



**CIVIL RIGHTS DIVISION
PERSONNEL POLICIES AND PROCEDURES SYSTEM
REVIEW CHECKLIST**

**329 – Texas Real Estate Commission
1700 Congress Ave, Suite 400
Austin, Texas 78701**

Review Conducted By: Jessianna Marshall, EEO Compliance Monitor

PERSONNEL SELECTION POLICIES & WORKFORCE DIVERSITY PROGRAM	Chapter/Page	Yes/No Or N/A
<p>1. <u>Workforce Diversity Program:</u> Workforce Analysis & Recruitment Plan</p> <p>a. Has the agency/institute of higher learning conducted an analysis of its current workforce and compared the number of African Americans, Hispanic Americans and females in each job category to the available statewide civilian workforce to determine the percentage of exclusion or underutilization by each category? (TLC §§21.452 and 21.501) Must utilize the provided Workforce Utilization Analysis Tool.</p>	Agency Workforce Analysis	Yes
<p>b. Has the agency/institute of higher learning developed and implemented an annual recruitment plan to recruit qualified African Americans, Hispanic Americans and females based on Labor Code workforce utilization analysis data? (TLC §§21.452 and 21.502)</p>	Employee Handbook Chapter 2 pg. 2-1	Yes
<p>2. <u>Job Advertisements:</u></p> <p>Do job advertisements refrain from indicating a preference, limitation, specification or discrimination based on race, color, national origin, religion, sex, age, or disability? (TLC §21.059(a)) (If no, the agency must demonstrate an exception such that a bona fide occupational qualification exists for a preference, limitation or specification based on disability, religion, sex, national origin, or age to be in compliance. (TLC §21.059(b))</p>	Hiring Samples	Yes
<p>3. <u>Hiring Procedures:</u></p> <p>a. Has the agency/institute of higher learning published written selection procedures? (TLC §21.452) * For institutions of higher education, please provide policies for both faculty and staff throughout the checklist.</p>	Employee Handbook Chapter 2 p. 2-1 to 2-	Yes
<p>b. Do written selection procedures incorporate a workforce diversity program and ensure that all selection decisions are made only on lawful, job related, and non-discriminatory criteria? (TLC §21.452)</p>	Employee Handbook Chapter 2 p. 2-1 to 2-7	Yes

PERSONNEL SELECTION POLICIES/WORKFORCE DIVERSITY PROGRAM - Continued	Chapter/Page	Yes/No Or N/A
c. Does the policy require the use of an applicant screening device and selection matrix to objectively compare an applicant's qualifications to a job advertisement and to other applicants for the position, and do they have policies or guidance documents for development and use of these tools? (Best Practice)	Employee Handbook Chapter 2. p. 13 HR SOP Notebook	Yes
d. Do procedures require that interview questions cover objective, job related criteria and provide information on the applicants' knowledge and competencies to perform the job, and do they have policies or guidance documents for the development of appropriate interview questions? (Best Practice)	HR SOP Notebook	Yes
e. Do procedures require a review of hiring actions for EEO compliance? (Best Practice)	N/A	No
f. Does the review of samples of hiring actions indicate that the agency implemented the selection procedures? (TLC §21.452).	Hiring Samples	Yes

SECTION SUMMARY:

Findings and Recommendations: Recommend TREC consider adding a review of hiring action for EEO compliance into its policy.

Observations and Best Practices: See above.

