EEO CONNECTION

Statewide EEO Coordinator's Message

INSIDE THIS ISSUE:	
OSEEOC Mission	2
Ask the EEOC Team	3
EEOC Update COVID- 19 Updates	4
Supreme Court Statement on the Death of Justice Ruth Ginsburg	5
EEO Spotlight	6
Noteworthy Rulings	7-8
ADA Corner	9-11
Diversity Inclusion TED Talk	12
Meetings & Trainings	13
2020 Calendar	14
Resources	15

October 4-10, 2020 was Mental Health Awareness Week. Although this newsletter was released after the celebration of this important week, the focus on our mental health should never end. The stress that the dual pandemics (COVID-19 and social/civil injustice) have placed on us has become increasingly challenging on our mental health. Instituting a daily mental health check up is paramount. These dual pandemics can bring about fear and anxiety and cause strong emotions.

When your mental health is off balance, you can physically not feel well. So, to help get your balance back, purposefully shift your focus to what you can do to gain peace of mind. Here are some suggestions that you may want to try: meditation, take a walk, take up a new hobby, read positive affirmations, create a gratitude diary or chart, or connect with family and friends. I understand that some people will need the help of a professional and that's okay. What's important is that you do something about it.

This issue is full of interesting articles. Read how the Supreme Court Justices honor RBG on page 5. Read why a Florida City paid out \$195,000 for race discrimination on page 7. We have a very interesting TED Talk on eliminating micro-aggressions that you will want to hear on page 12. Remember to check out the upcoming webinars and events on page 13. There is so much more. Simply turn the page.

Glynis Watford Statewide EEO Coordinator

Office of the Statewide EEO Coordinator Mission

- Administer and enforce state and federal equal employment opportunity laws and policies.
- Promote a work environment free of any unlawful discrimination, harassment, and retaliation.
- Assist in building a well-diversified workforce for Maryland State Government employees and applicants.



Ask the OSEEOC Team

1. QUESTION

Under the ADA, if an individual can take medication or use a prosthesis so that he or she is no longer substantially limited in any major life activity, is the individual considered to have a disability?

OSEEOC ANSWER:

Yes. A person will be considered as having a disability even though, through use of mitigating measures, he or she is not substantially limited in any major life activity.

2. QUESTION

I have a family member who is high risk for contracting COVID-19 due to them having underlying health conditions. I personally fear reporting to the office, and contracting the virus and spreading it to this family member. Is it possible for me to be granted a reasonable accommodation to telework under the Americans Disability Act Amendment Act?

OSEEOC ANSWER:

No. The ADA does not require an employer to accommodate an employee without a disability based on the disability related needs of a family member.

3. QUESTION

My office has been teleworking since March 2020, as a result of the COVID-19 outbreak. I would like to telework permanently since I have a disability. Could this be approved?

OSEEOC ANSWER:

According to the EEOC, this is a request for reasonable accommodation, and ADA Coordinator should proceed as it would for any other request for accommodation under the ADA..

4. QUESTION

Can an employer be held responsible for sexual harassment in the workplace, even if the harassment is by vendors or customers?

OSEEOC ANSWER:

Yes. Workplace sexual misconduct is not limited to a supervisor's mistreatment of subordinates. The employer can also be liable for tolerating a hostile work environment created by an employee's fellow employees and even nonemployees, such as customers and vendors, if the employer knows (or should know) about the offensive work environment but fails to take appropriate remedial action.

United States EEOC Update: The Commission Offers Updated COVID-19 Guidance To Address Additional ADA Considerations

By Gerald L. Maatman Jr. , Christopher DeGroff , Matthew Gagnon and Alex S. OxyerSeyfarth Shaw LLP

Seyfarth Synopsis: On September 8, 2020, the EEOC updated its Technical Assistance Q&A <u>webpage</u> to address 18 new questions regarding the application of the Americans With Disabilities Act ("ADA"), the Rehabilitation Act, and other EEO laws for employers continuing to face the struggles of the COVID-19 pandemic. The latest guidance addresses issues such as COVID-19 testing and screening, confidentiality, and reasonable accommodations. The latest guidance is a critical "must read" for all employers with employees in the workplace or those providing alternative work arrangements.

