

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

- 10  
11 Subchapter B. Equal Employment Opportunity Provisions, §819.11 and §819.12  
12 Subchapter D. Equal Employment Opportunity Complaints and Appeals Process, §819.41  
13 Subchapter E. Equal Employment Opportunity Deferrals, §819.73  
14

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

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

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

25  
26 SB 45 amended Texas Labor Code, Chapter 21 by adding Subchapter C-1, §21.141 and §21.142,  
27 relating to Sexual Harassment. New Texas Labor Code, §21.141 defines "Employer" and  
28 "Sexual harassment" and new Texas Labor Code, §21.142 includes sexual harassment as an  
29 unlawful employment practice.

30  
31 Texas Government Code, §2001.039 requires that every four years each state agency review and  
32 consider for readoption, revision, or repeal each rule adopted by that agency. TWC conducted a  
33 rule review of Chapter 819 and any changes are described in Part II of this preamble.  
34

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

36 (Note: Minor editorial changes are made that do not change the meaning of the rules and,  
37 therefore, are not discussed in the Explanation of Individual Provisions.)  
38

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

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

41  
42 The Chapter 819 title is amended to remove "Texas Workforce Commission" for consistency  
43 with the titles of other chapters.  
44

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

2 TWC proposes the following amendments to Subchapter B:

3  
4 **§819.11. Definitions**

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

10 **§819.12. Unlawful Employment Practices**

11 Section 819.12 is amended to add new subsection (k) to include sexual harassment as an  
12 unlawful employment practice.  
13

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

16 TWC proposes the following amendments to Subchapter D:

17  
18 **§819.41. Filing a Complaint**

19 Section 819.41(e) is amended to include that a complaint alleging sexual harassment must be  
20 filed within 300 days of the alleged unlawful employment practice. Section 819.41(h) is  
21 amended to include if a perfected complaint alleging sexual harassment is not received within  
22 300 days of the alleged unlawful employment practice, the respondent shall be notified that a  
23 complaint has been filed and the process of perfecting the complaint is in progress.  
24

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

26 TWC proposes the following amendments to Subchapter F:

27  
28 **§819.73. Deferral to Local Commission**

29 Section 819.73(b)(2) is amended to expand jurisdiction over sexual harassment complaint  
30 allegations.  
31

32 **PART III. IMPACT STATEMENTS**

33 Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the  
34 rules will be in effect, the following statements will apply:  
35

36 There are no additional estimated costs to the state and to local governments expected as a result  
37 of enforcing or administering the rules.  
38

39 There are no estimated cost reductions to the state and to local governments as a result of  
40 enforcing or administering the rules.  
41

42 There are no estimated losses or increases in revenue to the state or to local governments as a  
43 result of enforcing or administering the rules.  
44

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

1  
2 There are no anticipated economic costs to individuals required to comply with the rules.

3  
4 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural  
5 communities as a result of enforcing or administering the rules.

6  
7 Based on the analyses required by Texas Government Code, §2001.024, TWC determined that  
8 the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045,  
9 does not apply to this rulemaking.

10  
11 Takings Impact Assessment

12 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that  
13 affects private real property, in whole or in part or temporarily or permanently, in a manner that  
14 requires the governmental entity to compensate the private real property owner as provided by  
15 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas  
16 Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that  
17 would otherwise exist in the absence of the governmental action, and is the producing cause of a  
18 reduction of at least 25 percent in the market value of the affected private real property,  
19 determined by comparing the market value of the property as if the governmental action is not in  
20 effect and the market value of the property determined as if the governmental action is in effect.  
21 TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas  
22 Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as  
23 discussed elsewhere in this preamble, is to implement HB 21 and SB 45, relating to sexual  
24 harassment complaints filed against employers.

25  
26 The proposed rulemaking action will not create any additional burden on private real property or  
27 affect private real property in a manner that would require compensation to private real property  
28 owners under the United States Constitution or the Texas Constitution. The proposal also will  
29 not affect private real property in a manner that restricts or limits an owner's right to the property  
30 that would otherwise exist in the absence of the governmental action. Therefore, the proposed  
31 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

32  
33 Government Growth Impact Statement

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

- 35 --create or eliminate a government program;
- 36 --require the creation or elimination of employee positions;
- 37 --require an increase or decrease in future legislative appropriations to TWC;
- 38 --require an increase or decrease in fees paid to TWC;
- 39 --create a new regulation;
- 40 --expand, limit, or eliminate an existing regulation;
- 41 --change the number of individuals subject to the rules; and
- 42 --positively or adversely affect the state's economy.

1 Economic Impact Statement and Regulatory Flexibility Analysis

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

5  
6 Mariana Vega, Director, Labor Market Information, determined that there is not a significant  
7 negative impact upon employment conditions in the state as a result of the rules.

8  
9 Bryan Snoddy, Director, Civil Rights Division, has determined that for each year of the first five  
10 years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed  
11 rules will be to implement HB 21, which expanded the statute of limitations for filing sexual  
12 harassment discrimination complaints, and SB 45, which broadened the definition of "Employer"  
13 as it relates to filing a sexual harassment discrimination complaint.

14  
15 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be  
16 within TWC's legal authority to adopt.

17  
18 **PART IV. COORDINATION ACTIVITIES**

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

24  
25 **PART IV. PUBLIC COMMENTS**

26 Comments on the proposed rules may be submitted to [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov)  
27 and must be received no later than September 26, 2022.

28  
29 **PART V. STATUTORY AUTHORITY**

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

33  
34 The proposed rules implement HB 21 and SB 45, relating to sexual harassment complaints filed  
35 against employers.

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 organization<sup>5</sup> 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 (1) opposes a discriminatory practice;

12 (2) makes or files a charge;

13 (3) files a complaint; or

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

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

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

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

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

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

39 (2) concerns an employee's status, employment, or admission to or membership or  
40 participation in a labor organization or training or retraining program.  
41  
42  
43  
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           (1) where the local commission defers a complaint under its jurisdiction to CRD;

13           (2) where the complaint is received by CRD within 180 days of the alleged  
14           violation or, for a complaint alleging sexual harassment, within 300 days of the  
15           alleged unlawful employment practice, but beyond the period of limitation of  
16           the appropriate local commission; and

17           (3) where the local commission has not acted on the complaint pursuant to the  
18           requirements of Texas Labor Code, §21.155(c), and this chapter.  
19  
20  
21