

[WELCOME TO TEXAS!](#)

The Texas Commission on Human Rights Act ([TCHRA](#))

(<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>) prohibits

discrimination in employment on the basis of sex. Women can bring the following claims in

Texas including but not limited to:

- (1) Disparate Treatment
- (2) Disparate Impact
- (3) Sexual Harassment
- (4) Pregnancy Discrimination
- (5) Discriminatory Hiring
- (6) Wrongfully Denied Promotion
- (7) Discriminatory Firing
- (8) Retaliation

Continue to learn more information about your rights!!!

[HAVE I BEEN DISCRIMINATED AGAINST? TAKE THE QUIZ!](#)

<u>What does the law say?</u>	<u>Where do I go from here?</u>
<u>Resources and Statistics</u>	<u>Real Life Stories</u>

WHAT DOES THE TEXAS LAW SAY?

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(Link to IDEAS FOR CHANGE)

WHAT DOES THE LAW SAY?

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a. Where is the law regarding sex discrimination in employment in Texas found?

Texas’s law prohibiting sex discrimination is found in the Texas Commission on Human Rights Act, known as the “[TCHRA](#)”

(<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>)

for short, codified at Tex. Labor Code § 21.001 *et seq* (West 2005).

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b. To whom does the TCHRA apply?

The [TCHRA](#)

(<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>)

applies to all female employees in the state of Texas and their employers.¹

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c. Under the TCHRA, what is illegal?

Under the [TCHRA](#)

(<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>),

your employer commits an illegal employment practice ifit “fails or refuses to hire” you,

discharges you, or discriminates against you in any way that effects your employment status, wages, benefits, “terms, conditions, or privileges” because you are a woman.²

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d. What is sex discrimination?

Any practice or policy that treats women unfairly simply because they are women constitutes sex discrimination. Such acts can either be overtly degrading to women (such as sexual harassment) or simply differential treatment toward women.

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e. What constitutes sex discrimination under the TCHRA?

Under the [TCHRA](#)

(<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>), any act taken against a woman “because of” or “on the basis of sex” is sex discrimination.³ The [TCHRA](#)

(<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>) also recognizes pregnancy discrimination as a form of sex discrimination.⁴

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f. What is an “employee” under this law?

An employee is any person who is employed by an employer under the [TCHRA](#) (<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>), but it does not include an elected official.⁵

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g. What is an “employer” under this law?

An “employer” covered under the [TCHRA](#)

(<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>) is any person with 15 or more employees, for “20 or more calendar weeks in the current or preceding calendar year.”⁶ An employer can be an elected official⁷ or a branch of state or local government, even if that branch has less than 15 employees.⁸ Labor organizations (such as unions) and employment agencies are also considered employers under state law.⁹ Understand, however, that although you can file a complaint of sex discrimination against your employer (i.e. the company) under Texas law, you cannot directly file a complaint against individuals who have discriminated against you. Thus, you cannot directly file a complaint against your boss, supervisor, manager, or co-workers in their capacity as individuals, but the company as whole can be made to answer for their discriminatory acts.¹⁰

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h. Are women a “protected class”?

Yes, women constitute a “protected class,” or a defined group, under the [TCHRA](http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm) (<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>). As such, the [TCHRA](http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm) (<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>) prohibits employment discrimination against women.¹¹

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i. Is there a federal law about sex discrimination?

Yes, you may be protected under several federal laws, including the [Equal Pay Act](#) and [Title VII](#). [Title VII](#) is a federal law within the [Civil Rights Act of 1964](#) that prohibits employment discrimination based on race, color, religion, sex, or national origin. (Click here to learn more about federal law.)

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j. How does the state law compare with federal in terms of coverage?

Texas law and federal law provide nearly identical protections and remedies to women. In fact, the [TCHRA](http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm) (<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>) explicitly states, as its primary purpose, that Texas law is designed to execute the policies of federal anti-discrimination laws,¹² and thus, Texas courts have frequently turned to federal law to interpret and implement Texas law.¹³

One major exception, however, is that Texas does not have its own equal pay law, and thus, you may be limited to filing equal pay claims under federal law; however, existing Texas law (just like [Title VII](#)) may allow you to bring a claim of pay discrimination if you can prove your employer intended to discriminate against women by paying them less than men in the workplace.

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k. Is it ever okay for my employer to treat or impact women differently because of their sex?

In some circumstances, it may be perfectly legal for your employer to treat or impact women differently. Texas law permits such practices if your employer can prove that the practice does not intentionally violate state law or if the practice is “justified by business necessity.”¹⁴ Additionally, Texas allows gender to be a “[Bona Fide Occupational Qualification](#)” (BFOQ).¹⁵ In other words, your employer may be able to show that gender is a necessary qualification for a given job (i.e. a weight, height, or strength requirement). To do so, your employer must show that being a woman is both “reasonably related to the satisfactory performance” of the job and that there is a “factual basis” to believe that no woman would be able to “perform the duties of the job with safety and efficiency.”¹⁶

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l. In a nutshell, what must I prove to win my case?

With the exception of retaliation cases (click here to go to retaliation) where your burden will be slightly higher, you must be able to persuade the court or the jury that gender was a motivating factor behind your employer’s practice, policy, or action against you — even if your employer was motivated by other additional factors.¹⁷

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m. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer will have an opportunity to produce evidence that it engaged in the discriminatory practice, policy, or action against you for a legal reason. For example, your employer may claim it considered gender as a [Bona Fide Occupational Qualification](#) (BFOQ), or your employer may deny that it discriminated at all by showing evidence that it treated male and female employees identically.

If your employer is silent or does not rebut your initial evidence, and if the court or jury believes your evidence, you should win the case.¹⁸ On the other hand, if your employer does offer evidence that it engaged in the practice, policy, or action against your for a legal, non-discriminatory reason, you will have the final burden to persuade the court to believe your side of the story.¹⁹

Ultimately, you must persuade the court or jury that your gender was a motivating factor behind your employer’s practice or policy — even if other factors were at play as well.²⁰ Be aware, however, that under Texas law, if your employer can show that it would have engaged in the same policy or practice against you anyway, despite illegally considering your sex, your remedies may be limited to “[declaratory relief](#), [injunctive relief](#), and ... [certain] [attorney’s fees](#).”²¹ (Click here to learn about what remedies you may be entitled to under Texas law.)

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n. Does it matter when the discrimination occurred?

Texas enforces a very strict time limit on when a claim of sex discrimination can be filed. You must file a claim with the Texas Workforce Commission within 180 days of your employer’s discriminatory conduct.²² However, under federal law, you have 300 days to file a claim with the [Equal Employment Opportunity Commission](#) (EEOC).²³

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o. What options do I have if I my employer has fewer than 15 employees?

Unfortunately under Texas law, if your employer has fewer than 15 employees, your legal options are severely limited. The [TCHRA](#) (<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>) makes one exception for employees working for a branch of state or local government if that branch has fewer than 15 employees.²⁴ All is not lost, however: 1) You may wish to

consider some non-legal solutions other women have used to confront their employers about discriminatory practices. (Click here for “ideas for change”). 2) Depending on the circumstances of your case, some Texas courts have scrutinized an employer’s business organization and allowed women to bring claims where the evidence shows a combination of personnel may, in fact, come to 15 or more employees.²⁵ The court may find that two or more entities, for example, should be treated as a single employer if they have “a) interrelated operations; b) centralized control of labor relations; c) common management; and d) common ownership or financial control.”²⁶ Before you make such a conclusion yourself, however, you should consult with the Texas Workforce Commission or an attorney to determine if such an approach may be feasible.

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p. Who enforces the law?

The [TCHRA](#)

(<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>)

covers the duties of the Texas Workforce Commission, Civil Rights Division, formerly known as the Texas Commission on Human Rights. Under its mandate, the Commission may “receive, investigate, seek to conciliate, and pass on [to the courts] complaints alleging” sex discrimination.²⁷ The Commission may also file civil actions against an employer, allegedly in violation of the [TCHRA](#)

(<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>).

In recent years, four such agencies have been founded across the state: the City of Austin Human Resources Department, the City of Fort Worth: Human Relations Commissions, the City of Corpus Christi Human Resources Department, and the City of Garland Human Resources Department, all accessible at www.welcome.to/tchr.

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q. How do I file a claim of sex discrimination with Texas Workforce Commission?

Click here to learn about filing a claim with the Texas Workforce Commission.

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r. If I prove my sex discrimination claim, what kind of remedies am I entitled to?

Click here to learn about what remedies you may be entitled to under the [TCHRA](#)

(<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>).

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WHAT TYPES OF DISCRIMINATION ARE COVERED UNDER THE LAW?

[UNEQUAL PAY: *I don't think I'm being paid fairly compared to men doing the same job.*](#)

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[DISPARATE TREATMENT: *I think my employer treats women differently than men.*](#) (Link to Disparate Treatment claims)

[SEXUAL HARASSMENT: *I think I am being sexually harassed at work.*](#) (Link to Sexual Harassment claims)

[PREGNANCY DISCRIMINATION: *I think my employer is discriminating against me because I am pregnant.*](#) (Link to Pregnancy Discrimination claims)

[DISCRIMINATORY HIRING: *I did not get the job I applied for and I think it's because I'm a woman.*](#) (Link to Discriminatory Hiring claims)

[WRONGFULLY DENIED PROMOTION: *I think I didn't get the promotion because I am a woman.*](#) (Link to Wrongfully Denied Promotion claims)

[DISCRIMINATORY FIRING: *I just got fired from my job, and I think it's because I'm a woman.*](#) (Link to Discriminatory Firing claims)

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EQUAL PAY CLAIMS: *I don't think I'm being paid fairly compared to men doing the same job.*

- a. [Can I bring a claim for pay discrimination under Texas law?](#)

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- a. **Can I bring a claim for pay discrimination under Texas law?**

Most women in Texas bring their equal pay claims under the federal law known as the [Equal Pay Act](#). According to the Texas Workforce Commission, whenever a woman brings an [Equal Pay Act](#) claim, the complaint is automatically forwarded to the [Equal Employment Opportunity Commission](#) (EEOC) for investigation.²⁸

It is unclear whether Texas state law allows women any recourse to pursue equal pay claims. Texas does not have its own version of the [Equal Pay Act](#). You may, however, be able to bring a claim of pay discrimination under existing Texas law if you can prove your employer intended to discriminate against women by paying them less than men in the workplace (as you can with [Title VII](#)).²⁹ You should consult with an attorney to determine if a state equal pay claim would be viable. Federal law may simply provide an easier and more successful route against your employer.

Currently, the Texas State Senate is considering a state version of the [Equal Pay Act](#) (Bill Number S.B. 74), which would prohibit wage discrimination on the basis of sex.³⁰

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DISPARATE IMPACT CLAIMS: *My employer's policies disadvantage women more than men.*

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- j. [If I prove my disparate impact claim, what kind of remedies am I entitled to?](#)

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a. What does disparate impact mean?

“Disparate impact” refers to a policy which at first glance seems neutral, but which disproportionately harms women. You may hear such policies referred to as “facially neutral,” which literally means that the policy does not mention women “on its face,” but yet the policy disproportionately harms women in practice.³¹

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b. What kinds of claims can be brought as a disparate impact claim?

