

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

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3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
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7 The Texas Workforce Commission (Commission) proposes amendments to the following section
8 of Chapter 819 relating to the Texas Workforce Commission Civil Rights Division:
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10 Subchapter F, Equal Employment Opportunity Records and Recordkeeping, §819.92

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12 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
13 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
14 **PART III. IMPACT STATEMENTS**
15 **PART IV. COORDINATION ACTIVITIES**
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18 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
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20 The purpose of the rule amendment is to clarify in rule the Commission's determination of what
21 materials are available to the parties in a civil rights matter and what materials are beyond what
22 would constitute reasonable access to the file. The Commission's authority for determining the
23 scope of reasonable disclosure of documents is set forth in §21.305, Texas Labor Code,
24 regarding Access to Commission records.
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26 Specifically §21.305 provides that "the commission shall adopt rules allowing a party to a
27 complaint filed under §21.201 reasonable access to commission records relating to the
28 complaint." Furthermore it provides that, "unless the complaint is resolved through a voluntary
29 settlement or conciliation, on the written request of a party the executive director shall allow the
30 party access to the commission records: (1) after the final action of the commission; or (2) if a
31 civil action relating to the complaint is filed in federal court alleging a violation of federal law."
32 The rule defines reasonable access to include access to all records in the file, except those
33 excepted from required disclosure under the Public Information Act and investigator notes. The
34 purpose of the change in the rule is to make clear the intent of the Commission, under the
35 authority of §21.305, Texas Labor Code, to exclude investigator notes from the materials in a
36 civil rights matter that may be accessed. By so doing, the Commission is striving to ensure that
37 investigators have the broadest latitude to thoroughly investigate and record their findings, while
38 continuing to ensure that the parties have access to all other parts of the file. This proposal
39 additionally aligns Commission practices with the Equal Employment Opportunity
40 Commission's (EEOC) policies regarding release of records in employment discrimination
41 complaints as reflected in the Memorandum of Understanding with EEOC.
42

43 Pursuant to §21.305, the Commission has determined what constitutes reasonable access to files.
44 Claimants or respondents to a Civil Rights Division (CRD) investigation often request copies of
45 the complete complaint file including the investigator's personal notes. Generally, while an
46 individual is authorized to have access to copies of the contents in his or her CRD complaint file,

1 the reasonable access does not include documents in the file that may be deemed confidential
2 under the Public Information Act or an investigator's personal notes.
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4 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

5 **(Note: Minor editorial changes have been made that do not change the meaning of the**
6 **rules and, therefore, are not discussed in the Explanation of Individual Provisions.)**
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8 **SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND** 9 **RECORDKEEPING**

10 **The Commission proposes the following amendments to Subchapter F:**

11 **§819.92. Access to CRD Records**

12 Section 819.92(b) is added to provide that pursuant to the authority granted the Commission in
13 Texas Labor Code §21.305, reasonable access does not include: (1) information excepted from
14 required disclosure under Texas Government Code, Chapter 552; or (2) investigator notes.
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16 The new subsection provides that parties involved in an allegation filed with CRD may obtain
17 copies of all items in the file relating to their claim but that reasonable access does not include
18 documents in the file that may be deemed confidential under the Public Information Act or
19 investigator notes, which will allow for more complete investigations and is consistent with the
20 Commission's Memorandum of Understanding with EEOC.
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23 **PART III. IMPACT STATEMENTS**

24 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
25 years the rules will be in effect, the following statements will apply:
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27 There are no additional estimated costs to the state and local governments expected as a result of
28 enforcing or administering the rules.
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30 There are no estimated reductions in costs to the state and to local governments as a result of
31 enforcing or administering the rules.
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33 There are no estimated losses or increases in revenue to the state or to local governments as a
34 result of enforcing or administering the rules.
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36 There are no foreseeable implications relating to costs or revenue of the state or local
37 governments as a result of enforcing or administering the rules.
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39 There are no anticipated economic costs to persons required to comply with the rules.
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41 There is no anticipated adverse economic impact on small or microbusinesses as a result of
42 enforcing or administering the rules.
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1 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to
2 be within the Agency's legal authority to adopt.

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4 Mark Hughes, Director of Labor Market Information, has determined that there is no significant
5 negative impact upon employment conditions in the state as a result of the rules.

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7 Robert Gomez, Director, Civil Rights Division, has determined that for each year of the first five
8 years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will
9 be to ensure compliance with the Memorandum of Understanding with the Equal Employment
10 Opportunity Commission and ensure consistent treatment of these cases with the EEOC.
11 Furthermore, the benefits would be the consistent treatment of records within a TWC -Civil
12 Rights Division investigation and an EEOC investigation. Specifically, the change would
13 provide consistency with the EEOC policy for withholding investigator notes and would ensure
14 the investigators' freedom to fully and thoroughly investigate and record all complaints, while
15 continuing to ensure that parties get access to all other parts of the file.

16 17 18 **PART IV. COORDINATION ACTIVITIES**

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20 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and
21 UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-
22 mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments
23 postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

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25 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the
26 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it
27 deems necessary for the effective administration of Agency services and activities. The rules are
28 also proposed under Texas Labor Code §21.305, which provides the Commission with the
29 authority to adopt rules allowing a party to a complaint filed under Section 21.201 reasonable
30 access to Commission records relating to the complaint.

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32 The rules affect Texas Government Code, Chapter 552.

