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Civil Rights Reporter

Employment Edition

QUARTERLY JOURNAL OF THE TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION
Lowell A. Keig – Division Director

In this issue:

Mission Statement

The mission of the Civil Rights Division is to reduce discrimination in employment and housing through education and enforcement.

Vision

The vision of the Civil Rights Division is to help create an environment in which the people of the State of Texas may pursue and enjoy the benefits of employment and housing that are free from discrimination.

Texas Workforce Commission Commissioners

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Julian Alvarez
Commissioner Representing Labor

Dallas Company Takes Proactive Stance Against Sexual Harassment

By: Edward J. Hill, CRD Training & Outreach Specialist

Fiscal Year 2018 presented many financial and social challenges for businesses across the nation, including allegations of sexual harassment. Although most businesses have little to no control over the nation's economy, all can set and enforce standards of conduct within their work environment.

Following the wake of the "#MeToo" movement during late 2017, Madeleine Ficaccio and Patrick Gergen, owners Bella Vista management LP, a Dallas-based employer and housing provider, devised a plan to take a proactive stance against sex discrimination and sexual harassment through preventative training and education.

Bella Vista Management's diverse 30-employee workforce includes persons from all protected classes as well as several employees with English as a Second Language (ESL) and Limited English Proficiency (LEP). Their customer base, multi-family housing residents, is very diverse as well. The owners directed Sonia Hernandez, Assistant to the Controller, to request and coordinate a training event through the Texas Workforce Commission's Civil Rights Division (CRD). While discussing the training, Ficaccio stated, "As responsible business owners, we believe it is important to care for the well-being of both, our team and residents in the communities we oversee." After identifying a need for bilingual training to accommodate ESL and LEP personnel, Hernandez submitted a request to CRD for consideration and scheduling.

On March 28, 2018, CRD Trainer, Edward Hill and CRD EEO Investigator Railin Isaac teamed up to present a bilingual (English and Spanish) Sex Discrimination and Sexual Harassment class at the Bella Vista Park Apartment Complex in Dallas, Texas. The class was tailored to address Bella Vista Management's needs in educating its staff and customers. The training helped communicate standards and expectations for everyone, which should assist Bella Vista Management in preventing discrimination and harassment in the workplace.

Proactive companies like Bella Vista Management are instrumental in minimizing and overcoming discrimination and hostile work environments. If you have training needs, we want to encourage you to take advantage of CRD training, which is provided to private employers at-cost via webinar or in-person training platforms. For more information, visit us at http://www.texasworkforce.org/civilrights.

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Director's Corner

Recent Sexual Harassment Highlights Include Texas Supreme Court Same-Sex Case

By: Lowell A. Keig, CRD Director

The hot topic continues to be sexual harassment. Significant settlements by several major U.S. employers have been extensively reported. In addition, here in Texas we received a recent sexual harassment decision from the Texas Supreme Court.

In *Alamo Heights Independent School District v. Clark,* Catherine Clark, a coach and physical education teacher, alleged same-sex harassment by another female coach and retaliation. 2018 Tex. LEXIS 271 (Tex. S.Ct. April 6, 2018). The Court, citing the U.S. Supreme Court case of *Oncale v. Sundowner Offshore Services, Inc.,* 523 U.S. 75 (1998), set out the three methods of proving gender-based motivation in same-sex cases: 1) sexual desire, 2) general hostility to a particular gender in the workplace, and 3) direct comparative evidence. In this case, the Court ruled there was no evidence of any of these three types of motivation. The Court stated: "Sexual harassment is a form of sex-based discrimination, and as such, requires proof that the alleged mistreatment was 'because of' the employee's gender." The Court also stated that "[m]otives like personal animus or bullying do not satisfy the because-of-sex requirement, even if the comments are profane, vulgar, or have sexual overtones." *Id.* at 30. The Court went on to point out that the alleged harasser "enjoyed being crass and profane and telling dirty jokes and stories to *all* the coaches, male and female, not Clark." *Id.* at 31.

I want to contrast this case with a same-sex harassment complaint in which the Civil Rights Division found reasonable cause in 2016. In that matter, the evidence showed that the subject manager directed his severe and pervasive harassing conduct, including touching of private body parts, *only* at male employees.