Certified as in compliance

Certified as in compliance after implementing recommendations

Factors preventing certification of compliance as agency/institute of higher learning has not implemented recommendations on statutory/regulatory requirements

PERFORMANCE EVALUATION POLICY	Chapter/Page	Yes/No Or N/A
1. Has the agency developed and implemented a performance evaluation policy? (TLC §21.452)	Employee Handbook Chapter 6 p. 35-37	Yes
2. Does <u>the policy</u> require development of a performance evaluation or similar document containing rating of an individual's work performance? (Best Practice) *For institutions of higher learning, it is a best practice to provide an evaluation of performance to all employees, however, short-term student workers will not factor into this requirement.	Employee Handbook Chapter 6 pgs. 35-37	Yes
3. Do performance evaluations or similar documents explicitly rate the individual's compliance with policies, procedures, and work rules of the agency/institute of higher learning? (Best Practice)	CAPPS Performance Management Tool	Yes
4. Does <u>the policy</u> require that evaluations be based on objective, measurable and consistently applied criteria? (Best Practice)	Employee Handbook Chapter 6 p. 35	Yes
5. Does the agency/institute of higher learning have guidance documents and/or policies which effect the goal of using only objective, measurable, and consistently applied criteria?	Employee Handbook Chapter 6 CAPPS Performance Management Tool	Yes
6. Does the policy require a review of performance evaluations for EEO compliance, ideally before communicating the results to employees undergoing review? (Best Practice)	Employee Handbook Chapter 6 p. 35	Yes
7. Does the review of samples of performance evaluations indicate that the agency has implemented the procedures? (TLC §21.452)	Random Samples	Yes

SECTION SUMMARY: None

Findings and Recommendations: None

Observations and Best Practices: None

Certified as in compliance

Certified as in compliance after implementing recommendations

Factors preventing certification of compliance as agency/institute of higher learning has not implemented recommendations on statutory/regulatory requirements

DISCIPLINARY ACTIONS POLICY	Chapter/Page	Yes/No Or N/A
1. Has the agency developed and implemented a disciplinary actions policy? (Best Practice)	Employee Handbook Chapter 6 pgs. 37-38	Yes
2. Does the policy require that disciplinary actions be based only on job performance and job-related conduct? (Best Practice)	Employee Handbook Chapter 6 pgs. 37-38	Yes
3. Does the policy require supporting documentation (i.e., performance evaluation, counseling, etc.) of the employee's performance and/or conduct which is resulting in a disciplinary action? (Best Practice)	Employee Handbook Chapter 6 Manager Training Materials Progressive Discipline Process PPT	Yes
4. Does the policy prescribe progressive discipline and provide criteria for by-passing lesser disciplinary measures for severe misconduct? (Best Practice)	Employee Handbook Chapter 6 pages 37-38	Yes
5. Does the policy require an EEO compliance review of disciplinary actions which exceed a verbal reprimand? (Best Practice)	Employee Handbook Chapter 6 p. 35	Yes
6. Does the review of samples of disciplinary actions indicate that the agency has implemented the procedures? (Best Practice)	Random Samples	Yes

SECTION SUMMARY: None

Findings and Recommendations: None

Observations and Best Practices: None

(There is no compliance certification for the disciplinary action policy since all items are best practices.)

WORKPLACE ACCOMMODATION POLICY	Chapter/Page	Yes/No Or N/A
1. Has the agency/institute of higher education developed and implemented a workplace accommodation policy to include a definition of “Disability” that is consistent with Chapter 21, Texas Labor Code? (TLC §§21.128 and 21.002(6))	Employee Handbook Chapter 10 pgs. 61-62	Yes
2. Does the policy include provisions for the requesting employee with a disability (<u>unless obvious</u>) to provide reasonable documentation from an appropriate health care provider that describes a disability and the need for the accommodation? (Best Practice)	Employee Handbook Chapter 10 p. 61 Reasonable Accommodation Medical Inquiry Form	Yes
3. Does the policy include specific provisions describing the process for making reasonable workplace accommodations for qualified individuals with disabilities that covers decision-making, timeline, and documentation of the outcome? (Best practice)	Employee Accommodations Policy	Yes
4. Does the policy ensure that reasonable accommodations are made for persons with sincerely held religious beliefs? (TLC §21.108)	N/A	No
5. Does the policy ensure that reasonable workplace accommodations are made not only for individuals with disabilities, but also women affected by pregnancy? (Best Practices; Pregnancy Discrimination Act of 1978 No. 95-555, §7(r) of the Fair Labor Standards Act, & Young v. UPS, No. 12-1226 (3/25/15) * Legally required accommodations may exceed those provided by family leave and accommodations for nursing mothers policies.	Employee Handbook Chapter 10 p. 61	Yes
6. Does the review of samples of requests for accommodation indicate that the agency has implemented the procedures? (TLC § 21.452)	Random Samples	Yes