You may be able to allege that any “facially neutral” employment policy or practice has a disparate impact on women. Most commonly, job qualifications or promotion criteria have been challenged under a disparate impact theory.³² Aptitude or physical strength tests might also be open for a disparate impact challenge, providing such tests have a disproportionate affect on women.

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c. I think that a company policy adversely affects me because of my gender, how do I prove it?

To prove that your employer has a policy or practice that impacts women differently from men, you must show all the following the elements:

- (1) You have identified a particular employment practice or policy, and your employer's use of it;
- (2) You can demonstrate that the policy or practice has a disparate impact on women; and
- (3) You can demonstrate a “causal connection” “between the identified practice and the disparate impact.”³³

You must show that your employer's practice discriminates against women in practice. You do not need to show that your employer intended to discriminate against women.³⁴ You do, however, have to present evidence that the employment practice at issue has an adverse impact on women in the workplace. Generally, if you show that your employer engages in an employment practice or policy that causes a disparate impact on women, and your employer is unable to rebut your assertion by showing that the practice at issue is "job-related for the position in question or consistent with a business necessity,"³⁵ then you can proceed with a disparate impact claim.

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d. What is the difference between disparate impact and disparate treatment?

Whereas "disparate impact discrimination" is disguised as a "facially neutral" policy or practice, "disparate treatment discrimination" refers to a policy or practice that explicitly targets women in the workplace. In proving a disparate impact claim, there is no need to prove an intent to discriminate.³⁶

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e. Are there times when an employment policy or practice may legally impact women different from men?

Yes, in some circumstances, it may be perfectly legal for your employer to treat or impact women differently. Texas law permits such practices if your employer can prove that the practice does not intentionally violate state law or if the practice is "justified by business necessity."³⁷ Additionally, Texas allows gender to be a [bona fide occupational qualification](#) (BFOQ).³⁸ In other words, your employer may be able to show that gender is a necessary qualification for a given job (i.e. a weight, height, or strength requirement). To do so, your employer must show that being a woman is both "reasonably related to the satisfactory performance" of the job and that there is a "factual basis" to believe that no woman would be able to "perform the duties of the job with safety and efficiency."³⁹

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f. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer will have an opportunity to produce evidence that the discriminatory practice or policy is justified by a business necessity.⁴⁰ The court in analyzing your employer's evidence must consider 1) whether your employer's policy or practice truly is justified by business necessity and 2) whether your employer could achieve its stated purpose through alternative means that would not have such an impact on women.⁴¹ Ultimately, regardless of what your employer says, the judge or jury must believe your evidence of disparate impact for you to prevail.

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g. **What evidence will support my claim?**

For your claim to survive, you “must conduct a systematic analysis” of your employer’s discriminatory practice or policy, and that analysis must show that the practice or policy at issue causes a significant difference between women and men in your workplace.⁴²

The most appropriate evidence you can bring to support a disparate impact claim is statistical evidence that demonstrates how women have been treated differently than men in your workplace. Such statistical evidence may be difficult to come by. Your attorney may need to hire an expert statistician to compile and analyze the statistics. Courts, however, have scrutinized such statistical evidence to a high degree.⁴³

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a. What does “disparate treatment” mean?

“Disparate treatment” refers to a policy or practice that explicitly treats women differently from men.

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b. What kind of claims can be brought as a disparate treatment claim?

Any claim that a woman was not hired, fired, or promoted can be brought as a disparate treatment claim. In addition to these, claims that you were reassigned to a different job with significantly different responsibilities or denied benefits, can be brought as disparate treatment claims.⁴⁴

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c. I think that a company policy adversely affects me because of my gender, how do I prove it?

To prove that your employer has a policy or practice that treats women differently from men, you must show the following elements:

1. You are a member of a protected class (i.e. a woman);
2. You were qualified for your position;
3. You have suffered an “adverse employment action;” and
4. Men, who are similarly situated in your workplace, were treated more favorably.⁴⁵

By establishing all of these elements, you will create an initial presumption that your employer discriminated against you on the basis of sex.⁴⁶

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d. What is the difference between disparate treatment and disparate impact?

Whereas disparate impact discrimination is disguised as a “[facially neutral](#)” policy or practice, disparate treatment discrimination refers to a policy or practice that explicitly targets women in the workplace. In proving a disparate treatment claim, unlike a disparate impact claim, a woman must prove an underlying intent to discriminate.⁴⁷

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e. What types of claims can be brought under disparate treatment?

Generally, claims in which your employer illegally considers sex in hiring, promoting, and firing may be brought as disparate treatment claims.

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f. Are there times when an employment policy or practice may legally treat women different from men?

Yes, in some circumstances, it may be perfectly legal for your employer to treat or impact women differently. Texas law permits such practices if your employer can prove that the practice does not intentionally violate state law or if the practice is “justified by business necessity.”⁴⁸ Additionally, Texas allows gender to be a [bona fide occupational qualification](#) (BFOQ).⁴⁹ In other words, your employer may be able to show that gender is a necessary qualification for a given job (i.e. a weight, height, or strength requirement). To do so, your employer must show that being a man is both “reasonably related to the satisfactory performance” of the job and that there is a “factual basis” to believe that no woman would be able to “perform the duties of the job with safety and efficiency.”⁵⁰

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g. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer will have an opportunity to produce evidence that it engaged in the practice, policy, or action against you for a legal, non-discriminatory reason.⁵¹ If your employer is silent or does not rebut your initial evidence, and if the court or jury believes your evidence, you will win the case.⁵² On the other hand, if your employer does offer evidence that it engaged in the practice, policy, or action against you for a legal, non-discriminatory reason, you will have the final burden to persuade the court to believe your side of the story.⁵³

Ultimately, you must persuade the court or jury that your gender was a motivating factor behind your employer’s practice or policy — even if other factors were at play as well.⁵⁴ Be aware, however, that under Texas law, if your employer can show that it would have engaged in the same policy or practice against you anyway, despite illegally considering your sex, your remedies may be limited to “[declaratory relief](#), [injunctive relief](#), and ... [certain] [attorney’s fees](#).”⁵⁵ (Click here to learn about what remedies you may be entitled to under Texas law.)

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h. What evidence will support my claim?

Texas courts have held that your “subjective” or personal belief that your employer discriminated against you is not enough evidence on its own to sustain your claim.⁵⁶ You must produce either “[direct evidence](#)” or “[circumstantial evidence](#)” of sex discrimination.⁵⁷

“[Direct evidence](#)” is evidence of discrimination that is so clear that no one would have to infer or imply any meaning to it.⁵⁸ Generally, “[direct evidence](#)” can be any statement or document from your employer that clearly demonstrates it had illegally considered gender in its policy or practice — even if other factors may have been at play.⁵⁹

Courts recognize that plaintiffs can rarely produce “[direct evidence](#)” of sex discrimination.⁶⁰ Therefore, courts allow plaintiffs to produce what is known as “[circumstantial evidence](#)” of discrimination.⁶¹ “[Circumstantial evidence](#)” essentially is any fact from which the court can infer discrimination indirectly, such as patterns of conduct against women, derogatory comments toward women, favoritism toward men in the workplace, or other evidence of differential treatment between men and women.

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SEXUAL HARASSMENT: *I think I am being sexually harassed at work.*

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a. I think I am being sexually harassed at work, how do I prove it?

The required elements you need to show, as a woman, to prove a [quid pro quo](#) claim of sexual harassment are:

- 1) you were subjected to unwelcome sexual harassment in the form of sexual advances or requests for sexual favors;
- 2) the harassment you complained of was based on sex;
- 3) your submission to the unwelcome advances was an express or implied condition for receiving job benefits or refusal of advances would result in termination; and
- 4) the existence of [respondeat superior](#) liability.⁶²

You must prove all of these elements to advance your claim..

The elements for a claim of hostile work environment sexual harassment include:

- 1) you were subjected to unwelcome sexual harassment;
- 2) the harassment you complained of was based on sex;
- 3) the harassment complained of affects a term, condition, or privilege of employment; and
- 4) your employer knew or should have known of the harassment and failed to take remedial action.⁶³

You must prove all of these elements to advance your claim.

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b. What does “Quid Pro Quo” sexual harassment look like?

A [quid pro quo](#) claim literally means “something for something.” [Quid Pro Quo](#) sexual harassment occurs when a supervisor behaves in a way or demands actions from an employee that forces an employee to decide between giving in to sexual demands or losing their job, losing job benefits or promotion, or otherwise suffering tangible job detriments.⁶⁴

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c. What does “Hostile Work Environment” sexual harassment look like?

When the workplace is infused with intimidation, ridicule, and insult that is severe or pervasive enough to create a seriously uncomfortable or abusive working environment, then a discriminatory hostile environment case may be the issue. The conduct must be severe enough to create a work environment that a reasonable person would find hostile.⁶⁵

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d. How do I show that this conduct affected my ability to work?

If your behavior has significantly changed, you have sought counseling, or you have been absent from work due to your uneasiness because of the harassment, you may be able to show that your ability to work was indeed affected.

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e. How do I show that my employer knew what was going on?

Keep records! Note dates of harassment, specific language used, and ask other women if they are experiencing the same treatment. File a complaint through the proper channels at your work, and if none are provided, start documenting instances of harassment and go to your boss or your boss’s supervisor if you feel that your harassment is severe. The more documentation and facts you have to back you up, the better your case will be.

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f. Can I file a claim against my boss/supervisor under the TCHRA?

Yes. The law is designed to ensure that women who are victims of sexual harassment can bring a claim against their employers for harassment, be it [quid pro quo](#) harassment by their boss/supervisor or hostile work environment harassment created by an employee/co-worker as a member of the company.⁶⁶

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g. Can I bring a claim against my co-worker if he is not my boss or supervisor?

Yes. If you are considering filing suit against a supervisor, one method of this is [respondeat superior](#), which translates to “let the master answer.” That theory holds an employer liable for an employee’s actions committed during employment. Although [quid pro quo](#) claims usually are between an employee and his/her supervisor, the claim is not ruled out if you make a complaint of sexual harassment to a member of the company (be it the human resources department or your supervisor) and no action is taken. In this scenario, your claim would better be argued under hostile work environment.⁶⁷

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h. I complained to my employer and it failed to act or appropriately reprimand the harasser. Can I still file a claim?

If your employer failed to take appropriate action once it learned of your harassment or your harassment continued or worsened after a reprimand and you notified your employer of the ongoing condition, you may still be eligible to file a claim.⁶⁸

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i. What if my harasser is also a woman?

In Texas, if you are harassed by a member of the same sex, you can still bring a sexual harassment claim by showing a chain of factors similar to those used in male/female harassment cases. You should be able to show that: 1) you were subject to explicit or implicit proposals of sexual activity or; 2) the alleged harasser was motivated by general hostility to the presence of members of the same sex in the workplace. You may provide credible evidence that the alleged harasser is homosexual but please note that harassing conduct need not be motivated by sexual desire to support your claim. Sexual harassment may be reasonably found if a female victim is harassed in sex-specific and derogatory terms by another woman to the point that it is clear that the harasser is motivated by general hostility to women at work.⁶⁹

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j. Is one incident of sexual harassment sufficient basis for a claim?

