

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

2 **ADOPTED 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 The Texas Workforce Commission (TWC) adopts amendments to the following section of
6 Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, *without*
7 changes, as published in the April 3, 2020, issue of the *Texas Register* (45 TxReg 2307):

8 Subchapter B. Equal Employment Opportunity Provisions, §819.12

9 PART I. PURPOSE, BACKGROUND, AND AUTHORITY

10 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

12 The purpose of the Chapter 819 rule change is to align TWC's Chapter 819 Texas Workforce
13 Commission Civil Rights Division rules with amendments to Texas Labor Code §21.054,
14 pursuant to House Bill (HB) 1074, enacted by the 86th Texas Legislature, Regular Session
15 (2019), signed into law effective September 1, 2019.

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

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

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

21 **TWC adopts the following amendments to Subchapter B:**

22 **§819.12. Unlawful Employment Practices**

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 HB 1074 repealed Texas Labor Code §21.054(b),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

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

29 No comments were received.

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

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

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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.