Department of Budget and Management
Office of the Statewide Equal Employment

February 2014

Issue 1

EEO Connection

Inside this issue:

Coordinator's Message

February holds a special meaning-a time to celebrate and honor the lives and achievements of many who have helped to build our Country, those who came before us and those who are still with us- Presidents' Day and Black History Month.

Two of America's most prominent presidents were born in February, George Washington and Abraham Lincoln. Presidents Day was initially marked to honor our first United States president, George Washington. On February 21, 1971, President Richard Nixon issued a proclamation declaring the third Monday in February to be a "holiday set aside to honor **all** presidents." In 1863, President Lincoln issued the Emancipation Proclamation, which freed slaves in ten States.

On February 4, 2013, President Barrack Obama honored Rosa Parks on her one-hundredth birthday with a presidential proclamation for her contributions to the Civil Rights Movement and leading the charge to desegregate the public transportation systems across the country in 1955. The Black History Month theme of 2014 is "Civil Rights in America", which marks the 50th anniversary of the 1964 Civil Rights Act.

Let us pledge not only to honor the legacy of Rosa Parks, George Washington and Abraham Lincoln, but all of the men and women who have contributed to advancing our journey towards equality, justice and fairness for all.

In this issue, we bring you part two of a three part series on the creation of the Equal Employment Opportunity Commission (page 4). Learn practical tips for attracting good employees and improving the morale in your workplace by complying with the ADA (page 7). Effective January 1, 2014, the State of Maryland launched its statewide Visual Communication Services contract to provide sign language interpreters and computer-assisted real time transcription to its staff and constituents (page 9). Also read about why a beverage distributing company paid about $200K to a sight-impaired employee in the Noteworthy ruling Section (page 2). Other interesting reads are included in this edition. Simply turn the page…

Enjoy!

Glynis Watford
Statewide EEO Coordinator

NOTEWORTHY RULING

Beverage Distributors Ordered to Pay About $200K and Hire Sight-Impaired Employee in EEOC Disability Discrimination Suit

In a disability lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC), a federal court in Denver has ordered Beverage Distributors Company (BDC) in Colorado to pay around $200,000 and hire an employee to a position he had been denied because of his impaired eyesight.

According to the EEOC's suit, Mike Sungaila, who is legally blind, worked for BDC for over four years as a driver's helper. When the company decided to eliminate his position and instead use contract laborers, Sungaila applied for a position as a night warehouse loader. BDC offered Sungaila the position subject to a pre-employment medical examination. Following the medical examination, BDC withdrew the job offer, believing that Sungaila could not safely perform the functions of the position due to his poor eyesight. The position involves loading cases of liquor and kegs of beer into the back of trucks. The EEOC, contending that Sungaila could safely perform the job, filed suit in U.S. District Court for the District of Colorado after first attempting to reach a pre-litigation settlement through its conciliation process. *EEOC v. Beverage Distributors Company, LLC*, 11-cv-02557-CMA-CBS.

Following a four-day trial in April, the jury agreed with the EEOC that BDC intentionally violated the Americans with Disabilities Act (ADA) when it withdrew its job offer to Sungaila because of his impaired eyesight. The jury initially awarded Sungaila $132,347 in back pay, but found that his damages should be reduced by $102,803 because the jury believed that Sungaila could have mitigated his damages by finding a comparable position. U.S. District Judge Christine Arguello vacated the jury's finding that Sungaila could have mitigated his damages, finding that BDC failed to prove there were any available comparable jobs that Sungaila could have performed, and ordered BDC to pay Sungaila his entire back pay.

Moreover, BDC must pay interest on the award, which will increase the award to approximately $200,000, and must compensate Sungaila for any tax consequence he will suffer due to being paid this judgment in one year.

In addition, the court ordered BDC to hire Sungaila as a night warehouse loader with the same seniority that he would have had BDC not withdrawn the job offer due to his eyesight. Sungaila must be offered this position within the next six months and will be paid the same salary as other employees who have been employed in the position for five years, which is approximately $23 per hour.