One incident is rarely sufficient for a claim. Generally, one incident, unless extremely heinous, does not qualify as sexual harassment. One Texas court stated “Whether an environment is ‘hostile’ or ‘abusive’ can be determined only by reviewing all the circumstances; including the frequency of the conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.”⁷⁰

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k. Can I get damages for emotional distress?

Emotional distress damages have been awarded but generally are a separate claim of the suit different from sexual harassment. Emotional distress comes with its own elements that must be met. Consult the Texas Workforce Commission for more information.

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l. What is the difference between sex discrimination and sexual harassment?

Sexual harassment is often a part of sex discrimination. Sex discrimination encompasses many types of discrimination including harassment, pregnancy discrimination, unequal pay claims and disparate impact.

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m. What could my employer do to deny my allegations, and how do I respond to the denials?

In a hostile environment claim only, your employer may be able to use what is called the “Ellerth/Faragher” affirmative defense. The defense has two prongs, it must prove that (1) the employer exercised reasonable care to prevent or correct promptly any such sexual harassment, and (2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.⁷¹ The court must determine whether the misconduct attributed to the supervisor constitutes severe or pervasive sexual harassment to establish the supervisor’s liability.⁷²

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PREGNANCY DISCRIMINATION CLAIMS: *I think my employer is discriminating against me because I am pregnant.*

- [a. What is pregnancy discrimination and does the TCHRA cover it?](#)
- [b. I think I am being impacted or treated differently because of my pregnancy? How do I prove it?](#)
- [c. I just found out that I'm pregnant, should I tell my employer?](#)
- [d. Can my employer fire me because I may become pregnant?](#)
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- [k. Is my employer required to pay me while I am on pregnancy leave?](#)
- [l. I'm pregnant but not showing yet and I have an upcoming interview, do I need to disclose the fact that I'm pregnant?](#)
- [m. Can an employer refuse to hire me because I may become pregnant?](#)
- [n. Can my employer prevent me from working while I'm pregnant or require me to take a certain amount of leave?](#)
- [o. Does my employer's health insurance have to cover the medical costs of my pregnancy?](#)
- [p. I just returned from maternity leave and need to take extra breaks in order to pump milk, but my supervisor won't allow me to take more than 2 breaks a day. Can I file a claim?](#)
- [q. Can my employer treat me differently because I am unmarried and pregnant?](#)
- [r. I was pregnant, but had a miscarriage or an abortion, and need time off to recover. Am I covered by the law?](#)
- [s. What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- [t. If I prove pregnancy discrimination, what kind of remedies am I entitled to?](#)
- [u. My employer has fewer than 15 employees – is there anything I can do?](#)
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a. What is pregnancy discrimination and does Texas law cover it?

The [TCHRA](#)

(<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>)

does cover pregnancy discrimination. Since pregnancy is treated as a temporary disability by the law, pregnancy discrimination is when your employment status or benefits are treated differently and unequally from co-workers with similar disabilities.⁷³

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b. I think I am being impacted or treated differently because of my pregnancy? How do I prove it?

If you face termination because of your pregnancy, you should be able to prove that: (1) you are a member of the protected class; (2) you were qualified for the job from which you were discharged; (3) that you were discharged; and (4) that the employer filled the position in question with a non-pregnant person (i.e. not a member of the protected class).⁷⁴

In order to make a claim based on pregnancy or sex related medical conditions you must also meet the same elements of general sex discrimination which are that the employer: (1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or (2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.⁷⁵

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c. I just found out that I'm pregnant, should I tell my employer?

Although it is not necessary to inform your employer of your pregnancy status until it becomes an issue for you, you may want to. The earlier you tell your employer the more they will be able to do to accommodate you. Keep records of your conversations with your employer regarding this. You cannot be fired for being pregnant.

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d. Can my employer fire me because I may become pregnant?

No. You cannot be terminated solely because you are or may become pregnant.⁷⁶

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e. Can I ask my employer to make accommodations for me on account of my pregnancy?

Yes. If other non-pregnant employees are given handicap accommodations, you are entitled to the same fair treatment.⁷⁷

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f. How do I prove that I need a special accommodation?

It may be helpful to have a doctor's note detailing your requirements. You may also want to ask if your company has a process for non-pregnant employees who are given handicap accommodations. Since your pregnancy is treated like a disability, you may be able to use those channels to receive the accommodations you need.⁷⁸

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g. For what amount of time can I take leave because of pregnancy?

This is not yet regulated by Texas law. Ask your employer about their standard policies. The federal Family Medical Leave Act allows up to 12 weeks unpaid leave after the birth of your child if your employer has at 50 employees or you have been employed by the company for one year.⁷⁹

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h. What happens to my job while I am on pregnancy leave?

This will vary by company, and your employer's policy on maternity leave

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i. Can my employer deny me pregnancy leave?

Employers are not allowed to discriminate based on your pregnancy status. Under the federal Family Medical Leave Act you are allowed to take up to 12 weeks unpaid leave after the birth of your child if your employer has 50 or more employees or you have been employed by the company for one year.⁸⁰ If your company does not meet these qualifications, but the company has a sick or disability leave policy, they must make the same accommodations as offered to other employees in a similar condition.⁸¹

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j. I've been missing a lot of work due to prenatal check-ups or pregnancy-related complications; can my employer fire me for this?

Sex discrimination includes discrimination on the basis of pregnancy, childbirth, or a related medical condition. The law further states that any woman subject to these situations shall be treated and receive the same benefits as an employee who is similar in ability or inability to work.⁸² For example, other states have held that this does not protect a pregnant employee from being fired for being absent from work unless the absences of non-pregnant employees are overlooked.⁸³

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k. Is my employer required to pay me while I am on pregnancy leave?

No, your employer is not required by state law to pay you while you are on maternity leave. You cannot be discriminated against on the basis of sex in that you were denied sick leave with pay and ultimately terminated solely because you were pregnant. If, however, the evidence establishes that only pregnant female employees are required to take mandatory, unpaid leave while male employees suffering temporary physical disabilities are not required to take mandatory, unpaid sick leave or face termination because of any temporary disability, then a case for sexual discrimination may be grounded.⁸⁴

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l. I'm pregnant but not showing yet and I have an upcoming interview, do I need to disclose the fact that I'm pregnant?

Although it is not necessary to inform a prospective employer of your pregnancy status until it becomes an issue for you, you may decide to in order to know if the company will willingly accommodate your needs. Remember, an employer can decide not to hire a candidate for any reason as long as it is not based on sex or other discriminatory factors.

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m. Can an employer refuse to hire me because I may become pregnant?

No. However, an employer can decide not to hire a candidate for any other reason as long as it is not based on sex or other discriminatory factors (age, race, etc.)⁸⁵

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n. Can my employer prevent me from working while I'm pregnant or require me to take a certain amount of leave?

Texas law has held that pregnant employees may be required to take leave, or temporarily move to a different job if a business necessity exists that would prevent a pregnant woman from being able to fully perform her duties or put her health or the health and safety of others at risk.⁸⁶

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o. Does my employer's health insurance have to cover the medical costs of my pregnancy?

If your company offers you health insurance benefits, under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the insurance must cover expenses for pregnancy and related conditions, except abortions, in the same manner as costs for other medical conditions.⁸⁷

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p. I just returned from maternity leave and need to take extra breaks in order to pump milk, but my supervisor won't allow me to take more than 2 breaks a day. Can I file a claim?

Currently, there is no law requiring business to provide accommodations for breastfeeding. However, a bill was presented to Congress recently that would add such provisions onto existing legislation. Perhaps you can convince you employer to be ahead of the game by meeting your needs.⁸⁸

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q. Can my employer treat me differently because I am unmarried and pregnant?

On a federal level, discrimination against unmarried pregnant women is not regulated by the law nor enforced by the [EEOC](#). However, your situation should be treated no differently than that of an unmarried male with a child. ⁸⁹

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r. I was pregnant, but had a miscarriage or an abortion, and need time off to recover. Am I covered by the law?

At this time, miscarriage and abortion are not covered by the discrimination law in Texas, unless the mother's life is at stake.⁹⁰ You may be covered under your company's existing mental or temporary disability provisions depending on your condition. Ask your doctor to help you decide if you qualify.

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s. My employer's medical plan covers most health conditions, but excludes abortion and contraceptive devices and medication. Is this legal?

In Texas, there is no law requiring the coverage of contraception and abortion in medical plans, unless the mother's life is at stake.⁹¹

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t. What could my employer do to deny my allegations, and how do I respond to its denials?

An employer may try to prove that your pregnancy has a direct relationship to job performance by showing that you are unable to perform as required by business necessity. In other words, the different treatment is related to the essence of the employer's business and is reasonably calculated to further that purpose and no acceptable alternative would have a less discriminatory impact.⁹²

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DISCRIMINATORY HIRING POLICIES: *I wasn't hired because I'm a woman.*

- a. [I think I wasn't hired because I'm a woman, how do I prove it?](#)
- b. [The interviewer asked me some very personal questions. Is that legal?](#)
- c. [The interviewer stated that his customers would prefer to see a man do this job rather than a woman. Is this a legal reason not to hire me?](#)
- d. [Must I prove that I didn't get the job because of my sex, and not my qualifications? If so how?](#)
- e. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- f. [If I prove hiring discrimination, what kind of remedies am I entitled to?](#)
- g. [My employer has fewer than 15 employees – is there anything I can do?](#)
- h. [Is there a time limit for when I can file a claim with the Texas Workforce Commission?](#)

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a. I think I wasn't hired because I'm a woman, how do I prove it?

To prove a claim of discriminatory firing, you must show the following elements:

- 1) You are a member of a protected class (i.e. a woman);
- 2) You applied for a job for which you were qualified and for which the employer was seeking applicants;
- 3) The employer rejected you despite your qualifications; and
- 4) After your rejection, the position remained open and the employer continued to seek applicants with your qualifications.⁹³

By establishing all of these elements, you will create an initial presumption that your employer discriminated against you on the basis of sex.⁹⁴

<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>

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b. The interviewer asked me some very personal questions. Is that legal?

While not all personal questions are illegal, it is always in the employer's best interest to avoid asking questions such as if you plan to raise a family or if you call yourself Miss or Mrs. The basic practice that most employers follow is to only ask questions related to job skills and requirements. An employer who asks more personal questions increases the risk that someone may claim discriminatory hiring practices.⁹⁵

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c. The interviewer stated that his customers would prefer to see a man do this job rather than a woman. Is this a legal reason not to hire me?

Unless being male is a [BFOQ](#), your sex has no legal bearing on your being hired for a job.

<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>

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d. Must I prove that I didn't get the job because of my sex, and not my qualifications? If so how?