Latest EEOC COVID-19 Guidance On COVID-19 Screening And Testing

While much of the EEOC's latest guidance was adapted from the Commission's March 27, 2020 webinar (a summary of which we provided here in an earlier blog post), the EEOC's latest guidance provides some additional clarification as to the intersection of the ADA and the CDC's guidance on COVID-19 screening. Specifically, the ADA requires that any mandatory testing of employees be "job related and consistent with business necessity." In light of the COVID-19 pandemic, the EEOC has clarified that an employer may administer COVID-19 testing to employees before permitting them to enter the workplace to determine if they pose a direct threat to others in the workplace.

Consistent with the EEOC's previous guidance in the pandemic, the Commission has reiterated that the ADA does not interfere with employers following recommendations by the CDC or other public health authorities regarding whether, when, and for whom testing or other screening is appropriate, and that testing administered by employers consistent with current CDC guidance will meet the ADA's "business necessity" standard.

Additionally, the updated guidance states that employers may screen or test a particular employee only if the employer has a reasonable belief based on objective evidence that the individual may have COVID-19. Further, the guidance reminds employers that they cannot ask employees whether they have family members with COVID-19 or who are suffering symptoms of COVID-19, as such questions are prohibited by the Genetic Information Nondiscrimination Act ("GINA").

Read the full article at: <a href="https://www.mondaq.com/unitedstates/employment-and-workforce-wellbeing/983504/eeoc-update-the-commission-offers-updated-covid-19-guidance-to-address-additional-ada-considerations?email access=on



EEO Spotlight

STATEMENTS FROM THE SUPREME COURT REGARDING THE DEATH OF ASSOCIATE JUSTICE RUTH BADER GINSBURG

Statement of Chief Justice John G. Roberts, Jr.:

"Our Nation has lost a jurist of historic stature. We at the Supreme Court have lost a cherished colleague. Today we mourn, but with confidence that future generations will remember Ruth Bader Ginsburg as we knew her -- a tireless and resolute champion of justice."

Statement of Justice Clarence Thomas:

"My wife, Virginia, and I are heartbroken to learn of the passing of our friend, Justice Ruth Bader Ginsburg. Ruth and I first met when I began my tenure on the D.C. Circuit in 1990. With the exception of the brief period between our respective appointments to the Supreme Court, we have since been judicial colleagues. Through the many challenges both professionally and personally, she was the essence of grace, civility and dignity. She was a superb judge who gave her best and exacted the best from each of us, whether in agreement or disagreement. And, as outstanding as she was as a judge, she was an even better colleague – unfailingly gracious, thoughtful, and civil.

"Through her loss of her wonderful husband, Marty, and her countless health challenges, she was a picture of grace and courage. Not once did the pace and quality of her work suffer even as she was obviously suffering grievously. Nor did her demeanor toward her colleagues diminish.

"The most difficult part of a long tenure is watching colleagues decline and pass away. And, the passing of my dear colleague, Ruth, is profoundly difficult and so very sad. I will dearly miss my friend.

"Virginia and I will keep her family in our thoughts and prayers."

Statement of Justice Stephen G. Breyer:

"I heard of Ruth's death while I was reciting the Mourner's Kaddish at the Rosh Hashanah service. I thought: a great Justice; a woman of valor; a rock of righteousness; and my good, good friend. The world is a better place for her having lived in it. And so is her family; her friends; the legal community; and the nation."

Read the full article at: https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_09-19-20.



EEO Spotlight

Blaming the Victim, Or How Not to Respond to a Complaint By Meghan Droste

While preparing slides for a webinar involving race, national origin, and religious discrimination, I came across a 2015 Commission decision that is too surprising not to share, even though it doesn't fit my usual criteria of being a recent decision. The ultimate outcome of the decision is not a surprise (Spoiler Alert: It did not end in the Agency's favor), but the Agency's approach to the entire situation is.

Complainant v. Tennessee Valley Authority, EEOC App. No. 0120123132 (May 14, 2015), involves one of the most invidious forms of race discrimination — a noose in the workplace. As the Commission recounts, the complainant first observed a noose hanging in the back of an agency vehicle on August 5. He brought it to the attention to the two coworkers who were in the truck at the time. Apparently neither of them did anything about it because on August 11, the complainant saw the noose again in the back of the same truck. He told his supervisor, who responded by informing him that the noose wasn't a "legal" noose because it only had seven knots instead of 13.

