



EQUAL EMPLOYMENT OPPORTUNITY (EEO) LAWS AND TTUHSC POLICIES PROHIBITING EMPLOYMENT DISCRIMINATION INCLUDING SEXUAL HARASSMENT

Training for Texas Tech University Health Sciences Center (TTUHSC) employees pursuant to: House Bill 1976, 76th Legislature Sec. 21.010, Labor Code, Employment Discrimination for State Employees.

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TTUHSC EEO POLICY STATEMENT

TTUHSC policies are based on fairness and honesty, and are designed to provide equal opportunity in employment for all employees and applicants for employment. Per TTUHSC OP 51.01, TTUHSC will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, physical or mental disabilities, Vietnam Era or Special Disabled Veteran Status. TTUHSC will take affirmative action to ensure that applicants are employed, and that employees are treated equally during employment without regard to their race, color, religion, sex, national origin, age, physical or mental disabilities, Vietnam Era or Special Disabled Veteran Status. Such action shall include, but not be limited to any of the following employment transactions: recruitment, hiring, upgrading, demotion or transfer, disciplinary action, lay-off or termination; rate of pay or other forms of compensation and selection for training, including apprenticeship.

TTUHSC also prohibits any harassment based on race, color, religion, age, sex, national origin, disability or veteran status.

Harassment is verbal or physical conduct that shows hostility toward an individual because of these protected rights, and that has the purpose or effect of creating an intimidating, hostile, or offensive working environment; has the purpose or effect of unreasonably interfering with an individual's work performance; or otherwise adversely affects an individual's employment opportunities.

EEO LAWS AND TTUHSC POLICIES

1. Title VII of the Civil Rights Act of 1964, as amended in 1972, 1978; and the Civil Rights Act of 1991 - These federal laws prohibit employment discrimination by public and private employers in any personnel transactions due to:

- Race: Identifiable classes of people, e.g., Caucasian American, African American, Native American, Hispanic, etc.
- Color: (lightness or darkness of skin)
- Religion: (sincerely held religious beliefs)
- National Origin: (individual's or ancestor's birthplace)
- Sex: (male as well as female)

A. Title VII of the Civil Rights Act of 1964, as amended in 1972, 1978

This is the broadest of the Equal Employment Opportunity laws, and covers such personnel transactions as recruiting, interviewing, hiring, compensation, terms, conditions, discharges, job assignments, training programs, promotions, and any other employment functions.

Today most employment discrimination charges are filed under Title VII. It is enforced by the United States Equal Employment Opportunity Commission (EEOC). A complaint must be filed with the EEOC or the Texas Workforce Commission – Civil Rights Division (TWCCRD) before the case can be filed in court.

B. The Civil Rights Act of 1991

This act was designed primarily to overcome a series of 1989 United States Supreme Court

rulings on employment discrimination. Some of the new provisions:

- Restore the rule that once a person proves that an employment practice has a disparate impact, the employer must justify the practice by showing that it is based on business necessity (e.g., typing test, high school diploma, higher education degree, etc.).
- Amend Title VII granting any victim of intentional discrimination the right to recover compensatory monetary damages, and in egregious cases, punitive damages, as well.
- Make it clear that laws governing Affirmative Action and other race-conscious remedies will not be affected adversely. The Act does not mandate quotas in any fashion.
- Establish an initiative to create a Glass Ceiling Commission to study barriers in the workplace that impact the advancement or promotion of women and/or minority individuals.
- Clarify how statistics can be used as evidence of discrimination in cases where the alleged discrimination is based on adverse impact. Persons protected by the Civil Rights Act of 1991 may be able to challenge an employer's policy or procedures if they believe that the application of those policies or procedures impacts the group(s) to which they belong in a statistically disproportionate manner in contrast to other groups of persons.

A complaint must be filed with the EEOC or TWCCRD before the case can be filed in court.

This Act is enforced by the EEOC.

