

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-12 (rev. 11), “EQUAL EMPLOYMENT OPPORTUNITY”
JULY 1, 2020

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TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

NUMBER: PD-12 (rev. 11)

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SUPERSEDES: PD-12 (rev. 10)
May 1, 2017

EXECUTIVE DIRECTIVE

SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY

AUTHORITY: *Equal Pay Act of 1963*, 29 U.S.C. § 206(d); *Age Discrimination in Employment Act of 1967* (ADEA), as amended, 29 U.S.C. §§ 621–633; Title VII, *Civil Rights Act of 1964*, as amended, 42 U.S.C. §§ 2000e–2000e-17; *Genetic Information Nondiscrimination Act of 2008*, 42 U.S.C. §§ 2000ff–2000ff-11; *Americans with Disabilities Act of 1990* (ADA), as amended, 42 U.S.C. §§ 12101–12213; Tex. Gov’t Code §§ 493.001, 493.006(b), 493.007; Tex. Lab. Code §§ 21.001–.556, 301.151–.156; BP-02.08, “Statement of Internal Controls”; BP-02.43, “Equal Employment Opportunity”

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

EMPLOYMENT AT WILL CLAUSE:

This directive **does not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of this directive at any time.

Nothing in this directive limits the executive director’s authority to establish or revise human resources policy. This directive guides the operations of the TDCJ and **does not** create a legally enforceable interest for employees or limit the executive director’s, deputy executive director’s, or division directors’ authority to terminate an employee at will.

POLICY:

The TDCJ promotes equal employment opportunity through programs and policies designed to achieve employment without regard to race, color, religion, sex (gender), national origin, age, disability, or genetic information (collectively “protected class”). TDCJ equal employment opportunity policy consists of the following objectives:

1. Provide equal employment and promotional opportunities to all qualified persons, regardless of protected class;

2. Provide civil rights information to employees regarding personnel policies, complaint procedures, and other conditions of employment affecting employees;
3. Provide an internal complaint procedure for the processing of employment discrimination complaints;
4. Prohibit policies, practices, or procedures that adversely impact a particular individual or group of people due to protected class status; and
5. Provide training to employees, supervisors, and other individuals on civil rights and equal employment legislation, policies, and procedures.

DEFINITIONS:

The following terms are defined for the purpose of this policy and are not intended to be applicable to other policies or procedures.

“Applicant” is a person seeking consideration for a position within the TDCJ by way of interagency transfer, employment, or reemployment from outside the TDCJ.

“Artificial Barriers” are requirements, procedures, or standards for employment that are not related to successful job performance.

“Discrimination” is unequal treatment of persons based on sex (gender), including sexual harassment, race, color, religion, national origin, age (40 or above), disability, or genetic information. Discrimination by employers falls into four general areas: (1) hiring and firing, such as failing or refusing to hire or discharging; (2) employment conditions, such as compensation, terms, conditions, or privileges; (3) segregation and classification, such as limiting, segregating, or classifying employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as an employee; and (4) training, such as unequal access to training that may affect an individual’s ability to promote.

“Employee” is any person employed by the TDCJ on a full-time, part-time, or temporary basis.

“Equal Employment Opportunity Commission” (EEOC) is the federal agency that enforces federal laws prohibiting employment discrimination and retaliation. The EEOC is separate from the TDCJ’s Employee Relations.

“Other Individual” includes, but is not limited to, a contract employee, employee of a vendor, intern, or a volunteer. The definition does not include an individual under the supervision or custody of the TDCJ.

“Protected Class” is a group of people with a common characteristic who are legally protected from discrimination on the basis of that characteristic. In the general context of equal employment opportunity, the protected classes are race, color, religion, sex (gender), national origin, age, disability, and genetic information.

“Retaliation” is any action that may deter a reasonable person from: (1) filing a complaint, participating in a proceeding regarding, or otherwise opposing, an alleged EEO rule violation; or (2) associating with an employee or other individual who is engaged in a protected activity.

“Texas Workforce Commission, Civil Rights Division” (TWC-CRD) is the state agency charged with: (1) enforcing state laws prohibiting employment discrimination and retaliation; and (2) investigating alleged violations of such laws.

DISCUSSION:

The TDCJ is committed to ensuring that all applicants, employees, and other individuals are treated fairly and equitably in all matters affecting employment with the TDCJ. The TDCJ is also committed to providing a work environment free of all forms of employment discrimination and maintaining a diverse workforce.

Decisions relating to recruiting, hiring, position transfers, evaluations, and promotions will be based solely on an individual’s qualifications and ability to perform the essential functions of the position. The TDCJ does not tolerate any artificial barriers denying applicants, employees, and other individuals equal opportunity in any phase of these employment-related processes.

