EEO CONNECTION

Statewide EEO Coordinator's Message

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Over the past several weeks, a focus of discussion in the media has been the need to end racism as a result of recent events and protests worldwide. The movement has prompted calls for more Diversity and Inclusion professionals in the workplace across various industries. Fortunately, the State of Maryland is proactive and committed to ensuring fair and equitable treatment in our workplace free from any type of discrimination. State law requires every agency to have a designated Fair Practices Officer and Equal Employment Opportunity Officer to oversee its EEO program. The Office of the Statewide EEO Coordinator also works strategically to educate and empower our work force of their rights and responsibilities and provides various training resources and program initiatives. This has certainly contributed to a reduction and elimination of issues before they arise. As we move forward with our work, let's continue to be proactive and inform employees of the EEO resources that are available to them. Also, take the time to speak with employees regarding how comfortable they are at work and how things can be improved. Ensuring equal employment opportunity and diversity and inclusion is an ongoing process and not a one-time initiative.

This quarter's newsletter is full of great resources. Get answers to some of your burning questions about returning to work during COVID-19 on page 3. Read about the landmark Supreme Court Ruling on the protections of gay, lesbian, and transgender workers on page 6. Did you know that July 26 is the 30th anniversary of the ADA? Turn to page 10 for more information. We have a great Ted Talk for you to view about Diversity and Inclusion on page 13. Plus, so much more.

Please stay safe and healthy, and remember that the OSEECO staff is here for support.

Submitted by: Nicole Webb Senior EEO Compliance Officer

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

If an employee was receiving a reasonable accommodation prior to the COVID-19 pandemic, can they request an additional or altered accommodation?

OSEEOC ANSWER:

According to the EEOC, an employee who was already receiving a reasonable accommodation prior to the COVID-19 pandemic may be entitled to an additional or altered accommodation as long as it does not present an undue hardship.

2. QUESTION

Is an employee entitled to an accommodation under the ADA in order to avoid exposing a family member who is at high risk of severe illness from COVID-19?

OSEEOC ANSWER:

According to the EEOC, the ADA does not require that an employer accommodate an employee whose family member or other person with whom he/she is associated has a disability and at high risk for illness due to COVID-19.

3. QUESTION

If an employee entering the worksite requests an alternative method of screening, other than having their temperature taken due to a medical condition, how should management proceed?

OSEEOC ANSWER:

According to the EEOC, this is a request for reasonable accommodation, and a manager should proceed as it would for any other request for accommodation under the ADA. If the requested change is easy to provide and inexpensive, the ADA Coordinator might voluntarily choose to make it available to anyone who asks, without going through an interactive process. Alternatively, if the disability is not obvious or already known, information may be requested to establish that the employee has a disability.

4. QUESTION

When an employee returns to work, does the ADA allow the company to require a doctor's note confirming that they are fit for duty?

OSEEOC ANSWER:

According to the EEOC, the answer is yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

EEOC Unveils New Webpage on Commissioner Charges and Directed Investigations

Agency Explains Important Processes to Fight Discrimination

WASHINGTON – The U.S. Equal Employment Opportunity Commission (EEOC) posted a new document on its website explaining the role and procedures of two key EEOC processes to combat employment discrimination -- Commissioner charges and directed investigations.

Federal law authorizes any Commissioner to file a discrimination charge alleging that an employer violated Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA), after which the charge is investigated by the appropriate EEOC field office. In addition, the Age Discrimination in Employment Act (ADEA) and the Equal Pay Act (EPA) authorize EEOC field offices to initiate investigations of possible violations of those two statutes even without a charge from an aggrieved individual. These processes are in addition to the more common procedure of EEOC field offices receiving discrimination charges from individual employees or job applicants and then evaluating and investigating those charges.

The purpose of the new webpage is to explain exactly how Commissioner charges and directed investigations work for the benefit of employers and potential job discrimination victims alike.

