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**FOR**  
**EQUAL OPPORTUNITY**

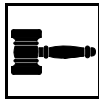
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## INTRODUCTION

All employers, regardless of size, should be aware of state and federal laws regarding equal opportunity. Different laws and regulations apply depending on the size and type of business.

## TEXAS LEGAL OBLIGATIONS



Texas Commission on Human Rights Act (TCHRA)—applies to all public employers and private employers with 15 or more employees. The Act prohibits employment discrimination because of race, color, disability, religion, sex (including sexual harassment), national origin and age (40 years of age and older). Employers may not discriminate based on the use of genetic test results or an employee’s refusal to submit to genetic testing. Current drug use and/or possession are not protected disabilities under the Act. Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) may be considered disabilities in some cases.

The TCHRA prohibits employers from retaliating against a person who opposes a discriminatory practice, files a discrimination charge or participates in any manner in an investigation or hearing.



Refer to the “Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)” section in the **Safety and Health** chapter for more information.

The TCHRA is enforced by the Civil Rights Division of the Texas Workforce Commission (TWC). The Equal Employment Opportunity Commission (EEOC) enforces federal discrimination laws, but defers discrimination-charge administration to the TWC.

### **ARE THERE ANY EXCEPTIONS TO THE TEXAS COMMISSION ON HUMAN RIGHTS ACT (TCHRA)?**

Texas law permits an employer to make an employment decision based on normally prohibited factors such as age or sex if such a requirement is justified by business necessity. The employer must establish that the employment decision was not intentionally devised to violate the provisions of the Texas Commission on Human Rights Act (TCHRA).

NOTE: The employer may not use “business necessity” as a defense to a claim of intentional discrimination.

If disability, religion, sex, national origin or age is a Bona Fide Occupational Qualification (BFOQ) that is reasonably necessary to the normal operation of business, hiring an employee on the basis of disability, religion, sex, national origin or age is not unlawful under the Act.

## **DISCRIMINATION CHARGES**

For an employer, a discrimination charge should be viewed as a serious action.

If a charge is found to be in favor of the employee, substantial financial penalties and court-mandated constraints may be imposed on the employer. This can significantly disrupt an employer’s business.

During an investigation of a charge, an employer’s records and workforce can be subpoenaed, which may lead to additional charges.

An employee may successfully recover damages for a retaliation claim even if the underlying civil rights claim is not proven, so long as the employee reasonably and in good faith believes that the discrimination occurred.

### **HOW IS A DISCRIMINATION CHARGE FILED BY AN EMPLOYEE, APPLICANT OR FORMER EMPLOYEE?**

A charge of discrimination must be filed within 180 days of the alleged act of discrimination to the TWC Civil Rights Division or to the Equal Employment Opportunity Commission (EEOC).

The employer should receive notification of the charge within ten days of the date the charge was filed. Most charge notifications will ask the employer to respond in writing and with specified data the agency feels is key to determining the validity of the charge.

### **HOW LONG DOES THE CHARGING PARTY HAVE TO FILE A DISCRIMINATION CHARGE?**

The charging party has 180 days from the alleged discrimination act to file with either the TWC or the EEOC.

**HOW LONG DOES THE TEXAS  
WORKFORCE COMMISSION (TWC)  
HAVE TO RESPOND TO A  
DISCRIMINATION CHARGE?**

There is no legal time limit to respond to a discrimination charge. The rules state that the Commission should promptly investigate a discrimination charge. If the charge is not dismissed or resolved within 180 days after it was filed, a “right-to-sue” letter may be requested by the charging party. This gives the charging party the right to bring a civil suit against the employer. The charging party has 60 days after receipt of the “right-to-sue” letter in which to file a civil action against the employer. If a “right-to-sue” letter is issued, a copy is mailed to the employer.

**IS THE EEOC REQUIRED TO  
UPHOLD THE TWC’S FINDING  
OF A DISCRIMINATION CHARGE?**

No, although the EEOC gives “substantial weight” to the state agency.