Dissatisfied with this (lack of a) response, the complainant told the yard operations supervisor about the noose. This supervisor showed the noose to four other employees, but remarkably no one removed the noose from the truck. The noose remained up for four more days. On August 19, the complainant's supervisor read the agency's anti-harassment policy to the yard staff during a meeting but did not make any reference to the noose or address the issue. On August 22, a member of management alerted agency security officers about the noose. Officers waited until September, more than a month after the complainant first observed the noose, to begin an investigation. At some point during this time, the agency issued a write-up to the complainant, admonishing him for not reporting the noose sooner. As you can expect, the Commission reversed the agency's FAD which found no discrimination. In the appeal, the agency argued that it was not liable because it had taken prompt and effective corrective action when it became aware of the noose. The Commission soundly rejected this. Nothing about the agency's response was prompt or effective:

- The agency allowed the noose to remain up for 10 days after the complainant first reported it.
- The complainant's supervisor responded to the seeing the noose by declaring it not a "legal" noose.
- The agency did not address the noose or the seriousness of the issue during the staff meeting.
- The agency made no effort to investigate the origins of the noose until a month after the complainant reported it.
- And, of course, the agency disciplined only the complainant and not any of the supervisors who were aware of the noose and failed to take action.

Read the full article at: https://feltg.com/blaming-the-victim-or-how-not-to-respond-to-a-complaint/.

NOTEWORTY RULINGS

Justice Department Settles Race Discrimination Case Against a Florida City Securing \$195,000 in Lost Wages and Damages

The Justice Department announced that it has reached a settlement with the City of Venice, Florida, resolving its race discrimination lawsuit against the city.

The suit alleged the city violated Title VII of the Civil Rights Act of 1964 when it subjected James Williamson, a 30-year Black city employee, to a series of unwarranted disciplinary actions, including two unpaid suspensions and ultimately termination, because of his race. Title VII is a federal statute that prohibits employment discrimination on the basis of race, color, national origin, sex, and religion.

"It is both morally wrong and illegal to single out any employee for harsh and unwarranted discipline because of the employee's race, and to subject individuals, like Mr. Williamson, to discharge because of race," said Assistant Attorney General for the Civil Rights Division, Eric S. Dreiband. "In this free country, all workers have a right to work without suffering unjust and unlawful race discrimination. This settlement agreement reflects the Civil Rights Division's continued commitment to vigorous enforcement of the Civil Rights Act's prohibition against race discrimination by state and local governmental employers."

According to the United States' complaint filed in the U.S. District Court for the Middle District of Florida, the City of Venice did not have legitimate, non-discriminatory reasons for treating Williamson far more harshly in imposing discipline than the city did toward his comparable white coworkers. According to the lawsuit, the city disciplined Williamson nine times, over a two-year period, including three separate reprimands in one day. These punishments were predicated on Williamson's supposed violations of work rules, such as taking normal lunch breaks in public parks, that were never enforced against his white coworkers.

The city ultimately fired Williamson, the only Black employee working in the Parks Division of the city's Public Works Department, without justification and after he had been subjected to prolonged use of racial slurs, including the n-word, directed towards him and in his presence, and to close scrutiny of, and finding fault with, his work without legitimate reasons.

Under the terms of the settlement agreement, the city will pay Williamson \$195,000 for lost wages and compensatory damages. The settlement agreement also requires the city to develop and submit to the Justice Department for approval anti-discrimination policies and to provide its supervisors and managers with training on those policies and on the types of conduct in the workplace that constitute unlawful employment practices under Title VII.

Read the full article at: https://www.justice.gov/opa/pr/justice-department-settles-race-discrimination-case-against-florida-city-securing-195000-lost.



NOTEWORTY RULINGS

Justice Department Settles Lawsuit Against the South Dakota Department of Social Services Alleging Intentional Race Discrimination Against Native American Job Applicants at the Pine Ridge Reservation

The Justice Department announced that it has reached a settlement with the South Dakota Department of Social Services (Department of Social Services or DSS), a state agency that assists South Dakotans seeking public benefits, resolving allegations that DSS intentionally discriminated against Native American job applicants at its Pine Ridge Indian Reservation Office. Under the terms of the settlement agreement, subject to court approval, the Department of Social Services will pay \$350,000 in back pay and other monetary relief to approximately 60 Native American job applicants. The Department of Social Services also must comply with reporting requirements regarding its hiring of Specialists at the Pine Ridge Office.

