

Civil Rights Reporter

Issue
08
July
2023

JOURNAL OF THE TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION.



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.

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Civil Rights Division

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This month we are pleased to have a guest article from Bill Hyche. Bill Hyche is an author, entrepreneur and speaker; he has co-founded, grown and sold several high tech companies in the health care and education sectors.

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I hope you're not a fan of Whataburger for this one. But maybe after reading this, we can tone down the hateful and rude comments about In and Out.

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Addressing the Alarming Rise of Workplace Violence in Healthcare Settings

Bill Hyché

Introduction

Healthcare workers, who dedicate their lives to caring for others, are unfortunately facing an alarming rise in workplace violence. Hospitals, clinics, and other healthcare facilities are meant to be places of healing and compassion, but an increasing number of incidents involving aggression, harassment, and physical assault have created an urgent need for action. This article explores the prevalence, underlying causes, and potential solutions to combat workplace violence in healthcare. Antigone E. Kokalias, MBA, MSN, RN says "Exposure to workplace violence can impair effective patient care, and lead to psychological distress and physical injuries, which in turn can lead to job dissatisfaction and absenteeism. On an organizational level, this causes high turnover and high costs. If you consider the potential financial impact related to workplace violence injuries and the rate of staff turnover, it is concerning."

The Prevalence of Workplace Violence in Healthcare

Workplace violence in the healthcare sector has reached an alarming level. According to recent studies, healthcare workers are at a higher risk of experiencing violence at work compared to employees in other sectors. The US Bureau of Labor Statistics reports a worsening trend, with health care and social service workers are now five times more likely to require time away from work due to workplace violence than in other industries.

Causes and Contributing Factors

Several factors contribute to the prevalence of workplace violence in healthcare settings:

1. **Emotional Stress and Frustration:** Healthcare environments often deal with high-stress situations, long working hours, and emotionally charged interactions. This can lead to patients and their families expressing frustration or anger, sometimes escalating into violent behavior.
2. **Understaffing and Overcrowding:** Shortages of healthcare staff and overcrowded facilities can increase stress levels and decrease the time available for patient care, leading to heightened tensions and potential outbursts. The recent Covid disaster has exasperated this issue
3. **Substance Abuse and Mental Health Issues:** Patients with substance abuse problems or mental health disorders may exhibit aggressive or violent behavior due to their condition.
4. **Lack of Training and Preparedness:** Many healthcare professionals receive inadequate training in de-escalation techniques and conflict resolution, leaving them ill-equipped to handle violent situations effectively.

Impact on Healthcare Workers and Patient Care

Workplace violence in healthcare has a significant impact on both healthcare workers and patient care:

1. **Physical and Psychological Harm:** Healthcare workers who experience violence often suffer physical injuries and psychological trauma, leading to decreased job satisfaction, burnout, and even leaving the profession altogether.
2. **Impaired Patient Care:** The safety and well-being of patients are compromised when healthcare workers are subjected to violence. Distressed and fearful staff members may struggle to provide optimal care, affecting patient outcomes.

Addressing Workplace Violence: Strategies and Solutions

The Joint Commission has collaborated with the US Occupational Safety and Health Administration (OSHA) through an alliance designed to address issues related to workplace safety. To combat workplace violence in healthcare, a multifaceted approach is recommended:

1. **Comprehensive Policies and Reporting Mechanisms:** Healthcare organizations should establish clear policies prohibiting violence, harassment, and abuse. Reporting mechanisms should be implemented to allow staff to report incidents without fear of retaliation.
2. **Training and Education:** Mandatory training programs should be developed to equip healthcare workers with de-escalation techniques, conflict resolution skills, and situational awareness. Regular drills and simulations can improve preparedness.
3. **Adequate Staffing and Resources:** Addressing understaffing and overcrowding issues is crucial to reduce stress levels and minimize the risk of violent incidents. Sufficient resources and support should be provided to healthcare professionals to ensure safe working conditions.
4. **Collaboration and Support Systems:** Collaboration between healthcare organizations, law enforcement agencies, and community resources can help create a supportive network for healthcare workers, offering protection and assistance during violent incidents.
5. **Creating a Culture of Safety:** Encouraging a culture that prioritizes the safety and well-being of healthcare workers is essential. This includes promoting open communication, fostering respect, and implementing effective measures to address and prevent violence.

