



## OFFICE OF THE VICE PRESIDENT FOR LEGAL AFFAIRS

2304 Whitis Avenue, FAC 438 • Mail Code G4800 • Austin, Texas 78712-1714 • 512-471-1241 • FAX 512-471-1255  
<https://legal.utexas.edu> • [vpla@austin.utexas.edu](mailto:vpla@austin.utexas.edu)

October 10, 2024

***CONFIDENTIAL***  
***BY EMAIL AND EEOC PORTAL***  
**Jacob.Morales@EEOC.GOV**

Equal Employment Opportunity Commission  
Attn: Jacob Morales  
5410 Fredericksburg Road, Suite 200  
San Antonio, Texas 78229

RE:       Byron J. Wilson v. The University of Texas at Austin  
EEOC Charge No.: 451-2024-01587

Dear Mr. Morales:

Complainant Byron J. Wilson's Charge of Discrimination alleges that he was subjected to race discrimination that changed the terms and conditions of his employment when his supervisors at The University of Texas at Austin (UT Austin) allegedly "investigated" him and placed him on a performance improvement plan. Exhibit 1. The evidence underlying his allegations, however, contradicts that any term, condition, or privilege of his employment has changed, must less changed from discrimination. Rather, he is in the same position, with the same job duties, and at the same rate of pay that he was at before the alleged incidents.

Such allegations do not satisfy Title VII's de minimis standard as articulated in *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024). Further, Wilson cannot show that the actions were discriminatory as he has not and cannot identify a similarly-situated comparator outside his class who was treated better or that the UT Austin's reasons were pretextual.

Thus, for the reasons stated herein, UT Austin requests that the Commission dismiss his Charge and issue a No Cause finding.<sup>1</sup>

## I. FACTUAL BACKGROUND

Wilson was offered and accepted an appointment at the University on July 1, 2022, as an Assistant Professor in the Department of Design in the School of Design and Creative Technologies within the College of Fine Arts. Exhibit 4. The appointment was for a three-year term starting on September 1, 2022, and concluding on May 31, 2025.<sup>2</sup> *Id.*

The initial appointment letter laid out terms and conditions of the job, including three main areas of job responsibilities. First, and foremost, Wilson was required to teach with 75% of his teaching responsibilities dedicated to the MA in Design in Health program and the other 25% of his teaching responsibilities distributed across other programs in the College. *Id.* Second, Wilson would serve as faculty lead for curriculum and practice for the MA in Design in Health program. In this role, he was charged with developing and delivering a thoughtful strategy for integrating design practice in health setting into the program's curriculum. Third, he had advising duties, including advising graduate students in all matters regarding their academic progress in the program. *Id.* Fourth, he had additional design consulting and project work. *Id.*

Notably, however, research was not a job duty identified in his letter of appointment. *Id;* see also Exhibit 5 (2023 letter of appointment also not referencing research as a job responsibility or duty).

Wilson initially struggled in his first year as a professor at UT Austin. Exhibit 3. Faculty receive feedback on their teaching performance in part through student course evaluation scores ("CES"). *Id.* For graduate courses, like the ones Wilson taught, the College expected faculty to receive CES scores between 4.0 and 5.0. *Id.* In his first year of teaching, Wilson received scores below 4.0 for the majority of his courses, including a 1.75 teaching score in his capstone course. *Id.*

---

<sup>1</sup> This statement is prepared by Esteban S.M. Soto, Associate Vice President for Legal Affairs at UT Austin. Mr. Soto may be contacted by mail at P.O. Box R, Austin, Texas 78713; by phone at 512-232-3588; or by email at esteban.soto@austin.utexas.edu. Dr. Jay C. Hartzell serves as President of UT Austin, an employer of more than 15,000 employees. UT Austin is a component institution of The University of Texas System. James Milliken serves as chancellor of The University of Texas System.

<sup>2</sup> Wilson was also appointed for two months starting on July 1, 2022, in order to begin administrative duties of his job. Exhibit 4.

