

# LABOR AND EMPLOYMENT LAW UPDATE



## TOP EEOC PRIORITIES REFLECTED IN RECENT LAWSUITS BY AGENCY AGAINST TEXAS EMPLOYERS

Since its resources are limited, the Equal Employment Opportunity Commission (“EEOC”) periodically identifies certain types of cases which will receive top agency priority for investigation and enforcement. In a March 2009 presentation to the Society for Human Resources Managers, Peggy Mastroianni, associate legal counsel for the EEOC identified four types of cases which are currently receiving top priority at the agency.

A review of cases recently brought by the EEOC against Texas employers underscores the importance of paying heed to the agency’s priorities.

### 1. BACKGROUND CHECKS

It is a violation of Title VII of the Civil Rights Act of 1964 (“Title VII”) for an employer to use hiring practices that have a disparate impact on protected groups which are not job-related and justified by business necessity. EEOC policies recognize that background checks which serve to disproportionately exclude protected individuals from employment may contravene Title VII.

### CREDIT HISTORY AND CRIMINAL RECORDS:

On October 1, 2009, the EEOC filed a lawsuit against Dallas-based Freeman Companies, a convention marketing company, alleging a nationwide pattern or practice of race, national origin and sex discrimination in the company’s hiring practices. According to the suit, Freeman has, since 2001, relied upon credit histories and records of arrests and convictions to reject applicants for employment. The EEOC contends that this practice has had a disparate impact on black, Hispanic and male applicants and is neither job-related nor justified by business necessity.

### 2. ACCOMMODATION OF RELIGIOUS BELIEFS

Religion is treated differently from race, sex and national origin under Title VII. In addition to a prohibition against religious discrimination, the Act requires that employers reasonably accommodate the religious beliefs of applicants and employees unless such accommodation would cause an undue hardship on the conduct of the employer’s business.

**WORK SCHEDULE:** On September 25, 2009, the EEOC sued Cinram Wireless in a Fort Worth federal court on behalf of a former employee, Eunice Arredondo. Ms. Arredondo is a member of the Soldiers of the Cross of Christ Church which observes the Sabbath from sundown on Friday through sundown on Saturday. The lawsuit claims that Cinram violated Title VII when it refused Ms. Arredondo’s request for a work schedule which would allow her to observe the Sabbath and then fired her.

**DRESS CODE:** On September 23, 2009, a lawsuit was brought in a Dallas federal court by the EEOC on behalf of Tyler Templeton, a former employee of Alliance Rental Center. As a Jehovah’s Witness, Mr. Templeton believes that his faith prohibits him from expressing opinions about government matters, including military affairs. The EEOC contends that Alliance violated Title VII when it fired Mr. Templeton for declining to participate in the company’s “Red Shirt Friday”, a store practice intended to show support for the U.S. military.

### 3. DISABILITY DISCRIMINATION

Effective January 1, 2009, the Americans With Disabilities Act (“ADA”) was amended to significantly expand the definition of “disability” under the Act.

**FAILURE TO HIRE I:** On September 25, 2009, the EEOC sued Garden Ridge Corporation in an Austin federal court on behalf of two applicants for employment. The two applicants, who were both deaf, were rejected by Garden Ridge for employment. The lawsuit claims that the applicants were denied employment because of their disability, in violation of the ADA

**FAILURE TO HIRE II:** Also on September 25, 2009, suit was brought by the EEOC against AT&T Services, Inc. in a federal court in Austin. AT&T rejected the application of an individual with insulin-dependent diabetes. The EEOC contends the application was rejected because of the applicant’s disability.

**MEDICAL EXAM:** On July 30, 2009 a lawsuit was filed in a Corpus Christi federal court by the EEOC on behalf of a former employee of Economy Finance Company. The former employee’s spouse had a medical condition related to Hepatitis C. According to the lawsuit, Economy violated the ADA when it asked the former employee to submit to a medical exam and fired her when she objected to the exam.

### 4. PAY DISCRIMINATION

The Lilly Ledbetter Fair Pay Act, which was signed by President Obama on January 26, 2009, relaxes the time deadlines for filing a charge alleging pay discrimination under Title VII.

**JOB ASSIGNMENTS:** On September 22, 2009, Guardsmark, LLC, was sued by the EEOC in a Houston Federal court on behalf of female security guards. The lawsuit charges that Guardsmark succumbed to customer preferences for male security guards; as a result several female guards were reassigned to new assignments which often paid less and were located farther away. The EEOC claims that the reassignments were sex discrimination in contravention of Title VII.

### POSTSCRIPT

The Texas cases also demonstrate the willingness of the EEOC to sue on behalf of individual claimants, and to go after smaller employers.

### QUESTIONS

Questions regarding Texas labor and employment issues can be directed to Robert G. Chadwick, Jr. at Campbell & Chadwick, P.C.

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