All TDCJ practices will be administered without regard to protected class. Such practices include, but are not limited to, events and activities sponsored by the TDCJ, the provision of benefits and compensation, disciplinary actions, grievance intake and responses, shift or job assignments, shift transfer requests, evaluations, and training and staff development opportunities.

If applicants, employees, or other individuals believe they have been discriminated against based on protected class, or subjected to retaliation, the applicants, employees, or other individuals may pursue a complaint in accordance with the guidelines in PD-31, “Discrimination in the Workplace.” If applicants, employees, or other individuals believe they have been sexually harassed, which is a form of gender discrimination, the applicants, employees, or other individuals may pursue a complaint in accordance with the procedures in PD-13, “Sexual Harassment and Discourteous Conduct of a Sexual Nature.” No applicants, employees, or other individuals will be impeded in any manner from filing a complaint of employment discrimination with the TDCJ’s Employee Relations, Human Resources Division; the TWC-CRD; or the EEOC; or be subjected to harassment or retaliation for opposing alleged unlawful employment practices.

An employee who violates the provisions of this directive may be subject to disciplinary action, up to and including separation from employment, in accordance with PD-22, “General Rules of Conduct and Disciplinary Action Guidelines for Employees.”

PROCEDURES:

The following procedures reflect the TDCJ's commitment to the letter and spirit of the law guaranteeing equal employment opportunity.

I. Commitment of TDCJ Management and Supervisors

The deputy executive director, division directors, wardens, department heads, and all other supervisors within the TDCJ shall observe and support the TDCJ's equal employment opportunity policy to ensure that all applicants, employees, and other individuals are treated in a non-discriminatory manner.

II. Policy Review by Texas Workforce Commission Civil Rights Division

- A. Every six years, the TWC-CRD audits the TDCJ's personnel policies for compliance with chapter 21 of the Texas Labor Code, "Employment Discrimination." The TWC-CRD determines whether the TDCJ's personnel policies comply and provides the review and any recommendations to the TDCJ.
- B. Within 60 days after receipt of the review, the TDCJ shall submit to the TWC-CRD, the governor, the legislature, and the Legislative Budget Board a report:
 - 1. Detailing the TDCJ's implementation, if any, of the recommendations of the TWC-CRD and the reasons for any failure to implement; or
 - 2. Indicating the TDCJ's full compliance with chapter 21 of the Texas Labor Code after the TWC-CRD review.

III. Workforce Analysis, Recruitment Plan, and Annual Report

A. Workforce Analysis

Each state fiscal biennium, the TDCJ shall analyze its current workforce and compare the number of African Americans, Hispanic Americans, and females employed by the TDCJ in each job category to the available African Americans, Hispanic Americans, and females in the statewide civilian workforce to determine the percentage of exclusion or underutilization in each job category.

B. Recruitment Plan

The TDCJ shall develop and implement a plan to recruit qualified African Americans, Hispanic Americans, and females.

C. Annual Report

No later than November 1 of each calendar year, the TDCJ shall report to the TWC-CRD the total number of African Americans, Hispanic Americans, females, and other persons hired for each job category by the TDCJ during the preceding state fiscal year via a report produced and submitted by the comptroller of public accounts. The TWC-CRD compiles this information and submits a report based on the information to the governor and the Legislative Budget Board no later than January 1 of the subsequent calendar year.

IV. Equal Employment Opportunity Report

No later than November 1 of each calendar year, the TDCJ shall report equal employment opportunity information for the preceding fiscal year to the TWC-CRD. The report shall be made in the form prescribed by the TWC-CRD and include information compiled on a monthly basis. The information reported shall include:

- A. The total number of employees of the TDCJ and the total number of new employees hired since the date of the last report made by the TDCJ;
- B. The total number of employees of the TDCJ listed by racial and ethnic group and the percentage of the total number of TDCJ employees for each racial and ethnic group, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the TDCJ;
- C. The total number of male employees and the total number of female employees of the TDCJ, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the TDCJ;
- D. The total number of male employees and the total number of female employees of the TDCJ for each racial and ethnic group, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the TDCJ; and
- E. The total number of employees of the TDCJ listed by job classification and the total number of employees for each sex and racial and ethnic group listed by job classification, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the TDCJ.

V. Training

Employees and other individuals shall receive training regarding TDCJ policies and procedures prohibiting employment discrimination through training conducted in accordance with the guidelines in PD-97, "Training and Staff Development." Employees and other individuals participating in such training shall also be informed of the federal and state agencies responsible for enforcing equal employment opportunity laws.

Bryan Collier
Executive Director