TTUHSC Operating Policies (OPs):

51.01 AA/EEO Policy

70.11 Appointment to Non-Faculty

Positions

70.27 Employment of Student Employees

70.31 Standards of Conduct, Discipline and Separation of Employees

2. Executive Order 11246 - Affirmative Action Plan

As a federal contractor, TTUHSC is required by U.S. Presidential Executive Order 11246, as amended, to develop and implement on an annual basis an Affirmative Action Plan (AAP). TTU System Office of Equal Employment Opportunity is responsible for developing and implementing the TTUHSC plan.

The basic concept behind the requirement of an AAP is to eliminate employment practices that discriminate against women and/or persons belonging to particular minority and ethnic groups. The AAP seeks to bring women and minorities into all levels and all segments of TTUHSC's workforce in proportion to the percentage they represent in the appropriate potential labor market.

Copies of the TTUHSC AAP are available at the institutional library.

This Executive Order is enforced by the U.S. Department of Labor.

TTUHSC Operating Policy (OP):

51.01 AA/EEO Policy

3. Equal Pay Act of 1963

This Act prohibits employment discrimination in pay, employee benefits, and pensions based on the employee's gender. Regardless of gender, employees must be paid equally for equal work when terms and conditions of employment are the same. Jobs are considered equal when they require substantially the same skill, effort, and

responsibility under similar working conditions and in the same establishment. It should be noted that pay differentials are permitted when they are based on a legitimate business factor other than sex.

This Act was passed as an amendment to the Fair Labor Standards Act of 1938, and it is enforced by the EEOC. A complaint does not have to be filed with the EEOC or TWC before the case can be filed in court.

TTUHSC Operating Policies (OPs):

51.01 AA/EEO Policy

70.11 Appointment to Non-Faculty Positions

70.37 Salary Administration Policy

4. Age Discrimination in Employment Act (ADEA) of 1967, as amended

This Act prohibits discrimination by private and public employers in any personnel transaction, including hiring, because of a person's age (40 years or older). Exceptions to the law are permitted where age is a *bona fide* occupational qualification (BFOQ – see definition on page 8). A BFOQ may exist where an employer can show that advanced age may affect public safety or organizational efficiency. A BFOQ does not exist where an employer argues that younger employees foster a youthful or more energetic organizational image.

This Act is enforced by the EEOC.

TTUHSC Operating Policies (OPs):

51.01 AA/EEO Policy

70.11 Appointment to Non-Faculty Positions

70.37 Salary Administration Policy

5. Americans with Disabilities Act (ADA) of 1990

Prohibits employment discrimination by public and private employers in any personnel

transactions because of mental or physical disability. An individual with a disability is a person who:

1. “has a physical or mental impairment that substantially limits one or more major life activities;
2. has a record of such an impairment; or
3. is regarded as having such an impairment.”

If the person with a disability is otherwise qualified to perform the essential functions of the job, then the employer is required to make a reasonable workplace accommodation that does not constitute an undue hardship. A reasonable workplace accommodation allows the individual with the disability to perform at the same level of effectiveness and efficiency as any other qualified individual.

A reasonable accommodation might include “making facilities accessible and useable to disabled persons, restructuring jobs, permitting part-time or modified work schedules, reassigning to a vacant position, changing equipment, and/or expense” (ADA Section 101 (9), considering the (1) nature and cost of the accommodation and (2) financial resources, size, and profitability of the facility and parent organization. Furthermore, employers cannot use selection procedures that screen out, or tend to screen out, disabled persons unless the selection procedure “is shown to be job-related for the position in question and is consistent with business necessity” (ADA Section 102 (6)), and acceptable job performance cannot be achieved through reasonable accommodation.

This Act also prohibits discrimination in public service, public accommodations, and telecommunications.

This Act is enforced by the EEOC.

