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Case of the Month

Texas appellate court holds the Texas Commission on Human Rights Act protects an employee from discrimination on the basis of attempting to become pregnant.

Cynthia Arriola was an accounting group manager employed by South Texas College (STC) when she informed her coworkers and supervisors of her intent to become pregnant after her impending marriage. Arriola claimed that her supervisors then disciplined her, harassed her, and treated her less favorably than similarly situated employees because of her intent to become pregnant and was terminated after she complained to a supervisor. Arriola filed an employment discrimination complaint with the Texas Workforce Commission, which dismissed the complaint, and subsequently sued STC in state district court alleging employment discrimination under the Texas Commission on Human Rights Act (TCHRA), [Texas Labor Code chapter 21](#). STC filed a plea to the jurisdiction, arguing that the court did not have subject matter jurisdiction over the lawsuit because Arriola had not pled a cause of action under the TCHRA for which immunity had been waived. The district court denied the motion and STC appealed.

On appeal, the issue for the state appellate court was whether Arriola had stated a claim for conduct that would violate the TCHRA, which required her to make a prima facie case of discrimination by showing, in part, that she was a member of a protected class under the TCHRA. STC argued that Arriola was not a member of a protected class because she was not actually pregnant but was only attempting to become pregnant. In considering that issue, the appellate court noted that whether the TCHRA protects an employee who expresses an intent to become pregnant was a case of first impression, but that numerous courts had held that Title VII of the Civil Rights Act of 1964 (Title VII), [42 U.S.C. § 2000e-2](#), protects women who have expressed an intent to become pregnant. The court concluded that because the TCHRA is intended to execute the policies of Title VII, the TCHRA similarly protects women who have expressed to their employer an intent to become pregnant. Because Arriola had claimed in her lawsuit that her supervisors at STC were aware that she was attempting to become pregnant and that they disciplined and terminated her for that reason, the court concluded that she had sufficiently pled that she was a member of a protected class under the TCHRA and affirmed the district court's denial of STC's plea to the jurisdiction. [South Texas Coll. v. Arriola](#), No. 13-19-00222-CV, 2021 WL 497237 (Tex. App.—Corpus Christi—Edinburg Feb. 11, 2021, no pet. h.).

Why is This Case Significant?

This is the first Texas appellate court to hold that the TCHRA protects an employee from discrimination by an employer for attempting to become pregnant. While neither the Texas Supreme Court nor the Fifth Circuit Court of Appeals has addressed the issue, colleges should consider both the TCHRA and Title VII when taking any adverse actions against an employee on the basis of an intent to become pregnant.

Highlights

[Update 40](#) is now available.

Join us at the TASB/TACCA Post-Legislative Seminar on July 30.

Resources

[Texas Higher Education Coordinating Board](#)
[Texas Legislature](#)
[Texas Statutes](#)
[Texas Attorney General](#)
[U.S. Department of Education](#)



From the Courts and the Attorney General

Personnel

Postdoctoral fellow failed to provide sufficient evidence that a university violated his speech rights under the U.S. Constitution [First Amendment](#), rights to due process and equal protection under the U.S. Constitution [Fourteenth Amendment](#), and various rights under the [Texas Constitution](#) or sufficient evidence of religious discrimination and hostile work environment under [Title VII of the Civil Rights Act of 1964](#). [Huang v. Huang](#), No. 20-50445, 2021 WL 519411 (5th Cir. Feb. 10, 2021) (per curiam).

Professor who was removed from her graduate advisory and fellowship coordinator positions failed to show that a university discriminated against her because of her race or national origin, created a hostile work environment, or retaliated against her in violation of [Title VII](#). [Gong v. City Univ. of New York](#), No. 20-1341-CV, 2021 WL 422451 (2d Cir. Feb. 8, 2021).

Students and Instruction

Student was denied a preliminary injunction to stop a university's one-year suspension after it found he had committed sexual assault because he failed to show that the university's disciplinary proceeding denied him due process under the Fourteenth Amendment; that the proceeding was erroneous, informed by, or enforced due to gender bias in violation of [Title IX of the Education Amendments of 1972](#) (Title

IX); or irreparable harm. [Doe v. Texas A&M Univ.](#), No. CV H-20-4332, 2021 WL 257059 (S.D. Tex. Jan. 26, 2021).

Student alleging that a university was liable for sexual harassment by a professor under [Title IX](#) failed to show the university had actual knowledge of the harassment. [Podrebarac v. Minot State Univ.](#), No. 19-2078, 2021 WL 374688 (8th Cir. Feb. 3, 2021) (per curiam).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings¹ based on requests from Texas community colleges related to:

- Information regarding specified employees, specified policies or procedures, specified complaints or concerns, and limitations or restrictions on employees' speech or writings. Tex. Att'y Gen. [OR2021-01701](#) (Jan. 22, 2021);
- Communications pertaining to a specified email. Tex. Att'y Gen. [OR2021-02505](#) (Jan. 29, 2021);
- Information regarding a specified contract. Tex. Att'y Gen. [OR2021-02745](#) (Feb. 2, 2021); and
- Information on a specified solicitation. Tex. Att'y Gen. [OR2021-02754](#) (Feb. 2, 2021).



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) amended a [regulation](#) to define *academic year* for purposes of state financial aid

programs so that the term aligns with federal law.

¹ Open record letter rulings are limited to the particular records at issue and the facts as presented to the attorney general. These rulings must not be relied upon as a previous determination regarding any other records or any other circumstances.

THECB amended [regulations](#) that duplicated the [requirement](#) for institutions of higher education to post online certain work-study employment information.

The Texas Workforce Commission (TWC) amended [regulations](#) relating to the eligibility for

and the use and administration of Skills Development Fund grants for customized assessment and training.

TWC amended emergency [regulations](#) relating to extended unemployment benefits under the CARES Act.



In the News

THECB issued a [notice of intent](#) to engage in negotiated rulemaking regarding course sequencing.

The U.S. Department of Education issued guidance, available in [Part 1](#) and [Part 2](#), to assist institutions in complying with recent Title IX regulations.

The Texas Governor [declared](#) a state of disaster for all counties in Texas due to severe winter weather and [renewed](#) the disaster proclamation issued for all counties in Texas due to the COVID-19 pandemic.

The White House [issued](#) a federal emergency declaration for all counties in Texas due to severe winter weather.

The Centers for Disease Control and Prevention [updated](#) guidance for operators of public pools and other public treated aquatic venues during the COVID-19 pandemic.

The Texas Education Agency announced a [request for applications](#) concerning a 2021-2022 Career and Technical Education (CTE) Perkins Reserve Grant to be awarded to regional teams that must include at least one institution of higher education.

The 87th Texas regular legislative session began on January 12, 2021. Follow the latest developments on the [Texas Legislature Online](#) website, including the latest news, [committee meetings](#), and [calendars](#).