Conclusion

Workplace violence in healthcare settings is a pressing issue that demands immediate attention. By implementing comprehensive policies, providing training, addressing staffing concerns, and fostering a culture of safety, healthcare organizations can make significant strides in reducing workplace violence. It is crucial to protect the well-being of healthcare workers, ensuring they can provide the high-quality care that patients need without fear of violence or harm.

Bill Hyche is an author, entrepreneur and speaker; he has co-founded, grown and sold several high tech companies in the health care and education sectors. He is the author of the best selling collection of quotations, *The Right Moment*. His new book, *Handbook for Success* was written to provide young people with a set of time-tested values to help them thrive in school and in life. Bill and his wife, Lenora, live in Austin, Texas. For more information on Bill, or to read his other works, visit billhyche.com

Filing a Complaint, It Does Not Stop With Your

Marvin Chaney
Investigator

It is important for the employee to remember that it is always their responsibility to report any discrimination that they believe they are experiencing. Some employees believe that reporting the discrimination to their union representative is a protected activity and this is misleading. Although the union may operate on the employee's behalf, it is still their responsibility to submit their complaints regarding discrimination to the appropriate individual or department stated in the employer's policy and to be able to provide evidence that they did in fact report their concerns, i.e., email exchanges, text messages or witness statements. Most employers have policies informing the employee about their process for reporting these violations. It is important that the employee follow the instructions outlined in policy to increase the likelihood of the employer having a record of their complaint. An employee reporting their concerns to their union representative will also require that, if their intention is for the union representative to file a complaint with the employer on their behalf, they follow up with the employer's Human Resources Department or designated person per policy to ensure that the complaint was made and obtain written confirmation that the complaint was made and submitted through the appropriate channels.

In a recent case that was investigated by TWC Civil Rights Division, an employee informed their union representative that he believed he was being discriminated against by his supervisor because of his sex and race. The employee submitted his complaint to the union representative in writing. The employer had a written policy that required all discrimination complaints be submitted to a specific person in Human Resources who would then investigate the alleged discrimination. Because the employee did not believe that Human Resources addressed his complaint and the actions of his supervisor continued, the employee resigned. After resigning, the employee filed an EEO complaint with the Division alleging harassment, constructive discharge, and retaliation for engaging in a protected activity. During the investigation, it was discovered that the union representative never filed the complaint on behalf of the employee. The employer in its response stated that the company was not made aware that the employee had complained about being discriminated against prior to resigning his position. Therefore, the prima facie (the evidence to establish a fact in the complaint) case on the constructive discharge issue was not established because there was insufficient evidence indicating that the employee protested any unlawful actions due to the employer having no record of his complaint. Because the employee did not file his complaint in accordance with the employer's reporting policy procedure, the employer had not been made aware of the complaint and, as such, had no opportunity prior to the employee's resignation to take remedial action. Regarding retaliation, the evidence did not establish that the employee engaged in a protected activity because the employee did not submit his discrimination complaint to a representative for the employer or follow the employer's complaint procedures.

The lesson to be learned from this is that although you may be represented by a union, it is still your responsibility to follow the employer's policies and reporting procedures when making a discrimination complaint. In absence of policies that specifically address how to report discrimination, remember to file your complaint with your employer's Human Resources Department or a member of management and request some form of documentation showing that you reported your concerns.

DIRECTOR'S CORNER

We are But Farmers

BRYAN SNODDY - DIVISION DIRECTOR

If you are wondering about the title, I was pondering how to concisely describe that which we do at TWC. In fact, I have often struggled with trying to describe what my job is at the agency in a short, plain statement. After some introspection, at the core and in its very essence – we plant seeds. When one looks at the broad and vast array of programs that we touch upon, care for and foster, there is no doubt that we look for good ground to invest into the promise of an individual, we provide nurture and care and finally, we hope that the demanding work results in a harvest for our customers that positively and dynamically changes lives.

