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XX.

TEXAS WORKFORCE COMMISSION

The rules are adopted under Texas Labor Code §§301.0015 and 302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

Chapter 839. WELFARE TO WORK PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

§ 839.1. Compliance with Federal Statute and Regulations

- (a) Each local workforce development board, private industry council, or other entity administering the Welfare to Work program must comply with federal statutory requirements, located at 42 U.S.C.A. § 403 *et seq.*
- (b) Each local workforce development board, private industry council, or other entity administering the Welfare to Work program must comply with federal regulatory requirements, located at 20 CFR Part 645.

The provisions of this § 839.1 adopted to be effective July 15, 1998, as published in the Texas Register, July 10, 1998, 23 TexReg 7237.

§ 839.2. Compliance with the State Plan

Each local workforce development board, private industry council, or other entity administering the Welfare to Work program must comply with the State Welfare to Work Plan, as approved by the U.S. Department of Labor.

The provisions of this § 839.2 adopted to be effective July 15, 1998, as published in the Texas Register, July 10, 1998, 23 TexReg 7237.

§ 839.3. Reimbursement of Funds

The Texas Workforce Commission (Commission) will not reimburse for any expenses incurred by the local workforce development boards, private industry councils, or other entities administering the Welfare to Work program except in compliance with the terms of the contract between the Commission and that entity.

The provisions of this § 839.3 adopted to be effective July 15, 1998, as published in the Texas Register, July 10, 1998, 23 TexReg 7237.

SUBCHAPTER B. NONDISCRIMINATION AND EQUAL OPPORTUNITY

§ 839.11. Applicability

In accordance with 20 CFR §645.255, this subchapter establishes the state WIA rules regarding Nondiscrimination and Equal Opportunity, located in §§841.208-841.215 of this title (relating to Workforce Investment Act Rules) as the applicable procedure for resolving Nondiscrimination and Equal Opportunity complaints in the Welfare-to-Work Act, except as otherwise provided in this chapter.

The provisions of this § 839.11 adopted to be effective October 30, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10763.

§ 839.12. Gender Discrimination Excluded

For complaints alleging gender discrimination, the procedures in Subchapter C of this chapter (relating to Welfare to Work Grievance Procedures) will apply.

The provisions of this § 839.12 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

SUBCHAPTER C. WELFARE TO WORK GRIEVANCE PROCEDURES

§ 839.31. Purpose and Coverage

- (a) In addition to the grievance procedures set forth in 42 U.S.C.A. § 603, and in accordance with the grievance procedures in 20 CFR § 645.255, this subchapter establishes state procedures for resolving allegations of violations of the Welfare to Work Act and implementing federal regulations. These procedures apply to complaints by:
- (1) program participants alleging gender discrimination;
 - (2) program participants alleging violations of health and safety standards;
 - (3) program participants alleging displacement; and
 - (4) regular employees alleging displacement.
- (b) Nothing in these rules shall prevent the parties from addressing and resolving problems before a formal complaint has been filed.

The provisions of this § 839.31 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.32. Optional Forms Available

To facilitate the filing, processing, or withdrawal of a complaint under this chapter, the Commission has developed the "Withdrawal of Complaint," and the "Commission/Welfare to Work Request for Hearing Form" which may be reproduced and are available from the address listed in § 839.34(b) of this title (relating to Grievance Filing Procedures at the Local Level).

The provisions of this § 839.32 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.33. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) **Act**--The Welfare to Work Act.
- (2) **Board**--The local workforce development board as defined by the Texas Government Code § 2308.253 or, in areas, where Boards are not yet operational, the Private Industry Council as defined by 20 CFR § 645.120.
- (3) **Commission**--The Texas Workforce Commission.
- (4) **Complainant**--A program participant or a regular employee alleging a violation of the federal Welfare to Work Act as described in § 839.31 of this title (relating to Purpose and Coverage).
- (5) **Contractor**--a service provider for the board.