Texas courts have looked to an established pattern of discriminatory practice in hiring situations. You should be able to show that the company you applied to had such practices in place and had a history of failing to hire women because of their sex. Keep in mind that an employer may have a valid reason for not hiring women that is legally protected. It is always helpful to do your homework and try to gather statistics about the company's employment history.⁹⁶

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e. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer will have an opportunity to produce evidence that it refused to hire you for a legal, non-discriminatory reason.⁹⁷ If your employer is silent or does not rebut your initial evidence, and if the court or jury believes your evidence, you will win the case.⁹⁸ On the other hand, if your employer does offer evidence that it refused to hire you for a legal, non-discriminatory reason, you will have the final burden to persuade the court to believe your side of the story.⁹⁹

Ultimately, you must show that your sex was a motivating factor in your employer's decision to hire or not hire you — even if other factors led to the decision as well.¹⁰⁰ (Click here to learn about what remedies you may be entitled to under Texas law.)

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WRONGFULLY DENIED PROMOTION: *I think I was denied a promotion because I'm a woman.*

- [a. I think I did not get the promotion because I'm a woman, how do I prove it?](#)
- [b. Must I show that I took proactive steps to get the promotion, and that I was qualified?](#)
- [c. What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- [d. If I prove wrongfully denied promotion, what kind of remedies am I entitled to?](#)
- [e. My employer has fewer than 15 employees – is there anything I can do?](#)
- [f. Is there a time limit for when I can file a claim with the Texas Workforce Commission?](#)

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a. I think I did not get the promotion because I'm a woman, how do I prove it?

Under Texas federal case law there is a set of standards you must prove to make a promotion claim. These are:

- 1) you are a member of a protected group, which you are as a woman;
- 2) you applied for a position for which you were qualified;
- 3) you were rejected; and
- 4) after you were rejected, your employer promoted someone or continued to seek applicants with your qualifications not in the protected group.¹⁰¹

<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>

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b. Must I show that I took proactive steps to get the promotion, and that I was qualified?

Under these elements of case law you must show that you were qualified for the position for which you applied. Texas federal law requires that you actually apply for the position for which you were not hired. This means that you should, to some degree, have actively sought to be promoted. Most importantly, this means submitting an application for the position.¹⁰²

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c. What could my employer do to deny my allegations, and how do I respond to its denials?

Once you have met the elements above, your employer must explain **circumstantial evidence** of discrimination by demonstrating a legitimate, nondiscriminatory reason for the employment action.¹⁰³ If it successfully does this, then the analysis shifts to the broader question of whether it intentionally discriminated against you.¹⁰⁴ Your employer will have an opportunity to produce evidence that it refused to hire you for a legal, non-discriminatory reason.¹⁰⁵ If your employer is silent or does not rebut your initial evidence, and if the court or jury believes your evidence, you should win the case.¹⁰⁶ On the other hand, if your employer does offer evidence that it refused to hire you for a legal, non-discriminatory reason, you will have the final burden to persuade the court to believe your side of the story.¹⁰⁷

Ultimately, you must show that your sex was a motivating factor in your employer's decision to hire or not hire you — even if other factors led to the decision as well.

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WRONGFUL TERMINATION: *I think I was fired because I'm a woman.*

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- b. [Are women a "protected class"?](#)
- c. [How do I show that my legally protected class led to my discharge?](#)
- d. [I've just received a warning from my employer, and I suspect I will be fired soon. What should I do?](#)
- e. [What can I do to protect any legal rights I might have before leaving my job?](#)
- f. [I am being forced to leave my job. But before I go, my employer requires that I sign a document promising not to sue. Is that legal?](#)
- g. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- h. [Does it matter when the discrimination occurred?](#)
- i. [What options do I have if I my employer has fewer than 15 employees?](#)
- j. [If I prove my wrongful termination claim, what kind of remedies am I entitled to?](#)

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a. I think I was fired because I'm a woman, how do I prove it?

To prove you were fired because you are a woman, you need to show the following:

- 1) You are a member of a protected class (i.e. a woman);
- 2) You were qualified for your position, before you were fired;
- 3) You were fired; and
- 4) You were replaced by someone outside your protected class (i.e. most likely a man).¹⁰⁸

<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>

By establishing all of these elements, you will create an initial presumption that your employer discriminated against you on the basis of sex.¹⁰⁹

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b. Are women a "protected class"?

Yes, women are an explicitly "protected class" under the [TCHRA](#) (<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>), which prohibits discrimination on the basis of sex.¹¹⁰

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c. How do I show that my legally protected class led to my discharge?

Any [direct evidence](#) or [circumstantial evidence](#) of discrimination will help prove that your employer inappropriately considered your gender when deciding to fire you.

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d. I've just received a warning from my employer, and I suspect I will be fired soon. What should I do?

One thing you can do is document everything. You should begin gathering information: clarify the warning, if necessary, by asking your employer, get a hold of company policy on warnings/dismissals to ensure that your employer is following its own policies, talk to trusted co-workers to see if they have any insights into what they have observed in the workplace, keep track of the date/time of interactions with your employer as well as any documents that may be relevant, and most importantly, consider whether the warning may have something to do with sex discrimination or complaining about sex discrimination. Ask yourself if your employer's warning comes on the heels of your confronting the company about sex discrimination. If so, there may be more to the warning than meets the eye.¹¹¹

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e. What can I do to protect any legal rights I might have before leaving my job?

You should definitely keep a paper trail and try to document the date and time of any interactions with your employer. Dates and times become very relevant if you decide to file a claim of sex discrimination because the Workforce Commission needs to be able to evaluate whether you are filing your claim within the [statute of limitations](#). You should also try to gather any relevant documents you might have access to, such as a hiring letter, termination letter, any documents in your personnel file, and any employee handbook or policy manual. These documents may serve as important evidence down the line if you proceed with filing a claim of sex discrimination against your employer.¹¹²
<http://www.welcome.to/tchr>

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f. I am being forced to leave my job. But before I go, my employer requires that I sign a document promising not to sue. Is that legal?

It is not illegal for your employer to get you to sign a waiver, but the waiver itself may not hold up in court. Be conscious that you are taking a risk if you sign a waiver. If you have any doubts about your employer's reasons for firing you, especially if you think your employer may be retaliating or discriminating against you, you should not sign the waiver. You may want to consult with an attorney before signing anything.¹¹³

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g. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer will have an opportunity to produce evidence that it fired you for a legal, non-discriminatory reason.¹¹⁴ If your employer is silent or does not rebut your initial evidence, and if the court or jury believes your evidence, you should win the case.¹¹⁵ On the other hand, if your employer does offer evidence that it fired you for a legal, non-discriminatory reason, you will have the final burden to persuade the court to believe your side of the story.¹¹⁶

Ultimately, you must show that your sex was a motivating factor in your employer's decision to fire you — even if other factors led to the decision as well.¹¹⁷ Be aware, however, that under Texas law, if your employer can show that you were going to be fired anyway, despite illegally considering your sex, your remedies may be limited to “[declaratory relief](#), [injunctive relief](#), and ... [certain] [attorney's fees](#).”¹¹⁸ (Click here to learn about what remedies you may be entitled to under Texas law.)

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RETALIATION/REPRISAL: *I think my employer fired me because I filed a sex discrimination claim.*

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- b. [For what reasons can I be fired?](#)
- c. [What is “protected conduct”?](#)
- d. [If I report what I believe is sex discrimination, but I am wrong, am I still protected if my employer retaliates against me?](#)
- e. [How do I show that my legally protected conduct led to my discharge?](#)
- f. [Did my employer retaliate against me by taking an “adverse action”?](#)
- g. [Must I show that my employer knew about my “protected conduct”?](#)
- h. [I’ve just received a warning from my employer, and I suspect I will be fired soon. What should I do?](#)
- i. [What can I do to protect any legal rights I might have before leaving my job?](#)
- j. [I am being forced to leave my job. But before I go, my employer requires that I sign a document promising not to sue. Is that legal?](#)
- k. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- l. [If I prove retaliation, what kind of remedies am I entitled to?](#)
- m. [My employer has fewer than 15 employees – is there anything I can do?](#)
- n. [Is there a time limit for when I can file a claim with the Texas Workforce Commission?](#)

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a. What is retaliation or reprisal, and how do I prove it?

To prove a claim of retaliation, you must show the following elements:

- 1) You participated in legally “protected conduct;”
- 2) Your employer took an “adverse employment action” against you; and
- 3) There is a causal connection between your protected conduct and the “adverse employment action.”¹¹⁹

<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.00021.00.htm>

By establishing all of these elements, you will create an initial presumption that your employer unlawfully retaliated against you.¹²⁰

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b. For what reasons can I be fired?

Your employer can fire you for a host of different reasons — including no reason at all, if you are what is called an “at will” employee. As the name suggests, an employer can fire an “at will” employee at his or her discretion at any time. Fortunately, however, Texas recognizes an exception to the “at will” employee rule, which allows an “at will” employee to bring a claim of “retaliation” against an employer so long as the employee

can show either (1) the employer retaliated against the employee for reporting suspected sex discrimination, or (2) the employee refused to engage in illegal activity.¹²¹

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c. What is “protected conduct”?

To succeed on a claim of “retaliatory discharge,” you must first show that you engaged in “protected conduct” under the law. In Texas, “protected conduct” includes (1) opposing your employer’s discrimination, (2) filing a charge of discrimination, (3) filing a complaint (or voicing an oral complaint), or (4) participating in an investigation or proceeding against your employer for discriminatory practices.¹²²

(<http://www.capitol.state.tx.us/statutes/docs/LA/content/html/la.002.00.000021.00.htm>)

Your employer is prohibited from taking action against you in retaliation for any of these types of conduct.¹²³

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d. If I report what I believe is sex discrimination, but I am wrong, am I still protected if my employer retaliates against me?

Under Texas law, you do not have to prove sex discrimination actually took place; however, you must show that you have a “good faith reasonable belief” that your employer broke the law by discriminating against you because of your sex.¹²⁴ Some Texas courts have been receptive to women’s good faith beliefs, but others have taken a harsher stance. In the harsher cases, the Court has determined that the conduct reported, such as a few off-color comments, in no way could be reasonably construed as sex discrimination.¹²⁵

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e. How do I show that my legally protected conduct led to my discharge?

Any evidence you can produce that your employer took action against you because of your “protected conduct” will help to prove your case. More often than not, women do not have any direct evidence of retaliation, but the circumstances of the adverse employment action may help to prove a link between the two. At a bare minimum, you should be able to show that your employer 1) knew about your “protected conduct” (e.g. that you filed a charge of sex discrimination) and 2) took the “adverse action” against you soon thereafter.¹²⁶

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f. Did my employer retaliate against me by taking an “adverse action”?

Texas courts have recognized “adverse employment actions” as those that rise to the level of ultimate employment decisions — these include refusal to hire, refusal to grant leave, discharges, or failure to promote.¹²⁷ Demotion may also be considered an “adverse employment action.”¹²⁸ In other words, your employer’s action against you must be substantial enough to affect the terms and conditions of your employment. Written

warnings, poor job evaluations, and even being placed on probation may not be substantial enough to be considered “adverse actions.”¹²⁹

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g. Must I show that my employer knew about my “protected conduct”?

Yes, you should be able to show that your employer knew about your “protected conduct” before taking an “adverse action” against you.¹³⁰

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h. I’ve just received a warning from my employer, and I suspect I will be fired soon. What should I do?

