EMPLOYMENT DISCRIMINATION TRAINING MATERIALS FOR NEW STATE EMPLOYEES
CHAPTER 21, SEC. 21.010, TEXAS LABOR CODE (TCHR SUNSET LEGISLATION, 76TH LEGISLATURE)

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INTRODUCTION

PURPOSE: The purpose of this state employees training material is to comply with Chapter 21, Sec. 21.010, Texas Labor Code which states:

(a) Each state agency shall provide to employees of the agency an employment discrimination training program that complies with this section.

(b) The training program must provide the employee with information regarding the agency’s policies and procedures relating to employment discrimination, including employment discrimination involving sexual harassment.

(c) Each employee of a state agency shall attend the training program required by this section not later than the 30th day after the date the employee is hired by the agency and shall attend supplemental training every two years.

(d) The commission shall develop materials for use by state agencies in providing employment discrimination training as required by this section.

(e) Each state agency shall require an employee of the agency who attends a training program required by this section to sign a statement verifying the employee’s attendance at the training program. The agency shall file the statement in the employee’s personnel file.

OBJECTIVES: Each state agency will provide the employees with information regarding the agency’s policies and procedures relating to employment discrimination, including employment discrimination involving sexual harassment.

(a) Each state agency may discuss their philosophy in regard to implementing their employment discrimination policies and procedures;

(b) Each state agency may discuss the agency’s purpose in delivering the training; and

(c) Each state agency may determine the agency’s objective for the training.

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FEDERAL EQUAL EMPLOYMENT OPPORTUNITY LAWS

There are federal laws that prohibit employment discrimination. These laws cover all personnel decisions that could affect the equal employment opportunities for employees or applicants for employment. These federal laws include Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Equal Pay Act of 1963; and, the Americans with Disabilities Act of 1990 (Article I).

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED

This federal law prohibits employment discrimination by public and private employers in all personnel decisions because of race, color, national origin, religion or sex.

1. Race

1. Identifiable classes of people that can be viewed as genetically separate (i.e. Caucasian American, African American, Asian American, Pacific Islander American, Native American, and Alaskan Native).

2. Color

2. The skin pigmentation of a person not classed as white.

3. National Origin

3. An individual's place of birth, the place of birth of the individual's ancestors or an individual who retains the cultural characteristics and/or language of the individual's ancestor (i.e. Hispanic American).

4. Religion

4. A set of traditional, sincere beliefs, values, and practices based upon a God or Supreme Power.

5. Sex

5. Male and Female

The United States Equal Employment Opportunity Commission (EEOC) enforces this law.

The filing of a complaint with the EEOC is extended to 300 days after the alleged discrimination. A complainant must file with EEOC before filing a lawsuit in federal court.

If this law is violated the complainant may receive employment opportunities such as a job or lost wages denied because of discrimination as well as money damages. The amount of damages are limited based on number of employees working for the employer. No punitive damages may be awarded when the violation is by a public employer.

This law also prohibits retaliation against an employee for opposing employment discrimination or a person assisting in the investigation of a complaint of employment discrimination.

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EQUAL PAY ACT OF 1963

This federal law prohibits employment discrimination in compensation (pay) based on sex (male/female) when the circumstances are the same.

The EEOC enforces this law.

A complainant is not required to file a complaint with the EEOC before a lawsuit may be filed.

If this law is violated the complainant may receive employment opportunities such as a job or lost wages denied because of discrimination. The complainant may also receive money damages absent a good faith effort and at the discretion of the court.

AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 (ADEA), AS AMENDED

This federal law prohibits employment discrimination by public and private employers in all personnel decisions because of a person's age (40 years and older).

The EEOC enforces this law.

The filing of a complaint with the EEOC is extended in Texas to 300 days after the alleged discrimination. A complainant must file with EEOC before filing a lawsuit in federal court.

If this law is violated the complainant may receive employment opportunities such as a job or lost wages denied because of discrimination as well as damages under certain circumstances. No punitive damages may be awarded for a violation under this Act.
STATE EQUAL EMPLOYMENT OPPORTUNITY LAW

There is a State law that prohibits employment discrimination. This law covers all personnel decisions that could affect equal employment opportunities for employees or applicants for employment. This State law codifies existing federal laws including Title VII, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.

TEXAS COMMISSION ON HUMAN RIGHTS (TCHR) ACT

This State law prohibits employment discrimination by public and private employers in all personnel decisions based on a person's race, color, disability, religion, sex, national origin and age.

TCHR enforces this State law.

Within 180 days after the alleged discrimination, a complainant is required to file a complaint with the TCHR. A complainant must file with TCHR before filing a lawsuit in state court.

If this law is violated the complainant may receive employment opportunities such as a job or lost wages denied because of discrimination as well as damages. The amount of damages are limited based on the number of employees working for the employer. No punitive damages may be awarded when the violation is by a public employer.

This State law prohibits retaliation against an employee who opposes employment discrimination or a person who assists in the investigation of a complaint of employment discrimination.