**WHAT SHOULD AN EMPLOYER  
DO AFTER RECEIVING A CHARGE  
FROM THE TWC OR THE EEOC?**

First, the employer should determine if the response to the charge can be completed in the time frame the agency has requested. If the response cannot be completed, another date for the completed response should be negotiated.

NOTE: Keep documentation of all phone calls with the agency, such as name of person talked to, date, time and summary of communications.

Second, the employer should collect all relevant data and conduct an independent investigation of the charge. A neutral party should perform the investigation, such as a personnel department employee (if available) or a high-level manager who is not involved with the allegation in any manner.

If it is determined in an investigation that the request for information from the agency is not available, or is inappropriate to provide, the employer should contact the agency to determine which information can be supplied to answer the agency’s questions. REMEMBER, the agency can subpoena records.

After the employer's investigation is completed, there are three general positions that the employer can take.

1. Deny the alleged charge(s). For this option, the employer should respond to the charge with the requested information and with supplemental information to demonstrate that no discrimination took place.
2. Agree that the alleged charge is valid, in total or in part, and make restitution. The agency will help and generally will seek reasonable ways of satisfying the charging party without undue constraints on the employer.
3. Negotiate a settlement. **THIS DOES NOT IMPLY GUILT.** It may be the most economical way of dealing with the charge.

Before discussing any settlement conditions, it is very important that the employer assess all the merits of the case. This is done by investigation of the charge.

#### **HOW DOES THE TWC INVESTIGATE A DISCRIMINATION CHARGE?**

After documenting the charge, the TWC Civil Rights Division sends a copy of the charge to the employer and asks for essential information necessary to determine the validity of the alleged charge.

The TWC may require a fact-finding conference with the charging party and the employer to clarify the issues and solicit information.

As part of an investigation, in addition to the employer's written response to a charge, the Commission may request additional evidence in the form of interviews, depositions, written interrogations (written questions), production of documents or records, requests for admissions, onsite inspections, affidavits or other forms of discovery.

Finally, the Commission makes a determination of the validity of the charge and informs the employer and the charging party. If the determination is made in favor of the charging party, specific actions will be given to the employer to make the charging party "whole." This can range from back pay, job reinstatement, a promotion or a civil suit.

At any time after a complaint has been filed, the case may be referred to the office of alternative dispute resolution for mediation or settlement negotiation.

**WHAT CRITERIA SHOULD BE USED  
IN ASSESSING THE EMPLOYER'S  
POSITION REGARDING A  
DISCRIMINATION CHARGE?**

The following questions can help assess the employer's case regarding a discrimination charge.

1. Does the statistical data on the makeup of the workforce or the results of employment actions imply discrimination?

(For example, the number of minorities hired is 10%, but the local area workforce has 30% minorities—this may imply discrimination.)

YES \_\_\_\_\_ NO \_\_\_\_\_

2. If an investigator interviews the employer's employees/managers regarding a charge, how strongly would they support the employer's position?

VERY SUPPORTIVE \_\_\_\_\_  
NEUTRAL \_\_\_\_\_  
NOT SUPPORTIVE \_\_\_\_\_

3. Have there been similar situations as described in the charge that have occurred in the past, regardless of whether a charge was filed?

YES \_\_\_\_\_ NO \_\_\_\_\_

4. To what degree has the employer shown obvious and visible concern and actions to manage fairly, especially as it relates to the situation described in the charge?

A GREAT DEAL OF EFFORT \_\_\_\_\_  
SOME EFFORT \_\_\_\_\_  
NO EFFORT \_\_\_\_\_

5. What is the opinion of the investigator of the charging party's case?

CHARGING PARTY'S COMPLAINT  
HAS MERIT \_\_\_\_\_  
CHARGING PARTY'S COMPLAINT  
HAS SOME MERIT \_\_\_\_\_  
CHARGING PARTY'S COMPLAINT  
HAS NO MERIT \_\_\_\_\_