With respect to Clark's claim of retaliation, she was placed on a growth plan and later terminated for poor performance. The Court stated that "[t]he issue is whether the employer's perception of the problems—accurate or not—was the real reason for termination" and concluded that there was "no evidence the stated reasons were mere pretext" for discrimination.

Aside from the wave of new and revised sexual harassment trainings being implemented by private and public employers, I expect the next significant development to be a release by the U.S. Equal Employment Opportunity Commission (EEOC) of its enforcement guidance on harassment. Last year, the EEOC published a 75-page draft and posted it for public comment. In February, Acting EEOC Chair Victoria Lipnic was reported as stating that it was pending review and approval by the Office of Management and Budget, so the document should be released in the near future.

Source: Kristin Klein Wheaton, *What To Expect From EEOC's New Harassment Guidance*, Law360, Feb. 26, 2018, https://www.law360.com/articles/1015041/what-to-expect-from-eeoc-s-new-harassment-guidance.

Reflections of a Mediator: Holding Delicate Conversations on Difficult Topics

By Marcia Y. Anavitarte-Jordan, CRD Mediator

Considering the recent events in the news, there has been an increase of harassment reporting, whether sexual or otherwise, in the workplace. I have mediated many of these types of cases. Generally, I have an in-depth conversation with the complainant, and at times also the respondent, about what to expect from the mediation process. During these conversations, there may be anger directed towards me, tears shed, and embarrassment conveyed about the situation.

Here are some "rules" that I follow, which may assist employers and employees in understanding our process. First, I remember that, for the person reporting the incident, it is difficult for them; and by talking about it, they are reliving the situation over again. Many times, I find it is best to let the person talk, vent, "yell" or pace the floor. I have found that in many of my mediations, it is not what they say, but what they do not say that will give one insight as to what the real issue is. With that insight, it can help me know what questions to ask and how to work with the parties to reach the resolution.

Second, if there are questions regarding the specific action(s) that took place, I ask them to walk through the incident, step by step. I give them time to gather their thoughts and do not rush it; patience is needed. I have found that if I do not need them to be graphic regarding what was said or done, I try to steer away from it—if at all possible. When I do ask the questions, I try to clarify by saying "What I understand from what you are saying, you meant that this happened." I will paraphrase it so that all they must do is confirm or correct me. I still get the answers that I need and they are spared going into details if not necessary.

Third, I keep in mind that empathy is paramount. That does not mean that I need to agree with them, but I let them know that I hear them and understand why they may feel this way. I make sure that I choose words that show I empathize, but I avoid giving them an indication that I agree or disagree with them.

Last, when holding a conversation with an alleged harasser, I remember that, whether or not the allegations are true or accurate, it still affects them as well. Again, empathy and tact play a huge role. If the allegations turn out to be misguided or incorrect, this person's work reputation may be harmed and they may be upset that they were implicated. I assure them that I am here to understand their position and work out a resolution—not to judge or condemn.

To summarize, I make sure that everyone understands their rights, responsibilities, and consequences. If you have an opportunity to participate in mediation, I will likewise make sure that you and others involved in the process comprehend the "in's and out's" of this efficient avenue to resolve a dispute.

Photo courtesy of Getty Images

Troops Called to Duty Protected by Military Deployment Discrimination Law

The Texas Workforce Commission (TWC) reminds individuals and employers that Texas and federal laws protect the employment rights of military service members who are part of recent deployments of Texas National Guard or other military deployments. These laws are designed to prevent discriminatory practices due to deployment such as withholding health or pension benefits, termination or other adverse actions affecting promotions, seniority or pay.

Laws governing the employment rights of employees on military duty include the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), and under Texas Law, Government Code, Chapter 437, which both provide job protections from employment discrimination due to their military training or duties.

"We support our members of the military who fulfill their duties on behalf of Texas and our nation, and we work to ensure that they are thanked for their service and are supported in the workplace while they are away from their communities," said TWC Chairman Andres Alcantar.