If you receive a warning from your employer, your first instinct may be to panic or even become angry. Depending on the circumstances, you should remain cool and collected, especially since your employer may continue monitoring your work. Generally, you should begin gathering information: Clarify the warning if necessary by asking your employer, get a copy of company policy on warnings/dismissals to ensure that your employer is following its own policies, talk to trusted co-workers to see if they have any insights into what they have observed in the workplace, keep track of the date/time of interactions with your employer as well as any documents that may be relevant, and, most importantly, consider whether the warning may have something to do with sex discrimination or complaining about sex discrimination. Ask yourself if your employer’s warning comes on the heels of your confronting the company about sex discrimination. If so, there may be more to the warning than meets the eye.¹³¹

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i. What can I do to protect any legal rights I might have before leaving my job?

You should definitely keep a paper trail and try to document the date and time of any interactions with your employer. Dates and times become very relevant if you decide to file a claim of sex discrimination because the Workforce Commission <http://www.welcome.to/tchr> needs to be able to evaluate whether you are filing your claim within the [statute of limitations](#). You should also try to gather any relevant documents you might have access to, such as a hiring letter, termination letter, any documents in your personnel file, and any employee handbook or policy manual. These documents may serve as important evidence at a later time if you proceed with filing a claim of sex discrimination against your employer.¹³²

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j. I am being forced to leave my job. But before I go, my employer requires that I sign a document promising not to sue. Is that legal?

It is not illegal for your employer to get you to sign a waiver, but the waiver itself may not hold up in court. Be conscious that you are taking a risk if you sign a waiver. If you have any doubts about your employer’s reasons for firing you, especially if you think

your employer may be retaliating or discriminating against you, you should not sign the waiver or consult with an attorney before signing anything.¹³³

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k. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer will have an opportunity to produce evidence that it fired you for a legal reason, and not in retaliation for your “protected conduct.”¹³⁴ Your employer may, for example, claim you were going to be fired anyway due to poor workplace performance.¹³⁵ Irreconcilable personality differences may also serve as a valid reason for termination.¹³⁶

Ultimately, you must convince the court or the jury that “without,” or in legal terms, “but for,” your “protected conduct,” your employer would not have taken action against you.¹³⁷ In other words, you must persuade the court or the jury that your employer’s claimed reason for taking action against you is a mere pretext for what was actually retaliation.¹³⁸

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HOW DO I FILE A CLAIM?

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a. How do I file a state claim with the Texas Workforce Commission?

To file a claim of sex discrimination with the Texas Workforce Commission <http://www.welcome.to/tchr>, your first step is to contact the Commission to fill out an Intake Questionnaire. The Questionnaire asks you for your basic contact information, the basis for your complaint (i.e. sex discrimination), the date of the last incident of discrimination, the date you were hired at your job, the position you held, and details about the discriminatory employment action taken against you (i.e. you were demoted). You must provide the Commission with the exact date of every separate action taken against you as well as the full name and position title of each person involved in the incident. The Commission needs this information to conduct a thorough investigation.¹³⁹ An intake worker at the Commission can assist you if necessary.

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b. How do I contact the Texas Workforce Commission?

You can contact the Texas Workforce Commission <http://www.welcome.to/tchr>, Civil Rights Division to obtain an Intake Questionnaire in person, by phone, or by mail. The Division Office is located at 6330 Highway 290 East, Suite 250, in Austin, Texas. The toll-free number is 1-888-452-4778. You can write the Commission at P.O. Box 13006, Austin, TX 78711-3006. The Intake Questionnaire is also available online at the Commission’s website, www.welcome.to/tchr.

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c. Against whom can I file a claim?

You can file a complaint of sex discrimination against your employer. Understand, however, that although you can file a complaint of sex discrimination against your employer (i.e. the company) under Texas law, you cannot directly file a complaint against individuals who have discriminated against you. Thus, you cannot directly file a complaint against your boss, supervisor, manager, or co-workers in their capacity as individuals, but the company as whole can be made to answer for their discriminatory acts.¹⁴⁰

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d. If I choose to file a claim, what is expected of me?

More than anything else, if you choose to go forward with a complaint against your employer, you are going to have to exercise an inordinate amount of patience. The process ahead of you could be rocky and full of administrative difficulties, depending on how efficient your local commission is and how cooperative your employer is. In addition, you are expected to be honest and candid with the commission about the discrimination you have faced — even if it means discussing events that have caused you pain, embarrassment, and humiliation. You should hope for a positive outcome, but prepare for disappointment if the commission finds for your employer. And even if you win, you may feel as if any remedy granted to you by the court cannot fully erase the pain of the discrimination you have faced. If you doubt your ability to go through with the legal process, you may wish to consider other ways to confront your grievances with your employer (click here for “Ideas for Change”).

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e. How long will the process take?

It varies from case to case. If you are fortunate, your case may only take a few months to resolve. But, it is not uncommon for a sex discrimination case to last several years.

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f. Do I need an attorney?

You do not need an attorney to file a complaint with the Commission, although you (or your employer for that matter) “may be represented by an attorney or designated agent.”¹⁴¹ On the one hand, retaining an attorney may turn out to be costly, depending on your case, and the Commission provides all its services for free. On the other hand, retaining your own attorney has numerous advantages. Having an advocate in your corner to explain the law and answer any questions as you embark on the filing process is a tremendous benefit. In addition, after the Commission concludes its investigation and arbitration, you will still have the right to sue your employer.¹⁴²

([http://info.sos.state.tx.us/pls/pub/readtac\\$ext](http://info.sos.state.tx.us/pls/pub/readtac$ext).

[ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y](http://www.welcome.to/tchr)) If you choose to go forward with a lawsuit, you will absolutely need an attorney to take your case to court.

<http://www.welcome.to/tchr>

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g. Where do I find an attorney?

You may be able to find an attorney from the Texas State Bar Association (www.laborlaw.org), the National Employment Lawyers Association (www.nela.org), or simply the phone book. The Texas Workforce Commission

(<http://www.welcome.to/tchr>) does not directly refer people to attorneys, but may direct women to the Texas State Bar Association’s lawyer referral service (Telephone: 1-800-9TEXBAR, available Mon. to Fri. 8 a.m. to 5:30 p.m.) or another referral agency in your county.¹⁴³

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h. What if I can’t afford an attorney?

Depending on the attorney you contact, most attorneys will be willing to negotiate a fee arrangement that you will find acceptable. If you ultimately choose not to pay for an attorney and you want to challenge your employer’s discriminatory practice, you may wish to consider some tactics that other women have tried in the workplace. (Click for “ideas for change”).

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i. What will my attorney need from me?

Just like the Commission attorneys, your attorney will require your patience, trust, honesty, and candor. Your attorney will need to know all the details about the discrimination you have faced from your employer. S/he has an ethical obligation to maintain attorney-client confidentiality — that means, everything you say to your attorney remains private. Your attorney may also ask you to recall names, documents, dates, and even times as you reconstruct the events surrounding the discrimination. The more you can help in this effort, the easier it will be for him or her to ultimately help you.

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j. Do I have to contact the Texas Workforce Commission?

You have to contact the Texas Workforce Commission (<http://www.welcome.to/tchr>), the [Equal Employment Opportunity Commission \(http://www.eeoc.gov/\)](http://www.eeoc.gov/), or a local commission if you want to pursue a complaint against your employer.¹⁴⁴ Nonetheless, you may choose to confront sex discrimination in your workplace without engaging in the legal process, simply by commencing a dialogue with your employer [See ideas for change]. You may determine that you do not have enough facts to proceed with a claim, in which case you should not contact the Commission. If you have any doubts about whether you have a claim of sex discrimination, start by learning about the law in Texas (see WDTLS) or consult with an attorney.

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k. Can't I sue my employer directly without going through the Texas Workforce Commission?

You must exhaust all “administrative remedies” before going through the court system. State and federal courts will dismiss a woman’s complaint for failure to first file a complaint with the local human rights commissions or the Texas Workforce Commission.¹⁴⁵ (<http://www.welcome.to/tchr>)

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l. Who will investigate my complaint?

The local commissions have the power to “receive, investigate, conciliate, or rule on [a complaint of sex discrimination] and may file a civil action to carry out the purposes” of the [TCHRA](#)¹⁴⁶ (<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>). They have the power to call witnesses by subpoena as well as to order the production of records, documents, and relevant evidence.¹⁴⁷

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m. What do I do after my initial contact with the Texas Workforce Commission?

After you submit your Intake Questionnaire to the Commission, it will be reviewed to ensure that the information you have provided is sufficient for a formal complaint. If so, your claim will be assigned to an Investigator. The Investigator will assist you in creating what is called a “perfected complaint.” Essentially, the “perfected complaint” translates the information provided on your Intake Questionnaire into a formal, legal complaint of sex discrimination against your employer. At that point, s/he will send you the drafted complaint as well as a standard confidentiality form. You must review, sign, and notarize the complaint and sign the confidentiality agreement, and return both to the Commission within 30 days from when you received them.¹⁴⁸ (<http://www.welcome.to/tchr>)

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n. What happens after I submit my perfected complaint?

Once you have submitted your perfected complaint, your case will be processed: It will be given a “complaint number” and assigned to a commission employee.¹⁴⁹ Within 10 days, a copy of the complaint will be sent to your employer.¹⁵⁰ The Commission will then attempt to settle your claim without an investigation by attempting what is known as “Alternative Dispute Resolution” before proceeding to the investigation phase, if necessary.¹⁵¹

([http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y)) and <http://www.welcome.to/tchr>

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o. What is “Alternative Dispute Resolution” and what are its benefits?

“Alternative Dispute Resolution” (ADR) is a process by which the Commission will attempt to facilitate a voluntary settlement between you and your employer.¹⁵² [ADR](#) is sometimes referred to as “mediation.” If the Commission believes that your case is appropriate for [ADR](#), it will send a referral notice to you and your employer inviting you to attempt [ADR](#). The Commission will send its referral within 10 days of receiving your perfected complaint.¹⁵³

([http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y))

[ADR](#) has many benefits: First and foremost, [ADR](#) allows the parties to resolve their dispute without a lengthy and expensive court challenge. In addition, a successful mediation may generate faster results than waiting for the Commission to complete an investigation of your employer. On the negative side, however, even if the dispute is resolved to your satisfaction, the Commission makes no official finding that your employer discriminated on the basis of sex.¹⁵⁴ Down the road, if your employer ever discriminates again, nothing from your [ADR](#) will be admissible as evidence that your employer has engaged in a pattern of discrimination.

([http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y))

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p. Do I have to partake in “Alternative Dispute Resolution”?

“Alternative Dispute Resolution” (“[ADR](#)”) is not mandatory. Under the law, a party must have a “reasonable basis” for an objection to [ADR](#), submitted within five days of the Commission’s referral to [ADR](#).¹⁵⁵ In practice, however, if neither party wishes to pursue [ADR](#) for whatever reason, the Commission generally will immediately proceed to investigation phase.¹⁵⁶

([http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y))

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q. How does “Alternative Dispute Resolution” work?