"The Civil Rights Division is committed to enforcing the nation's anti-discrimination laws on behalf of all Americans, including Native Americans, to make sure they are as the Reverend Dr. Martin Luther King challenged 56 years ago—judged by the 'content of their character' and not the 'color of their skin,' said Assistant Attorney General Eric Dreiband of the Civil Rights Division. "This settlement helps move our nation towards Dr. King's dream of making opportunity available to all unfettered by unlawful discrimination. It provides monetary relief for Native American applicants, ensures equal opportunity to compete for jobs, and establishes a reporting and oversight process to guard against racial discrimination in the future."

The amended complaint, filed in November 2016 in the U.S. District Court for the District of South Dakota, alleged that in failing to select qualified Native American applicants for several positions at DSS's Pine Ridge Office, DSS engaged in a pattern or practice of discrimination that violated Title VII of the Civil Rights Act of 1964, as amended. Title VII is a federal statute that prohibits employment discrimination on the basis of race, sex, color, national origin, and religion.

According to the amended complaint, in October 2010, Cedric Goodman, a Native American job candidate, applied for a Specialist position at DSS's Pine Ridge Office. DSS determined that Goodman was qualified for the position and offered him an interview. After interviewing Goodman and other qualified Native American candidates, DSS removed the job posting and hired no one. The next business day, however, DSS re-posted the position and ultimately selected a white applicant with qualifications inferior to Goodman's.

Read the full article at: https://www.justice.gov/opa/pr/justice-department-settles-lawsuit-against-south-dakota-department-social-services-alleging.



ADA CORNER

Baccarat to Pay \$100,000 to Settle EEOC Lawsuit for Race, Sexual Orientation and Disability Harassment

Manhattan Store Forced Employee to Quit Due to Abuse, Federal Agency Charged

NEW YORK – Baccarat, Inc., which operates a retail store in Manhattan that sells luxury crystal products, will pay \$100,000 and furnish other relief to settle a lawsuit for employment discrimination filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced. The EEOC had charged Baccarat with harassing a sales consultant at its Manhattan store based on race, sexual orientation and disability harassment.

According to the EEOC's lawsuit, the sales consultant was subject to constant and virulent verbal harassment by two co-workers for close to three years, with the knowledge of the supervisor, to whom the sales consultant complained on several occasions. The harassment victim was forced to quit to escape the abuse, the EEOC said.

The EEOC filed suit (U.S. EEOC v. Baccarat, Inc., Civil Action No. 1:20-CV-02918) in the U.S. District Court for the Southern District of New York after first attempting a pre-litigation settlement through its conciliation process. The EEOC's lawsuit initially charged Baccarat with failing to take prompt action to end race and disability harassment following numerous employee complaints to management and human resources. The EEOC amended the complaint to include an allegation of sexual orientation harassment following the U.S. Supreme Court's June 15, 2020 decision in Bostock v. Clayton County, Georgia, 140 S. Ct. 1731 (2020).

The consent decree settling the suit, entered by Judge Paul G. Gardephe, will remain in effect for two and a half years and, in addition to the \$100,000 payment to the harassment victim, requires significant non-monetary relief designed to prevent further harassment. These provisions include the implementation of an 800 hotline for employee complaints; training for all employees, including management and human resources staff, on the requirements of Title VII and the ADA and their prohibition against harassment in the work-place; and specific one-on-one training for the manager who failed to report or stop the harassment. The company must also report to the EEOC any complaints of race, sexual orientation, or disability harassment it receives in the next two-and-a-half years.

The lawsuit was settled prior to the parties engaging in substantial pre-trial discovery.

Read the full article at: http://www.employmentlawdaily.com/index.php/news/despite-short-duration-of-impairment-truck-driver-fired-after-infection-following-lung-surgery-revives-regarded-as-claim/.



Tips from the Other Side: No 'One Size Fits All' for Accommodations

By Meghan Droste

This month, I return to our ongoing review of important issues related to reasonable accommodation requests. Unfortunately, I have seen agencies too often make very avoidable mistakes when it comes to responding to requests for accommodations. Often times these mistakes seem to result from an instinct to apply a one-size-fits-all approach to handling requests. As the Commission has reminded agencies time and again, that strategy just does not work in the area of reasonable accommodations.

