

# Discriminated or retaliated against on the job? Know Your Rights!



Information for workers in Texas

*These rights apply to all workers, regardless of immigration status.*

**My employer discriminated against me. Do I have a claim?** It depends on why your employer discriminated against you. In Texas:

- It's illegal for an employer with at least 15 employees to discriminate (treat employees or applicants differently) based on **race, color, sex** (including pregnancy discrimination and [LGBTQ-based discrimination](#)), **age, mental or physical disability, religion, national origin, or genetic information**.
  - No employer, even one with fewer than fifteen employees, may discriminate based on race. Employers who have at least 4 employees cannot discriminate because of national origin.
  - In Texas, beginning 9/1/2021, all employees are protected against **sexual harassment**, regardless of the employer's size. For more information, go [here](#).
  - Employees of smaller employers may have other claims. Talk to a lawyer.
- It is illegal for employers with at least 4 employees to discriminate because of **citizenship status** (for example, preferring workers of a certain immigration status or discriminating against people who are not U.S. citizens). The same law prohibits discrimination during the hiring process (like requiring more documents for people who appear "foreign"). For more information, [go here](#). For information on how these rights apply to DACA recipients, [go here](#) (English) or [here](#) (Spanish).
- Certain types of discrimination against **veterans** are prohibited for employers of all sizes. For more information and information on filing a complaint, [go here](#).
- It is also generally illegal for employers to **retaliate** against workers who complain about their rights or try to act together in groups at work. For more info, see below.

*There are other laws prohibiting discrimination, but these types of discrimination are the most common. For advice on your specific situation, contact a lawyer (see below).*

**Is all discrimination illegal?** Discrimination is only illegal if it's based on a protected category that you can't change (like the ones above). It is usually not illegal for a private Texas employer to play favorites, mismanage, to hire or promote family members or friends, or to be rude or unprofessional, as long as the behavior is not because of something like one of the categories listed above or another protected category.

**What kinds of actions can be discriminatory?** Examples of discrimination include:

- treating workers differently in hiring, firing, and promotion
- paying workers differently (or giving them different benefits) for the same or similar work
- giving workers different terms and conditions of work (like better or worse work)
- enforcing a rule that supposedly applies to all workers, but harms one group of workers more than others (for example, an English-only rule)
- allowing harassment of workers based on a protected category (like sex or race) by managers, co-workers, customers, vendors, or contractors

**Can my employer discriminate against me because of my accent or require me to speak only English at work?** Usually not, assuming (in Texas) that your employer had at least 4 employees. “English-only” rules and discrimination based on someone’s accent or English proficiency are often considered types of *unlawful national origin discrimination*. In general, “national origin” means the country that you or your ancestors came from (or the country your employer thinks you or your ancestors came from).

**My employer discriminated against me because of my pregnancy. Is this illegal?** Yes, this is a form of sex discrimination. In Texas, go after employees the law prohibits employers with at least 15 employees from treating a job applicant or employee worse because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

**I was sexually harassed. Is that illegal?** This is another type of sex discrimination. In Texas, starting 9/1/21, all employers, regardless of size, are covered by sexual harassment laws. Federal and Texas law prohibits sexual harassment (unwanted behavior or actions, sexual advances, requests for sexual favors, LGBTQ-based harassment, sexist remarks, and other sexual conduct). In order for it to be illegal, harassment has to happen often, be severe, or cause a negative change in your employment status (like losing your job). For more information, go [here](#).

**Is harassment for other reasons also illegal?** Yes, harassment based on other protected categories (race, color, age, mental or physical disability, religion, national origin, or genetic information) can also be illegal under workplace anti-discrimination laws. Just like with sexual harassment, to be illegal, the harassment has to happen often, be severe, or cause a negative change in your employment status.

**Is it illegal for an employer to discriminate against me because of my sexual orientation, or because I am transgender or gender non-conforming?** Yes, as long as your employer is covered by the laws against sex discrimination. Click [here](#) for more info.

**If I’ve been discriminated against or harassed, what can I do to protect my rights?**

- ✓ **Document the discrimination or harassment.** Keep a journal where you write down the “who, what, when, where” of any incidents and who witnessed them. Keep any documents related to the discrimination or harassment (like texts, photos, and communications between you and the employer or coworkers). Tell a coworker or friend you trust what is going on. These steps can put you in a better position if you pursue a legal claim later.

- ✓ **Report any harassment to your employer.** Review your employer's anti-harassment policy and follow it to report any harassment as soon as possible. If there's no policy, report to your supervisor or (if your supervisor is the harasser) someone higher up. Keep documentation of your reports and report in writing if you can (though that's not required) so that you can prove later that you made the report. If you complain in person, try to bring a witness.
- ✓ It is often a good idea to try to work out a resolution with your employer, but if your employer doesn't act quickly to stop the discrimination or harassment, the next step is to file an outside **written complaint**. There are **deadlines** to file a complaint (see below). You do not have to have an attorney to make a discrimination complaint, but you can contact an attorney to get advice or try to get representation.

## How do I file a discrimination complaint, and what are the deadlines?

*Note: everyone's case is different, and if you decide to take this step you should contact an attorney for advice to confirm what deadline applies to your situation. For example, harassment claims have more complicated deadlines. Federal employees have much shorter deadlines to complain and must take action within **45 days** (see [this information page for federal employees](#)).*

Most discrimination claims have to be filed with a government agency before you can file a lawsuit in court, and some discrimination claims can't be filed in court (only with a government agency).

