

**“KNOW YOUR RIGHTS”
Training on the Legal Rights and Responsibilities of
People with Alcohol and Drug Problems**

**Texas Laws Regarding Discrimination
(November 2006)**

I. The Basics

Q1. Does Texas have State laws, like the federal laws discussed in the *Know Your Rights* brochure, that protect people from discrimination because they have a history of alcohol or drug problems, or are in treatment or in recovery from these problems?

A1. Yes – although the Texas laws only prohibit employment and housing discrimination based on an individual’s disability, and their protections of people with or in recovery from alcohol or drug problems are more limited than those of the federal laws. The Texas law that prohibits employment discrimination based on disability is known as the Texas Commission on Human Rights Act (TCHRA). The Texas Fair Housing Act (TFHA) prohibits disability-based housing discrimination in much the same way as the federal Fair Housing Act. We will refer to these two laws as the Texas anti-discrimination laws in this summary.

The **Texas Workforce Commission Civil Rights Division** (the “Civil Rights Division” or CRD) is the state agency charged with enforcing these state anti-discrimination laws. (The Texas Commission on Human Rights no longer exists; its responsibilities have been transferred to the Civil Rights Division.) The Civil Rights Division accepts, investigates and can resolve complaints alleging –

- Employment discrimination based on disability, in violation of the Texas Commission on Human Rights Act (TCHRA), whose employment discrimination provisions are set out in Texas Labor Code, Chapter 21, §§ 21.001 *et seq.*
- Housing discrimination based on disability in violation of the Texas Fair Housing Act (TFHA), whose provisions are set out in the Texas Property Code, Chapter 301, §§ 301.001 *et seq.*
 - If federal laws also cover an individual’s discrimination claims, the CRD can accept these for dual processing with the appropriate federal agency.
 - See the Texas Workforce Commission CRD’s informational materials in the handouts, which include the agency’s website address.

- Q2.** Do the Texas laws define “**disability**” the same way as the Federal non-discrimination laws?
- A2.** Generally, yes – but see **Q3** for how the Texas anti-discrimination laws differ from the federal laws in dealing with alcohol and drug problems as a disability. The Texas laws define disability similarly for employment and housing purposes, and use essentially the same definition used in the federal anti-discrimination laws. The TCHRA and TFHA both define “disability” as (1) a mental or physical impairment that substantially limits at least one major life activity of that individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment. Tex. Labor Code § 21.002(6), Tex. Prop. Code § 301.003(6).
- Q3.** Are people with **alcohol or drug problems** considered individuals with a “disability” protected from discrimination under Texas laws?
- A3.** **No**, with respect to **current** alcohol or drug addiction or drug use; but **yes or maybe**, with respect to **past** alcohol or drug addiction.

The Texas employment discrimination law (TCHRA):

- The TCHRA explicitly excludes *current* alcohol and drug addiction from its definition of a “disability.” It specifies that “disability” does **not** include “a current condition of addiction to the use of alcohol, a drug, an illegal substance or a federally controlled substance.” Tex. Lab. Code. § 21.002(6)(A). This is a narrower definition than is used in the federal employment discrimination laws – the Americans with Disabilities Act (ADA) and Rehabilitation Act – because it excludes a current condition of alcoholism as well as of drug addiction from the TCHRA’s protections against employment discrimination.
- In addition, the TCHRA specifies that it is **not** unlawful discrimination for an employer to adopt a policy prohibiting the employment of an individual “who currently uses or possesses a controlled substance [as defined in the federal Controlled Substance Act], other than the use or possession of a drug taken under the supervision of a licensed health care professional or any other use or possession authorized by the Controlled Substances Act or any other state or federal law,” or unless the policy prohibiting drug use or possession is adopted or applied “with intent to discriminate on the basis of a protected characteristic.” Tex. Lab. Code § 21.120.

The Texas housing discrimination law (TFHA):

- The Texas Fair Housing Act excludes current *illegal* drug use or addiction from its definition of a covered disability. It specifies that “disability” does **not** include “current illegal use or addiction to any drug or illegal or federally controlled substance.” Tex. Prop. Code, § 301.003(6).

