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**BASIC GUIDELINES: HOW TO PROVE  
DISCRIMINATION, HARASSMENT, AND RETALIATION**

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# **BASIC GUIDELINES: HOW TO PROVE DISCRIMINATION, HARASSMENT, AND RETALIATION**

## **I. COVERAGE**

Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits discrimination in employment based upon race, color, religion, sex, and national origin. Prohibitions based on age and disability are covered in separate laws, the Age Discrimination in Employment Act (“ADEA”) and the Americans with Disabilities Act (“ADA”) and the Americans with Disabilities Act Amendments (“ADAAA”).

Title VII applies to employment agencies, labor organizations, and employers that employ more than 15 employees. The prohibitions of Title VII extend to every conceivable employment decision, such as hiring, firing, promotion, wages, training, and job classification. The ADEA extends to every employer with 20 or more employees and the Americans with Disabilities Act covers every employer with 15 or more employees.

The Texas Commission on Human Rights Act (“TCHRA”), TEX. LAB. CODE § 21.001 *et. seq.* is the state version of Title VII, but also includes age and disability. It covers every employer with 15 or more employees.

## **II. PROVING CLAIMS OF DISCRIMINATION**

### **A. Disparate Treatment**

#### **1. Elements of Claim**

- a. Title VII prohibits disparate treatment in terms and conditions of employment based on race, color, gender, national origin, and religion. An employee can make out a disparate treatment claim by direct or indirect evidence. Cases of direct evidence disparate treatment claims are rare. The most common disparate treatment claims are based on indirect or circumstantial evidence.

##### ***i. Direct Evidence***

In a case where an employee has direct evidence of discriminatory animus

– like a statement by a supervisor attributing a change in terms and conditions specifically based on a person’s protected trait – it is well established that such direct evidence establishes a prima facie case for the employee and the burden of production and persuasion automatically shifts to the employer to show a legitimate, non-discriminatory reason(s) for its challenged actions.

##### ***ii. Circumstantial Evidence***

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