communicate with one another—not talk at each other—they should be able to find a middle ground that makes the accommodation reasonable for both parties.

OUT AND ABOUT



The Civil Rights' own Housing Investigator, Keith Cooper, participated in an event in Manor, Texas. Keith routinely provides information on our investigative process and other matters to housing and apartment associations and housing authorities across the state. Pictured above is Keith Cooper and others at exhibitor tables set up for the event.

EVENTS

Equal Employment Training

If you didn't already know and are still reading, our training is provided at no cost to the employer. Take advantage of having our training team do the training for you.

Are you a private employer looking to develop your company on the basics of Equal Employment Opportunity or for a better understanding of how to prevent sexual harassment in the workplace?

The Civil Rights Division's Training team can help. We offer numerous EEO training presentations and can tailor training to your needs. Reach out to our training team at CRDTraining@twc.texas.gov to discuss and schedule your training!

Our complete our form found here. <https://forms.office.com/g/2hRSC8xqVU>

Fair Housing Training

Join us on every first and third Tuesday from 10:00 - 11:00 (CST) where we discuss Fair Housing and Housing Accommodations.

This is a great webinar for those interested in their rights or those that manage or own properties. Did we mention it is free!

Register Here. <https://forms.office.com/g/ZBm7gtJLjg>

A portion of the work that provided the basis for this publication was supported by funding under a Cooperative Agreement with the U.S. Department of Housing and Urban Development. The substance and finding of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do no necessarily reflect the views of the Government.