The beautiful thing about belonging to a team like the one that exists at TWC is that we have a purpose, design and platform that promotes a long arc of success. Each interaction is designed to build, lift and restore some person to a new level. It seems to emanate from the very nature of every single person that I have interacted with at this agency.

So, this spring when I had the opportunity to finish a Masters of Business Administration, I got a question from my son about what I learned. And, quite simply, I learned how to plant seeds. If nothing more can be said about the work that we do, the efforts that we undertake and our valiant attempts to deliver value to everyday hard working Texans, it should be noted that each effort is akin to planting seeds of literacy, opportunity and freedom from discrimination. We may not control the outcomes, but as with most farming, when the conditions for prosperity are laid down good things often rise up.

The next time that someone asks me what I do I can confidently tell them that I am a farmer and a planter of seeds in the lives of others. And I work within a large organization that is dedicated to doing the same.



Reasonable Accommodation Considerations

Jeffrey Riddle, Editor and Trainer

I'm just going to come out and say it, Whataburger sucks. I don't know how else to put it without sugar-coating. Why do you even like the place? The food is horrible, the colors for their stores are garish, and Texans talk it up way too much. I need people to quit loudly signing the praises of Whataburger and know that In and Out makes a good burger, because, frankly, I can not fathom why anyone would eat Whataburger...ever.

Them's fightin words here is Texas. Instantly two things come to mind if I hear someone utter those words, they ain't a true Texan or they are a recent transplant from somewhere else (cough, cough, California). Whether you like Whataburger for your cheeseburger craving, or another fast-food location, Texans must defend their homegrown store. We know what is coming after a statement against Whataburger; us Texans will talk about the many options and varieties, its Texas roots, and how it is a Texas institution. What won't happen is a talk about what is good about In and Out, or even a grudging acceptance that someone can like that place over Whataburger.



At this point, you may be wondering what this has to do with Civil Rights and Equal Employment . Well, simply put, it's about how we go about interacting with our employees and co-workers. Instead of an argument or heated discussion over Whataburger and In and Out, imagine if the conversation was about different races, religions, genders, or sexual views. There will always be people that have views contrary to your own or to cultural norms and, when we are trying to curb those comments or actions that could be unfair or unequal treatment, we must not attack those values and beliefs. Because nothing will change.

Again, if I have a coworker that hates In and Out and will only eat Whataburger, continually berates In and Out and my enjoyment of the place, then attacking that person's love of Whataburger will not change things. They will do one of two things most of the time, vehemently defend their burger choice or ignore everything I am saying. But what if I did not challenge their ideals, but instead let them know my feelings about my choice.

For instance, my mom really liked In and Out and so every couple of weeks my dad would take us there because she enjoyed it. For me In and Out is comfort food, it is part of my family tradition. I would appreciate if you would not bad mouth it around me because as important as it is to my family and it upsets me how you talk mean about it.

Do you think this might make that person not talk bad about In and Out around me anymore? In my experience this leads to more positive change. More so than attacking the other persons stance, though nothing is one hundred percent effective and there will always be those that will not let it go. But I have found this method leads to more positive changes in the workplace. The same goes for statements against those protected classes we work to uphold: race, color, national origin, religion, age, sex, and disability. To continue the analogy don't attack their love of Whataburger to defend your love of In and Out, it will not have a positive change.

Author's note: I do not endorse any burger joint above any others. In actuality I am an older Texas and remember eating at Dairy Queen's before any other chain store as those were more convenient and accessible when I was growing up. I'm not saying they are better, but for me, there is that great small-town Texas feel to eating at a Dairy Queen. Unless you're eating at the two-story Whataburger in Corpus.

EEOC Releases New Resource on Artificial Intelligence and Title VII

Outlines Considerations for Incorporating Automated Systems into Employment Decisions

WASHINGTON – Today the Equal Employment Opportunity Commission (EEOC) released a technical assistance document, "[Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964](#)," which is focused on preventing discrimination against job seekers and workers. The document explains the application of key established aspects of Title VII of the Civil Rights Act (Title VII) to an employer's use of automated systems, including those that incorporate artificial intelligence (AI). The EEOC is the primary federal agency responsible for enforcing Title VII, which prohibits discrimination based on race, color, national origin, religion, or sex (including pregnancy, sexual orientation, and gender identity).

