

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

2
3 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY**
6 **OF STATE.**

7
8 ON **AUGUST 9, 2022**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE
9 RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

10
11 Publication Date of the Proposal in the *Texas Register*: **August 26, 2022**

12 End of Comment Period: **September 26, 2022**

13
14 The Texas Workforce Commission (TWC) proposes amendments to the following sections of
15 Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:

- 16 Subchapter B. Equal Employment Opportunity Provisions, §819.11 and §819.12
- 17 Subchapter D. Equal Employment Opportunity Complaints and Appeals Process, §819.41
- 18 Subchapter E. Equal Employment Opportunity Deferrals, §819.73

19
20
21 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

22 The purpose of the proposed amendments to Chapter 819 is to implement House Bill (HB) 21
23 and Senate Bill (SB) 45, 87th Texas Legislature, Regular Session (2021), relating to sexual
24 harassment complaints filed against employers. HB 21 expanded the statute of limitations for
25 filing sexual harassment discrimination complaints and SB 45 broadened the definition of
26 "Employer" as it relates to the filing of a sexual harassment discrimination complaint.

27
28 HB 21 amended Texas Labor Code, §21.202 to include a deadline for filing complaints alleging
29 sexual harassment. Under new Texas Labor Code, §21.202(a-1), complaints must be filed with
30 TWC within 300 days after the alleged sexual harassment occurred.

31
32 SB 45 amended Texas Labor Code, Chapter 21 by adding Subchapter C-1, §21.141 and §21.142,
33 relating to Sexual Harassment. New Texas Labor Code, §21.141 defines "Employer" and
34 "Sexual harassment" and new Texas Labor Code, §21.142 includes sexual harassment as an
35 unlawful employment practice.

36
37 Texas Government Code, §2001.039 requires that every four years each state agency review and
38 consider for readoption, revision, or repeal each rule adopted by that agency. TWC conducted a
39 rule review of Chapter 819 and any changes are described in Part II of this preamble.

40
41 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

44
45 **CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION**

46 TWC proposes the following amendment to the title of Chapter 819:

1
2 The Chapter 819 title is amended to remove "Texas Workforce Commission" for consistency
3 with the titles of other chapters.

4
5 **SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS**

6 TWC proposes the following amendments to Subchapter B:
7

8 **§819.11. Definitions**

9 Section 819.11 is amended to expand the definition of "Employer" to include provisions relating
10 to sexual harassment, modify the definition of "Complaint" to include the statute of limitations to
11 file a complaint for sexual harassment to within 300 days of the alleged unlawful employment
12 practice, and add the definition of "Sexual Harassment."
13

14 **§819.12. Unlawful Employment Practices**

15 Section 819.12 is amended to add new subsection (k) to include sexual harassment as an
16 unlawful employment practice.
17

18 **SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND**
19 **APPEALS PROCESS**

20 TWC proposes the following amendments to Subchapter D:
21

22 **§819.41. Filing a Complaint**

23 Section 819.41(e) is amended to include that a complaint alleging sexual harassment must be
24 filed within 300 days of the alleged unlawful employment practice. Section 819.41(h) is
25 amended to include if a perfected complaint alleging sexual harassment is not received within
26 300 days of the alleged unlawful employment practice, the respondent shall be notified that a
27 complaint has been filed and the process of perfecting the complaint is in progress.
28

29 **SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS**

30 TWC proposes the following amendments to Subchapter F:
31

32 **§819.73. Deferral to Local Commission**

33 Section 819.73(b)(2) is amended to expand jurisdiction over sexual harassment complaint
34 allegations.
35

36 **PART III. IMPACT STATEMENTS**

37 Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the
38 rules will be in effect, the following statements will apply:
39

40 There are no additional estimated costs to the state and to local governments expected as a result
41 of enforcing or administering the rules.
42

43 There are no estimated cost reductions to the state and to local governments as a result of
44 enforcing or administering the rules.
45

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

3
4 There are no foreseeable implications relating to costs or revenue of the state or local
5 governments as a result of enforcing or administering the rules.

6
7 There are no anticipated economic costs to individuals required to comply with the rules.

8
9 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
10 communities as a result of enforcing or administering the rules.

11
12 Based on the analyses required by Texas Government Code, §2001.024, TWC determined that
13 the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045,
14 does not apply to this rulemaking.

15
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, Article I, §17 or §19, 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 effect.
26 TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas
27 Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as
28 discussed elsewhere in this preamble, is to implement HB 21 and SB 45, relating to sexual
29 harassment complaints filed against employers.