These troops and their employers should be aware of the requirements of Texas Government Code, Chapter 437, specifically Section 437.204, which provides protection from the following actions:

- Termination of employment because the employee is ordered to authorized training or duty by a proper authority,
- Failure to return employee to same employment held when ordered to authorized training or duty by a proper authority, or
- Employee being subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the military-related absence.

After Hurricane Harvey, the Texas Workforce Commission's Civil Rights Division received complaints from nine service members alleging violations of Section 437.204, some of which were settled in favor of the military service member.

"We understand how complex the laws can be at times and how many questions employers have," said TWC Commissioner Representing Employers Ruth R. Hughs. "TWC will do its best to get the word out about the important rights these laws protect, so our employers have the easiest possible time complying with legal requirements. Our goal is to have the reemployment rights of all of our troops upheld after they return home."

Employee responsibilities and best practices for the service members include:

- Providing the employer proof of membership in the Texas military forces;
- Immediately notifying the employer upon receipt of orders authorizing military training or duty;
- Giving written or actual notice of intent to return to employment, as soon as practicable after release from duty; and
- Returning to normal employment as soon as practicable after release from duty.

"We want the brave men and women who are answering their call of duty, whether in Texas or throughout the world, to also know the rights and responsibilities of both employers and employees under this state statute," said TWC Commissioner Representing Labor Julian Alvarez. "We salute our troops and thank them for their service."

For more information and technical assistance for both employers and employees, contact the Civil Rights Division at crdtraining@twc.state.tx.us.

Photo courtesy of Getty Images.

Recent Equal Employment Case Law Summaries

Duncan v. Texas HHS Commission

No. AU-17-CA-00023-SS, 2018 U.S. Dist. LEXIS 64279
(W.D. Texas, Apr. 17, 2018)

By: Roberta Swan, TWC Legal Assistant
and Lowell A. Keig, CRD Director

In this case, the Plaintiffs alleged that a male nurse working in a similar situated Nurse IV position earned a larger salary than a female nurse in the same position, in violation of the *Equal Pay Act*, 29 U.S.C. § 206(d)(1). To establish a "case of wage discrimination under 29 U.S.C. § 206(d), a plaintiff must show (1) the employer pays different wages to men and women; (2) the employees perform equal work on jobs the performance of which requires equal skill, effort, and responsibility; and (3) the employees perform their jobs under similar working conditions." Plaintiffs asserted that Nicodemus Thiongo, a male colleague, "was paid more based solely because of his gender and prior salary."

From 2014 to 2015 Defendant advertised and filled openings for Nurse IV positions in the Nursing and Facility Utilization Review Unit (UR Unit). The salaries in the UR Unit ranged from $4,598.66 to $7,349.00 per month. Beginning in 2014 Plaintiff Kathy Duncan applied for a Nurse IV position with the UR Unit. Duncan received her nursing license in 2000 and had also been employed with the Texas Board of Nursing for four and a half years as a Supervising Investigator prior to application to the UR Unit. After going through the interview process and being offered a position by Supervisor Linda Carlson, Duncan was offered the minimum starting salary of $4,598.66. Duncan countered and stated she had hoped to receive a higher salary than her current salary of $4,928 per month. Supervisor Carlson advised Duncan that the agency "could offer her a salary that would match—but not exceed—her current salary." As a result, Duncan accepted the position with the matching salary of her previous position.

In March of 2015, Thiongo applied for a Nurse IV position with the UR Unit. During that time there were many open positions for a Nurse IV. Thiongo received his RN license in 2012, served as an Assistant Director of Nursing at a rehabilitation center, as a Clinical Director at a home healthcare organization, and as a Corporate Director of Nursing for a nursing and rehabilitation center. Supervisor Carlson offered a starting salary of $5,973.83 per month, which was more than the minimum starting salary. Thiongo declined the initial offer and after negotiation he accepted a salary of $6,200.00 which was approximately $100.00 more per month than he earned in his previous position.

In May of 2015 Plaintiff Elida Tovar applied for a Nurse IV position with the Defendant. At that time, she was working in another unit as a Nurse IV. After receiving the offer to transfer to the UR Unit, Tovar asked if she would receive a salary increase from her $4,458.50 per month. Supervisor Carlson told Tovar that because she was moving laterally within the agency there would not be an increase in her salary because it was the agency's policy that there were no salary increases for lateral moves.