The U.S. EEOC must defer federal jurisdiction over complaints of employment discrimination to the TCHR because the TCHR Act is comparable to federal law.
ADA: Complying with the Law

The Americans With Disabilities Act became effective January 26, 1992, for all public and private organizations offering goods and services to the public. Employment provisions of ADA went into effect July 26, 1992. Here are some tips on complying with the new provisions.

Prohibitions Under the Law

THE LAW SAYS
In employment-related situations, employers are prohibited from discriminating against qualified individuals with disabilities.

THAT MEANS
Disabled individuals must have equal access to:
- The job application process
- Job opportunities and promotions within the company
- The benefits and privileges enjoyed by employees without disabilities.

THAT DOES NOT MEAN
Employers must hire individuals with disabilities over applicants who are not disabled. Employers are required to hire the most qualified applicants and to consider all persons without discriminating on the basis of disabilities.

Who Is Protected?

THE LAW SAYS
Qualified individuals with disabilities are protected from employment discrimination on the basis of their disabilities.

THAT MEANS
To enjoy protection under the law, the individual must be qualified for the position. Employers should ask themselves two things:
1. Does this applicant satisfy the job requirements (education, work experience)?
2. Can this applicant perform the essential functions of the job with or without reasonable accommodations?

IT ALSO MEANS
The individual must have a disability. There are three ways an individual can be considered disabled:
1. The individual has a physical or mental impairment which substantially limits one or more life activities.
2. The individual has a record of such an impairment.
3. The individual is regarded as having such an impairment.

THAT DOES NOT MEAN
A temporary impairment such as a broken arm renders an individual disabled. Nor does it mean disabilities controlled by medication disqualify individuals from protection under this law. A major life activity can include:
- Caring for oneself
- Walking
- Performing manual tasks
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Sitting
- Standing
- Lifting

Performing Essential Functions of the Job

THE LAW SAYS
Disabled individuals applying for jobs or already on the job must be able to perform the essential functions of the job.

THAT MEANS
The person must be able to perform, with or without reasonable accommodation, the essential job duties of the position. Factors employers should use to determine whether a job requirement is essential include:
1. Does the position exist primarily for performance of that function?
2. Are there other employees available to perform the function? The more employees who could perform the function, the less essential it may be.
3. How much skill is required to perform the function? The higher the skill required, the more essential the function.

THAT DOES NOT MEAN
Employers are required to lower their standards of performance for certain jobs.

Reasonable Accommodations for People With Disabilities May Be Required

THE LAW SAYS
Employers are required to provide reasonable accommodations to individuals with disabilities.

THAT MEANS
Employers must make changes or adjustments to job requirements or work environments to give disabled individuals equal employment opportunities. Reasonable accommodations may include:
• Acquiring special equipment or modifying existing equipment
• Modifying work schedules
• Providing readers or interpreters
• Making the workplace readily accessible and usable by workers with disabilities.

THAT DOES NOT MEAN
An employer must make accommodations if he is not aware the individual is disabled. Similarly, employers are not required to reallocate to other employees essential functions of jobs held by disabled individuals. It also does not mean employers must make accommodations that cause undue hardships.

What Constitutes an Undue Hardship?

THE LAW SAYS
It is not necessary to make a reasonable accommodation to the job requirements or work environment if doing so will cause employers undue hardships.

THAT MEANS
The accommodation would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business.

THAT DOES NOT MEAN
An employer is excused from making an accommodation where one accommodation poses an undue hardship but another accommodation is available. Employers have a duty to explore all possible accommodations and will only be excused when none are available.

IT ALSO DOES NOT MEAN
Employers must incur expenses that exceed their resources. However, even if an employer can show that the cost of the accommodation would constitute an undue hardship, the employer still will be required to provide the accommodation if alternate funding is available.

Contractual Arrangements

THE LAW SAYS
Employers may not do by contract that which they cannot do in their own rights.

THAT MEANS
Employers must make sure those entities with whom they contract also provide equal access for their employees. For example, off-site training facilities or conferences held at a hotel must have equal access for disabled employees.
LEGAL THEORIES
FOR DETERMINING
EMPLOYMENT DISCRIMINATION

The United States Supreme Court has established two legal theories for determining if laws prohibiting employment discrimination have been violated. These legal theories are as follows.

Disparate Treatment Theory:

Disparate treatment focuses on whether the Complainant was treated the same or differently than other like or similarly situated employees not of the Complainant's same protected class under like or similar circumstances. If such difference in treatment exists, then there may be reasonable cause to believe that illegal employment discrimination has occurred. If there is no difference in treatment, then there is no reasonable cause to believe that employment discrimination has occurred.

An example of this theory is found in U.S. Supreme Court Case McDonnell Douglas Corp. v. Green.

A summary of this case is as follows:

- McDonnell Douglas Corporation is an aerospace and aircraft manufacturer. Percy Green, a Black man, worked for the company as a mechanic and laboratory technician. In 1964 he was laid off in the course of a reduction in the company's workforce.