- This mirrors the federal Fair Housing Act, which defines “disability” to include alcoholism and past drug use but specifically excludes persons currently involved in the illegal use of or addiction to controlled substances. The Texas Workforce Commission Civil Rights Division regulations implementing the TFHA provide that the term disability does not include “current illegal use of or addiction to any drug or illegal or federally controlled substance,” but also make it clear that “physical or mental impairment” includes “any mental or psychological disorder, such as. . . drug addiction (other than addiction caused by current, illegal use of a controlled substance).” 40 Tex. Admin. Code § 819.112(8).
- The TFHA also specifies that it does not prohibit discrimination in housing sales or rentals against a person because he or she “has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.” Tex. Prop. Code § 301.021(c).

II. Texas Anti-Discrimination Laws

Q4. In what areas of life do Texas’s anti-discrimination laws protect individuals from discrimination because of their disability?

A4. The two main Texas anti-discrimination laws are:

- Employment (Texas Commission on Human Rights Act)
- Housing (Texas Fair Housing Act)

The Texas Education Code and Government Code do not mention discrimination. Nor does Texas have a state law prohibiting discrimination, including disability-based discrimination, by public accommodations – as do the federal laws discussed in the *Know Your Rights* brochure.

Employment:

Texas Commission on Human Rights Act (TCHRA)

Texas Labor Code, Title 2, Subtitle A, Chapter 21,
§§ 21.001 *et seq.* (*Employment Discrimination*)

Q5. Who does TCHRA protect from disability-based employment discrimination?

A5. TCHRA’s employment provisions make it illegal for an employer covered by the law to:

- Deny employment to or otherwise discriminate in the terms, conditions or privileges of employment against an individual on the basis of a past, current or perceived disability. Tex. Labor Code §§ 21.051, 21.052, 21.053, 21.054. Unlawful discrimination includes limiting, segregating or classifying an employee or job applicant in a manner that deprives or tends to deprive an

individual of an employment opportunity or adversely affects in any other manner the status of an employee. Tex. Labor Code. § 21.051.

- However, TCHRA’s protections against employment discrimination only apply to job applicants and employees whose “physical or mental condition . . . does not impair [the] individual’s ability to reasonably perform a job.” Tex. Labor Code § 21.105. Only individuals who are able (with or without reasonable accommodations as explained below) to reasonably perform the job in question, are protected from job discrimination based on their disability.

Q6. What employers are covered by the TCHRA?

A6. All public employers (state and local government units and officials, including individuals elected to public office in the state or a political subdivision of the state), and private employers with 15 or more employees in an industry affecting commerce. Tex. Labor Code § 21.002(8).

- Individuals elected to public office in the state or a political subdivision (county or municipality) of the state were formerly exempted from the law’s employment discrimination provisions, but are now also prohibited from discriminating on the basis of disability (or other prohibited criteria) against persons who serve on the elected official’s personal staff, or serve on a policy-making level, or serve the official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Tex. Labor Code § 21.126.
- TCHRA does not apply to Texas employers with respect to the employment of a person outside of Texas. Tex. Labor Code § 21.111.

Q7. Are all employees covered by the TCHRA?

A7. All employees of the employers noted in **Q6** are covered, except that the TCHRA does not apply to the employment of an individual by his or her parent, spouse or child. Tex. Labor Code §§ 21.002(7), 21.117.

Q8. Are the employment discrimination provisions like those of the Federal laws explained in *Know Your Rights*?

A8. Yes, in most respects, TCHRA adopts the same standards and follows the same basic rules that the Rehabilitation Act and the ADA establish, in regard to:

- Defining what constitutes unlawfully discriminatory employment policies and practices, in regard to hiring, firing, and the terms and conditions of employment
- Reasonable accommodation requirements (see **Q9**)

Federal court interpretations of the ADA and Rehabilitation Act serve as guidance for courts interpreting the TCHRA. Because the TCHRA seeks to promote federal civil rights policy and because Texas has little case law interpreting the

TCHRA, Texas courts will look to federal cases for guidance when deciding discrimination claims.