Entering his second year, Wilson received a letter of appointment which once again laid out the terms and conditions of his job. Exhibit 5. In his second year, his teaching responsibilities would be the “[p]rimary area of contribution.” *Id.* In addition to teaching, the letter of appointment also identified service, such as service on committees or participation in student or curriculum related development activities, as an “[a]dditional area of contribution.” *Id.* Once again, the letter of appointment did not reference research as a job duty, responsibility, or area of contribution. *Id.*

In the fall of 2024, the Dean of the College of Fine Art, Ramón Rivera-Servera, received complaints about the Design in Health program. Dean Rivera-Servera requested that one of his Assistant Deans, Doreen Lorenzo, look into the situation. Exhibit 3. Lorenzo met with employees and students about the program. During those meetings, students lodged several complaints about Wilson’s courses and conduct. *Id.* The students’ complaints about Wilson were consistent with other feedback about Wilson’s teaching, including his CES scores which for the second year in a row were below average. *Id.*

After consulting with the University’s Provost Office, the College decided to issue Wilson a faculty development plan. *Id.; see also* Exhibit 6. The plan was not formal discipline and had no impact on Wilson’s pay, position, or employment status. *Id.* Instead, it was meant to support Wilson’s professional improvement by removing extraneous assignments—like research—and providing him a structured plan to improve his teaching performance. *Id.*

After receiving the plan, Wilson filed this Charge of Discrimination challenging Lorenzo’s supervision and the development plan. Exhibit 1.

## **II. POSITION STATEMENT**

UT Austin is an equal opportunity employer and does not discriminate on the basis of race, color, religion, gender, national origin, age, disability, citizenship, veteran status, sexual orientation, gender identity, and gender expression. *See* Exhibit 2. In addition, UT Austin strictly prohibits retaliation against individuals who file discrimination complaints, participate in discrimination investigations, or otherwise engage in a protected activity. *Id.*

UT Austin disputes Wilson's allegations and contends that its evidence refutes any allegation that he was subjected to discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended.<sup>3</sup>

**1. Wilson cannot establish a prima facie case for discrimination.**

To establish a prima facie case of racial discrimination, an employee must show (1) he is a member of a protected class, (2) he was qualified for his position, (3) he was subject to an adverse employment action, and (4) he "was treated less favorably because of his membership in that protected class than were other similarly situated employees who were not members of the protected class, under nearly identical circumstances." *Paske v. Fitzgerald*, 785 F.3d 977, 985 (5th Cir. 2015). Wilson cannot establish the third and fourth elements of this test.

**A. Wilson cannot establish a change to the terms, conditions, or privileges of his employment.**

To meet the adverse action element, an employee must show discrimination with respect to the "terms, conditions, or privileges of employment." *Hamilton v. Dallas County*, 79 F.4th 494 (5th Cir. 2023) (en banc). Such an action must be more than de minimis workplace trifles and must be accompanied by "some harm." *Muldrow*, 601 U.S. at 350. Here, Wilson alleges he suffered three actions: (1) that he was investigated; (2) that he was placed on a plan; and (3) that he was prohibited from working on research projects and given a larger teaching load. In light of the factual evidence, none of those complaints constitute a change to the terms, conditions, or privileges of his employment.

First, as the facts show, the purported "investigation" was not a formal investigation but rather ordinary workplace monitoring and supervision. Mere supervision, or even a formal investigation, by itself does not constitute an adverse action unless it is accompanied by some harm (such as a suspension without pay pending investigation, which did not occur here). *See id* (plaintiff must allege "some harm" for the action to constitute a change to the terms, conditions, or privileges of employment); *see also Porto v. Chevron NA Expl. & Prod. Co.*, 2018 WL 3559103, at \*15 (S.D. Tex. July 24, 2018) ("close" supervision combined with other alleged harassment did not constitute a change of the terms, conditions, or privileges of employment under a hostile work environment theory).