In Duncan's situation, the Court denied Defendant's motion for Summary Judgment. The Court stated that a reasonable factfinder could reject the Defendant's position that the salary "... disparity was the result of a factor other than sex and find HHSC discriminatorily applied its negotiation policy by allowing Thiongo greater latitude to negotiate." Duncan was denied the opportunity to negotiate a higher beginning salary while Thiongo was not only offered a higher starting salary than Duncan, he was given greater opportunities to negotiate and actually received a higher salary than his private sector salary. Duncan was told by Supervisor Carlson the Defendant could only match the current salary she was receiving from her former employer thereby limiting her negotiation options.

In Tovar's situation, the Court could find "no genuine issue of material fact exists as to whether Tovar was paid less than Thiongo on the basis of a factor other

than sex." The agency had a lateral transfer policy in place that restricted Supervisor Carlson's ability to offer or negotiate a salary increase for Tovar—she had no discretion. Tovar did not provide any reason why the policy should not be applied in her situation. Therefore, the Court granted Defendant's motion for summary judgment as to Tovar's claim.

This case is timely as it reflects a potential trend. The Court stated in a footnote that "several circuits have found that employers may not seek refuge under the 'factor other than sex' exception where the defendant's sole justification for a pay disparity is an applicant's prior pay." The Court went on to quote from the Ninth Circuit case of *Rizo v. Yovino*, No. 16-15372, 2018 U.S. App. LEXIS 8882, 2018 WL 1702982 (9th Cir. April 9, 2018), which has received national attention in the media.

Photo courtesy of Getty Images

More on Arrests and Convictions—***Texas v. EEOC***

2018 U.S. Dist. LEXIS 30558
(N.D. of Texas, Feb. 1, 2018)

By: Roberta Swan, TWC Legal Assistant
and Lowell A. Keig, CRD Director

In the October 2016 issue of the Civil Rights Reporter, we reported that a federal district court had sided with the U.S. Equal Employment Opportunity Commission (EEOC) in denying the State of Texas an injunction against the EEOC to restrain it from enforcing its *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII* ("Guidance"). Texas had asserted that the Guidance inhibits its ability to maintain a categorical ban on hiring of felons and to use discretion to reject felons for certain jobs. The district court opined that Texas lacked standing and the issue was not ripe for review because the Guidance had not been enforced.

Also in the October 2016 article, we reported that Texas appealed the district court's dismissal to the Fifth Circuit Court of Appeals, which reversed the dismissal and remanded the case to the district court. 838 F.3d 511, 2016 U.S. App. LEXIS 17431 (5th Cir. 2016). In its opinion, the Fifth Circuit stated that the EEOC had enacted a policy statement couched in mandatory language that was intended to apply to all employers. By arguing that the Guidance cannot be reviewed, the EEOC was exploiting the limitations of its enforcement authority, while denying that state agencies would face legal consequences if they failed to follow the Guidance's directives. The Fifth Circuit found that the Guidance was a "final agency action" subject to judicial review.

Back in district court, cross motions for summary judgement were filed. The district court analyzed Texas' two causes of action. The first cause of action was "brought under the Declaratory Judgment Act (DJA), 28 U.S.C. §§ 2201-02, and [sought]: (1) a declaration that Texas has a right to maintain and enforce its laws and policies that absolutely bar convicted felons (or certain categories of convicted felons) from serving in any job the State and its Legislature deem appropriate; and (2) an injunction preventing Defendants from enforcing the interpretation of Title VII that appears in the Guidance and from issuing right-to-sue letters. The second cause of action was "brought under the Administrative Procedures Act ("APA"), 5 U.S.C. § 702, and ask[ed] the Court to hold the Guidance unlawful and to set it aside as: (1) a substantive rule issued without notice and the opportunity for comment; (2) outside the scope of statutory authority given to the EEOC; and (3) an unreasonable interpretation of Title VII." In response to Texas' allegations, the EEOC asserted that the Guidance had not been enforced against Texas, therefore creating a "ripeness issue." The EEOC also asserted that the new Guidance was an update and a consolidation of previously issued policy statements, not an expansion.

