

EMPLOYMENT OBJECTIVES  
EQUAL EMPLOYMENT OPPORTUNITY

DAA  
(LEGAL)

**Nondiscrimination — in General** A district shall not fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, on the basis of any of the following protected characteristics:

1. Race, color, or national origin;
2. Sex;
3. Religion;
4. Age (applies to individuals who are 40 years of age or older);
5. Disability; or
6. Genetic information [see DAB].

*42 U.S.C. 1981; 20 U.S.C. 1681 et seq. (Title IX); 29 U.S.C. 793, 794 (Rehabilitation Act); U.S. Const. Amend. I; Human Resources Code 121.003(f); Labor Code Ch. 21 (Texas Commission on Human Rights Act)*

Business Necessity  
Defense

A district does not commit an unlawful employment practice by engaging in a practice that has a discriminatory effect and that would otherwise be prohibited if the district establishes that the practice:

1. Is not intentionally devised or operated to contravene the Texas Commission on Human Rights Act; and
2. Is justified by business necessity.

*Labor Code 21.115, .122*

**Bankruptcy  
Discrimination**

A district may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under federal bankruptcy laws, solely because the bankrupt or debtor is or has been a debtor under federal bankruptcy laws; was insolvent before the commencement of a bankruptcy case or during the case but before the debtor was granted or denied a discharge; or has not paid a debt that is dischargeable in the bankruptcy case or that was discharged under the bankruptcy laws. *11 U.S.C. 525(a)*

**Student Loan  
Repayment**

A district that issues a license may not take disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract including by:

1. Denying the person's application for a license or license renewal;
2. Suspending the person's license; or

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3. Taking other disciplinary action against the person.

*Occupations Code 56.001, .003*

**Job Qualification**

A district may take employment actions based on religion, sex, national origin, or age in those certain instances where religion, sex, national origin, or age is a bona fide occupational qualification. *Labor Code 21.002(1), .119*

**Employment Postings**

A district shall not print or publish any notice or advertisement relating to district employment that indicates any preference, limitation, specification, or discrimination based on race, color, religion, sex, disability, or national origin, unless the characteristic is a bona fide occupational qualification. *Labor Code 21.059*

**Retaliation**

A district may not discriminate against any employee or applicant for employment because the employee or applicant has opposed any unlawful, discriminatory employment practices or participated in the investigation of any complaint related to an unlawful, discriminatory employment practice. *Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005) (Title IX)*; *Labor Code 21.055*

**Age Discrimination**

The prohibition against discrimination on the basis of age applies only to discrimination against an individual 40 years of age or older. *Labor Code 21.101*

Bona Fide  
Employee Benefit  
Plan

A district may take an employment action on the basis of age pursuant to a bona fide seniority system or a bona fide employee benefit plan. However, a bona fide employee benefit plan shall not excuse the failure to hire any individual and no such benefit plan shall require or permit the involuntary retirement of any individual because of age. *Labor Code 21.102*

**Sex Discrimination**

Harassment

Sexual harassment is a form of prohibited sex discrimination. *Bartkowiak v. Quantum Chemical Corp., 35 S.W.3d 103 (Tex. App. - Amarillo 2000, no pet.)* [See DIA]

Pregnancy

The prohibition against discrimination on the basis of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. A district shall treat women affected by pregnancy, childbirth, or related medical conditions the same as other employees for all employment-related purposes, including receipt of benefits under fringe benefit programs. *Labor Code 21.106*

Equal Pay

A district may not pay an employee at a rate less than the rate the district pays employees of the opposite sex for equal work on jobs the performance of which require equal skill, effort, or responsibility and which are performed under similar working conditions. This rule does not apply if the payment is pursuant to a seniority system, a merit system, a system that measures earnings by quantity

or quality of production, or a differential based on any other factor other than sex. *29 U.S.C. 206(d) (Equal Pay Act); 34 C.F.R. 106.54 (Title IX)*

**Religious  
Discrimination**

The prohibition against discrimination on the basis of religion includes all aspects of religious observances and practice, as well as religious belief, unless a district demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship to the district's business. *Labor Code 21.108*

A district may not substantially burden an employee's free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. & Rem. Code 110.003*

A person employed or maintained to obtain or aid in obtaining positions for public school employees may not directly or indirectly ask about, orally or in writing, the religion or religious affiliation of anyone applying for employment in a public school of this state. A violation of this provision is a Class B misdemeanor. A person who violates this provision is subject to civil penalties. *Education Code 22.901*