---

<sup>3</sup> This position statement is not intended to raise all legal theories or defenses that ultimately may be raised in this matter, and UT Austin reserves the right to offer additional facts as may be discovered upon further investigation.

Second, the faculty development plan was a type of performance improvement plan that was aimed at supporting and developing Wilson's teaching performance. Such a plan is not an adverse action, even post-*Hamilton* and *Muldrow*. See *Lemonia v. Westlake Management Serv., Inc.*, 2023 WL 6878915, at \*7 (5th Cir. 2023).

Third, a change in job duties by itself does not constitute an adverse action because it does not establish a non-de minimis injury. *Fleming v. Methodist Healthcare System of San Antonio, Ltd., L.L.P.*, 2024 WL 1055120, at \* 12 (W.D. Tex. Mar. 11, 2024); *Green v. Ochsner LSU Health Shreveport*, 2024 WL 1057217, at \* 9 (W.D. La. Mar. 11, 2024) ("reduction in job responsibilities" did not constitute a material change in the terms, conditions, and privileges of employment). This is especially true in this case as research was never part of Wilson's job duties. See Exhibits 4 and 5. Thus, an instruction to stop work on research and focus on teaching, does not constitute an adverse action when research duties were never a term, condition, or privilege of Wilson's employment.

For all these reasons, Wilson cannot establish a prima facie case of discrimination.

**B. Wilson cannot establish that similarly situated comparators outside of his class were treated better.**

A similarly situated comparator is someone treated more favorably under "nearly identical" circumstances, including "essentially comparable violation histories." *Lee v. Kan. City S. Ry.*, 574 F.3d 253, 260 (5th Cir. 2009); see *Crawford v. Formosa Plastics Corp., La.*, 234 F.3d 899, 902 (5th Cir. 2000). In this case, Wilson was placed on a plan that focused his duties on teaching, because of abnormally low teaching scores and student complaints. See Ex. 3. Wilson has not identified a comparator with nearly identical low scores and student complaints, and none exist. *Id.* Accordingly, Wilson cannot establish this element of his prima facie case.

**2. UT Austin had legitimate, non-discriminatory reasons for its actions and Wilson cannot show they are pretextual.**

Under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), once an employee makes a prima facie showing, the employer must articulate a legitimate, non-discriminatory reason for its action. Then the burden shifts to the plaintiff to show that the employer's reasons were pretext for discrimination. *Owens v. Circassia Pharm., Inc.*, 33 F.4th 814, 825-26 (5th Cir. 2022). To the extent the Commission even reaches this part of the *McDonnell Douglas* framework, which it need not for the reasons explained above, UT Austin asserts that Lorenzo was assigned to look into the Design program due to complaints the Dean received about the program. See Exhibit 3. Further, Wilson was placed on a faculty development plan, including the

plan's focus on teaching duties,<sup>4</sup> due to low CES scores and student complaints. *Id.* Wilson has not alleged and cannot show that these reasons are pretext for discrimination.

Accordingly, Wilson cannot meet his evidentiary burden to show that the UT Austin discriminated against him due to his race.

### III. CONCLUSION

For these reasons, the Commission should dismiss the Charge and issue a “No Cause” finding.

Should you have any questions or need additional information, please do not hesitate to contact me at esteban.soto@austin.utexas.edu

Regards,



Esteban Soto  
Associate Vice President for Legal Affairs

ES:lo

Enclosures

---

<sup>4</sup> An increase in Wilson's teaching responsibilities was also planned as detailed in his initial appointment letter in July 2022. See Exhibit 4 (“For your first semester, I will further reduce your teaching load by one course in order to give you time to acclimate to your new roles at UT.”).

## **EXHIBITS**

- Exhibit 1    Byron J. Wilson's EEOC Charge of Discrimination
- Exhibit 2    UT Austin's Nondiscrimination Policy
- Exhibit 3    Doreen Lorenzo's Statement
- Exhibit 4    2022-23 Letter of Appointment
- Exhibit 5    2023-24 Letter of Appointment
- Exhibit 6    December 2023 Faculty Development Plan