- (6) **Equal Opportunity (EO) Officer**--The person designated by a Welfare to Work contractor who shall represent the Welfare to Work contractor and facilitate the complaint process.
- (7) **Hearing Officer**--A hearing officer is a Texas Workforce Commission employee designated to conduct fair hearings.
- (8) **Respondent**--The person, organization or agency against whom a complaint has been filed for an alleged violation of the Act.
- (9) **Regular Employee**--An individual who is not a program participant and is employed by a company that is participating in the Welfare to Work program.
- (10) **SOAH**--The state agency designated to conduct a review, as described in § 839.45 of this title (relating to Procedure for Review by SOAH), of the written decision issued under § 839.43 of this title (relating to Written Decision). May also be referred to as the State Office of Administrative Hearings.
- (11) **Subrecipient**--The employer who has a Welfare to Work participant working in his company.

The provisions of this § 839.33 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.34. Grievance Filing Procedures at the Local Level

- (a) A complainant alleging a violation of the Act at the local level may file a complaint by submitting a written grievance to the Welfare to Work contractor. The grievance must be signed and dated by the complainant and shall include the following information:
 - (1) the full name, complete address, and residence and work telephone numbers for the person filing the complaint;
 - (2) a detailed description of the action, or failure to act, which is the subject of the complaint and a reference to, or description of, the provision of the Welfare to Work Act, regulations, rules, grant, or other agreement the complainant alleges was violated;
 - (3) whether or not an informal conference was held in an attempt to resolve the complaint, and a copy of any written determination issued by the local EO Officer;
 - (4) if an informal conference was held, a description of all issues remaining unresolved;
 - (5) a description of the remedies or corrective actions sought by the complainant; and
 - (6) the name and address of each party or parties believed to be responsible for the action which is the subject of the complaint. The complainant shall explain how each party is responsible for the action which is the subject of the complaint.
- (b) To facilitate the filing of a grievance or complaint, the complainant may request a Commission/Welfare to Work Request for Hearing Form from the Welfare to Work contractor or send a written request to the Texas Workforce Commission, Equal Opportunity Officer, 101 E.15th Street, Austin, TX 78778-0001.
- (c) All information about, and complaints involving, allegations of fraud, abuse, or other criminal activity shall be reported directly to the Texas Workforce Commission, Office of Investigations, 101 E.15th Street, Austin, TX 78778-0001.

The provisions of this § 839.34 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.35. Time Limitations at Local Level

- (a) All complaints of violations as described in § 839.31 of this title (relating to Purpose and Coverage) must be made within 180 days of the alleged action. The time limitations for complaint resolution specified in 20 CFR § 645.270(g) shall begin to run upon the date of receipt by the Welfare to Work contractor of a properly completed written grievance according to the requirements of § 839.34 of this title (relating to Grievance Filing Procedures at the Local Level).
- (b) All of the complainant's outstanding and unresolved allegations under this subchapter against the respondent must be described and consolidated into a single complaint, at the time of filing. Any allegation not consolidated into the filed complaint prior to a hearing shall be deemed waived.

The provisions of this § 839.35 adopted to be effective September 19, 1999, as published in the Texas Register, September 17, 1999, 24 TexReg 7770.

§ 839.36. Welfare to Work Provider Responsibilities

Each Welfare to Work contractor shall maintain at their principal places of business and at all intake centers a copy of the Welfare to Work grievance procedure rules and shall post notice that a copy of the rules is available upon request. Each Welfare to Work subrecipient shall maintain at each facility where a Welfare to Work participant performs work a copy of the Welfare to Work grievance procedure rules and shall post notice that a copy of the rules is available upon request. The Welfare to Work contractor shall also:

- (1) designate a staff person as EO Officer who shall:
 - (A) ensure that the Welfare to Work contractor's staff informs each Welfare to Work applicant about the existence of the Welfare to Work grievance procedure;
 - (B) obtain the signature of the applicant stating that the applicant is aware of the existence of the Welfare to Work grievance procedure and retain a copy of the signed form in each participant's official record;
 - (C) handle all complaint correspondence and maintain complete and accurate records of all complaint proceedings;
 - (D) coordinate each step of the Welfare to Work grievance procedure occurring prior to any appeal to SOAH, including forwarding the request for hearing to the hearing officer, pursuant to § 839.40 of this title (relating to notice of hearing);
 - (E) forward a copy of all complaints to the Commission; and
- (2) prepare and maintain all records, transcripts and other documentation required by the Welfare to Work grievance procedure to ensure that the Welfare to Work contractor is fully complying with the terms of the Welfare to Work grievance procedure.