Employers increasingly use automated systems, including those with AI, to help them with a wide range of employment matters, such as selecting new employees, monitoring performance, and determining pay or promotions. Without proper safeguards, their use may run the risk of violating existing civil rights laws.

"As employers increasingly turn to AI and other automated systems, they must ensure that the use of these technologies aligns with the civil rights laws and our national values of fairness, justice and equality," said EEOC Chair Charlotte A. Burrows. "This new technical assistance document will aid employers and tech developers as they design and adopt new technologies."

The EEOC's new technical assistance document discusses adverse impact, a key civil rights concept, to help employers prevent the use of AI from leading to discrimination in the workplace. This document builds on previous EEOC releases of [technical assistance on AI and the Americans with Disabilities Act](#) and a [joint agency pledge](#). It also answers questions employers and tech developers may have about how Title VII applies to use of automated systems in employment decisions and assists employers in evaluating whether such systems may have an adverse or disparate impact on a basis prohibited by Title VII.

"I encourage employers to conduct an ongoing self-analysis to determine whether they are using technology in a way that could result in discrimination," said Burrows. "This technical assistance resource is another step in helping employers and vendors understand how civil rights laws apply to automated systems used in employment."

The EEOC's technical assistance document is [part](#) of its [Artificial Intelligence and Algorithmic Fairness Initiative](#), which works to ensure that software—including AI—used in hiring and other employment decisions complies with the federal civil rights laws that the EEOC enforces.

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information about the EEOC is available at www.eeoc.gov. Stay connected with the latest EEOC news by subscribing to our [email updates](#).



HUD Restores “Discriminatory Effects” Rule

Department to rescind 2020 Fair Housing Act rule and restore 2013 policy to eradicate discriminatory practices from housing market

WASHINGTON - Today, the U.S. Department of Housing and Urban Development (HUD) announced that it has submitted to the Federal Register for publication a Final Rule entitled Restoring HUD’s Discriminatory Effects Standard. The Final Rule rescinds the Department’s 2020 rule governing Fair Housing Act disparate impact claims and restores the 2013 discriminatory effects rule. In the Final Rule, HUD emphasizes that the 2013 rule is more consistent with how the Fair Housing Act has been applied in the courts and in front of the agency for more than 50 years, and that it more effectively implements the Act’s broad remedial purpose of eliminating unnecessary discriminatory practices from the housing market.

“Discrimination in housing continues today and individuals, including people of color and people with disabilities, continue to be denied equal access to rental housing and homeownership,” said HUD Secretary Marcia L. Fudge. “Today’s rule brings us one step closer to ensuring fair housing is a reality for all in this country.”

The Fair Housing Act prohibits discrimination in housing and housing-related services because of race, color, religion, national origin, sex (including sexual orientation and gender identity), familial status, and disability. The discriminatory effects doctrine (which includes disparate impact and perpetuation of segregation) is a tool for addressing policies that unnecessarily cause systemic inequality in housing, regardless of whether they were adopted with discriminatory intent. It has long been used to challenge policies that unnecessarily exclude people from housing opportunities, including zoning requirements, lending and property insurance policies, and criminal records policies. Accordingly, having a workable discriminatory effects standard is vital for the Biden-Harris Administration to accomplish its goal of creating a housing market that is free from both intentional discrimination and policies and practices that have unjustified discriminatory effects.

HUD’s 2013 discriminatory effects rule codified long-standing caselaw for adjudication of Fair Housing Act cases under the discriminatory effects doctrine, for cases filed administratively with HUD and for federal court actions brought by private plaintiffs. Under the 2013 rule, the discriminatory effects framework was straightforward: a policy that had a discriminatory effect on a protected class was unlawful if it was not necessary to achieve a substantial, legitimate, nondiscriminatory interest or if a less discriminatory alternative could also serve that interest.

The 2020 rule complicated that analysis by adding new pleading requirements, new proof requirements, and new defenses, all of which made it more difficult to establish that a policy violates the Fair Housing Act and harder for entities regulated by the Fair Housing Act to assess whether their policies were lawful. HUD now returns to the 2013 rule’s straightforward analysis.