The court also found that "the testimony of Beverage Distributors managers and human resources professionals demonstrated a lack of sufficient knowledge about the ADA, its interactive process, and the requirement that reasonable accommodations be provided to employees." The judge also stated that BDC's employee handbook was insufficient to explain to employees how they can request accommodations and contained an incorrect statement of its obligations under the law. Therefore, the court ordered that BDC must engage an outside consultant to provide employee training and assistance in revisions to BDC's policies, job postings, notice posting, and reporting and compliance review. BDC must report to the court within six months that it has complied with the judge's order.

"The Commission is always willing to resolve cases informally," said EEOC General Counsel P. David Lopez. "As we have demonstrated consistently nationwide, when necessary, we will try the case and secure both monetary relief for the victim and, importantly, non-monetary relief to ensure the company modifies it practices so that the discrimination does not recur. The Commission has prevailed in 10 of its past 11 jury trials."

"Employers must provide accommodations for qualified individuals with disabilities and must base all employment-related decisions on facts, not stereotypical assumptions about an employee's abilities," said EEOC Regional Attorney Mary Jo O'Neill. "We believe this order will ensure that going forward, individuals with disabilities will no longer be discriminated against by Beverage Distributors. Further, this decision will send a message to all employers that it does not pay to discriminate."

EEOC Denver Field Office Director Nancy Sienko added, "We are excited that Mr. Sungaila will finally be fully compensated for the harm that he suffered due to discrimination by his former employer."

www.eeoc.gov

NOTEWORTHY RULING

Founders Pavilion Will Pay $370,000 to Settle EEOC Genetic Information Discrimination Lawsuit

Founders Pavilion, Inc., a former Corning, N.Y. nursing and rehabilitation center, will pay $370,000 to settle a discrimination lawsuit filed by the U.S Equal Employment Opportunity Commission (EEOC).

The EEOC charged that Founders Pavilion requested family medical history as part of its post-offer, pre-employment medical exams of applicants. The Genetic Information Nondiscrimination Act (GINA), passed by Congress in 2008 and enforced by the EEOC, prevents employers from requesting genetic information or making employment decisions based on genetic information.

The EEOC also alleged that Founders Pavilion fired two employees because they were perceived to be disabled, in violation of the Americans with Disabilities Act (ADA). According to the suit, Founders Pavilion also refused to hire or fired three women because they were pregnant, in violation of the Title VII of the Civil Rights Act of 1964 (Title VII).

The EEOC filed suit in the U.S. District Court for the Western District of N.Y. (*EEOC v. Founders Pavilion, Inc.*, 13-CV-01438), after first attempting to reach a pre-litigation settlement through its conciliation process.

As part of a five-year consent decree resolving the suit, Founders Pavilion will provide a fund of $110,400 for distribution to the 138 individuals who were asked for their genetic information. Founders Pavilion will also pay $259,600 to the five individuals who the EEOC alleged were fired or denied hire in violation of the ADA or Title VII.

After the lawsuit was filed, Founders Pavilion sold its Corning, N.Y. nursing facility to Pavilion Operations, LLC d/b/a Corning Center for Rehabilitation and Healthcare and ceased operating any business. If Founders Pavilion resumes conducting business, the consent decree requires Founders Pavilion to post notices and send a memo to employees regarding the lawsuit and consent decree. They will also adopt a new anti-discrimination policy that will be distributed to all employees, provide antidiscrimination training to all employees and provide periodic reports to the EEOC regarding any internal complaints of discrimination.

Pavilion Operations, the buyer of the Corning, N.Y. nursing facility, agreed as a non-party signatory to the consent decree. They will revise their antidiscrimination policies and will include specific references to genetic information discrimination, disability discrimination, and pregnancy discrimination laws and will include a complaint and investigation procedure for employee complaints of discrimination. Pavilion Operations will also provide antidiscrimination training to all of its employees.

"This is our third lawsuit since the enactment of the GINA law and the first one that is systemic," said David Lopez, EEOC General Counsel. "Employers need to be aware that GINA prohibits requesting family medical history. When illegal questions are required as part of the hiring process, the EEOC will be vigilant in ensuring that no one is denied employment opportunities on a prohibited basis."