An impartial facilitator will meet with you and your employer in the same room, and encourage both sides to resolve your differences. The facilitator remains a neutral party at all times, and does not “decide” any issue in the dispute.¹⁵⁷ The process can be terminated at any point along the way at the mutual consent of the parties after one session has been completed.¹⁵⁸ The entire mediation has 45 days to work.¹⁵⁹ Any settlement agreement will be binding and enforceable on you and your employer.¹⁶⁰ If no resolution emerges, your case will proceed to the investigation phase.¹⁶¹

([http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y))

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r. What happens during the investigation phase of my complaint?

During the investigation, the Commission gathers evidence of your employer’s discrimination as specified in your complaint. The Commission has the power to call witnesses, seek documents and records, take statements from the parties, inspect your workplace,¹⁶² and hold “fact finding conferences” with you and your employer to ascertain the facts of your complaint.¹⁶³ The Commission has the power to compel the appearance of, or subpoena, witnesses or production of documents and other evidence for the benefit of the investigation.¹⁶⁴ Failure to comply with a Commission’s subpoena could result in Court taking you, your employer, or any other relevant party to court.¹⁶⁵

<http://www.welcome.to/tchr> and

([http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y))

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s. What happens when the Commission concludes its investigation?

At the end of the investigation, the Commission makes a formal determination of whether your employer discriminated on the basis of sex. Such a determination is known as “[reasonable cause](#)” under Texas law. <http://www.welcome.to/tchr>

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t. What happens if the investigators determine that no “reasonable cause” exists?

If the Commission determines that no “[reasonable cause](#)” exists, it means the Commission did not find enough evidence to support your suspicion that your employer discriminated on the basis of sex. At that point, the Commission will inform you and your employer of its determination via certified mail.¹⁶⁶ Even if the Commission does find that “no [reasonable cause](#)” exists, it will still inform you of your right to pursue a lawsuit against your employer.¹⁶⁷ If for whatever reason the Commission neglects to send you a notice of your “right to sue” your employer, you will still have the right to proceed with a lawsuit.¹⁶⁸

([http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y)) and <http://www.welcome.to/tchr>

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u. What happens if the investigator determines that “reasonable cause” exists?

If the Commission makes an official determination that “[reasonable cause](#)” exists to believe that your employer discriminated against you, it will first attempt to settle the matter informally through what is known as “conciliation.”¹⁶⁹ In extreme cases of workplace sex discrimination, the Commission may seek a court order against your employer to suspend its discriminatory practice while it continues to press a settlement.¹⁷⁰ If the commission cannot negotiate a settlement between the parties, the Commission may decide to bring a civil action against your employer on your behalf.¹⁷¹ You have a right to become a party in that lawsuit as well.¹⁷² If the Commission chooses not to pursue a civil action against your employer, it will still inform you of your right to pursue a lawsuit against your employer.¹⁷³

([http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y)) and <http://www.welcome.to/tchr>

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v. Can I sue my employer?

Ultimately, you do have a right to sue your employer under the [TCHRA](#) (<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>), however, you have to exercise the appropriate administrative channels first.¹⁷⁴ You will have a right to sue your employer whether the Commission determines “reasonable cause” exists or not.¹⁷⁵ Be aware, however, that if you settle the dispute with your employer during “Alternative Dispute Resolution” or through “conciliation,” you may be asked to agree that you will not proceed with a lawsuit against your employer, except, if your employer fails to comply with the settlement.¹⁷⁶ <http://www.welcome.to/tchr> and ([http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y))

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w. What is a “right to sue” letter?

A “right to sue” letter, or notice of a “right to sue,” is a notice that ends the Commission’s investigation of your employer, and allows you to proceed with a lawsuit against your employer in state or federal court. <http://www.welcome.to/tchr>

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x. How do I obtain a “right to sue” letter?

Usually, when the Commission finishes its investigation of your employer and makes its final determination of whether “reasonable cause” exists, it will automatically provide

you notice of your “right to sue” your employer.¹⁷⁷

([http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=819&sch=D&rl=Y))

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y. Can I appeal a decision of the Texas Workforce Commission?

The Commission itself does not offer any appeals process. If you disagree with the Commission’s decision, you may wish to consider exercising your right to file a lawsuit against your employer in state or federal court. <http://www.welcome.to/tchr>

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z. Can I file a federal claim of employment discrimination as well? If so, how?

Yes, you can file both a state and federal claim. When you file a claim with the Texas Workforce Commission <http://www.welcome.to/tchr>, you can ask the Commission to jointly file your complaint with the [EEOC \(http://www.eeoc.gov/\)](http://www.eeoc.gov/). Although ultimately only one of the agencies will investigate your claim, both federal and state law protect you against sex discrimination.

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aa. What are the advantages and disadvantages of filing a federal claim over a state claim?

As Texas law mirrors federal law, there are no discrete advantages or disadvantages of filing a federal claim over a state claim. Your attorney may have strategic reasons for choosing to use the state system over the federal system (i.e. preferred judges or quicker trials, etc.). Be aware, however, that under work sharing agreements between the [EEOC \(http://www.eeoc.gov/\)](http://www.eeoc.gov/), and the Texas Workforce Commission (<http://www.welcome.to/tchr>), you may file a claim with one agency only to have your claim investigated by another. Be prepared to be flexible, and allow the Commission to direct you where appropriate.

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WHAT AM I ENTITLED TO IF I WIN?

- a. [What am I entitled to if I prove my claim of sex discrimination?](#)
- b. [What is equitable relief?](#)
- c. [What is injunctive relief?](#)
- d. [Am I entitled to monetary damages if I win?](#)
- e. [What is the difference between compensatory and punitive damages?](#)
- f. [Am I entitled to compensatory damages?](#)
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- h. [Are there limits to the amount of monetary damages to which I may be entitled?](#)
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- j. [Am I entitled to “future pecuniary losses” or front pay?](#)
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a. What am I entitled to if I prove my claim of sex discrimination?

Providing the court finds your favor, you may be entitled to what is known as injunctive and/or [equitable relief](#).¹⁷⁸ You may also be entitled to monetary damages against your employer. You should be aware, however, that what the court grants you (if anything) varies from case to case.

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b. What is equitable relief, and what equitable relief am I entitled to in Texas?

“[Equitable relief](#)” refers to any remedy that the court chooses to grant based on what it deems fair and within its powers to enforce. Under Texas law, this includes, but is not limited to:

- “(1) hiring or reinstating with or without [back pay](#);
- (2) upgrading an employee with or without pay;
- (3) admitting to or restoring union membership;
- (4) admitting to or participating in a guidance program, apprenticeship, or on-the-job training or other training or retraining program, using objective job-related criteria in admitting an individual to a program;
- (5) reporting on the manner of compliance with the terms of a final order issued under this chapter; and
- (6) paying court costs.”¹⁷⁹

Again, you should be aware that what the court grants you (if anything) varies from case to case.

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c. What is injunctive relief, and what injunctive relief am I entitled to in Texas?

[Injunctive relief](#) is when a court issues an order directing a party to take (or refrain from) a particular action. For example, the court can order your employer to change its discriminatory practices.

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d. Am I entitled to monetary damages if I win?

Yes, you may be entitled to [compensatory damages](#) and [punitive damages](#) if the Court finds in your favor.¹⁸⁰

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e. What is the difference between compensatory damages and punitive damages?

[Compensatory damages](#), as the name suggests, compensate you for any loss you may have sustained at the hand of your employer. [Punitive damages](#), meanwhile, punish your employer for allowing discriminatory practices in the workplace.

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f. Am I entitled to “compensatory” damages?

You may be eligible for [compensatory damages](#) for future losses, emotional damages, “suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.”¹⁸¹

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g. Am I entitled to punitive damages?

The court may award you [punitive damages](#) only where if your employer is a non-governmental body and where the evidence demonstrates that your employer discriminated “with malice or with reckless indifference” toward women and their rights to be free from discrimination in the workplace.¹⁸²

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h. Are there limits to the amount of monetary damages to which I may be entitled?

Texas, like federal law, places a restriction on the total amount of compensatory and [punitive damages](#) that a woman can recover. Those restrictions are as follows:

- (1) \$50,000 from employers with fewer than 101 employees;
- (2) \$100,000 from employers with more than 100 and fewer than 201 employees;

- (3) \$200,000 from employers with more than 200 and fewer than 501 employees; and
- (4) \$300,000 from employers with more than 500 employees.¹⁸³

It is important to note that these figures prescribe the maximum amount of [punitive damages](#) possible, but are not guaranteed damage awards.

i. Am I entitled to back pay?

Depending on the circumstances of your case, you may be entitled to [back pay](#) from your employer, for up to two years prior to the date of your original complaint with the Workforce Commission. <http://www.welcome.to/tchi>¹⁸⁴ If the trial court awards you [back pay](#), it will subtract any interim earnings, worker's compensation benefits, and unemployment benefits from the total award.¹⁸⁵ Overall, your award must be based on rational calculations of what income and benefits you actually received.¹⁸⁶

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j. What are “future pecuniary losses” or “front pay” and am I entitled to them under Texas law?

“Future pecuniary losses” — or “[front pay](#)” — essentially refers to monetary damages from future wages or benefits that have been diminished because of your employer's sex discrimination. “Pecuniary losses” are a form of compensatory monetary damages available under Texas law, which can be estimated from actual calculations of earned income.¹⁸⁷ In practice, you may believe that as a result of losing your job, for example, your future “earning capacity” has diminished. The court will, however, compare what income you have been earning since leaving your employer with your old salary under your employer to determine if you truly have a diminished earning capacity.¹⁸⁸ Under Texas law, you may also be entitled to “[front pay](#)” if the court determines that [reinstatement](#) is not feasible.¹⁸⁹

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k. Am I entitled to my old job back?

You may be entitled to your old job back, depending on the circumstances of your case. Texas courts have sufficient discretion to order your [reinstatement](#) if the court deems [reinstatement](#) appropriate.¹⁹⁰

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l. Am I entitled to attorney's fees?

The court may, at its discretion, award you reasonable [attorney's fees](#) and expert witness fees if you win your case.¹⁹¹ Courts tend to determine whether to award [attorney's fees](#) on a case by case basis by considering what is fair under the circumstances of the case. On occasion, even where the employee has prevailed, Texas courts may deny [attorney's fees](#) when they do not consider the other total relief awarded to be “meaningful.”¹⁹² By “meaningful,” these courts seemed to indicate that they did not feel a jury award was significant.

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m. What is declaratory relief, and am I entitled to declaratory relief?

“[Declaratory relief](#),” also known as a “declaratory judgment,” is a court ruling that decides the legal rights or relationships of the parties in a case.¹⁹³ For instance, the court may make a “declaratory judgment” that you are protected under the [TCHRA](#) (<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>) or that your employer qualifies as an employer under the [TCHRA](#) (<http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm>). You may be entitled to “[declaratory relief](#)” depending on the facts and circumstances of your case.

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n. Will this be the final result?

Whether your damage award is the final result depends on whether you or your employer challenges the award. If you, after discussing the result with your attorney, believe the damage award is unsatisfactory for whatever reason, you will have a right to at least one appeal. Likewise, however, your employer may decide to challenge an award in your favor. Essentially, you will have to wait and see if your employer chooses to challenge the award.