30
31 The proposed rulemaking action will not create any additional burden on private real property or
32 affect private real property in a manner that would require compensation to private real property
33 owners under the United States Constitution or the Texas Constitution. The proposal also will
34 not affect private real property in a manner that restricts or limits an owner's right to the property
35 that would otherwise exist in the absence of the governmental action. Therefore, the proposed
36 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

37
38 Government Growth Impact Statement

39 TWC determined that during the first five years the rules will be in effect, they will not:

- 40 --create or eliminate a government program;
41 --require the creation or elimination of employee positions;
42 --require an increase or decrease in future legislative appropriations to TWC;
43 --require an increase or decrease in fees paid to TWC;
44 --create a new regulation;
45 --expand, limit, or eliminate an existing regulation;
46 --change the number of individuals subject to the rules; and

1 --positively or adversely affect the state's economy.
2

3 Economic Impact Statement and Regulatory Flexibility Analysis

4 TWC has determined that the rules will not have an adverse economic impact on small
5 businesses or rural communities, as the proposed rules place no requirements on small businesses
6 or rural communities.
7

8 Mariana Vega, Director, Labor Market Information, determined that there is not a significant
9 negative impact upon employment conditions in the state as a result of the rules.
10

11 Bryan Snoddy, Director, Civil Rights Division, has determined that for each year of the first five
12 years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed
13 rules will be to implement HB 21, which expanded the statute of limitations for filing sexual
14 harassment discrimination complaints, and SB 45, which broadened the definition of "Employer"
15 as it relates to filing a sexual harassment discrimination complaint.
16

17 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
18 within TWC's legal authority to adopt.
19

20 **PART IV. COORDINATION ACTIVITIES**

21 In the development of these rules for publication and public comment, TWC sought the
22 involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the
23 policy concept regarding these rule amendments to the Boards for consideration and review on
24 February 11, 2022, and during the rulemaking process, TWC considered all information gathered
25 in order to develop rules that provide clear and concise direction to all parties involved.
26

27 **PART IV. PUBLIC COMMENTS**

28 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov
29 and must be received no later than September 26, 2022.
30

31 **PART V. STATUTORY AUTHORITY**

32 The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide
33 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
34 effective administration of TWC services and activities.
35

36 The proposed rules implement HB 21 and SB 45, relating to sexual harassment complaints filed
37 against employers.
38

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

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

4
5 **§819.11. Definitions.**

6
7 The following words and terms, when used in Subchapter B, Equal Employment
8 Opportunity Provisions; Subchapter C, Equal Employment Opportunity Reports,
9 Training, and Reviews; Subchapter D, Equal Employment Opportunity Complaints and
10 Appeals Process; Subchapter E, Equal Employment Opportunity Deferrals; and
11 Subchapter F, Equal Employment Opportunity Records and Recordkeeping shall have the
12 following meanings, unless the context clearly indicates otherwise.

- 13
14 (1) Bona fide occupational qualification--A qualification:
- 15
16 (A) that is reasonably related to the satisfactory performance of the duties of
17 a job; and
- 18
19 (B) for which there is a factual basis for believing that no members of the
20 excluded group would be able to satisfactorily perform the duties of the
21 job with safety and efficiency.
- 22
23 (2) Civil Rights Act--The Civil Rights Act of 1964, as amended by the Equal
24 Employment Opportunity Act of 1972 and the Civil Rights Act of 1991; the
25 Age Discrimination in Employment Act of 1976, as amended; the
26 Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act
27 of 1990, as amended; and Texas Labor Code, Chapter 21, regarding
28 Employment Discrimination.
- 29
30 (3) Complaint--A written statement made under oath stating that an unlawful
31 employment practice has been committed, setting forth the facts on which the
32 complaint is based, and received within 180 days or, for a complaint alleging
33 sexual harassment, within 300 days of the alleged unlawful employment
34 practice.
- 35
36 (4) Conciliation--The settlement of a dispute by mutual written agreement in order
37 to avoid litigation where a determination has been made that there is
38 reasonable cause to believe an unlawful employment practice has occurred.
- 39
40 (5) Disability--A mental or physical impairment that substantially limits at least
41 one major life activity of an individual, a record of such mental or physical
42 impairment, or being regarded as having such an impairment as set forth in
43 §3(2) of the Americans with Disabilities Act of 1990, as amended, and Texas
44 Labor Code, §21.002(6).
- 45

1 (6) Employer--A person who is engaged in an industry affecting commerce and
2 who has 15 or more employees for each working day in each of 20 or more
3 calendar weeks in the current or preceding calendar year and any agent of that
4 person. The term includes an individual elected to public office in Texas or a
5 political subdivision of Texas, or a political subdivision and any state agency
6 or instrumentality, including public institutions of higher education, regardless
7 of the number of individuals employed. The term excludes a franchisor from
8 being considered an employer of a franchisee or a franchisee's employees. The
9 term also exempts the Texas Military Forces from being an employer, as
10 claims of discrimination against the Texas Military Forces by service members
11 on state active duty shall be processed in accordance with military regulations
12 and procedures as authorized by Texas Government Code, §437.212.
13 Exclusively regarding allegations of sexual harassment, the term "Employer"
14 includes a person who employs one or more employees or acts directly in the
15 interests of an employer in relation to an employee.

