

Civil Rights Reporter

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Bryan Snoddy - Division Director

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Equal Employment & Fair Housing

Telecommuting and Mediating During COVID-19

By: Faith N. Penn



As a state Employment Discrimination Mediator, my first duty is to the citizens and residents of Texas. In this role, I strive to produce the best outcome for both parties in all mediation settings. Now, due to COVID-19, there are significant changes in not only our personal lives but also in our work environment as well. Regardless of the present situation, our work remains significant and requires our attention and expertise even more. Our economy's well-being depends on it. Necessary and crucial measures have been put into place to protect our communities from the spread of COVID-19. We have all been asked to limit our activities and to engage in social distancing and self-isolation when possible, and for businesses, this means closing their doors to the public and laying off hundreds of thousands of employees. The majority of those still employed in an office setting are now working from home, and this includes those with the challenge of successfully mediating and resolving disputes despite

the gnawing concern and unrest that comes with a national lockdown.

I admit I was originally opposed to telecommuting because I was concerned with not having the resources needed to conduct productive mediations. I feel I am at my best when I am connecting with people, assisting parties to resolve their issues and helping them find common ground. With COVID-19 essentially forcing people to work from home, or causing them financial hardship, I felt that this obstacle would significantly hinder the mediation process, and I felt I would be limited in being able to ensure that both parties could walk away with the best outcome. Nonetheless, employment discrimination mediation sessions need to move forward as scheduled. And, they are.

The question is, how does a mediator help parties reach a successful outcome when most businesses are struggling to remain afloat during this pandemic? The short answer: creativity. In all actuality, professionals in the Alternative Dispute Resolution field have been

Mission Statement

The mission of the Civil Rights Division is to reduce discrimination in employment and housing through education and enforcement.

Vision

The vision of the Civil Rights Division is to help create an environment in which the people of the State of Texas may pursue and enjoy the benefits of employment and housing that are free from discrimination.



using various tools and methods to assist with resolving cases for years. Now, due to COVID-19, I am having to reach deep down into my tool chest to locate buried tools that I have not used in some time. While this is not a negative thing, it is not a positive either. “It is what it is”, as my niece would say. I have found that using older mediation methods has helped me to remember to listen to what is not being said. This older, yet effective method, combined with playing the devil’s advocate, pointing out strengths and weaknesses of cases, and creatively thinking outside of the box helps me successfully resolve matters.

COVID-19 has significantly altered several facets of our everyday lives. However, it seems that amid all

the challenges and fears, we may have stumbled across a mechanism for creative change that many white-collared workers have long since needed. Example: Cutting out the commute. I have found that by removing my daily commute via public transportation, telecommuting has afforded me the opportunity to meet deadlines I would not have been able to meet if I were in the office. I have also noticed a decrease in my stress levels. Although the nature of my position can be stressful at times, I have noticed working from home has helped me be more relaxed and focused. If telecommuting is our new normal, I believe I may be able to accept and welcome it.



Photos courtesy Getty Images

Civil Rights are Immune to COVID-19



In this battle against COVID-19, we are, for many in America, engaged in the epic and defining struggle of a generation. That struggle is defined by and defines who we are and what we will become as a people and a nation. Never before have we had both a health and communicable disease situation

evolve into an economic struggle for survival. What sets this series of events apart from the Spanish influenza of 1918 or the Great Depression era is that since those tragic events, America, as a society and country, has stated emphatically that how we treat the least of us will determine who we are and shall become as a country. During such crises, it would be easy to compromise the moral high ground to which we have staked claim for the sake of maintaining the economy or in the name of ensuring that sickness does not overtake the ones we love and hold dear. But this is a false choice. The Civil Rights Division must not shrink away from the duty to justly and rightly enforce defending the ground of Fair Housing and Equal Employment under the law without fear or favor. To do so, would permit an assault on the integrity of the system of impartial application of the law.

While modern civil rights had not yet been exposed during Franklin's era in the 1750s, Benjamin Franklin, from a letter that he is believed to have written on behalf of the Pennsylvania General Assembly, stated, "Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety." Some have intuited that the statement was meant to explain how there could be a balance between liberty and safety. But that could not be more in error.

In a short bit of a history lesson, Franklin was writing about a tax dispute between the Pennsylvania General Assembly and the family of the Penns, the proprietary family of the Pennsylvania colony who ruled it albeit remotely. As the legislature was attempting to tax the family lands to pay for frontier defense during the French and Indian War, the family wished to strike a deal, to quite literally, pay for (purchase) the governing structure to provide a haven against taxing their land in exchange for some funding of the defense. Franklin understood that the government could enter into the bargain, but simply noted that it was neither good nor just. And, in fact, it was no compromise at all. Because it was a betrayal of the very authenticity of the governing structure.



Photos courtesy Getty Images

In many instances of crisis, we are faced with the same false Hobbesian struggle. No quarter can be given to the fair and equitable enforcement of the law lest we cede the foundation of the ground upon which we claim to stand. In short, Covid-19 is not an opportunity to shrink or modify the protections of the law but it is rightly a sacred place to ensure that every Texan has a voice - whether they seek to provide or engage in employment or seek shelter or the provision of fair housing. The notion that we could strike a balance and compromise the integrity of that impartial sanctuary does not exist.

It is only right and just that we maintain our vigilance against unlawful discrimination at home and in the workplace. Balance and compromise of the law is simply not a choice. It is as unfair to the housing provider as it is to the employee laying grievance. All parties under the law should expect equal protection

of the law and the current crisis provides no justification to alter that bedrock principle.