In the first cause of action under the DJA, the district court declined "to declare that Texas has a right to maintain and enforce its laws and policies that absolutely bar convicted felons [or certain categories of convicted felons] from serving in any job the State and its Legislature deem appropriate." The district court stated that "a categorical denial of employment opportunities to all job applicants convicted of a prior felony paints with too broad a brush and denies meaningful opportunities of employment to many who could benefit greatly from such employment in certain positions." The district court also declined to prevent the EEOC from issuing a notice of right to sue letter because it was "not a determination … that a meritorious claim exists."

In the second cause of action under the APA, the district court agreed with Texas and granted its request to prevent the EEOC from enforcing the "Guidance against the State of Texas until the EEOC has complied with the notice and comment requirements under the APA for promulgating an enforceable substantive rule." The court dismissed Texas' request for a ruling under "the second and third prongs [of the APA claim], as such findings [were] not necessary to the adjudication of the claims and would be premature."

All interested stakeholders should consider weighing in when the time comes for submitting public comment to the EEOC. Readers will want to watch for significant updates reported by the division on the topic of use of arrests and convictions in employment decisions.

Presta v. Omni Hotels Management Corp.

2018 U.S. Dist. LEXIS 60998 (S.D. Texas, Apr. 4, 2018)

By: Corra Dunigan, TWC Assistant General Counsel

Plaintiff Lia Presta ("Presta") filed an employment discrimination lawsuit against Omni Hotels Management ("Omni") alleging that Omni discriminated against her because of her age and disability. Defendant filed a motion for summary judgment.

Presta is 89 years old, and began working for defendant in April of 1981 as a seamstress. She eventually moved into the laundry department and became a laundry attendant. Over the course of that extensive tenure, Presta only had three performance reviews, all of which were rated as "meets expectations." In May 2016, heavy rain caused extreme flooding to the hotel's basement, and resulted in the total destruction of the laundry equipment. At the time, there were nine people who worked in the laundry room, and their ages ranged from 21-87. Following the flood, the Defendant held two meetings with the displaced laundry workers to update them on the status of the damage. Defendant claims that they provided options for temporary jobs in other parts of the hotel for all employees, including Presta. Presta's son drove her to these meetings (Presta spoke limited English) and both she and her son deny that she was ever offered temporary placement during those meetings. In fact, Presta asserts that at the first of these meetings, her supervisor told her to "go home and rest" when she asked about returning to work. (Defendant denies this exchange).

Following the meetings, Presta's employment status was changed from full time to "on call." With this designation, employees are "still in the system" as an Omni associate, yet they only work as needed and are not entitled to compensation or benefits. Between June 2015 and January 2016, Presta and her daughter met with hotel staff on multiple occasions to discuss her return to work. The parties dispute what transpired at these meetings; Defendant claims that it continued to offer Presta different temporary positions at the hotel which were declined by Presta, but Presta and her children maintain that she was never offered a position during that time.

As early as January 2016, Defendant began advertising for laundry attendant positions, both full and part time. In February 2016, the hotel received new laundry equipment and partially reopened that department to start training employees on the new equipment. Some of the former employees who worked with Presta before the flooding started training on the new machinery.

In late February 2016, Presta and her daughter again met with Defendant to discuss the status of the laundry department. According to Defendant, it was explained to Presta that all employees would have to undergo training for the new equipment, and that Presta did not express interest in returning to work. Presta denies this

exchange, maintaining that she expressed interest in continued work. It is undisputed that at that meeting, Defendant told Presta how to go about filing for unemployment benefits, and that Presta was not invited to train on the new equipment.

Defendant continued to advertise for positions in the laundry department and Presta maintains that she continued to inquire about her job status. In late June 2016, after looking at jobs online and seeing that Defendant still had postings for laundry attendants at the hotel, Presta's son called the Defendant to ask about the possibility of Presta being called back to work. He was told "you're kidding me, right? There is nothing for her to do here because everything is too hard." Defendant denies anyone made that statement. Defendant never asked Presta to return to work and between July 2015 and February 2017, at least five individuals (who previously worked in the laundry department with Presta) were hired to work using the new equipment.

