

By: Eckhardt, et al.

S.B. No. 204

A BILL TO BE ENTITLED

1 AN ACT
2 relating to a prohibition of employment discrimination on the basis
3 of reproductive decisions and certain employment agreements
4 limiting reproductive decisions.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter C, Chapter 21, Labor Code, is amended
7 by adding Section 21.1061 to read as follows:

8 Sec. 21.1061. DISCRIMINATION BASED ON REPRODUCTIVE
9 DECISIONS; CERTAIN AGREEMENTS VOID. (a) A provision in this
10 chapter referring to discrimination because of or on the basis of a
11 reproductive decision includes discrimination because of or on the
12 basis of:

- 13 (1) marital status at the time of a pregnancy;
14 (2) the use of assisted reproduction to become
15 pregnant;
16 (3) the use of contraception or a specific form of
17 contraception; or
18 (4) the obtainment or use of any other health care
19 drug, device, or service relating to reproductive health.

20 (b) An employer commits an unlawful employment practice if
21 the employer discriminates because of or on the basis of a
22 reproductive decision of the employee, the employee's spouse or
23 partner, the employee's dependent, or any other member of the
24 employee's family or household.

1 (c) An employer that provides an employee handbook or manual
2 to employees shall include in the handbook or manual information
3 regarding the prohibition of discrimination based on a reproductive
4 decision.

5 (d) A mandatory arbitration agreement between an employer
6 and an employee is void and unenforceable as against the public
7 policy of this state to the extent the agreement limits the
8 reproductive decisions of an employee, an employee's spouse or
9 partner, an employee's dependent, or any other member of the
10 employee's family or household.

11 SECTION 2. Section 21.051, Labor Code, is amended to read as
12 follows:

13 Sec. 21.051. DISCRIMINATION BY EMPLOYER. An employer
14 commits an unlawful employment practice if because of race, color,
15 disability, religion, sex, national origin, ~~or~~ age, or
16 reproductive decisions the employer:

17 (1) fails or refuses to hire an individual, discharges
18 an individual, or discriminates in any other manner against an
19 individual in connection with compensation or the terms,
20 conditions, or privileges of employment; or

21 (2) limits, segregates, or classifies an employee or
22 applicant for employment in a manner that would deprive or tend to
23 deprive an individual of any employment opportunity or adversely
24 affect in any other manner the status of an employee.

25 SECTION 3. Section 21.052, Labor Code, is amended to read as
26 follows:

27 Sec. 21.052. DISCRIMINATION BY EMPLOYMENT AGENCY. An

1 employment agency commits an unlawful employment practice if the
2 employment agency:

3 (1) fails or refuses to refer for employment or
4 discriminates in any other manner against an individual because of
5 race, color, disability, religion, sex, national origin, [~~or~~] age,
6 or reproductive decisions; or

7 (2) classifies or refers an individual for employment
8 on the basis of race, color, disability, religion, sex, national
9 origin, [~~or~~] age, or reproductive decisions.

10 SECTION 4. Section 21.053, Labor Code, is amended to read as
11 follows:

12 Sec. 21.053. DISCRIMINATION BY LABOR ORGANIZATION. A labor
13 organization commits an unlawful employment practice if because of
14 race, color, disability, religion, sex, national origin, [~~or~~] age,
15 or reproductive decisions the labor organization:

16 (1) excludes or expels from membership or
17 discriminates in any other manner against an individual; or

18 (2) limits, segregates, or classifies a member or an
19 applicant for membership or classifies or fails or refuses to refer
20 for employment an individual in a manner that would:

21 (A) deprive or tend to deprive an individual of
22 any employment opportunity;

23 (B) limit an employment opportunity or adversely
24 affect in any other manner the status of an employee or of an
25 applicant for employment; or

26 (C) cause or attempt to cause an employer to
27 violate this subchapter.

1 SECTION 5. Section 21.054, Labor Code, is amended to read as
2 follows:

3 Sec. 21.054. ADMISSION OR PARTICIPATION IN TRAINING
4 PROGRAM. [~~a~~] Unless a training or retraining opportunity or
5 program is provided under an affirmative action plan approved under
6 a federal law, rule, or order, an employer, labor organization, or
7 joint labor-management committee controlling an apprenticeship,
8 on-the-job training, or other training or retraining program
9 commits an unlawful employment practice if the employer, labor
10 organization, or committee discriminates against an individual
11 because of race, color, disability, religion, sex, national origin,
12 [~~or~~] age, or reproductive decisions in admission to or
13 participation in the program.

14 SECTION 6. Section 21.059(a), Labor Code, is amended to
15 read as follows:

16 (a) An employer, labor organization, employment agency, or
17 joint labor-management committee controlling an apprenticeship,
18 on-the-job training, or other training or retraining program
19 commits an unlawful employment practice if the employer, labor
20 organization, employment agency, or committee prints or publishes
21 or causes to be printed or published a notice or advertisement
22 relating to employment that:

23 (1) indicates a preference, limitation,
24 specification, or discrimination based on race, color, disability,
25 religion, sex, national origin, [~~or~~] age, or reproductive
26 decisions; and

27 (2) concerns an employee's status, employment, or

1 admission to or membership or participation in a labor union or
2 training or retraining program.

3 SECTION 7. Section 21.102(c), Labor Code, is amended to
4 read as follows:

5 (c) This section does not apply to standards of compensation
6 or terms, conditions, or privileges of employment that are
7 discriminatory on the basis of race, color, disability, religion,
8 sex, national origin, [~~or~~] age, or reproductive decisions.