This Final Rule will go into effect 30 days after it is published in the Federal Register. Due to a preliminary injunction staying the implementation of the 2020 Rule in *Massachusetts Fair Housing Center v. HUD*, the 2020 Rule never went into effect, and the 2013 Rule – which has been in place for nearly a decade – has been and is currently still in effect. Accordingly, regulated entities that were complying with the 2013 Rule have no need to change any practices they have in place to comply with this rule.

Read HUD’s [Final Rule](#) on Restoring HUD’s Discriminatory Effects Standard.

For further information, please reference this [Fact Sheet](#).

HUD Seeks Public Comment on Changes to Requiring Accessibility and Prohibiting Discrimination on the Basis of Disability in HUD-Assisted Programs

The U.S. Department of Housing and Urban Development (HUD) seeks public comment on potential changes to its regulation implementing Section 504 of the Rehabilitation Act for recipients of HUD federal financial assistance. Section 504 prohibits discrimination on the basis of disability in programs and activities receiving federal financial assistance from HUD. [HUD's Section 504 Advance Notice of Proposed Rulemaking \(ANPRM\)](#) acknowledges the need to align HUD's Section 504 regulation with environmental, societal, and technological advances and emerging issues.

As indicated in the ANPRM, HUD requests general information and comments on its Section 504 regulation relating to recipients' obligations, including advances in accessible design, the use of websites and other technology, and auxiliary aids and services, such as assistive technologies, that have become available since HUD's Section 504 regulation was originally published in 1988. Additionally, HUD's Section 504 [ANPRM includes several questions](#) on HUD's existing Section 504 regulation in relation to effective communication, program accessibility, updating federal accessibility standards, and enforcement.

All members of the public, including individuals with disabilities, HUD recipients, States, and local governments, Tribes, housing providers, and social service providers, are invited to provide input by July 24, 2023 via any of the following methods:

- > • [Federal Register](#): Select the "Submit a Formal Comment" link at the top of the notice and follow the instructions.
- > • [Regulations.gov e-rulemaking portal](#): Select "Comment" link and follow the instructions.
- > • Mail:

Regulations Division Office of General Counsel Department of Housing and Urban Development 451 7th Street SW Room 10276 Washington, DC 20410-0500

For background and more information, visit www.hud.gov/504 or access the docket via <https://www.regulations.gov/document/HUD-2023-0029-0001>. For further information, contact Amy Gioletti at the toll-free number 1-405-609-8561.



TEXAS CONFERENCE FOR EMPLOYERS

As I've mentioned we do get out and about. One of the events we participate in is the Texas Conference for Employers. Come out and join us at our booth to talk over our training programs or try your hand at winning one of our fancy coffee mugs.

TWC's Office of the Commissioner Representing Employers sponsors the Texas Conference for Employers, a series of employer seminars held each year throughout the state. Employers who attend the seminars learn about state and federal employment laws and the unemployment claim and appeal process. We assemble our best speakers to guide you through ongoing matters of concern to Texas employers and to answer any questions you have regarding your business.

We encourage every employer to attend at least one of these conferences every year, since the topics are updated whenever there are new laws, regulations or court cases. Each conference is geared toward small business owners, HR managers and assistants, payroll managers, and anyone responsible for the hiring and managing of employees.

All in-person meetings do have a virtual option available that is attended via Zoom. The same material is presented and all informational handouts provided in-person, are provided in a digital format to virtual attendees. The virtual option is also great for companies that are headquartered outside of Texas and have operations within the state or planning to.

[Event Location - Amarillo, August 11](#)

Amarillo Civic Center
401 S Buchanan Street
Amarillo, TX 79101

[Event Location - Horseshoe Bay, August 18](#)

Horseshoe Bay Resort
200 Hi Cir N
Horseshoe Bay, TX 78657

[Event Location - College Station, August 25](#)

Hilton College Station & Conference Center
801 University Drive East.
College Station, TX 77840

[Event Location - Del Rio, September 15](#)

Ramada by Wyndham
2101 Veterans Blvd.
Del Rio, TX 78840

[Event Location - Arlington, September 29](#)

Arlington Expo Center
1200 Ballpark Way
Arlington, TX 76011

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 not necessarily reflect the views of the Government.