In this case, Presta makes two different claims of discrimination against Defendant: discrimination based on Defendant regarding Presta as disabled, and discrimination based on her age. The first question raised in any disability discrimination case is whether the plaintiff is "a qualified individual with a disability," which can include being regarded as having a disability. A plaintiff asserting the claim that she is regarded as disabled must demonstrate that she was "subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits or is perceived to substantially limit a major life activity." Furthermore, "individuals who are 'regarded as disabled,' but who do not actually have a disability, need only show that they were subjected to an action prohibited by the statute, and no longer that the disability substantially limited them in a major life activity."

In the present case, Presta only asserted that she was "regarded as disabled." Specifically, she argues that Defendant regarded her as "substantially limited in the major life activity of working." This court concluded that Presta has made a *prima facie* showing that the Defendant regarded her as disabled within the meaning of the ADA.

Presta then had to establish that she was a "qualified individual", which is an individual who, with or without reasonable accommodation, can perform the essential functions of the job. Defendant argued that she could not meet that burden because in her deposition, she testified that she could not meet three of the qualifications for laundry attendants. "Although courts owe deference to an employer's position description," the "defense is not absolute." Instead, the inquiry of whether a specific function is essential or not initially focuses on whether the employer actually requires employees in that position to perform all of those functions deemed "essential."

Presta worked at the hotel for over 30 years prior to the 2015 flood, the majority of which was spent working as a laundry attendant. Furthermore, in her performance reviews, including one as late as 2013, she was rated as "meets expectations." One of the job description's "essential functions" listed by Defendant was that the employee be able to follow instructions in the "spoken language of the work area." Presta spoke Spanish, but acknowledged that in all of her years of employment, she was never written up or disciplined in any way for not speaking English.

Defendants went on to challenge whether Presta was qualified for the new position since there was new training on new equipment. The court was not persuaded, concluding that while there was new training for the new machines, the record did not reflect how, if at all, that changed the qualifications for the laundry attendant position.

Next, the court analyzed whether Presta suffered an adverse employment action based on her disability. Defendant argued that because she was placed on call, and never formally terminated, she was not subject to any employment action. The court was unpersuaded by this argument. It is undisputed that when Presta was placed on call, she received no benefits or compensation, nor did she have the right to return to work. In fact, the court concluded "...notwithstanding Presta's purported status as Defendant's on call employee, she, at Defendant's direction, applied for, and was granted, unemployment benefits...." In fact, by changing her employment status to on call,

Photo courtesy of Getty Images

at a minimum it raises a fact issue of whether or not her employment was terminated. The Fifth Circuit recognizes an event such as an altered job status, which fundamentally changes an employee's compensation, as an "ultimate employment decision." The court reached the same conclusion with respect to Defendant's failure to call Presta back after it reopened the laundry department of the hotel.

Since Presta claimed that Defendant regarded her as disabled, the court must then look to whether the alleged adverse employment action was taken because Defendant perceived her to be disabled. The parties do not dispute that all hotel laundry employees were displaced after the 2015 flood; however, there is evidence that Defendant offered all of those employees temporary positions within the hotel—except Presta. Furthermore, Defendant posted job openings for a laundry attendant for several months after the flood, yet never offered Presta any jobs, despite her repeatedly checking in with the hotel to see if there were any jobs available for her.

Since the court concluded that Presta met her burden to demonstrate genuine issues of material fact on each element of her prima facie case for disability based on being regarded as disabled, the court then turned to whether Defendant could articulate a legitimate, non-discriminatory reason for its actions. Defendant asserted that it placed Presta on call after she declined offers of temporary employment in other parts of the hotel. Defendant further argued that Presta filed for unemployment following the February 2016 meeting with employees, and Defendant had not reached out to any of the other employees for months after this meeting. Defendant claimed that it did not call Presta back because it reasonably believed that she no longer wished to work at the hotel. The court ultimately determined that the Defendant met its burden.