TTUHSC Operating Policies (OPs):

- 10.15 *Americans with Disabilities Act*
- 51.01 *AA/EEO Policy*
- 70.11 *Appointment to Non-Faculty Positions*
- 70.12 *Performance Management*
- 70.36 *Communicable and Transmittable Disease Control in the Employee Workplace*

6. Fair Labor Standards Act (FLSA) of 1938, as amended

This Act, commonly referred to as the Wage and Hour Act, was passed in 1938 and since then has been amended many times. The major provisions of the FLSA are concerned with the minimum wage rates, overtime payments, recordkeeping, and child labor standards.

For persons covered by the FLSA, the minimum wage rate applies to the actual earning rate before any overtime premiums have been added. An overtime rate of 1 ½ times the base rate must be paid for all hours worked in excess of 40 during a given week.

Certain groups of employees (as specified by the FLSA) are exempt from coverage under this Act.

The Fair Labor Standards Act is administered by the U.S. Department of Labor.

TTUHSC Operating Policies (OPs):

- 51.01 *AA/EEO Policy*
- 70.06 *Employee Working Hours and Holidays*
- 70.17 *Overtime and Compensatory Time*
- 70.18 *Multiple Employment*
- 70.37 *Salary Administration Policy*

7. Vocational Rehabilitation Act of 1973

The Vocational Rehabilitation Act requires employers with federal contracts over \$10,000 to take affirmative action to hire and

promote individuals with a mental or physical disability. Employers must make a reasonable accommodation to hire handicapped individuals but are not required to employ unqualified persons. In applying the safeguards of this law, the term *handicapped individual* means "... any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment." (ADA Section 3(2)(A)-(C) This definition closely parallels the definition of the person with a disability provided in the American with Disabilities Act.

The Vocational Rehabilitation Act does not require employers to hire or retain a handicapped person if he or she has a contagious disease that poses a direct threat to the health and safety of others, and the individual cannot be accommodated.

The U.S. Department of Labor enforces this Act.

TTUHSC Operating Policies (OPs):

- 51.01 *AA/EEO Policy*
- 70.11 *Appointment to Non-Faculty Positions*
- 70.36 *Communicable and Transmittable Disease Control in the Employee Workplace*

8. Family and Medical Leave Act (FMLA) of 1993

The Family and Medical Leave Act provides an eligible employee with up to 12 weeks of unpaid leave for any of the following reasons:

- childbirth,
- adoption or foster care,
- recovery from serious illness, or
- caring for a seriously ill spouse, son, daughter, or parent.

On January 28, 2008, the Act was amended by H.R. 4986, the National Defense Authorization Act for FY 2008 (NDAA). Specifically, section 585 of the NDAA amends the FMLA to permit a “spouse, son, daughter, parent, or next of kin” to take up to 26 workweeks of leave to care for a “member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.”

The eligible employee is one who has worked at TTUHSC for 12 months, and for at least 1,250 hours in the past 12 months.

Current TTUHSC leave policies (OP 70.01) permit leave equal to or greater than the FMLA in most instances. Therefore, the most likely situations where the FMLA will be advantageous to the employee are:

- For individuals who do not have adequate paid leave accruals to extend into all months of the desired leave. For example, a person on leave without pay for an entire month for maternity reasons would not receive insurance premium sharing under current leave policies. The person on leave without pay for the same reason will receive premium sharing dollars under the FMLA.
- For cases in which the employee wishes to take 12 weeks of qualified FMLA leave although the department is opposed to the individual being gone that length of time. The department is required to allow 12 weeks of leave if the request is for qualified FMLA leave. The statute forbids retaliation against employees who exercise their legal right to utilize FMLA.

The Department of Labor enforces this Act.

TTUHSC Operating Policies (OPs):

70.01 Leave Policy

70.32 Family and Medical Leave

9. Pregnancy Discrimination Act of 1978

This Act is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar disabilities or limitations.

An employer cannot refuse to hire a woman because of her pregnancy-related condition as long as she is able to perform the major functions of the job.