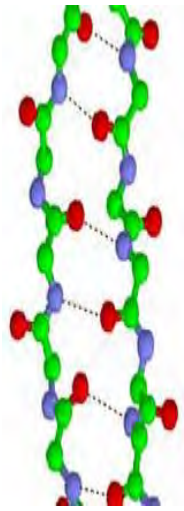
"Employers should take heed of this settlement because there are real consequences to asking applicants or employee for their family medical history," said EEOC New York District Director Kevin Berry. "The EEOC will pursue these cases to the fullest extent of the law to ensure that such genetic inquiries are never made of applicants or employees."

EEOC Trial Attorney Konrad Batog said, "We are pleased that Founders Pavilion worked with us to resolve this lawsuit and that Pavilion Operations signed onto the consent decree, agreeing to provide its employees antidiscrimination training and revise its antidiscrimination policies. The resolution of this lawsuit should serve as a message and educate employers about genetic information discrimination and help ensure compliance with the laws that the EEOC enforces."

Addressing emerging and developing issues in equal employment law, which includes genetic discrimination, is one of the six national priorities identified by the EEOC's Strategic Enforcement Plan (SEP).

The EEOC enforces federal laws prohibiting employment discrimination.

Further information about the EEOC is available on its web site at www.eeoc.gov.



1965 - 1971: A "Toothless Tiger" Helps Shape the Law and Educate the Public

Part Two of Three

Introduction

EEOC began operations officially July 2, 1965 one year after the passage of the Civil Rights Act of 1964. Its chairman and four commissioners had been confirmed by the Senate only one month before. A small staff of about 100, detailed mostly from other federal agencies, was confronted on opening day with an instant backlog of nearly 1,000 complaints, called "charges" in the parlance of the new law. Most of the charges had been forwarded by the National Association for the Advancement of Colored People Legal Defense Fund, which had worked with a coalition of civil rights groups for passage of the new law. New charges of employment discrimination filed with EEOC mounted rapidly. Although it had been estimated that 2,000 charges of discrimination would be filed in the first year, 8,852 charges were filed.

While the Commission attempted to process and respond to these charges, it also was struggling to hire more staff and develop basic procedures to process the charges. Moreover, in these early years, EEOC was forced to confront the many substantive and procedural issues raised by the new law. A young EEOC attorney remembers the first year as "hectic, exhilarating and exhausting. Before we could even think of trying to conciliate charges of discrimination, we had to devise a filing system, determine which complaints appeared to be valid charges . . ., what further information was needed for a determination . . ., which charges should be investigated, by whom and in what manner."

Because of its lack of enforcement powers, most civil rights groups viewed the Commission as a "toothless tiger." Nevertheless, EEOC made significant contributions to equal employment opportunity between 1965 and 1971 by using the powers it had to help define discrimination in the workplace. Indeed, in these early years, EEOC developed the basic procedural and substantive parameters of equal employment opportunity (EEO) law within a broad Congressional framework. By documenting the nature and extent of employers' discriminatory practices, EEOC helped to identify some of the most egregious employment practices. Through conciliations and by assisting private litigants in federal court through its robust amicus curiae program (in which EEOC filed "friend of the court" briefs interpreting the law), EEOC obtained redress for thousands of individual workers who had been victims of discrimination.

Shaping Employment Discrimination Law

The Commission's most significant early interpretations concerned the basic definition of discrimination, not provided in the statutory language of Title VII. Other key legal issues addressed by the Commission included pronouncements on how to prove discrimination; what remedies were available under the law; and how to reconcile the seniority rights of current "innocent" employees with the rights of victims who, but for an employer's discrimination, would have greater seniority. Some of EEOC's contributions to the development of the law are discussed below.