If an individual feels that they have been discriminated against as a result of the COVID-19 crisis, whether at home or in the workplace, the Civil Rights Division has the imperative duty to examine and divine the facts to ensure that the law is followed. Likewise, all housing providers and employers may find specific COVID-19 guidance respectively from our United States Department of Housing and Urban Development (HUD) and Equal Employment Opportunity Commission (EEOC) partners at <https://www.hud.gov/coronavirus> and <https://www.eeoc.gov/coronavirus/>.

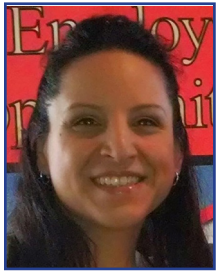
Together, we can keep Texas strong and come through this crisis without compromising values or rights and secure a future that is worthy of this great state.



Photos courtesy Getty Images

Complying with Texas Labor Code Anti-Discrimination Laws During a Pandemic

By: *Ellena E. Rodriguez, OCR Manager*



Employers can take additional health and safety precautions during a pandemic - such as checking workers'

temperatures - but they still must follow workplace anti-discrimination federal and state laws, such as Texas Labor Code, Chapter 21 (formerly known as the Texas Commission on Human Rights Act of 1983). Human Resource professionals, Business Owners, Managers, etc. ... should periodically check for Equal Employment Opportunity (EEO) updates on coronavirus-related rules and resources as the crisis evolves.

The Civil Rights Division (CRD) wants you to know that we are continuing to enforce the nation's and Texas's employment nondiscrimination laws while ensuring that all our activities are consistent with public health guidelines.

The CRD enforces laws that prohibit employment discrimination including the Americans with Disabilities

Act (ADA), Age Discrimination in Employment Act (ADEA) and Title VII of the Civil Rights Act of 1964.

Disclosing Employee Data to Public Health Agencies

What information can an employer disclose to a public health agency when a worker is diagnosed with COVID-19 (the respiratory illness caused by the coronavirus)? The Equal Employment Opportunity Commission (EEOC) said businesses can provide an employee's name to a public health agency without running afoul of the ADA. Temporary staffing agencies and contractors that place workers with a client may notify a client when an employee has COVID-19.

As a best practice, employers should limit the number of people who know the name of the employee and should not disclose the employee's identity when notifying co-workers and other business partners who may have come into contact with the employee.

[\(National Law Review\)](#)

Additional Questions Permitted

In [updated guidance](#), the EEOC said employers can ask workers if they have experienced COVID-19 related symptoms beyond a fever or cough, such as loss of smell or nausea, and other symptoms that public health officials have determined to be connected to the respiratory disease. Employers may also keep COVID-19 related medical data in existing medical files. Please note, however, that employers can not rescind job offers to certain applicants, such as pregnant women and older workers, solely because they are at a higher risk of infection.

[\(Bloomberg Law\)](#)

Precautions to Fight Discrimination

Educating your workforce on the nature of the virus is important to ward off potential stigmatization, misunderstanding or overreaction. The U.S. Center for Disease Control and Prevention (CDC) has urged the public to stay calm and stop misinformation from spreading. For example, being Chinese or Asian

Hot Topics

American does not increase the chance of getting or spreading COVID-19. Viruses cannot target people from specific populations, ethnicities or racial backgrounds.

[\(SHRM Online\)](#)

Civil Rights Division's programs provide an avenue for current and former employees (or people who applied for employment) to file a complaint if they believe they have been discriminated against in an employment transaction. We are here to assist you if you believe the treatment you received from the employer was because of your race, color, national origin, age, religion, sex, disability, or because of retaliation for participating and or filing a discrimination complaint.

CRD conducts neutral investigations and gathers information to determine if discrimination has occurred under the Texas Labor Code. We work in cooperation with the federal Equal Employment Opportunity Commission (EEOC) to resolve employment discrimination allegations.

Feel free to complete the [Employment Discrimination Complaint Form](#) from our website if you believe you were discriminated against for any of the reasons listed above.

When an employment discrimination complaint is submitted to CRD, it is automatically submitted with EEOC through our Work-Sharing Agreement. Please be advised, one

cannot submit with both the Civil Rights Division and EEOC.

Once a signed charge is received, you and the Respondent will receive an invitation to mediate. Mediation is a voluntary process that allows both parties to discuss their issues with a neutral mediator. The mediator's role is to provide assistance in resolving the dispute in a manner favorable to all parties. Mediation will take place virtually, involving the internet and or phone. If both parties accept the mediation invitation, a meeting will be scheduled with our mediator.

Lastly, CRD offers a variety of comprehensive, interactive presentations and training programs to provide practical understanding of Equal Employment Opportunity (EEO) laws impact on employment decisions and how to comply.

For additional information, or to schedule an EEO presentation or training, please contact the Civil Rights Division by phone at (512) 463-2642 or [email: CRDTraining@twc.state.tx.us](mailto:CRDTraining@twc.state.tx.us)



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**Texas Workforce
Commission
Civil Rights
Division**

Mailing Address:
Texas Workforce Commission
101 E. 15th Street
Guadalupe CRD
Austin, Texas 78778-0001

Physical Address:
1215 Guadalupe
Austin, Texas 78701-1829

Phone:
512-463-2642 or
888-452-4778
Fax:
512-463-2643

Relay Texas:
800-735-2989 (TTY)
and 711 (Voice)

www.texasworkforce.org

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