SECTION SUMMARY: TREC’s Workplace Accommodation policy does not explicitly indicate that reasonable accommodations are made for persons with sincerely held religious beliefs.

Findings and Recommendations:

1. Policy does not ensure that reasonable accommodations are made for persons with sincerely held religious beliefs as per TLC §21.108. Recommend TREC update its Employee Handbook to ensure reasonable accommodations are made for persons with sincerely held religious beliefs.

REF: Sec. 21.108. DISCRIMINATION BASED ON RELIGION. A provision in this chapter referring to discrimination because of religion or on the basis of religion applies to discrimination because of or on the basis of any aspect of religious observance, practice, or belief, unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business.

Observations and Best Practices: None

Certified as in compliance

Certified as in compliance after implementing recommendations

Factors preventing certification of compliance as agency/institute of higher learning has not implemented recommendations on statutory/regulatory requirements

EEO POLICY INCLUDING SEXUAL HARASSMENT	Chapter/Page	Yes/No Or N/A
1. EEO Policy: Has the agency developed and implemented an equal employment opportunity policy? (TLC §21.452; See also agency's/institute of higher learning enabling legislation)	Employee Handbook	Yes
a. Does the policy prohibit discrimination based on race, color, national origin, religion, sex, age, or disability? (TLC §21.051)	Employee Handbook	Yes
b. Does the policy explicitly prohibit discrimination based on sexual orientation and gender identity? (Best Practice; Bostock v. Clayton County, 590 US _ (2020))	Employee Handbook	Yes
c. Does the EEO policy require a training program that provides employees information regarding the agency's policies and procedures relating to employment discrimination, including sexual harassment, and require that employees receive initial training within 30 days after their date of hire and supplemental training every two years? (TLC §21.010, 40 Tex. Admin. Code §819.24) *For institutions of higher learning, it is a best practice to provide employment discrimination training to all employees, however, short-term student workers will not factor into this requirement.	Employee Handbook Chapter 12 p. 68	Yes
d. What EEO/SH training curriculum does your agency use and has that curriculum been approved by the TWC Civil Rights Division (internally developed, another agency's curriculum, or the CRD's curriculum)? (TLC §§ 21.003(c), 21.010, 21.556; TAC §819.24) * Provide training curriculum & certification or memo asserting agency's use of CRD training materials.	TWC EEO/Sexual Harassment Training	Yes
e. Does the EEO policy prohibit retaliation against a person who opposes a discriminatory practice, files a charge, testifies, assists, or participates in an investigative proceeding or hearing and provide a full definition of retaliation? (TLC §21.055; must identify every protected activity in the Labor Code definition)	Employee Handbook Chapter 12 pgs. 67-68	Yes
2. Sexual Harassment Policy: Has the agency/institute of higher learning developed and implemented a sexual harassment policy? (TLC §21.452; Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1989))	Employee Handbook Chapter 12 p. 68	Yes
a. Does the policy clearly explain the prohibited conduct constituting "sexual harassment"? (Best Practice)	Employee Handbook Chapter 12 pgs.67	Yes
b. Does the policy include a provision for distribution or communication of the policy to all employees? (Best Practice)	Employee Handbook Chapter 12 pg. 68	Yes
c. Has the agency/institute of higher learning developed and implemented complaint procedures? (Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1989))	Employee Handbook Chapter 12 pgs.67-68	Yes
d. Do the complaint procedures allow employees to bypass harassing supervisors? (Best Practice)	N/A	No