**Disability  
Discrimination**

No otherwise qualified disabled person shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. *29 U.S.C. 794(a) (Rehabilitation Act)*

A district shall not fail or refuse to hire an individual, discharge an individual, or discriminate in any other manner against an individual in connection with compensation or terms, conditions, or privileges of employment because of a disability that does not impair an individual's ability to reasonably perform a job. *Labor Code 21.051, .105*

Discrimination  
Based on Lack of  
Disability

The Texas Commission on Human Rights Act does not provide a basis for a claim that an individual was subject to discrimination because of the individual's lack of disability. *Labor Code 21.005(c)*

Definition of  
Disability

"Disability" means:

1. An actual disability: a physical or mental impairment that substantially limits one or more of an individual's major life activities;
2. A record of having such an impairment; or
3. Being regarded as having such an impairment.

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An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

*“Regarded as”  
Having an  
Impairment*

An individual meets the requirement of being “regarded as” having an impairment if the individual establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. However, this provision does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of six months or less.

*Mitigating  
Measures*

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

*29 U.S.C. 705 (Rehabilitation Act); Labor Code 21.0021*

Other Definitions

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. “Major life activities” also include the operation of major bodily functions, including functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. *Labor Code 21.002*

“Qualified disabled person” means, with respect to employment, a disabled person who, with reasonable accommodation, can perform the essential functions of the job in question. *34 C.F.R. 104.4(l) (Rehabilitation Act)*

Reasonable  
Accommodations

A district shall make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual, unless the district can demonstrate that the accommodation would impose an undue hardship on the operation of the district. *29 U.S.C. 794; 34 C.F.R. 104.11; Labor Code 21.128*

“Reasonable accommodation” includes:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

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2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

*34 C.F.R. 104.12(b)*

“Undue hardship” means an action requiring significant difficulty or expense when considered in light of the nature and cost of the accommodation needed, overall financial resources of the affected facility and the district, and other factors set out in law. *34 C.F.R. 104.12(c)*

Discrimination  
Based on  
Relationship

A district shall not exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association. *34 C.F.R. 104.11*

Illegal Drugs and  
Alcohol

The term “individual with a disability” does not include an individual who is currently engaging in the illegal use of drugs, when a district acts on the basis of such use.

The term “individual with a disability” does not include an individual who is an alcoholic and whose current use of alcohol prevents the employee from performing the duties of his or her job or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

*29 U.S.C. 705(20)(C); Labor Code 21.002(6)(A)*

Qualification  
Standards

As a qualification standard, a district may require that an individual not pose a direct threat to the health or safety of other individuals in the workplace. “Direct threat” means a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. *Labor Code 21.002(6)(B)*

*Direct Threat to  
Health or Safety*

*Vision Standards  
and Tests*

A district shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by the district, is shown to be job-related for the position in question and consistent with business necessity. *Labor Code 21.115(b)*

*Communicable  
Diseases*

A district may refuse to assign or continue to assign an individual to a job involving food handling if the individual has an infectious or communicable disease that is transmitted to others through handling of food. *29 U.S.C. 705(20)(D); Labor Code 21.002(6)(B)*

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Service Animals	A district that is subject to section 504 of the Rehabilitation Act (employment discrimination) shall comply with the reasonable accommodation requirements of that law with respect to service animals. [See Reasonable Accommodations, above] <i>28 C.F.R. 35.140</i>
<b>Military Service</b>	A district shall not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of membership in a uniformed service, performance in a uniformed service, application for uniformed service, or obligation to a uniformed service. A district shall not take adverse employment action or discriminate against any person who takes action to enforce protections afforded by the Uniformed Services Employment and Re-employment Rights Act (USERRA). <i>38 U.S.C. 4311</i> [See also DECB]
<b>Grievance Procedures</b> Title IX	A district that receives federal financial assistance shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX. <i>34 C.F.R. 106.8(c)</i> ; <u><i>North Haven Board of Education v. Bell</i></u> , <i>456 U.S. 512 (1982)</i> [For legally referenced material relating to Title IX grievance procedures, see FFH(LEGAL).]
<b>Compliance Coordinator</b> Title IX	A district must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX, which employee must be referred to as the "Title IX Coordinator." The district must notify applicants for admission and employment, students, parents or legal guardians, employees, and all professional organizations holding professional agreements with the district of the name or title, office address, electronic mail address, and telephone number of the employee(s) so designated. <i>34 C.F.R. 106.8(a)</i>