9 SECTION 8. Section 21.112, Labor Code, is amended to read as
10 follows:

11 Sec. 21.112. EMPLOYEES AT DIFFERENT LOCATIONS. An employer
12 does not commit an unlawful employment practice by applying to
13 employees who work in different locations different standards of
14 compensation or different terms, conditions, or privileges of
15 employment that are not discriminatory on the basis of race, color,
16 disability, religion, sex, national origin, [~~or~~] age, or
17 reproductive decisions.

18 SECTION 9. Section 21.120(b), Labor Code, is amended to
19 read as follows:

20 (b) Subsection (a) does not apply to a policy adopted or
21 applied with the intent to discriminate because of race, color,
22 sex, national origin, religion, age, [~~or~~] disability, or
23 reproductive decisions.

24 SECTION 10. Section 21.122(a), Labor Code, is amended to
25 read as follows:

26 (a) An unlawful employment practice based on disparate
27 impact is established under this chapter only if:

1 (1) a complainant demonstrates that a respondent uses
2 a particular employment practice that causes a disparate impact on
3 the basis of race, color, sex, national origin, religion, [~~or~~]
4 disability, or reproductive decisions and the respondent fails to
5 demonstrate that the challenged practice is job-related for the
6 position in question and consistent with business necessity; or

7 (2) the complainant makes the demonstration in
8 accordance with federal law as that law existed June 4, 1989, with
9 respect to the concept of alternative employment practices, and the
10 respondent refuses to adopt such an alternative employment
11 practice.

12 SECTION 11. Section 21.124, Labor Code, is amended to read
13 as follows:

14 Sec. 21.124. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST
15 SCORES. It is an unlawful employment practice for a respondent, in
16 connection with the selection or referral of applicants for
17 employment or promotion, to adjust the scores of, use different
18 cutoff scores for, or otherwise alter the results of
19 employment-related tests on the basis of race, color, sex, national
20 origin, religion, age, [~~or~~] disability, or reproductive decisions.

21 SECTION 12. The heading to Section 21.125, Labor Code, is
22 amended to read as follows:

23 Sec. 21.125. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE
24 CONSIDERATION OF RACE, COLOR, SEX, NATIONAL ORIGIN, RELIGION, AGE,
25 [~~OR~~] DISABILITY, OR REPRODUCTIVE DECISIONS IN EMPLOYMENT
26 PRACTICES.

27 SECTION 13. Section 21.125(a), Labor Code, is amended to

1 read as follows:

2 (a) Except as otherwise provided by this chapter, an
3 unlawful employment practice is established when the complainant
4 demonstrates that race, color, sex, national origin, religion, age,
5 [~~or~~] disability, or a reproductive decision was a motivating factor
6 for an employment practice, even if other factors also motivated
7 the practice, unless race, color, sex, national origin, religion,
8 age, [~~or~~] disability, or a reproductive decision is combined with
9 objective job-related factors to attain diversity in the employer's
10 work force.

11 SECTION 14. Section 21.126, Labor Code, is amended to read
12 as follows:

13 Sec. 21.126. COVERAGE OF PREVIOUSLY EXEMPT EMPLOYEES OF THE
14 STATE OR POLITICAL SUBDIVISION OF THE STATE. It is an unlawful
15 employment practice for a person elected to public office in this
16 state or a political subdivision of this state to discriminate
17 because of race, color, sex, national origin, religion, age, [~~or~~]
18 disability, or reproductive decisions against an individual who is
19 an employee or applicant for employment to:

- 20 (1) serve on the elected official's personal staff;
21 (2) serve the elected official on a policy-making
22 level; or
23 (3) serve the elected official as an immediate advisor
24 with respect to the exercise of the constitutional or legal powers
25 of the office.

26 SECTION 15. Section 21.152(a), Labor Code, is amended to
27 read as follows:

1 (a) A political subdivision or two or more political
2 subdivisions acting jointly may create a local commission to:

3 (1) promote the purposes of this chapter; and

4 (2) secure for all individuals in the jurisdiction of
5 each political subdivision freedom from discrimination because of
6 race, color, disability, religion, sex, national origin, ~~or~~ age,
7 or reproductive decisions.

8 SECTION 16. Section 21.155(a), Labor Code, is amended to
9 read as follows:

10 (a) The commission [~~Commission on Human Rights~~] shall refer
11 a complaint concerning discrimination in employment because of
12 race, color, disability, religion, sex, national origin, ~~or~~ age,
13 or reproductive decisions that is filed with the [~~that~~] commission
14 to a local commission with the necessary investigatory and
15 conciliatory powers if:

16 (1) the complaint has been referred to the commission
17 [~~Commission on Human Rights~~] by the federal government; or

18 (2) jurisdiction over the subject matter of the
19 complaint has been deferred to the commission [~~Commission on Human~~
20 ~~Rights~~] by the federal government.

21 SECTION 17. (a) Except as provided by Subsection (b) of
22 this section, the change in law made by this Act applies only to a
23 claim of discrimination based on conduct occurring on or after the
24 effective date of this Act. A claim of discrimination that is based
25 on conduct occurring before that date is governed by the law in
26 effect on the date the conduct occurred, and the former law is
27 continued in effect for that purpose.

1 (b) Section 21.1061(d), Labor Code, as added by this Act,
2 applies to an agreement entered into before, on, or after the
3 effective date of this Act.

4 SECTION 18. This Act takes effect September 1, 2023.