One way in which this can come up is in determining the essential functions of a position. I know it can be tempting to look at the position description ("PD") and use that as the sole definition of the essential functions for the position at issue, but it's just not that simple. The Commission's decision in *Cecille W. v. U.S. Postal Service*, EEOC App. No. 0120181915 (Aug. 6, 2020) is an excellent example of why that approach does not work.

In *Cecille W.*, the complainant worked as a rural mail carrier. The PD for that position included a requirement that employees be able to lift up to 70 pounds. When the complainant requested reasonable accommodations, the agency informed her that she was not a qualified individual with a disability because her lifting restrictions (no more than 20 pounds) made her unqualified for her position as a rural carrier. The agency also concluded that the complainant was unqualified for any other positions to which the agency could potentially reassign her, as they all included 70-pound lifting requirement.

After a hearing, the administrative judge found in the agency's favor. The administrative judge agreed with the agency that the complainant was not qualified because of her lifting restrictions. The administrative judge also agreed with the agency's argument that accommodating the complainant would be an undue hardship because it would require the agency to provide significant assistance to the complainant and reduce its production standards. Does this seem like an easy and obvious win for the agency? The EEOC didn't think so. The Commission reversed the finding in the agency's favor because of one big issue neither the agency nor the administrative judge looked beyond the PD when determining the essential functions of the complainant's position. If they had, they would have seen that the complainant had been performing her rural carrier duties with a 20-pound lifting restriction for years. She found workarounds to avoid lifting heavy trays of mail and needed minimal assistance to successfully perform her job without any complaints from management.

Read the full article at: https://feltg.com/tips-from-the-other-side-no-one-size-fits-all-for-accommodations/.



ADA CORNER

EEOC Sues Red Roof Inn for Disability Discrimination

Hotel Refused to Accommodate Visually Impaired Employee and Summarily Denied Him a Promotion, Federal Agency Charges

DAYTON, Ohio – National hotel giant Red Roof Inns, Inc. violated federal law when it refused to promote an employee because of his visual impairment, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit filed.

According to the EEOC's lawsuit, an employee of the Red Roof Inns' Corporate Call Center in Springfield, Ohio expressed interest in a promotion to a newly available position there. Red Roof Inns refused to accommodate the employee in his attempt to learn more about and compete for the promotion, stating it would be a waste of his time to apply for the position because his visual impairment could not be accommodated.

Rejecting a qualified employee because of a disability, or failing to consider accommodations for employees with disabilities, violates the Americans with Disabilities Act (ADA). The EEOC asserts that the company's actions were intentional and demonstrated a reckless indifference to the qualified employee's federally protected rights.

The EEOC filed suit (Case No. 3:20-cv-00381 in U.S. District Court for the Southern District of Ohio, Western Division, at Dayton) after first attempting to reach a voluntary settlement through its administrative conciliation process. The agency is seeking back pay and compensatory and punitive damages against Red Roof Inns as well as a permanent injunction to prevent the company from engaging in future discrimination against its visually impaired employees.

"Denying a promotional opportunity to a qualified visually impaired employee solely because of his disability is illegal, and it should be," said Michelle Eisele, district director for the EEOC's Indianapolis District Office.

Kenneth L. Bird, regional attorney of the Indianapolis District Office, said, "Protecting the employee's right to receive a reasonable accommodation to apply for a promotion is central to the EEOC's mission."

The Indianapolis District Office of the EEOC oversees Indiana, Michigan, Kentucky, and parts of Ohio.

Read the full article at https://www.eeoc.gov/newsroom/fedex-ground-pay-33-million-settle-eeoc-disability-discrimination-lawsuit-0.



DIVERSITY AND INCLUSION TED TALK

Eliminating Micro-aggressions: The Next Level of Inclusion



Tiffany Alvoid is an attorney. She earned a JD from UCLA School of Law with a concentration in Critical Race Theory. Tiffany created a training about addressing Micro-aggressions in the workplace in an effort to create awareness about how destructive they can be in the workplace. Tiffany's training focuses on the historical context that makes certain phrases offensive in an effort to help participants understand the unique perspective of marginalized groups. Tiffany conducts the training for teams to help create a more inclusive and productive work environment. Currently, Tiffany works at Twitter on their employee relations team.