16
17 (7) Local commission--Created by one or more political subdivisions acting
18 jointly, pursuant to Texas Labor Code, §21.152, and recognized as a Fair
19 Employment Practices Agency by EEOC pursuant to Title VII of the U.S. Civil
20 Rights Act of 1964, Title VII, §706, as amended by the Equal Employment
21 Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans
22 With Disabilities Act of 1990, as amended.

23
24 (8) Mediation--An alternative dispute resolution process to resolve a dispute by
25 mutual written agreement among the complainant, respondent, and CRD.

26
27 (9) Perfected complaint--An employment discrimination complaint that CRD has
28 determined meets all of the requirements of Texas Labor Code, Chapter 21,
29 and for which CRD will initiate an investigation.

30
31 (10) Sexual Harassment--An unwelcome sexual advance, a request for a sexual
32 favor, or any other verbal or physical conduct of a sexual nature if:

33
34 (A) submission to the advance, request, or conduct is made a term or
35 condition of an individual's employment either explicitly or implicitly;

36
37 (B) submission to or rejection of the advance, request, or conduct by an
38 individual is used as the basis for a decision affecting the individual's
39 employment;

40
41 (C) the advance, request, or conduct has the purpose or effect of
42 unreasonably interfering with an individual's work performance; or

43
44 (D) the advance, request, or conduct has the purpose or effect of creating an
45 intimidating, hostile, or offensive working environment.
46

1 **§819.12. Unlawful Employment Practices.**
2

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

6
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
11 (2) limits, segregates, or classifies an employee or applicant for employment in a
12 manner that deprives or tends to deprive an individual of an employment
13 opportunity or adversely affects in any other manner the status of an employee.
14

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

18
19 (1) fails or refuses to refer for employment or discriminates in any other manner
20 against an individual; or

21
22 (2) classifies or refers an individual for employment on that basis.
23

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

27
28 (1) excludes or expels from membership or discriminates in any other manner
29 against an individual; or

30
31 (2) limits, segregates, or classifies a member or an applicant for membership, or
32 classifies or fails or refuses to refer for employment an individual in a manner
33 that:

34
35 (A) deprives or tends to deprive an individual of any employment
36 opportunity;

37
38 (B) limits an employment opportunity or adversely affects in any other
39 manner the status of an employee or of an applicant for employment; or

40
41 (C) causes or attempts to cause an employer to violate this subchapter.
42

43 (d) Admission or Participation in Training Program. An employer, labor organization, or
44 joint labor-management committee controlling an apprenticeship, on-the-job
45 training, or other training or retraining program commits an unlawful employment
46 practice if based on race, color, disability, religion, sex, national origin, or age, it

1 discriminates against an individual in admission to or participation in the program,
2 unless a training or retraining opportunity or program is provided under an
3 affirmative action plan approved by federal or state law, rule, or court order. The
4 prohibition against discrimination based on age applies only to individuals who are
5 at least 40 years of age.
6

7 (e) Retaliation. An employer, employment agency, or labor organization⁷ 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 an individual who:
11

12 (1) opposes a discriminatory practice;

13 (2) makes or files a charge;

14 (3) files a complaint; or

15 (4) testifies, assists, or participates in any manner in an investigation, proceeding,
16 or hearing.
17

18 (f) Aiding or Abetting Discrimination. An employer, employment agency, or labor
19 organization commits an unlawful employment practice if it aids, abets, incites, or
20 coerces an individual to engage in an unlawful discriminatory practice based on race,
21 color, disability, religion, sex, national origin, or age.
22

23 (g) Interference with the Agency or CRD. An employer, employment agency, or labor
24 organization commits an unlawful employment practice if it willfully interferes with
25 the performance of a duty or the exercise of a power by CRD or by the Agency in
26 relation to CRD.
27

28 (h) Prevention of Compliance. An employer, employment agency, or labor organization
29 commits an unlawful employment practice if it willfully obstructs or prevents an
30 individual from complying with Texas Labor Code, Chapter 21, or a rule adopted or
31 order issued under Texas Labor Code, Chapter 21.
32

33 (i) Discriminatory Notice or Advertisement. An employer, employment agency, labor
34 organization, or joint labor-management committee controlling an apprenticeship,
35 on-the-job training, or other training or retraining program commits an unlawful
36 employment practice if it prints or publishes or causes to be printed or published a
37 notice or advertisement relating to employment that:
38

39 (1) indicates a preference, limitation, specification, or discrimination based on
40 race, color, disability, religion, sex, national origin, or age; and
41

42 (2) concerns an employee's status, employment, or admission to or membership or
43 participation in a labor organization or training or retraining program.
44
45
46

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

4
5 (k) Sexual Harassment. An employer commits an unlawful employment practice if
6 sexual harassment of an employee occurs and the employer or the employer's agents
7 or supervisors:

8
9 (1) knows or should have known that the conduct constituting sexual harassment
10 was occurring; and

11
12 (2) fails to take immediate and appropriate corrective action.