The provisions of this § 839.36 adopted to be effective September 19, 1999, as published in the Texas Register, September 17, 1999, 24 TexReg 7770.

§ 839.38. Local Level Informal Conference Procedure

- (a) The EO Officer may schedule an informal conference following receipt of a properly completed Commission/Welfare to Work Request for Hearing Form to provide the parties an opportunity to informally resolve the complaint. The EO Officer shall notify all parties of the time, date, and location for the informal conference. The informal conference must be held within 20 calendar days of receipt of the Commission/Welfare to Work Request for Hearing Form.

- (b) If the EO Officer schedules an informal conference, the EO Officer shall serve as facilitator of the informal conference, which may be attended by the complainant, the respondent and any other persons with information or knowledge relevant to the complaint considered necessary by the complainant, respondent, or EO Officer for a fair determination of the issues. Only those issues presented at the informal conference may be addressed in subsequent hearings. The EO Officer shall provide each party with a written determination including a statement of whether or not a resolution was reached, the details of any resolution and, if the complaint was unresolved, notice to the complainant of the opportunity for a hearing, including any applicable time limits. The written determination must be sent certified mail, return receipt requested to all parties.
- (c) If the EO Officer does not schedule an informal conference, the EO Officer shall inform the Appeals department of the Commission, in writing, that a hearing needs to be scheduled, in accordance with § 839.40 of this title (relating to Notice of Hearing), following receipt of a properly completed Commission/Welfare to Work Request for Hearing Form.

The provisions of this § 839.38 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.39. Opportunity and Request for a Hearing

- (a) If there was an informal conference and a hearing is desired, the complainant must file a written request for a hearing, with the Welfare to Work contractor, under this section within three calendar days after receipt of the EO Officer's written determination on the informal conference. In computing this time period, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. A hearing held pursuant to the complainant's request will involve only those issues that were unresolved at the informal conference.
- (b) The Appeals department of the Commission shall hold the hearing, as provided in 40 TAC Chapter 823.
- (c) The parties may be represented at the hearing by an attorney or other representative and may present witnesses and documentary evidence.
- (d) All documents required, as determined by the Hearing Officer, shall be at the hearing at the time of the hearing.
- (e) The complainant shall bear the burden of proving that the actions complained of involve a violation that falls within the purpose and coverage of this subchapter.

The provisions of this § 839.39 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.40. Notice of Hearing

Within three business days after the Welfare to Work contractor receives a complainant's properly completed Commission/Welfare to Work Request for Hearing Form, or within three business days after the Welfare to Work contractor receives a complainant's written request for a hearing after an informal conference, whichever occurs last, the EO Officer shall send the request for hearing to the Appeals department of the Commission. The Hearing Officer shall send to the complainant and all other interested parties notice of the setting for a hearing within 5 business days of receipt of the request for hearing. Such notice shall include a synopsis of the issues to be considered at the hearing, and the following information:

- (1) the time, date, and location of the hearing, which must be a date no later than 20 calendar days following receipt by the Appeals department of the Commission of a properly completed Commission/Welfare to Work Request for Hearing Form; and
- (2) a provision that the complainant may withdraw the request for a hearing by submitting a written notice of withdrawal of the complaint to the Welfare to Work contractor, and to the Commission Hearing Officer if applicable, at any time prior to the hearing date.