Because the court concluded that the Defendant proffered a legitimate, non-discriminatory reason for its actions, Presta had to raise a genuine issue of fact as to whether Defendant's actions were based on pretext. "A plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." The court carefully assessed the facts and concluded that Presta did offer sufficient evidence to create a genuine issue of material fact that Defendant's reasons for placing her on call, and not offering her other jobs, were evidence of pretext for discrimination. Therefore, the court denied defendant's motion for summary judgment on the issue of disability discrimination based on being regarded as disabled with respect to the major life activity of working.

Finally, the court addressed Presta's claims of age discrimination. Clearly, Presta was a member of the protected class regarding age under the state and federal law, since she was 89 years old. Presta also provided evidence that the individuals hired by Defendant after the 2015 flood were younger than Presta. Using the same facts in the analysis regarding her claim for being regarded as disabled, the court further determined that Presta made a *prima facie* showing of age discrimination, that the defendant articulated a legitimate, non-discriminatory reason for its actions, and that plaintiff presented evidence of a pretext for discrimination. Defendant's motion for summary judgment was thus also denied on the age discrimination claim.

CRD Education, Training & Outreach

The Texas Workforce Commission Civil Rights Division (CRD) is committed to providing training and technical assistance, outreach and education programs to assist state agencies, institutions of higher education, private businesses, and employees in understanding and preventing discrimination. We believe that discrimination can be averted if everyone knows their rights and responsibilities.

Equal Employment Opportunity Training

CRD offers at cost, Instructor-Led, Equal Employment Opportunity EEO compliance and sexual harassment training to state and other public agencies, institutions of higher education, and private entities via in-person and webinar methods.

Texas Labor Code §21.010 and 40 Texas Administrative Code §819.24 require each state agency and institution of higher education to "provide its employees with standard employment discrimination training no later than the 30th day after the date the employee is hired by the agency, with supplemental training every two years thereafter."

All state agencies/institutions of higher education that elect to create customized versions are required to submit copies of their equivalent training materials to the CRD Training and Monitoring Unit for evaluation and certification bi-annually or following any changes in EEO laws or significant changes in course content. For registration information, eligibility and scheduling curriculum reviews, please e-mail crdtraining@twc.state.tx.us subject: EEO 1.0 CBT and or EEO Training Curriculum Certification.

CRD Outreach and Education Programs

CRD training and outreach representatives are available on a limited basis to make presentations and participate in meetings with human resources managers, business owners, and community organizations in efforts to reduce employment discrimination throughout the State of Texas.

For more information, contact CRD at (888) 452-4778 or by email at CRDTraining@twc.state.tx.us.

Meet Us at Upcoming Texas Business Conferences

TWC's Office of the Commissioner Representing Employers sponsors the Texas Business Conferences (TBC), a series of employer seminars held each year throughout the state. Employers who attend the seminars learn about state and federal employment laws, including the unemployment claim and appeal process. Commissioner Ruth Hughs and her staff assemble excellent speakers to guide you through ongoing matters of concern to Texas employers and to answer any questions you have regarding your business.

Each conference is geared toward small business owners, Human Resources (HR) managers and assistants, payroll managers, and anyone responsible for the hiring and managing of employees. CRD outreach personnel regularly participate in these events by staffing an information booth to provide details about the state's EEO and Fair Housing programs and provide technical assistance to conference participants.

Texas Society for Human Resource Management (SHRM) will begin offering SHRM and HR Certification Institute (HRCI) recertification credits, targeted specifically for HR professionals attending the conferences. In addition, attorneys may receive up to 5.5 hours of mandatory continuing legal education credit if they attend the entire conference. Please see listing of upcoming TBCs and dates below:

Odessa: June 22, 2018 - MCM Eleganté Hotel
Arlington: July 19-20, 2018 - Arlington Convention Center
Abilene: July 27, 2018 - Abilene Convention Center
Laredo: August 10, 2018 - Laredo Community College
Round Rock: August 24, 2018 - Austin Marriott North
Amarillo: September 21, 2018 - Amarillo Civic Center Complex
College Station: September 28, 2018 - Hilton College Station and Conference Center

For more information and registration, go to http://www.twc.state.tx.us/texas-business-conferences.