"The EEOC is strongly committed to making our processes fully transparent and useful to the public," said EEOC Chair Janet Dhillon. "Commissioner charges and directed investigations are important tools in the Commission's arsenal to fight employment discrimination, and it is vital that the public knows how we use them."



CDC Center of Disease Control Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2020 (COVID-19)

Businesses and employers can prevent and slow the spread of COVID-19 within the workplace. Employers should respond in a way that takes into account the level of disease transmission in their communities and revise their business response plans as needed. Employers should follow the White House Guidelines for Opening Up America Again, a phased approach based on current levels of transmission and healthcare capacity at the state or local level, as part of resuming business operations. Business operation decisions should be based on both the level of disease transmission in the community and your readiness to protect the safety and health of your employees and customers.

Businesses and employers are encouraged to coordinate with state and local health officials to obtain timely and accurate information to inform appropriate responses. Local conditions will influence the decisions that public health officials make regarding community-level strategies. CDC has guidance for mitigation strategies according to the level of community transmission or impact of COVID-19.

As an employer, if your business operations were interrupted, resuming normal or phased activities presents an opportunity to update your COVID-19 preparedness, response, and control plans. All employers should implement and update as necessary a plan that:

- Is specific to your workplace,
- identifies all areas and job tasks with potential exposures to COVID-19, and
- includes control measures to eliminate or reduce such exposures.

Talk with your employees about planned changes and seek their input. Additionally, collaborate with employees and unions to effectively communicate important COVID-19 information.

See the OSHA COVID-19 guidance for more information on how to protect workers from potential exposures, according to their exposure risk. Plans should consider that employees may be able to spread COVID-19 even if they do not show symptoms.

All employers need to consider how best to decrease the spread of COVID-19 and lower the impact in your workplace.

Access full article at: https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html#more-changes



EEO Spotlight

Supreme Court Says Gay, Transgender Workers Protected by Federal Law Forbidding Discrimination

By Robert Barnes

The Supreme Court ruled [June 15, 2020] that a landmark federal civil rights law from the 1960s protects gay and transgender workers, a watershed ruling for -LGBTQ rights written by one of the court's most conservative justices.

Justice Neil M. Gorsuch and Chief Justice John G. Roberts Jr. joined the court's liberals in the 6-to-3 ruling. They said Title VII of the Civil Rights Act of 1964, which prohibits discrimination "because of sex," includes gay and transgender employees.

The decision was a surprise, and not the only one of the day. Even though the court's conservative majority has been strengthened, it announced Monday that it was turning down a batch of challenges from gun rights groups eager to expand Second Amendment rights. And it rejected the Trump administration's request to review California's attempts to provide sanctuary to undocumented immigrants.

The court's LGBTQ rights ruling is the major decision of the term so far and illustrates the difficulty of predicting how the independent-minded court will rule. Over the next several weeks, the justices will announce the fates of the program extending protection from deportation to undocumented immigrants brought to this country as children, a Louisiana law restricting abortion access, three cases important to religious conservatives, and President Trump's ongoing battle to keep his private financial records from Congress and a New York prosecutor.

Providing additional interest to Monday's decision was its author. Gorsuch, Trump's first choice for the high court, is such a favorite of conservatives that "But, Gorsuch" has become a catchphrase among those who are not enamored of the president but love his judicial choices.