Complaints under Texas law for discrimination based on **race, color, sex, age, mental or physical disability, religion, or national origin** against employers with 15 or more employees must be filed with the **Texas Workforce Commission Civil Rights Division (TWCCRD)** within **180 days** of the discrimination. Beginning September 1, 2021, **sexual harassment** complaints against Texas employers of any size can be filed with the TWCCRD within 300 days. For information on filing with the TWCCRD, see [the TWCCRD's website](#) or call 888-452-4778.

Complaints under federal law for discrimination based on **race, color, sex, mental or physical disability, religion, national origin, or genetic information** against employers with 15 or more employees (or **age** discrimination complaints against employers with 20 or more employees) must be filed with the **Equal Employment Opportunity Commission (EEOC)** within **300 days** of the discrimination. For information on filing with the EEOC, see [the EEOC's website](#) or call 800-669-4000.

Many employees have discrimination claims under both federal and Texas law. If so, you can file **one complaint** with either the EEOC or the TWCCRD and state that you are filing claims under both federal and Texas law. If you file with one agency, that agency will automatically cross-file your complaint with the other agency, so you do not have to file two complaints. If the discrimination happened in Austin or Fort Worth, you may also be able to file your claim with a local agency. Contact an attorney for advice.

Complaints of **citizenship status discrimination (for employers with 4 or more employees) and national origin discrimination (for smaller employers with 4-14 employees)** must be filed with

a different agency, the U.S. Department of Justice Office of Immigrant and Employee Rights (IER) within **180 days** of the discrimination. This office may be able to help negotiate with the employer. For information on filing a charge with this office, [go to the IER website](#).

Some discrimination claims do not have to be filed with a government agency and can be taken straight to court (for example, claims against employers of any size for race or color discrimination, and claims that you were paid less because your sex). However, you should contact a lawyer for advice.

### **What happens after I file my charge with the EEOC or TWCCRD?**

The agency will send the employer a copy of your complaint and assign an investigator to your case. The investigator should contact you and the employer for more information, witnesses, and documents. If both sides want to try to resolve the case, the agency may set up a meeting called a mediation where both sides can agree to settle.

EEOC and TWCCRD investigations can take some time, and it can be frustrating to wait for the investigation to finish. After the investigation, the agency will send you a letter giving you a right to file a lawsuit and stating whether the agency believes there was discrimination. You may sue your employer even if the agency did not think there was discrimination.

If you want to go to court, keep these deadlines in mind:

- Texas discrimination claims must be filed in court 60 days from the date you receive your right to sue letter from the TWCCRD or two years from the date you filed your charge of discrimination, *whichever comes first*. If you have questions about this, talk to an attorney.
- Federal discrimination claims must be filed in court 90 days from the date you receive your right to sue letter from the EEOC.

You should always consult with an attorney about your specific situation and deadlines.

**Should I hire an attorney?** Although you are not required to have an attorney during the EEOC or TWCCRD investigation process, it is a good idea to contact an attorney if you decide you want to pursue a discrimination claim, because court rules are complicated. Some private employment attorneys are able to take very strong cases on “contingency,” meaning that there is no fee unless you win your case. Some private attorneys charge a consultation fee, but some may not charge a fee. You will need to discuss any payment arrangements before you consult with any private attorney. For referrals to private attorneys in Texas representing employees, [go here](#). If you need additional attorney referrals, you can call the Lawyer Referral Information Service of the State Bar of Texas toll-free at 800-252-9690. If you are low-income, you can contact Texas RioGrande Legal Aid at 888-988-9996 for free, confidential legal services.

## What if my employer retaliates against me for speaking up?

It's generally illegal for an employer covered by the laws that prohibit discrimination to fire or otherwise retaliate against an employee for standing up against discrimination. Employees and former employees are protected from retaliation when they, for example:

- Complain to an employer about discrimination or harassment (the complaint doesn't have to be in writing).
- Complain about discrimination against or harassment of a coworker.
- File an EEOC or TWC complaint, or a lawsuit, because of discrimination or harassment.
- Act as a witness in a discrimination or harassment investigation or case.

Other actions are protected, but these are some common examples.

Employers can't retaliate against an employee who complains by, for example:

- Firing or disciplining the employee, or cutting hours;
- Doing things like reporting an employee to immigration or the police, suing the employee, or harming the employee in other ways;
- Or threatening to do these things.

Employees who are unlawfully retaliated against may have a claim against the employer to try to get their job back or other damages.

There are deadlines to file a retaliation claim. In general, a retaliation claim under Texas anti-discrimination law must be filed with the [TWCCRD](#) within **180 days** of the retaliation, and a retaliation claim under federal anti-discrimination law must be filed with the [EEOC](#) within **300 days** of the retaliation. Retaliation claims related to complaints about citizenship status discrimination or national origin discrimination for smaller employers (4-14 employees) must be filed with the [U.S. Department of Justice Office of Immigrant and Employee Rights \(IER\)](#) within **180 days** of the retaliation.

Many other employment laws also prohibit retaliation when workers try to enforce their rights. For example, it is generally illegal to retaliate against workers who complain about minimum wage and overtime rights (for info, go [here](#)), workers who complain about health and safety issues (for info, go [here](#) and [here](#)), and workers who try to take action together to improve workplace conditions or form a union (for info, go [here](#) and [here](#)).

**What if my coworker is discriminated against or harassed?** Respect your coworker's privacy and decisions and be available to talk. Be a witness and help document the harassment or discrimination. Help report any harassment (but only if you have permission from your coworker). If you are retaliated against for being a witness or for helping report discrimination or harassment, you may have a claim against the employer for unlawful retaliation (see above).

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*Note: this information is not legal advice. For free, confidential advice and information, contact Texas RioGrande Legal Aid at 888-988-9996.*