However, federal courts in the Fifth Circuit (covering Texas and other states) have narrowly interpreted the ADA and other federal anti-discrimination laws as they apply to people claiming disability discrimination generally, and alcohol- and drug-related disability discrimination in particular.

- Q9.** Does the TCHRA require employers to make reasonable accommodations for individuals with disabilities? What types of reasonable accommodations should an employer expect to make for a person in treatment or otherwise in recovery from an alcohol or drug problem?
- A9.** Yes, like the federal laws, the TCHRA requires employers to make reasonable accommodations for job applicants and employees with a disability.

The TCHRA provides that it is unlawful for an employer to “fail or refuse to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability who is an employee or job applicant, unless the employer demonstrates that the accommodation would impose an undue hardship on the employer’s operations.” Tex. Labor Code § 21.128

Remember, though, that because “a current condition of addiction” to the use of alcohol or drugs is not included in the Texas law’s definition of a disability, the TCHRA does not require employers to provide any reasonable accommodations to job applicants or employees with “current” alcohol or drug addictions. But people with addiction histories who are in treatment or otherwise in recovery, and who are not currently using alcohol or drugs, may be able to request and be given reasonable accommodations as provided by the TCHRA.

- While the TCHRA does not specifically define what is a “reasonable accommodation,” the CRD and courts interpreting the state law look to federal law in this area. Examples of reasonable accommodations include: job restructuring; modified work schedules; and permitting an employee to use paid or unpaid sick leave, disability leave or medical leave.
- Under the TCHRA, as under the federal laws, workplace accommodations are not required if providing them would cause the employer undue hardship or expense. Also, in cases charging an employer with failing to provide reasonable accommodations to an employee entitled to them, the TCHRA provides that, if the employer demonstrates it made **good faith efforts** to provide a reasonable workplace accommodation to an individual needing such an accommodation, damages cannot be awarded to the individual.

- Q10.** Can employers make inquiries about an applicant’s criminal history?

- A10.** Yes, employers may make inquiries about an applicant’s criminal history. See the hand-out on legal barriers facing people with criminal records in Texas.

Employment-related Medical Inquiries and Examinations

- Q11.** Are TCHRA’s employment provisions regarding medical inquiries, examinations and drug and alcohol tests similar to those of the Federal laws explained in the *Know Your Rights* brochure?
- A11.** The TCHRA does not contain specific provisions addressing medical inquiries and examinations by employers, and Texas does not have a specific law that addresses drug and alcohol testing by employers. But since the TCHRA does not protect job applicants and employees with current conditions of alcohol or drug addiction from discrimination, and also allows employers to maintain policies prohibiting the employment of individuals who currently use or possess controlled substances, it is likely that it would not be a violation of the TCHRA for employers to ask questions, use medical examinations and do drug and alcohol testing to ascertain if job applicants or employees currently use alcohol or drugs.

The federal employment discrimination laws’ (ADA and Rehabilitation Act) do have strict rules governing whether and when it is legal for employers to make pre-employment inquiries about individuals’ past or current health conditions, and to require job applicants and employees to undergo medical exams or alcohol and drug testing. These are explained in the *Know Your Rights* brochure. These rules apply to Texas employers covered by the federal employment discrimination laws.

Housing:

Texas Fair Housing Act (TFHA)

Texas Property Code, Title 15, Chapter 301, §§ 301.001 *et seq*; §301.025

- Q12.** Does Texas protect people in treatment or otherwise in recovery from alcohol or drug problems from housing discrimination?
- A12.** Yes. The protections of Texas’s Fair Housing Act (TFHA) against housing discrimination based on disability are very similar to those of the federal Fair Housing Act described in the *Know Your Rights* brochure.

Remember:

As explained in **Q3**, the TFHA mirrors federal law in that it defines “disability” to include alcoholism and past drug use but excludes persons currently involved in the illegal use of or addiction to a controlled substance.