Read full decision at: https://www.washingtonpost.com/context/supreme-court-ruling-on-lgbtq-worker-protections/397f6a41-fa68-420f-bf5e-e80401595ed7/

Read full article at: <a href="https://www.washingtonpost.com/politics/courts-law/supreme-court-says-gay-transgender-workers-are-protected-by-federal-law-forbidding-discrimination-on-the-basis-of-sex/2020/06/15/2211d5a4-655b-11ea-acca-80c22bbee96f_story.html?arc404=true



EEO Spotlight

Resolution of the U.S. Equal Employment Opportunity Commission In Mourning for the Deaths of George Floyd, Breonna Taylor, and Ahmuad Arbery

WHEREAS the U.S. Equal Employment Opportunity Commission (Commission or EEOC) was created by the landmark Civil Rights Act of 1964 in direct response to calls for racial justice at the historic March on Washington for Jobs and Freedom in 1963; and

WHEREAS the 1964 Civil Rights Act, which established the Commission, was passed by overwhelming bipartisan majorities in both chambers of Congress; and

WHEREAS the Commission opened its doors on July 2, 1965, exactly one year after passage of the Civil Rights Act, and immediately received thousands of discrimination charges, including many alleging racial discrimination; and

WHEREAS in 1972, Congress amended the Civil Rights Act to provide the Commission with greater authority to advance equal employment opportunity, including the ability to seek justice in the federal courts for those who suffer employment discrimination; and

WHEREAS the Commission enforces federal laws that protect all employees in the United States against employment discrimination based on race, national origin, color, sex, religion, age, disability, and genetic identity and has worked to promote equality of opportunity in American workplaces; and

WHEREAS equal employment opportunity strengthens our nation and its economy; and

WHEREAS for more than half a century, the Commission's dedicated staff have worked tirelessly to advance justice for all people, and during that time the Commission has worked to lessen the impact that prejudice and institutional racism have in denying opportunities to persons of color; and

WHEREAS throughout its history, the EEOC has uncovered evidence of virulent racial discrimination in employment, including countless instances of African Americans accosted with nooses, racial epithets, threats of violence, harassment, and more subtle forms of discrimination in the work-place; and

WHEREAS Black lives matter:

THEREFORE, BE IT RESOLVED THAT -- the EEOC condemns the violence that has claimed the lives of so many Black persons in America and joins in mourning the senseless deaths of George Floyd, Breonna Taylor, Ahmaud Arbery, and countless others; expresses our heartfelt sympathy to their families; and commits to redouble our efforts to address institutionalized racism, advance justice, and foster equality of opportunity in the workplace.

Signed this 9th day of June, 2020.

View a PDF of the resolution at https://www.eeoc.gov/sites/default/files/2020-06/resolution-6-9-20.pdf.

NOTEWORTY RULINGS

Baltimore County will pay \$5.4 million to Settle Long-Running EEOC Age Discrimination Lawsuit

Court Ruled That County Forced Employees Hired at Older Ages to Pay More for Pensions

BALTIMORE – Baltimore County will pay approximately \$5.4 million to over 2,000 county employees to resolve a federal age discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced.

According to the EEOC's suit, Baltimore County maintains a defined benefit pension plan based in part on employee contributions deducted from each paycheck. Under the county code, employee contribution rates were based on age at entry into the retirement system, with older employees paying higher rates than younger members for the same benefits.

The Age Discrimination in Employment Act (ADEA) prohibits discrimination based on age, including with respect to fringe benefits such as pensions. Two county correctional officers filed discrimination charges with the EEOC. In 2007, the EEOC filed suit (EEOC v. Baltimore County et al., Civil Action No. 1:07-cv-2500-RDB) in U.S. District Court for the District of Maryland, Northern Division, after first attempting to reach a pre-litigation settlement through its conciliation process.

The case progressed for 13 years prior to resolution, and was one of the longest running law-suits on the EEOC's docket. In 2012, the district court granted partial summary judgment for the EEOC, ruling that the county's pension plan was facially discriminatory and not justified by financial considerations, thus violating the ADEA. EEOC v. Balt. Cnty., 2012 WL 5077631 (D. Md. Oct. 17, 2012). In 2014, the Fourth Circuit affirmed and remanded for further proceedings to address the issue of damages. EEOC v. Balt. Cnty., 747 F.2d 267 (4th Cir. 2014). In 2016, the parties resolved EEOC's claims for injunctive relief through a joint order under which the county eliminated age-based contribution rates. In 2016, the district court determined that no monetary relief was appropriate. EEOC v. Balt. Cnty., 202 F. Supp. 3d 499 (D. Md. 2016). However, in 2018, the Fourth Circuit reversed and remanded, holding that "a retro-active monetary award of back pay under the ADEA is mandatory upon a finding of liability." EEOC v. Balt. Cnty., 904 F.3d 330, 333 (4th Cir. 2018). In October 2019, the district court ordered that the EEOC could recover back pay accruing between March 2006 and April 2016, for eligible class members.