If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her exactly the same as any other temporarily disabled employee by, for example, providing modified tasks, alternative assignments, disability, or leaves without pay. Pregnant employees must be permitted to work as long as they are able to perform their jobs.

This Act is administered by the EEOC.

TTUHSC Operating Policies (OPs):

51.01 AA/EEO Policy

70.01 Leave Policy

70.32 Family and Medical Leave

10. Vietnam Era Veterans Readjustment Assistance Act of 1974

This Act prohibits discrimination against Vietnam Era Veterans by employers with government contracts of \$25,000 or more. The Act mandates affirmative action to employ and advance disabled and qualified

PRIMARY LEGAL THEORIES FOR DETERMINING DISCRIMINATION UNDER EEO LAW

Regardless of the specific allegation on a complaint of employment discrimination, a violation of fair employment law will be determined on the basis of one or both of the following legal theories:

1. Difference in Treatment (Disparate Treatment) - Difference in treatment compares whether the complainant was treated the same or differently than like or similarly situated employees, not of the complainant's same class, under like or similar circumstances. *McDonald v. Santa Fe Train Transp. Co.*, 427 U.S. 273 (1976)

2. Difference in Effect or Impact (Disparate Effect/Adverse Impact) - Difference in impact states that if an employer has a policy that is neutral on its face but has a disproportionate effect or impact on the complainant's protected class, the policy must be justified by a legitimate business necessity. *Griggs v. Duke Power Co.*, 401 U.S. 427 (1971)

The Texas Commission on Human Rights Act states: "**Bona Fide** Occupational Qualifications (BFOQ)" means a qualification:

1. reasonably related to the satisfactory performance of the duties of the job; **and**
2. for which a factual basis exists for the belief that no person of an excluded group would be able to satisfactorily perform the duties of the job with safety or efficiency.

TTUHSC SEXUAL HARASSMENT POLICY STATEMENT

Per TTUHSC OP 70.14, it is the policy of TTUHSC to maintain a work place and a learning environment free of sexual harassment and intimidation. **SEXUAL HARASSMENT IS ILLEGAL.**

EEO GUIDELINES DEFINING SEXUAL HARASSMENT

(Note: TWCCRD applies these guidelines in administering the Texas Commission on Human Rights Act.)

Harassment of students on the basis of sex is a violation of Section 106.31 of Title IX of the Education Amendments of 1972.

Harassment of TTUHSC employees on the basis of sex is a violation of Section 703 of Title VII of the Civil Rights Act of 1964, as well as, Section 39.03 of the Texas Penal Code and the Texas Commission on Human Rights Act of 1983.

According to HSC OP 70.14, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature can constitute sexual harassment when

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, participation in a TTUHSC sponsored educational program or activity or in return for a grade or other consideration;
2. Submission to or rejection of, such

REPORTING PROCEDURES

EEO Complaint Procedures:

Non-Faculty Employees should first follow the procedures outlined in HSC OP 70.10, “Non-Faculty Employee Complaint and Grievance Procedures.” This begins with discussing the issue with the immediate supervisor within ten (10) working days of the date of the action that is the basis of the complaint or grievance. Reference HSC OP 70.10 for additional information.

Faculty should address concerns in accordance with the faculty grievance procedures published in the Faculty Handbook of their school.

In addition, HSC OP 51.01 states that, “employees or applicants for employment may file employment-related complaints of discrimination with the TTUS Office of EEO. Faculty employment complaints of discrimination may also be filed with the TTUS Office of EEO.”

Employment-related complaints can also be filed directly with the TWCCRD or the EEOC although resolution at the lowest level (TTUHSC) is always the preferred approach. Employees have a maximum of 180 days to file with the TWCCRD and 300 days with the EEOC.

Your local Human Resources Office is also available to assist and answer questions.