- Texas law specifies that “disability,” for purposes of the state’s Fair Housing Act, does **not** include “current illegal use or addiction to any drug or illegal or federally controlled substance.” Tex. Prop. Code § 301.003(6).

- The TFHA also specifies that it does not prohibit discrimination in housing sales or rentals against a person because he or she “has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance. Tex. Prop. Code § 301.021(c).

The TFHA:

- Prohibits housing discrimination based on disability (defined as noted above, like the federal laws). The TFHA makes it illegal for any person to discriminate in the sale or rental of, or make unavailable or deny, a dwelling (a property designed to be occupied as a residence) to any buyer or renter because of the disability of the renter or buyer, or of any person living or intending to live in the dwelling, or of any person associated with the renter or buyer. Tex. Prop. Code § 301.025.
- Requires that landlords allow reasonable modifications to be made to an existing dwelling (at the expense of the individual with a disability), if necessary to afford the individual full enjoyment of the dwelling; and also requires landlords to make reasonable accommodations in rules, policies, practices or services, if necessary to afford the person with a disability an equal opportunity to use and enjoy a dwelling. Tex. Prop. Code § 301.025(c).
- Generally prohibits landlords from making inquiries about the existence, nature or severity of a potential buyer or renter’s disability. 40 Tex. Admin. Code § 819.132(c). However, the TFHA permits potential landlords to make certain inquiries of potential housing buyers or renters, including whether the potential buyer or renter –
 - is a “current illegal drug user or addict of a controlled substance.” 40 Tex. Admin. Code § 819.132(c)(4).
 - has been convicted of the illegal manufacture or distribution of controlled substances. 40 Tex. Admin. Code §819.132(c) (5).
- Does not require dwellings to be made available to individuals whose tenancy would constitute a “direct threat” to the health or safety of other individuals. Tex. Prop. Code § 301.025(f)
- Does not apply to single-family dwellings rented or sold by the owner, and housing operated by religious organizations and private clubs. Tex. Prop. Code § 301.041.

III. Analyzing Discrimination Claims under Texas Law

While Texas’s anti-discrimination laws likely protect individuals in recovery from alcohol or drug problems/addictions from discrimination, with the limitations noted above, there are no reported state court decisions applying the state’s employment and housing discrimination laws to individuals with alcohol or drug problems.

IV. Remedies and Resources for Addressing Illegal Discrimination

Q13. What can I do if I think I have been discriminated against because of my past drug or alcohol problem?

A13. For violations of Texas’s anti-discrimination laws, you have these options:

- You can file an **administrative complaint** charging violations of Texas’s anti-discrimination laws – the Texas Commission on Human Rights Act, and the Texas Fair Housing Act – with the Texas Workforce Commission Civil Rights Division (CRD).
 - Persons charging employment discrimination in violation of the Texas Commission on Human Relations Act must file their complaint with the CRD within 180 days after the alleged discrimination happened.
 - In cases involving unlawful housing practices in violation of the Texas Fair Housing Act, individuals must file their complaints with the CRD within one year of the alleged housing discrimination.
- You may also file a **lawsuit** in state court (or in federal court if you are also alleging that the discrimination violated federal law).
 - Texas law requires that anyone bringing a complaint under the TCHRA must first exhaust the CRD’s administrative remedies – that is, file an administrative complaint with the CRD – before bringing a lawsuit for such a violation.
 - For violations of the Texas Fair Housing Act, the lawsuit must be filed within two years of the discrimination. You do not have to exhaust your administrative remedies by filing a complaint with the CRD before bringing a housing discrimination lawsuit.

The hand-outs from the Texas Workforce Commission Civil Rights Division explain where and how you can file employment and housing discrimination complaints with the Civil Rights Division, and also contain the forms you can use in filing these complaints.

Remember: Employment discrimination claims under federal law:

- If you intend to file an employment discrimination lawsuit under the ADA or Rehabilitation Act, you must first file a complaint with the U.S. Equal Employment Opportunity Commission within 180 days of the alleged discrimination.