Read full article at: https://www.eeoc.gov/newsroom/baltimore-county-will-pay-54-million-settle-long-running-eeoc-age-discrimination-lawsuit



NOTEWORTY RULINGS

HM Solutions to Pay \$315,000 to Settle EEOC Sexual Harassment and Retaliation Lawsuit

Manager and Supervisor Repeatedly Subjected Female Employees to Sexual Comments and Exposed Themselves, Federal Agency Charged

FLORENCE, S.C. – HM Solutions, Inc., a Greenville, S.C.-based company that provides commercial and industrial janitorial services, will pay \$315,000 and provide other relief to settle a sexual harassment and retaliation lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced. The EEOC charged that HM Solutions violated federal law when it subjected four female employees to a sexually hostile work environment, then later fired the women in retaliation for objecting to the harassment.

According to the EEOC's lawsuit, the four women worked for HM Solutions at some point from July 2015 through March 2017. They were assigned to a client's battery recycling facility in Florence, where they performed general housekeeping tasks and cleaned up lead and mercury contamination. The EEOC alleged that at various times during each woman's employment, the women were subjected to sexual harassment by an HM Solutions account manager and a shift supervisor, both male. The EEOC contends that some of the sexually harassing behavior was observed by other supervisors, who took no action to stop the sexual harassment.

The EEOC further charged that the four female employees repeatedly complained about the ongoing sexual harassment, but that the abuse continued. According to the EEOC's suit, the four women were ultimately fired by HM Solutions for not acquiescing to the sexual harassment or in retaliation for complaining about it.

Sexual harassment is a form of sex discrimination, which violates Title VII of the Civil Rights Act of 1964. Title VII also prohibits employers from retaliating against employees who complain about discrimination in the workplace. The EEOC filed its lawsuit (*U.S. Equal Employment Oppor-tunity Commission v. HM Solutions, Inc., Civil Action* No. 4:19-cv-02043-SAL-KDW) in U.S. District Court for the District of South Carolina, Florence Division after first attempting to reach a pre-litigation settlement through its conciliation process.

Read full article at: https://www.eeoc.gov/newsroom/hm-solutions-pay-315000-settle-eeoc-sexual-harassment-and-retaliation-lawsuit

HM Solutions, Inc

ADA CORNER

MDOD Celebrates the ADA 30th Anniversary

On July 26, 1990, President George H.W. Bush signed the Americans with Disabilities Act (ADA) into law. This landmark legislation is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life. This includes areas like employment, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else.

The Maryland Department of Disabilities is counting down to the 30th Anniversary of the ADA signing! Join our social media campaign as we highlight, educate and celebrate the best of the Americans with Disabilities Act. Follow our hashtag #30DaysADA to keep up with each day's posting.



ADA CORNER

FEDEX GROUND TO PAY \$3.3 MILLION TO SETTLE EEOC DISABILITY DISCRIMINATION LAWSUIT

Consent Decree Requires Accommodations for Deaf and Hard-of-Hearing Package
Handlers

PHILADELPHIA – FedEx Ground Package System, Inc. will pay \$3.3 million and provide programmatic relief to resolve a companywide disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced.

The EEOC charged that FedEx Ground denied deaf and hard-of-hearing package handlers reasonable accommodations and that it discriminated against deaf and hard-of-hearing applicants to the package handler position. Package handlers are responsible for loading, unloading, scanning and routing packages at the company's distribution facilities.

