

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON **JANUARY 23, 2007**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: **February 9, 2007**

The rules will take effect: **February 12, 2007**

The Texas Workforce Commission (Commission) adopts amendments, *without* changes, to the following section of Chapter 819 relating to the Texas Workforce Commission Civil Rights Division, as published in the November 17, 2006, issue of the *Texas Register* (31 TexReg 9448):

Subchapter F, Equal Employment Opportunity Records and Recordkeeping, §819.92

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the rule amendment is to clarify in rule the Commission's determination of what materials are available to the parties in a civil rights matter and what materials are beyond what would constitute reasonable access to the file. The Commission's authority for determining the scope of reasonable disclosure of documents is set forth in §21.305, Texas Labor Code, regarding Access to Commission records.

Specifically §21.305 provides that "the commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to commission records relating to the complaint." Furthermore it provides that, "unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records: (1) after the final action of the commission; or (2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law." The rule defines reasonable access to include access to all records in the file, except those excepted from required disclosure under the Public Information Act and investigator notes. The purpose of the change in the rule is to make clear the intent of the Commission, under the authority of 21.305, Texas Labor Code, to exclude investigator notes from the materials in a civil rights matter that may be accessed. By so doing, the Commission is striving to ensure that investigators have the broadest latitude to thoroughly investigate and record their findings, while continuing to ensure that the parties have access to all other parts of the file. This proposal additionally aligns Commission practices with the Equal Employment Opportunity Commission's (EEOC) policies regarding release of records in employment discrimination complaints as reflected in the Memorandum of Understanding with EEOC.

Pursuant to §21.305, the Commission has determined what constitutes reasonable access to files. Claimants or respondents to a Civil Rights Division (CRD) investigation often request copies of the complete complaint file including the investigator's personal notes. Generally, while an individual is authorized to have access to copies of the contents in his or her CRD complaint file, the reasonable access does not include documents in the file that may be deemed confidential under the Public Information Act or an investigator's personal notes.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

The Commission adopts the following amendments to Subchapter F:

§819.92. Access to CRD Records

Section 819.92(b) is added to provide that pursuant to the authority granted the Commission in Texas Labor Code §21.305, reasonable access does not include: (1) information excepted from required disclosure under Texas Government Code, Chapter 552; or (2) investigator notes.

The new subsection provides that parties involved in an allegation filed with CRD may obtain copies of all items in the file relating to their claim but that reasonable access does not include documents in the file that may be deemed confidential under the Public Information Act or investigator notes, which will allow for more complete investigations and is consistent with the Commission's Memorandum of Understanding with EEOC.

No comments were received.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

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

The rules affect Texas Government Code, Chapter 552.

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SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

§819.92. Access to CRD Records

(a) Pursuant to Texas Labor Code §21.304 and §21.305, CRD shall, on written request of a party to a perfected complaint filed under Texas Labor Code §21.201, allow the party access to CRD's records, unless the perfected complaint has been resolved through a voluntary settlement or conciliation agreement:

- (1) following the final action of CRD; or
- (2) if a party to the perfected complaint or the party's attorney certifies in writing that a civil action relating to the perfected complaint is pending in federal court alleging a violation of federal law.

(b) Pursuant to the authority granted the Commission in Texas Labor Code §21.305, reasonable access shall not include access to the following:

- (1) information excepted from required disclosure under Texas Government Code, Chapter 552; or
- (2) investigator notes.