Sexual Harassment Complaint Procedures:

If you feel comfortable in doing so, object to the behavior. While it is not required, it might be helpful to object to the behavior since lack of response may be interpreted as approval. State clearly that the behavior is offensive and unacceptable and must cease

immediately. Direct action on your part may put an end to the harassing behavior.

If this doesn't stop the behavior or you are uncomfortable confronting the person or persons, HSC OP 70.14 outlines the following steps for filing a complaint:

Students:

Students believing they are the targets of sexual harassment in the academic environment by faculty, staff, or other students should report their complaint to the dean of the school in which they are enrolled. If the complaint involves the dean's office, the complaint should be filed with the Office of EEO.

Students complaining of sexual harassment in their employment capacity should proceed directly to the Office of EEO. If the complaint involves the Office of EEO, the complaint should be filed with the dean of the school in which the student is enrolled.

Faculty/Staff:

Employees wishing to file a complaint of sexual harassment should contact the Office of EEO. Employees, who believe they are being sexually harassed, but are unsure about filing a formal complaint, should discuss the situation with a representative of the Office of EEO.

Sexual harassment complaints can always be filed directly with the TWCCRD or the EEOC although resolution at the lowest level (TTUHSC) is always the preferred approach. Sexual harassment complaints must be filed within 180 days after the incident occurs with the TTUS Office of EEO or the TWCCRD and within 300 days with the EEOC.

Your local Human Resources Office is also available to assist and answer questions.

CONTACT INFORMATION

AGENCIES:

U.S. Equal Employment Opportunity Commission (EEOC)

1-800-669-4000

www.eeoc.gov

El Paso Area Office

300 E. Main Street, Suite 500

El Paso, Texas 79901

1-915-534-6700

<http://www.eeoc.gov/el Paso/area.html>

Dallas Area Office

207 S. Houston Street, 3rd floor

Dallas, Texas 75202-4726

1-214-253-2880

<http://www.eeoc.gov/dallas/area.html>

The EEOC office that has jurisdiction for all TTUHSC locations, except Amarillo, is located in El Paso, Texas. The EEOC Dallas office has jurisdiction over the TTUHSC Amarillo location.

Texas Workforce Commission – Civil Rights Division (TWCCRD)

101 East 15th Street, Room 144T

Austin, Texas 78778

1-888-452-4778

TTY 1-512-371-7473

<http://www.twc.state.tx.us>

U. S. Department of Labor (DOL)

200 Constitution Avenue N.W.

Washington, D.C. 20210

866-4-USA-DOL

ADA COORDINATORS:

TTUHSC Human Resources (Lubbock),

HSC Room 1B100, 806-743-2865,

AVP for Human Resources

TTUHSC Student Services (Lubbock),

HSC Room 2C410, 806-743-2300,

Margarita G. Duran

FOR INFORMATION OR ASSISTANCE:

Texas Tech University System – EEO

Office, 806-742-3627

<http://www.depts.ttu.edu/equalemployment/>

TTUHSC Employee Relations

Representative (Lubbock), HSC Room

1B100E, 806-743-2865 x 239, Earl Crain

TTUHSC Human Resources (Lubbock),

HSC Room 1B100, 806-743-2865

<http://www.ttuhs.edu/hr/>

TTUHSC Human Resources (Amarillo),

WHRI Room 107, 806-354-5409

TTUHSC Human Resources (Correctional Managed Health Care)

3223 S. Loop 289,

Suite 220, 806-793-0791 ext. 229, Toll Free

1-866-541-7731

TTUHSC Human Resources (El Paso),

Medical Ctr. Building, 915-545-6515

TTUHSC Human Resources (Permian

Basin), Room 1C19, 432-335-5112

TTUHSC embraces the spirit of fairness and equality within these laws and policies. You, too, should understand your rights under these laws and guidelines, and recognize your responsibility to respect your fellow employees and to further a work environment free of prejudices, discrimination, and harassment.

When you and your co-workers respect, appreciate, and benefit from the differences between individuals, everyone wins, including TTUHSC. And, it's the right thing to do!