Under the Americans with Disabilities Act (ADA), employers must make reasonable accommodations to the known limitations of qualified individuals with disabilities to enable them to perform the essential functions of their jobs and to enjoy equal benefits and privileges of employment.

The EEOC litigated the case, Civil Action No. 15-cv-00256, in U.S. District Court for the Western District of Pennsylvania. Prior to filing suit, the EEOC attempted to reach a pre-litigation settlement through its conciliation process. The agency had conducted a nation-wide systemic investigation after numerous deaf and hard-of-hearing package handlers filed ADA discrimination charges with EEOC offices throughout the country.

The two-year consent decree settling the suit identifies 229 individuals who may receive payment as part of the settlement. It also requires FedEx Ground to provide deaf and hard-of-hearing package handlers with access to live and video remote American Sign Language interpreting, captioned videos, and scanning equipment with non-audible cues such as vibration.

Pursuant to the decree, FedEx Ground will also take steps to protect the safety of deaf and hard-of-hearing package handlers. Going forward, the company will ensure that all taggers, forklifts and similar motorized equipment have visual warning lights, and it will provide personal notification devices to alert deaf package handlers of an emergency. FedEx Ground will also train managers and human resources representatives on ADA compliance and create written resources to assist them in identifying and providing accommodations for deaf and hard-of-hearing package handlers. A FedEx Ground vice president will oversee the company's implementation of the consent decree and reporting to the EEOC.

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



ADA CORNER

Despite Short Duration of Limitation, Truck Driver Fired After Infection Following Lung Surgery Revives as Regarded-Claim

By Kathleen Kapusta, J.D.

The issue of whether an impairment is "minor" is a separate and distinct inquiry from whether it is "transitory," the appeals court explained.

The court below erred in failing to consider whether a truck driver's impairment was *minor*—he had missed nine-and-a-half weeks of work in a 15-week period due to a lung biopsy and respiratory infection—separately from whether it was *transitory*, the Third Circuit ruled, reversing the dismissal of his ADA regarded-as claim. "Because even minimally invasive lung surgery is still thoracic surgery, more than likely requiring inpatient care, it is plausible that [the employee's] lung surgery was "non-minor," the appeals court reasoned, finding that at the pleading stage, he plausibly pleaded a non-minor perceived impairment (*Eshleman v. Patrick Industries, Inc.*, May 29, 2020, McKee, T.).

A little over two years after he started working for Patrick Industries, the employee took medical leave to have a nodule surgically removed from his lung and tested for cancer. Two months later, he returned to work without any restrictions. Six weeks after that, however, he took two vacation days due to a severe respiratory infection that lasted five days. At the end of his shift on his second day back, he was fired.

Shifting explanations. He was originally told it was due to performance issues but after he reminded the superintendent that his most recent performance review had been excellent, the superintendent claimed he was fired because he had not called out sick during his recent leave. The employee later learned that his employer claimed he had been fired for behavioral issues.

Lower court proceedings. The employee then sued, alleging the company regarded him as disabled and the shifting reasons for his termination were pretext for disability discrimination. Although the district court found he pleaded a plausible regarded-as claim, it nonetheless dismissed his complaint because his alleged impairment, which lasted less than six months, was objectively transitory and minor.

Transitory and minor. On appeal, the employee conceded that his actual impairments—lung surgery to remove a nodule and test it for cancer and a severe upper respiratory infection—were transitory. He argued, however, that the district court erred when it failed to separately evaluate whether his impairment was minor. The ADA, observed the court, excludes impairments that are transitory and minor from regarded-as claims. While it defines "transitory" as "an impairment with an actual or expected duration of 6 months or less," it does not define "minor." The ADA regulations, however, require an employer to establish that the perceived impairment is objectively *both* transitory and minor.