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o. If I am not satisfied with the result, can I appeal?

You always have the right to appeal your case to a higher court if you, with your attorney’s advice, determine that the court or jury made an error when it ruled in your case.

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p. What if my employer still does not change?

If the employer does not comply with the court’s order, the complainant or aggrieved party may further petition the court to “compel compliance” with its order.¹⁹⁴

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LOCAL ORDINANCES: DOES MY CITY HAVE ITS OWN LAWS ABOUT SEX DISCRIMINATION?

- a. [What are the differences between local and state law?](#)
- b. [What is the procedure for filing a local claim?](#)
- c. [What are the remedies under the local law?](#)

If you work in Austin, Texas, you may have another legal recourse open to you. The Austin Human Resources Department enforces its own non-discrimination law in addition to the state [TCHRA](http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm) and federal law. Austin's law applies to all employers within Austin city limits. You can file a complaint on the basis of local, state, or federal law.

a. What are the differences between local and state law?

Essentially, both laws prohibit employment discrimination on the basis of gender, and the provisions of the laws are quite similar. Like the [TCHRA](http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm) and federal law, Austin's Employment Ordinance only applies to employers with 15 or more employees, and requires an employee to file a complaint of discrimination with 180 days of a discriminatory incident. One important difference between Austin's law and the [TCHRA](http://www.capitol.state.tx.us/statutes/docs/LA/content/htm/la.002.00.000021.00.htm) is that Austin protects persons on the basis of sexual orientation. Thus, if you wanted to bring a claim of discrimination on the basis of sex and sexual orientation, you could do so in Austin.

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b. What is the procedure for filing a local claim?

To file a complaint of discrimination against your Austin-based employer, you should contact the City of Austin Equal Employment/Fair Housing Office at 512-974-3251 or 1-800-526-9159 to speak directly to an investigator.

The Office will ask you to complete an intake questionnaire about your complaint, either before or during an initial meeting with an investigator. The investigator will review the facts of your complaint, may call witnesses, and may visit your place of employment to gather more information.

Ten days after you file your complaint, the Office will notify your employer, who, in turn, will have 15 days to respond to the charges. The Office's investigation continues until either you and your employer reach a settlement or until the investigator makes a determination on your case — i.e. **cause** or **no cause**. Put simply, a determination of "cause" or "no cause" depends on whether the investigator believes you have a case of discrimination based on all the gathered evidence.

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c. What are the remedies under the local law?

The Commission will first attempt to negotiate a settlement with your employer. If your employer refuses to remedy the discriminatory practice within 30 days, the Commission will close your case with a finding of “Failure to Conciliate” (or failure to settle).

<http://www.welcome.to/tchr> At that point, the Commission will either refer your case to the [EEOC \(http://www.eeoc.gov/\)](http://www.eeoc.gov/), (if your charges are based on federal law), or forward your case to the City of Austin Legal Department, which could file your case in Austin Municipal Court.

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- ¹ Tex. Lab. Code Ann. § 21.051 (West 2005).
- ² Tex. Lab. Code Ann. § 21.051(a).
- ³ 40 Tex. Admin. Code § 819.1, ¶ 31.
- ⁴ *Id.*
- ⁵ Tex. Lab. Code Ann. § 21.002(7).
- ⁶ Tex. Lab. Code Ann. § 21.002(8)(A).
- ⁷ Tex. Lab. Code Ann. § 21.002(8)(C).
- ⁸ Tex. Lab. Code Ann. § 21.002(8)(D).
- ⁹ 40 Tex. Admin. Code § 819.1, ¶ 16
- ¹⁰ *See Jenkins v. Guardian Industries Corp.*, 16 S.W.3d 431, 439 (Tex. App. Waco 2000).
- ¹¹ Tex. Lab. Code Ann. § 21.051.
- ¹² Tex. Lab. Code Ann. § 21.001(1).
- ¹³ *See Quantum Chemical Corporation v. Toennies*, 47 S.W.3d 473, 476 (Tex. 2001).
- ¹⁴ Tex. Lab. Code Ann. § 21.115.
- ¹⁵ Tex. Lab. Code Ann. § 21.119.
- ¹⁶ Tex. Lab. Code Ann. § 21.002.
- ¹⁷ Tex. Lab. Code Ann. § 21.125(a).
- ¹⁸ *See Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981).
- ¹⁹ *See Quantum Chemical Corp.*, 47 S.W.3d at 477.
- ²⁰ Tex. Lab. Code Ann. § 21.125(a). *See generally Quantum Chemical Corp.*, 47 S.W.3d 473.
- ²¹ Tex. Lab. Code Ann. § 21.125(b).
- ²² Tex. Lab. Code Ann. § 21.202.
- ²³ <http://www.eeoc.gov/facts/qanda.html>
- ²⁴ Tex. Lab. Code Ann. § 21.002(8)(D).
- ²⁵ *Fields v. Teamsters Local Union No. 988*, 23 S.W.3d 517, 524 (Tex. App. Houston 2000).
- ²⁶ *Id.*
- ²⁷ Tex. Lab. Code Ann. § 21.003(2).
- ²⁸ Telephone Interview with John Moore, Division Director, Regulatory Enforcement Division, Texas Workforce Commission (March 4, 2005).
- ²⁹ *See Georgen-Saad v. Texas Mutual Insurance Co.*, 195 F. Supp. 2d 853, 858 (W.D. Tex. 2002); *see also Plemmer v. Parsons-Gilbane*, 713 F.2d 1127, 1137 (5th Cir. 1983); *Lowery v. Texas A & M*, 11 F. Supp. 2d 895, 907 (S.D. Texas 1998).
- ³⁰ For the full text of the bill, go to: <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=R&CHAMBER=S&BILLTYPE=B&BILLSUFFIX=00074&VERSION=1&TYPE=B>
- ³¹ *See generally Wal-Mart Stores, Inc. v. Davis*, 979 S.W.2d 30 (Tex. App. Austin 1998).
- ³² *See generally Scales v. Slater*, 181 F.3d 703 (5th Cir. 1999).
- ³³ *See Gonzales v. City of New Braunfels, Texas*, 176 F.3d 834, 839 (5th Cir. 1999).
- ³⁴ *See Wal-Mart Stores, Inc.*, 979 S.W.2d at 44.
- ³⁵ Tex. Lab. Code Ann. § 21.122(a)(1).
- ³⁶ *See Wal-Mart Stores, Inc.*, 979 S.W.2d at 44.
- ³⁷ Tex. Lab. Code Ann. § 21.115.
- ³⁸ Tex. Lab. Code Ann. § 21.119.
- ³⁹ Tex. Lab. Code Ann. § 21.002.
- ⁴⁰ *See Texas Parks & Wildlife Dept. v. Dearing*, 150 S.W.3d 452, 462 (Tex. App. Austin 2004) (quoting *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 609 (1993)).
- ⁴¹ *See Frazier v. Garrison Independent School Dist.*, 980 F.2d 1514, 1525-26 (5th Cir. 1993).
- ⁴² *See Munoz v. Orr*, 200 F.3d 291, 299-300 (5th Cir. 2000).
- ⁴³ *See generally Frazier*, 980 F.2d 1514.
- ⁴⁴ *See Martin v. The Kroger Co.*, 65 F. Supp. 2d 516, 535 (S.D. Tex. 1999) (quoting *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998)).
- ⁴⁵ *See Rutherford v. Harris County, Texas*, 197 F.3d 173, 184 (5th Cir. 1999).

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- ⁴⁶ See *Texas Dept. of Community Affairs*, 450 U.S. at 254.
- ⁴⁷ See *Munoz*, 200 F.3d at 299.
- ⁴⁸ Tex. Lab. Code Ann. § 21.115.
- ⁴⁹ Tex. Lab. Code Ann. § 21.119.
- ⁵⁰ Tex. Lab. Code Ann. § 21.002.
- ⁵¹ See *Quantum Chemical Corp.*, 47 S.W.3d at 477.
- ⁵² See *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981).
- ⁵³ See *Quantum Chemical Corp.*, 47 S.W.3d at 477.
- ⁵⁴ Tex. Lab. Code Ann. § 21.125(a). See generally *Quantum Chemical Corp.*, 47 S.W.3d 473.
- ⁵⁵ Tex. Lab. Code Ann. § 21.125(b).
- ⁵⁶ See *Rutherford*, 197 F.3d at 173, Fn. 6.
- ⁵⁷ See *Scales*, 181 F.3d at 708-09.
- ⁵⁸ See *Nichols v. Lorai Vought Systems Corp.*, 81 F.3d 38, 40 (5th Cir. 1996).
- ⁵⁹ See *Fabela v. Socorro Independent School Dist.*, 329 F.3d 409, 415 (5th Cir. 2003).
- ⁶⁰ See *Rutherford*, 197 F.3d at 173, Fn. 4.
- ⁶¹ See *Scales*, 181 F.3d at 708-09.
- ⁶² See *Ewald v. Wornick Family Foods Corp.*, 878 S.W.2d 653, 659 (Tex. App. Corpus Christi 1994).
- ⁶³ See *Garcia v. Schwab*, 967 S.W.2d 883, 885-86 (Tex. App. Corpus Christi 1998) (citing *Ewald*, 878 S.W.2d at 659).
- ⁶⁴ See *Highlander v. K.F.C. Nat'l Management Co.*, 805 F.2d 644, 648 (6th Cir. 1986).
- ⁶⁵ See *Garcia* 967 S.W.2d at 885-86.
- ⁶⁶ See generally *Bartkowiak v. Quantum Chemical Corp.*, 35 S.W.3d 103 (Tex. App. Amarillo 2000).
- ⁶⁷ See *Bartkowiak*, 35 S.W.3d 103, 110 (Tex. App. Amarillo 2000).
- ⁶⁸ See generally *Ewald*, 878 S.W.2d at 653.
- ⁶⁹ See *Noto v. Regions Bank*, 84 Fed. Appx. 399, 401-02 (5th Cir. 2003); See also *Oncala v. Sundowner Offshore Services*, 523 U.S. 75, 80-81 (1998).
- ⁷⁰ See *Garcia*, 967 S.W.2d at 885-886.
- ⁷¹ *Padilla v. Flying J, Inc.*, 119 S.W.3d 911, 915 (Tex. App. Dallas 2003)
- ⁷² See *Garcia*, 967 S.W.2d at 886.
- ⁷³ Tex. Lab. Code Ann. § 21.106.
- ⁷⁴ See *Baehler v. Fritz Indus. Inc.*, 993 S.W.2d 181,183 (Tex. App. Texarkana 1999).
- ⁷⁵ Tex. Lab. Code Ann. §21.051.
- ⁷⁶ See *Somers v. Aldine Independent School Dist.*, 464 F. Supp. 900, 903 (S.D. Tex. 1979)
- ⁷⁷ Tex. Lab. Code Ann. § 21.106.
- ⁷⁸ Tex. Lab. Code Ann. § 21.106.
- ⁷⁹ 29 U.S.C.A. §§ 2601-2654.
- ⁸⁰ 29 U.S.C.A. §§ 2601-2654.
- ⁸¹ Tex. Lab. Code Ann. § 21.106.
- ⁸² Tex. Lab. Cod. Ann. § 21.106.
- ⁸³ See *Stout v. Baxter Healthcare Corp.*, 282 F.3d 856 (5th Cir. 2002).
- ⁸⁴ See *Somers*, 464 F. Supp. at 903.
- ⁸⁵ See <http://www.eeoc.gov/facts/fs-preg.html>
- ⁸⁶ See *Levin v. Delta Air Lines, Inc.*, 1982 U.S. Dist. LEXIS 13959, at *1-2 (S.D. Tex. 1982)
- ⁸⁷ 42 U.S.C.A. § 1320d et seq.
- ⁸⁸ Elizabeth N. Baldwin, Esq. and Kenneth A. Friedman, Esq, “Working It Out: Breastfeeding at Work,” available at <http://www.lalecheleague.org/Law/LawEmployment.html>.
- ⁸⁹ <http://youth.eeoc.gov/pregnancy2.html#Q9>
- ⁹⁰ Tex. Lab. Cod. Ann. § 21.107
- ⁹¹ Tex. Lab. Cod. Ann. § 21.107
- ⁹² See *Levin*, 1982 U.S. Dist. LEXIS 13959.
- ⁹³ See *Munoz*, 200 F.3d at 299.
- ⁹⁴ See *Texas Dept. of Community Affairs*, 450 U.S. at 254.