- Mr. Green illegally protested against the company alleging that his layoff and the general hiring practices of the company were racially motivated.

- Approximately three weeks after Mr. Green's protest, the company publicly advertised for qualified mechanics. Mr. Green promptly applied for re-employment with the company and was rejected. Mr. Green challenged the company's refusal to rehire him by filing a formal complaint with the EEOC and subsequently filed a lawsuit in federal court.

- The U.S. Supreme Court held that Mr. Green established a prima facie case of discrimination: (1) Mr. Green belongs to a protected class; (2) the company does not dispute that Mr. Green applied and was qualified for the position of mechanic and acknowledges that Mr. Green's past work performance as a mechanic was satisfactory; (3) despite his qualifications, Mr. Green was rejected for the position; and (4) after Mr. Green's rejection the company continued to seek mechanics.

- The U.S. Supreme Court also held that the company met its burden by articulating some legitimate nondiscriminatory reason for Mr. Green's rejection because Mr. Green illegally protested his layoff by the company.

- The U.S. Supreme Court went on to say that Mr. Green must now be afforded a fair opportunity to show that the company's stated reason for Mr. Green's rejection is in fact a pretext for discrimination. Mr. Green could meet this burden by perhaps showing that White
employees involved in illegal protests against the company of comparable seriousness to that of Mr. Green's protest were nevertheless retained or rehired. Other evidence that may be relevant to any showing of pretext includes facts such as the company's treatment of Mr. Green during his prior term of employment; the company's reaction if any, to Mr. Green's legitimate civil rights activities; and the company's general policy and practice with respect to minority employment.

- This ruling established the disparate treatment under laws prohibiting employment discrimination.

Another example of the Disparate Treatment Theory based on comparative evidence is found in the U.S. Supreme Court Case McDonald vs. Santa Fe Trail Transportation Co.

A summary of this case is as follows:

- The Santa Fe Trail Transportation Co. is in the trucking and transportation business. The Company has three employees whose job is to load and unload trucks.

- One of these employees is Black and two of these employees are White.

- The three employees are equally responsible for stealing sixty gallons of Antifreeze from the Company. Company officials discovered the theft and took disciplinary action against the three employees. The Company temporarily suspended and brought back to work the Black employee but fired the two White employees.

- The two White employees were subject to different disciplinary action than the Black employee (fired versus suspension) even though the circumstances were the same (theft of Company property) and all three employees were like or similarly situated (loading and unloading trucks).

- The decision by the Company officials to more severely discipline the two White employees versus the Black employee constitutes employment discrimination against the two White employees because of race, White, under the difference in treatment theory.
Disparate Impact Theory:

Disparate impact focuses on whether or not the employer has a policy or qualification that appears to apply to everyone the same but in fact has a significantly greater impact on members of the Complainant's protected class.

If the employer cannot show a business necessity reason or a legitimate business objective then there may be a violation of the laws prohibiting employment discrimination. If the employer can show a business necessity reason or legitimate business objective then the Complainant will need to show that there was a less discriminatory alternative policy or qualification available to the employer.

If there is no difference in impact, then there may be no reasonable cause to believe that employment discrimination occurred.

An example of the Disparate Impact Theory is found in U. S. Supreme Court Case Griggs v. Duke Power.

A summary of this case is as follows:

♦ Duke Power is a company producing electrical power. Mr. Griggs was a Black male working for the company.

♦ Prior to 1964, Mr. Griggs attempted to transfer from the yard into the Plant where the working conditions and pay were better. Duke Power officials refused to transfer Mr. Griggs into the plant because of a policy that only White employees were employed in the plant.

♦ After passage of Title VII of the Civil Rights Act of 1964, as amended, Duke Power's attorneys advised the company's officials that the policy of employing only Whites in the plant violated Title VII. Duke Power's attorneys recommended that the company institute two new policies. First, to work in the plant employees would be required to have a high school diploma. Second, employees would be required to pass two professionally prepared aptitude tests to work in the plant. These policies were neutral on their face since they applied to all employees subsequently hired to work in the plant.

♦ Mr. Griggs applied again to be transferred into the plant but was denied the transfer because of these two new policies. Mr. Griggs did not have a high school diploma nor ranked high enough on the tests. Mr. Griggs challenged these two policies by filing a complaint with the EEOC and subsequently filed a lawsuit in federal court.

♦ The U.S. Supreme Court held that the employer was prohibited by Title VII from requiring a high school education or a passing score on a standardized general intelligence test as a condition of employment or in transfers to jobs, where both requirements operated to disqualify Black applicants at a substantially higher rate than Whites applicants. Further the company could not show that either the high school diploma policy or the tests were significantly related to successful job performance (business necessity). The evidence showed that White employees had been working in the plant for many years satisfactorily performing their jobs who did not have a high school diploma or had not taken the tests.

♦ This ruling established the disparate impact theory under laws prohibiting employment discrimination.