Read 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/

DIVERSITY AND INCLUSION TED TALK

Color Blind or Color Brave?



Mellody Hobson born in raised in Chicago Illinois, a graduate from Princeton worked to become the Co-CEO of Ariel Investments, one of the largest African-American owned money management and mutual fund companies in the United States. She serves on numerous boards for companies such as Starbucks; JPMorgan Chase; DreamWorks Animation; and serves her community by serving as a board member for various Chicago after schools summer programs. Hobson was recognized in 2015, Time Magazine named her one the "100 Most Influential People" in the world.

In this 14 minute TED Talk Hudson addresses the difficult conversation on race and described the topic as very "touchy" and "conversational third rail", but necessary. Hobson makes an argument that open discussion on race, particularly about diversity in hiring will improve businesses and society. Click the link below to watch the full video.

https://www.youtube.com/watch?v=oKtALHe3Y9Q



Meetings & Trainings

Simply the ADA Workshop Series Hosted by: The ARC Northern Virginia

Location: Webinar

Access: https://thearcofnova.org/programs/info-referral/ada-workshop-series/

The ADA and workplace considerations for COVID-19!

Hosted by: EARN

Date: Available now (Archived)

Location: Webinar

Registration: https://askearn.org/training-center/webinars/the-ada-at-work-considerations-for-

covid-19/

Essential and Functional: The Importance of Essential Job Functions for Disability Law Compli-

ance and Inclusion

Hosted by: Federal Law Employment Training Group

Date: Available now (archived)

Location: Webinar

Registration:https://www.adainfo.org/training/essential-functional

Navigating Managing Multiple Generations in the Workforce

Hosted by: Paychex

Date: Available now (archived)

Location: Webinar

Registration: https://www.hr.com/en/webcasts_events/webcasts/upcoming_webcasts/managing-multiple-

generations-in-the-workforce k8ogvy00.html

Change Management: Managing and Accepting Change in the Midst of Chaos

Hosted by: hr.com Date: July 28, 2020 Time: 1:00 p.m. ET

Webinar

Registration: https://www.hr.com/en/webcasts events/webcasts/upcoming webcasts/change-management-

managing-and-accepting-change-in_kazt32fg.html

Public Sector EEO and Employment Law Update— Live Webinar

Hosted by: National Employment Law Institute

Date: August 26—28, 2020

Registration: https://www.neli.org/programs2.asp?programid=69

Annual Mid-Atlantic ADA Conference

When: Sept. 9, 2020 @ 1:00 p.m. ET to Sept. 11, 2020 @ 5:00 p.m. ET

Where: Hilton Alexandria Mark Center, Alexandria, Virginia For more information visit: https://www.adainfo.org/Content/ADAcon

2020 DIVERSITY CALENDAR

July 2020

7/1	Canada Day
7/4	Independence Day
7/18	Nelson Mandela International Day
7/26	Disability Independence Day
7/30	International Day of Friendship

August 2020

8/26 Women's Equality Day

September 2020

Hispanic and German Heritage Month is observed from September 15 to October 15

National Guide Dog Month

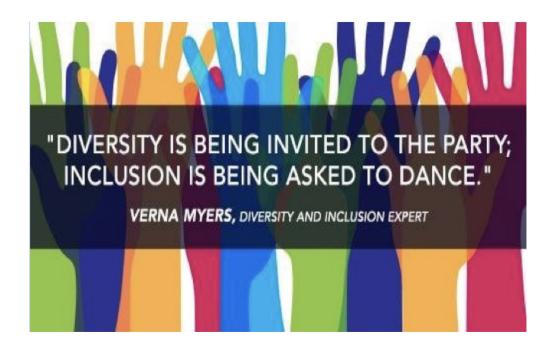
9/7 Labor Day

9/16 Mexico Independence Day

9/18-20 Rosh Hashanah

9/21 International Day of Peace

9/25 Little Rock Central High School Integration



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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