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- ⁹⁵ See http://www.texasbar.org/legal_library/employment/hiring.php
- ⁹⁶ See generally *Rogillio v. Diamond Shamrock Chemical Co.*, 446 F. Supp. 423 (S.D. Tex. 1977).
- ⁹⁷ See *Quantum Chemical Corp.*, 47 S.W.3d at 477.
- ⁹⁸ See *Texas Dept. of Community Affairs*, 450 U.S. at 254
- ⁹⁹ See *Quantum Chemical Corp.*, 47 S.W.3d at 477.
- ¹⁰⁰ Tex. Lab. Code Ann. § 21.125(a). See generally *Quantum Chemical Corp.*, 47 S.W.3d 473.
- ¹⁰¹ *Martin*, 65 F. Supp. 2d at 541.
- ¹⁰² *Id.*
- ¹⁰³ See *Texas Dept. of Community Affairs*, 450 U.S. at 253-56, quoting *McDonnell Douglas v. Green*, 411 U.S. at 802.
- ¹⁰⁴ See *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510-11 (1993).
- ¹⁰⁵ See *Quantum Chemical Corp.*, 47 S.W.3d at 477.
- ¹⁰⁶ See *Texas Dept. of Community Affairs*, 450 U.S. at 254
- ¹⁰⁷ See *Quantum Chemical Corp.*, 47 S.W.3d at 477.
- ¹⁰⁸ See *Georgen-Saad*, 195 F.Supp.2d at 858.
- ¹⁰⁹ See *Texas Dept. of Community Affairs*, 450 U.S. at 254.
- ¹¹⁰ Tex. Lab. Code Ann. § 21.051 (West 2005).
- ¹¹¹ See "Handling Getting Fired," *Lectric Law Library*. <http://www.lectlaw.com/files/emp43.htm>
- ¹¹² *Id.*
- ¹¹³ *Id.*
- ¹¹⁴ See *Quantum Chemical Corp.*, 47 S.W.3d at 477
- ¹¹⁵ See *Texas Dept. of Community Affairs*, 450 U.S. at 254.
- ¹¹⁶ See *Quantum Chemical Corp.*, 47 S.W.3d at 477
- ¹¹⁷ Tex. Lab. Code Ann. § 21.125(a). See generally *Quantum Chemical Corporation v. Toennies*, 47 S.W.3d 473.
- ¹¹⁸ Tex. Lab. Code Ann. § 21.125(b).
- ¹¹⁹ See *Cox & Smith Inc. v. Cook*, 974 S.W.2d 217, 223 (Tex. App. San Antonio 1998).
- ¹²⁰ See *Texas Dept. of Community Affairs*, 450 U.S. at 254.
- ¹²¹ See *Guient v. Hogan & Assoc.*, 2001 WL 722559 at *2 (Tex. App. Dallas June 28, 2001).
- ¹²² 21 Tex. Lab. Code Ann. § 21.055.
- ¹²³ See *Menefee v. McCaw Cellular Communications of Texas*, 2003 WL 1461469 at * 6. (Tex. App. Dallas March 24, 2003)
- ¹²⁴ See *Cox & Smith Inc.*, 974 S.W.2d at 224.
- ¹²⁵ *Id.* at 227.
- ¹²⁶ See generally *Sherrod v. American Airlines, Inc.*, 132 F.3d 1112 (5th Cir. 1998).
- ¹²⁷ *Roark v. Kidder, Peabody & Co.*, 959 F. Supp. 379, 386 (N.D. Texas 1997).
- ¹²⁸ *Lowrey v. Texas A & M*, 11 F. Supp. 2d 895, 910 (S.D. Texas 1998).
- ¹²⁹ *Martin*, 65 F. Supp. 2d at 557.
- ¹³⁰ See *Guient*, 2001 WL 722559 at *2.
- ¹³¹ See "Handling Getting Fired," *Lectric Law Library*. <http://www.lectlaw.com/files/emp43.htm>
- ¹³² *Id.*
- ¹³³ *Id.*
- ¹³⁴ See *Pineda v. United Parcel Service, Inc.*, 360 F.3d 483, 487 (5th Cir. 2004).
- ¹³⁵ See generally *Martin*, 65 F.Supp.2d 516.
- ¹³⁶ See e.g. *Cox & Smith Inc.*, 974 S.W.2d at 221.
- ¹³⁷ See *Pineda*, 360 F.3d at 488-89.
- ¹³⁸ *Id.*
- ¹³⁹ See Intake Questionnaire form, <http://www.welcome.to/tchr>.
- ¹⁴⁰ See *Jenkins*, 16 S.W.3d at 439.
- ¹⁴¹ 40 Tex. Admin. Code § 819.83.
- ¹⁴² 40 Tex. Admin. Code § 819.77.
- ¹⁴³ Telephone Interview with John Moore, Division Director, Regulatory Enforcement Division, Texas Workforce Commission (March 4, 2005).
- ¹⁴⁴ See *Schroeder v. Texas Iron Works, Inc.*, 813 S.W.2d 483, 485 (Tex. 1991).
- ¹⁴⁵ *Id.*

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- ¹⁴⁶ Tex. Lab. Ann. Code § 21.154(a).
¹⁴⁷ Tex. Lab. Ann. Code § 21.154(b)(1) and (2).
¹⁴⁸ See <http://www.welcome.to/tchr>.
¹⁴⁹ 40 Tex. Admin Code § 819.71(h).
¹⁵⁰ 40 Tex. Admin Code § 819.71(i).
¹⁵¹ 40 Tex. Admin. Code § 819.72(a).
¹⁵² 40 Tex. Admin. Code § 819.1, ¶ 3.
¹⁵³ 40 Tex. Admin. Code § 819.86(a).
¹⁵⁴ 40 Tex. Admin. Code § 819.86(c).
¹⁵⁵ 40 Tex. Admin. Code § 819.88(b)-(c).
¹⁵⁶ Telephone Interview with John Moore, Division Director, Regulatory Enforcement Division, Texas Workforce Commission (March 4, 2005).
¹⁵⁷ 40 Tex. Admin. Code § 819.92(c).
¹⁵⁸ 40 Tex. Admin. Code § 819.92(i).
¹⁵⁹ 40 Tex. Admin. Code § 819.86(a).
¹⁶⁰ 40 Tex. Admin. Code § 819.93(a).
¹⁶¹ 40 Tex. Admin. Code § 819.86(a).
¹⁶² 40 Tex. Admin. Code § 819.72(h).
¹⁶³ 40 Tex. Admin. Code § 819.72(e).
¹⁶⁴ 40 Tex. Admin. Code § 819.73(a).

¹⁶⁵ 40 Tex. Admin. Code § 819.73(d).
¹⁶⁶ 40 Tex. Admin. Code § 819.74(g).
¹⁶⁷ 40 Tex. Admin. Code § 819.74(g).
¹⁶⁸ 40 Tex. Admin. Code § 819.78.
¹⁶⁹ Tex. Lab. Code Ann. § 21.207(a).
¹⁷⁰ Tex. Lab. Code Ann. § 21.210(a).
¹⁷¹ Tex. Lab. Code Ann. § 21.251(a).
¹⁷² Tex. Lab. Code Ann. § 21.251(b).
¹⁷³ 40 Tex. Admin. Code § 819.76(g).
¹⁷⁴ See *Schroeder*, 813 S.W.2d at 485.
¹⁷⁵ 40 Tex. Admin. Code § 819.77(a).
¹⁷⁶ See 40 Tex. Admin. Code § 819.93; Tex. Lab. Code Ann. § 21.060.
¹⁷⁷ 40 Tex. Admin. Code § 819.76(g); 40 Tex. Admin. Code § 819.74(g).
¹⁷⁸ See generally Tex. Lab. Code Ann § 21.258.
¹⁷⁹ Tex. Lab. Code Ann. § 21.258(b).
¹⁸⁰ Tex. Lab. Code Ann § 21.2585(a).
¹⁸¹ Tex. Lab. Code Ann. § 21.2585(d).
¹⁸² Tex. Lab. Code Ann. § 21.2585(b).
¹⁸³ Tex. Lab. Code Ann. § 21.2585(d).
¹⁸⁴ Tex. Lab. Code Ann. § 21.258(c).
¹⁸⁵ Tex. Lab. Code Ann § 21.258(c). See *Haggar Apparel Co. v. Leal*, 100 S.W.3d 303 (Tex. App. Corpus Christi 2002).
¹⁸⁶ See *Mayberry v. Texas Dept. of Agriculture*, 948 S.W.2d 312, 317 (Tex. App. Austin 1997).
¹⁸⁷ Tex. Lab. Code Ann. § 21.2585(d). See also *Black's Law Dictionary* (8th ed. West 2004).
¹⁸⁸ See *Gorges Foodservice, Inc. v. Huerta*, 964 S.W.2d 656, 670 (Tex. App. Corpus Christi 1997).
¹⁸⁹ See *Cox & Smith Inc.*, 974 S.W.2d at 227.
¹⁹⁰ Tex. Lab. Code Ann. § 21.258(b)(1). See also *Southwestern Bell Mobile Systems v. Franco*, 951 S.W.2d 218 (Tex. App. Corpus Christi 1997), *rev'd in part on other grounds* 971 S.W.2d 52, 55 (Tex. 1998).
¹⁹¹ Tex. Lab. Code Ann. § 21.259(a) and (c).
¹⁹² See *Burgmann Seals America Inc. v. Cadenhead*, 135 S.W.3d 854, 860-61 (Tex. App. Houston 1st Dist. 2004).
¹⁹³ See *Black's Law Dictionary* (8th ed. West 2004).
¹⁹⁴ Tex. Lab. Code Ann. § 21.261.