EEO POLICY INCLUDING SEXUAL HARASSMENT - Continued	Chapter/Page	Yes/No Or N/A
e. Does the policy ensure that employees who make complaints of harassment or provide information relating to such complaints will be protected from retaliation? (Best Practice)	Employee Handbook Chapter 12 pgs. 67-68	Yes
f. Does the policy ensure that the employer will protect the confidentiality of individuals bringing harassment complaints and explain to what extent confidentiality will be protected? (Best Practice)	Employee Handbook Chapter 12 pg. 68	Yes
g. Does the complaint process provide for a prompt, thorough, and impartial investigation? (Best Practice; written timelines will ensure that the process is prompt)	Employee Handbook Chapter 12 pg. 68	Yes
h. Does the policy include procedures for instituting both immediate and appropriate corrective actions if prohibited conduct occurs? (TLC §21.142; immediate actions could include temporary reassignments or leave while an investigation is conducted)	N/A	No
i. Does the policy include procedures for proactive continued monitoring of the circumstances surrounding a complaint, regardless of final outcome, to ensure the situation has been remedied? (Best Practice)	N/A	No
j. Does the policy provide information about reporting complaints to the TWCCRD and/or EEOC? (Best Practice)	N/A	No
3. Does the review of samples of personnel actions indicate that the agency/institute of higher learning has implemented the EEO/Sexual Harassment policies? (TLC §21.452)	Random Samples	Yes

SECTION SUMMARY:

Findings and Recommendations:

- d. policy does not provide allowances to bypass a harassing supervisor. Recommend TREC add this to its policy.
- h. Policy does not include procedures for instituting both immediate and appropriate corrective actions if prohibited conduct occurs. Recommend TREC include this in its policy to comply with TLC 21.142.
- i. The policy does not include procedures for proactive monitoring of the circumstances surrounding a complaint to ensure the situation has been remedied. Recommend TREC considers adding continuous monitoring procedures to its policy.
- j. The policy does not provide information about reporting complaints to TWCCRD and/or the EEO, it also not provide information regarding new statute of limitations information for filing EEO and Sexual Harassment complaints. Recommend that the Texas State Bar add the new reporting statute of limitations to its policy.

Reference:

Sec. 21.202. STATUTE OF LIMITATIONS. (a) Except as provided by Subsection (a-1), a complaint under this subchapter must be filed not later than the 180th day after the date the alleged unlawful employment practice occurred.

(a-1) A complaint under this subchapter alleging sexual harassment must be filed not later than the 300th day after the date the alleged sexual harassment occurred.

Observations and Best Practices: As a best practice, it is recommended that TREC consider updating its policy to include information on reporting complaints to the TWCCRD and/or EEOC.

Certified as in compliance

Certified as in compliance after implementing recommendations

Factors preventing certification of compliance as agency/institute of higher learning has not implemented recommendations on statutory/regulatory requirements

COMPENSATION POLICY	Chapter/Page	Yes/No Or N/A
1. Does the agency/institution of higher learning have a written compensation policy which addresses compensation change (one-time merit, merit raise, promotion, demotion, etc.) and the criteria required to receive a benefit when funds are available? (Best Practice)	Employee Handbook Chapter 5 pg. 23-24	Yes
2. Does the review of samples of merit increases (“raises”)/promotions/one-time merit payments (“bonuses”) indicate that the agency has implemented the policy? (Best Practice)	Random Samples	Yes

SECTION SUMMARY: None

Findings and Recommendations: None

Observations and Best Practices: None

(There is no compliance certification for the compensation policy since both items are best practices.)

SIGNATURES



EEC Compliance Monitor

Month Day, Year
March 28, 2024
Date

TREC acknowledges and accepts the findings from this audit. We will address each noted area with a “no” during our annual handbook review in September 2024. This includes all Best Practice Recommendations.



Daron Goertz, HR Director

04/01/2024
Date