The provisions of this § 839.40 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.41. Hearing Officer

- (a) The Welfare to Work contractor shall refer the complaint to the Texas Workforce Commission, Appeals Department, 101 East 15th Street, Austin, Texas 78778-0001.
- (b) The Hearing Officer shall conduct the hearing according to the procedures set forth in this subchapter and shall consider all evidence relevant to the complaint in order to reach a fair decision based on such evidence. At any time during testimony, the Hearing Officer may ask questions to elicit additional facts and to clarify the issues or statements of a party or witness. The Hearing Officer may interrupt testimony to discourage irrelevant lines of testimony or inquiry, to avoid cumulative evidence, and to maintain or restore efficient order to the proceeding.

The provisions of this § 839.41 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.42. Hearing Procedure

- (a) The Hearing Officer shall conduct the hearing, which may be attended by the complainant, the respondent, the EO Officer and any other persons with information or knowledge relevant to the complaint and considered necessary by a party for a fair determination of the issues.
- (b) If no party has arranged for a transcript of the hearing by a certified court reporter, the Hearing Officer shall make adequate arrangements for making an audible, understandable electronic recording of the hearing.
- (c) The Hearing Officer shall state the issues to be considered at the hearing.
- (d) The Hearing Officer may accept testimony from any other person who may have information or knowledge relevant to the complaint, and may receive oral and written evidence from any party or witness. The Hearing Officer may limit the introduction of cumulative or repetitive evidence.
- (e) The Hearing Officer may, after an appropriate warning, expel from any proceeding any person, whether or not a party, who fails to comport himself in a manner befitting the proceeding. The Hearing Officer may then continue with the proceeding, hear evidence, and render a decision on the hearing.

The provisions of this § 839.42 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.43. Written Decision

The Hearing Officer shall provide to all the parties and to the EO Officer a written decision within five calendar days following the hearing. Such written decision shall contain, at minimum, the following information:

- (1) the time, date, and location of the hearing;

- (2) the names of all persons present at the hearing and the capacities in which they appeared;
- (3) a synopsis of the issues and the facts found to exist by the Hearing Officer;
- (4) a statement of the decision and the basis for such decision; and
- (5) a statement of any remedies to be applied.

The provisions of this § 839.43 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.44. Request for Review of a Written Decision

- (a) The Hearing Officer shall issue, together with the written decision, a notice informing any adversely affected party of their opportunity to request that SOAH review the decision. The notice must inform the party that to obtain such review, a written request for review must be filed with the Commission, with a copy sent to the Welfare to Work contractor.
- (b) The written request for review of the decision must be filed with the Commission's Office of General Counsel within thirty calendar days from the date upon which the party received the written decision, or the written decision will be final.
- (c) The request for review must contain a statement signed by the party requesting a review of the written decision and must include a copy of the written decision.
- (d) The request for review must be dated and sent by registered or certified mail to the address shown in § 839.34(b) of this title (relating to Grievance Filing Procedures at the Local Level).

The provisions of this § 839.44 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.45. Procedure for Review by SOAH

- (a) Upon receipt of the file relating to the complaint, SOAH shall reach a determination based upon a review of the information provided by each party.
- (b) SOAH's review shall be limited to the process utilized at the local level and the complete file utilized at the hearing held by the Commission. SOAH shall not consider any additional evidence not presented at the hearing held by the Commission. SOAH may only overturn the hearing officer's determination if SOAH determines that there has been an abuse of discretion with regard to the process.

The provisions of this § 839.45 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.46. Final Written Decision

SOAH shall issue a written decision to all parties within 40 days from the filing of a request pursuant to § 839.44 of this title (relating to Request for Review of a Written Decision). The written decision shall be the final decision rendered at the state level on a complaint and shall either sustain or overrule in whole or in part the Hearing Officer's decision.

The provisions of this § 839.46 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.

§ 839.47. Remedies

The following remedies are available to the complainant if deemed appropriate by the Hearing Officer or SOAH officer:

- (1) Suspension or termination of payments to the respondent from funds provided under the Welfare to Work program; or
- (2) Prohibition of placement of a Welfare to Work participant with an employer that is found to have discriminated based on gender, violated health and safety standards, or displaced a regular employee.

The provisions of this § 839.47 adopted to be effective June 16, 1999, as published in the Texas Register, June 11, 1999, 24 TexReg 4473.