In this 9 minute TED Talk, Tiffany lays out how this behavior manifests itself, the role you play, and what you can do to avoid perpetuating its continued existence in society. Click the link below to watch the full video.

https://youtu.be/cPqVit6TJjw



Meetings & Trainings

Reasonable Accommodations

Hosted by: ADA National Network

Date: October 29,2020 Location: Webinar

Registration: https://adata.org/event/reasonable-accommodations

15th Annual Fall HR Conference LIVE (Employment Law and Legislation)

Hosted by: Chesapeake Human Resources Association

Date: November 4 & 5th 2020

Location: Virtual

Registration: https://www.chra.com/events/EventDetails.aspx?id=1352294&group=

Handling Cases before the EEOC, MSPB and in Arbitration: Best Practices for Representatives

Hosted by: Federal Law Employment Training Group

Date: November 5, 2020

Location: Webinar

Registration: https://feltg.com/event/virtual-training-event-handling-cases-before-the-eeoc-

mspb-and-in-arbitration-best-practices-for-representatives/

Disability Etiquette in the Workplace

Hosted by: Diversity Inc. Date: November 12 2020

Location: Webinar

Registration: https://www.diversityincbestpractices.com/webinar-schedule-public/

The 5 Behaviors of a Team and how to be a more effective virtual team player

Date: November 19, 2020

Location: Webinar

Registration: https://www.chra.com/events/EventDetails.aspx?id=1428016&group=

Impact Your Bottom Line With Workforce Diversification Strategies

Date: Available Now Location: Webinar

Registration: <a href="https://circaworks.com/webinar-impact-your-bottom-line/?utm_campaign=Nurturing&utm_medium=email&hsenc=p2ANgtz-line/?utm_campaign=Nurturing&utm_medium=email&hsenc=p2ANgtz-line/?utm_campaign=Nurturing&utm_medium=email&hsenc=p2ANgtz-line/?utm_campaign=Nurturing&utm_medium=email&hsenc=p2ANgtz-line/?utm_campaign=Nurturing&utm_medium=email&hsenc=p2ANgtz-line/?utm_campaign=Nurturing&utm_medium=email&hsenc=p2ANgtz-line/?utm_campaign=Nurturing&utm_medium=email&hsenc=p2ANgtz-line/?utm_campaign=Nurturing&utm_ca

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2020 DIVERSITY CALENDAR

October 2020

Global Diversity Awareness Month National Disability Employment Awareness Month National Italian American Heritage Month

November 2020

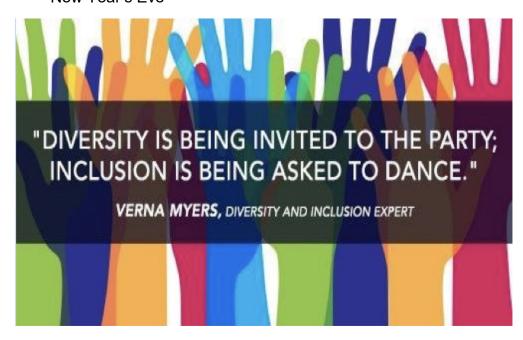
Native American Heritage Month

11/3	Election Day
11/11	Veterans Day
11/16	Dutch-American Heritage Day
11/26	Thanksgiving

December 2020

HIV/AIDS Awareness Month

12/10-12/18 Hanukkah 12/25 Christmas Day 12/26 Kwanzaa 12/31 New Year's Eve



RESOURCES FOR EEO PROFESSIONALS

Division of Rehabilitation Services (DORS)

http://dors.maryland.gov/Pages/default.aspx

Department of Labor

http://www.dol.gov/

Employee Assistance Program (EAP)

http://www.dbm.maryland.gov/employees/Pages/EAP.aspx

Equal Employment Opportunity Commission (EEOC)

http://www.eeoc.gov/

Job Accommodation Network (JAN)

https://askjan.org/

Maryland Commission on Civil Rights (MCCR)

http://mccr.maryland.gov/

Society for Human Resource Management (SHRM)

http://www.shrm.org/pages/default.aspx

Maryland Department of Disabilities

http://mdod.maryland.gov/Pages/Home.aspx

Out & Equal Workplace Advocates

http://outandequal.org/

National Service Animal Registry

https://www.nsarco.com/

Maryland LGBT Chamber of Commerce

https://mdlgbt.org

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