13
14 **SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND**
15 **APPEALS PROCESS**

16
17 **§819.41. Filing a Complaint.**

18
19 (a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD or a
20 local commission office recognized by EEOC as a Fair Employment Practices
21 Agency to obtain information on filing a complaint with CRD.

22
23 (b) At the complainant's request, CRD:

24
25 (1) shall confer with the complainant about the facts and circumstances that may
26 constitute the alleged unlawful employment practice;

27
28 (2) shall assist the complainant in perfecting the complaint if the facts and
29 circumstances appear to constitute an alleged unlawful employment practice;
30 or

31
32 (3) may advise the complainant if the facts and circumstances presented to CRD
33 do not appear to constitute an unlawful employment practice.

34
35 (c) The complaint shall be filed in writing and either signed under oath or subscribed by
36 the person making the declaration as true under penalty of perjury and in
37 substantially the form prescribed by Texas Civil Practice and Remedies Code,
38 Chapter 132, or its successor statute. It may be filed with CRD by mail, electronic
39 communication, fax, or in person with:

40
41 (1) the CRD office on a CRD-provided form;

42
43 (2) an EEOC office; or

44
45 (3) a local commission office recognized by EEOC as a Fair Employment
46 Practices Agency.

- 1
2 (d) The complaint shall set forth the following information:
3
4 (1) Harm experienced by the complainant as a result of the alleged unlawful
5 employment practice;
6
7 (2) Explanation, if any, given by the employer to the complainant for the alleged
8 unlawful employment practice;
9
10 (3) A declaration of unlawful discrimination under federal or state law;
11
12 (4) Facts upon which the complaint is based, including the date, place, and
13 circumstances of the alleged unlawful employment practice; and
14
15 (5) Sufficient information to enable CRD to identify the employer, e.g., employer
16 ID, business address, and business phone.
17
18 (e) A complaint shall be filed within 180 days or, for a complaint alleging sexual
19 harassment, within 300 days, after the date on which the alleged unlawful
20 employment practice occurred.
21
22 (f) A complaint may be withdrawn by a complainant only with the consent of the CRD
23 director.
24
25 (g) A perfected complaint may be amended by the complainant to cure technical defects
26 or omissions, or to clarify and amplify allegations made therein. Such amendment or
27 amendments alleging additional acts that constitute unlawful employment practices
28 related to or growing out of the subject matter of the original complaint shall relate
29 back to the date the complaint was first filed. CRD shall provide a copy of the
30 perfected complaint to the respondent. An amended perfected complaint shall be
31 subject to the procedures set forth in applicable law.
32
33 (h) A respondent shall be mailed a copy of the perfected complaint within 10 days after
34 CRD receives the perfected complaint. If CRD receives a complaint that is not
35 perfected within 180 days or, for a complaint alleging sexual harassment, within 300
36 days, of the alleged unlawful employment practice, CRD shall notify the respondent
37 that a complaint has been filed and the process of perfecting the complaint is in
38 progress.
39
40 (i) The complainant and respondent shall be advised upon request by CRD of the status
41 of their perfected complaint, unless doing so would jeopardize an undercover
42 investigation by another state, federal, or local government.
43

1 **SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS**

2
3 **§819.73. Deferral to Local Commission.**

- 4
- 5 (a) Texas Labor Code, §21.155 grants to a local commission the exclusive right to take
6 appropriate action within the scope of its power and jurisdiction to process a
7 complaint deferred by CRD pursuant to the requirements of Texas Labor Code,
8 §21.155, and this chapter.
- 9
- 10 (b) CRD shall not assume jurisdiction over a complaint deferred to a local commission,
11 pursuant to Texas Labor Code, §21.155, except:
- 12
- 13 (1) where the local commission defers a complaint under its jurisdiction to CRD;
- 14
- 15 (2) where the complaint is received by CRD within 180 days of the alleged
16 violation or, for a complaint alleging sexual harassment, within 300 days of the
17 alleged unlawful employment practice, but beyond the period of limitation of
18 the appropriate local commission; and
- 19
- 20 (3) where the local commission has not acted on the complaint pursuant to the
21 requirements of Texas Labor Code, §21.155(c), and this chapter.