Religious Discrimination and National Origin Discrimination

From its earliest days, employment discrimination law developed through EEOC's decisions, policy guidances, and amicus briefs. While the majority of EEOC's decisions during the 1960s involved race discrimination, the general principles in the decisions applied with equal force to all of the bases covered by Title VII. Nevertheless, some early Commission policy issuances focused exclusively on particular bases, such as religion or national origin, attempting to establish the legal parameters for Title VII's interpretation. For example, EEOC issued Guidelines on Religious Discrimination in 1966 which required employers to make reasonable accommodation for the religious practices of employees and job applicants where such accommodation could be made without an undue hardship on the business. The Guidelines placed the burden of proving undue hardship on the employer.

In 1970, EEOC issued Guidelines on National Origin Discrimination. There the Commission stated that Title VII's protection extended beyond obvious, identifiable national origin characteristics to characteristics that have a disparate impact on national origin minorities, such as language requirements and height and weight standards, and to stereotypical characteristics such as a foreign sounding surname. Relatively few national origin charges were filed in the early years, but the Commission took pains to insure that the message was sent that all aspects of Title VII would be vigorously enforced.

The Disparate Impact Theory of Discrimination

The majority of charges filed during EEOC's early years of operation involved claims of race discrimination against black workers and applicants in hiring and promotion, in selection and testing practices, and by the maintenance of segregated seniority lines by employers. In reviewing these charges, the Commission declared that discrimination did not merely take place through intentional acts of overt discrimination against individuals the generally accepted "disparate treatment" definition of discrimination. Rather, the Commission held that discrimination also occurred when neutral policies or practices had a disproportionate, adverse impact on any protected class, usually minorities or women. Consequently, EEOC focused early on broad employment systems that operated as barriers to equal employment opportunities. The Commission utilized statistics to demonstrate the disparate impact of facially neutral hiring and employment systems.

In 1966, EEOC issued Guidelines on Employment Testing Procedures. This was the first public articulation of the principle that Title VII prohibited neutral policies and practices that adversely affected members of protected groups and could not be justified by business necessity.

SPOT LIGHT—cont'd

1965 - 1971: A "Toothless Tiger" Helps Shape the Law and Educate the Public

Part Two of Three

Revisions to the Guidelines in 1970 further defined the types of proof necessary to validate any screening test under Title VII to assure that systems and tests accurately predict job performance or relate to actual skills required by the jobs.

The disparate impact theory of discrimination reflected in Commission decisions and in amicus briefs was adopted by some lower courts. For example, an early Commission decision concluded that a sixth grade education requirement for a labor position was discriminatory because it had a disproportionate impact on black workers and was not shown to be necessary to do the job. Ultimately, the Supreme Court adopted the Commission's position in the landmark decision, Griggs v. Duke Power Co. (1971), in which EEOC submitted an amicus brief. In that case, the Court invalidated an employer's requirement that applicants have a high school diploma and/or pass aptitude tests for hire and transfer into more desirable departments where prior to the enactment of Title VII the company had restricted blacks to labor positions. Specifically, the Court stated:

The Act proscribes not only overt discrimination, but also practices that are fair in form but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude [blacks] cannot be shown to be related to job performance, the practice is prohibited . . . Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation.

This basic definition of discrimination, further elaborated in later court decisions, paved the way for EEOC to challenge many seemingly neutral employment practices that operated to restrict the advancement of minorities and women.

Sex Discrimination

EEOC had expected to receive very few charges of sex discrimination in its early years. It had assumed that the vast majority of charges would allege race discrimination because Title VII had been debated and passed in a racially-tense environment and most of the Congressional and media attention had focused on the problem of race discrimination. It was a surprise to find that fully one third of the charges (33.5 percent) filed in the first year alleged sex discrimination. After all, the prohibition against sex discrimination had been added as a last minute amendment by Congressman Howard Smith of Virginia who opposed the civil rights legislation and thought that Congress would reject a bill that mandated equal rights for women.

Indeed, most supporters of Title VII initially opposed the Smith amendment because they, too, thought that it would doom the legislation. The amendment stayed in because female members of Congress argued that there was a need to protect equal job opportunities for women. Congresswoman Katherine St. George of New York argued that she could think of "nothing more logical than this amendment" and that while women did not need any special privileges "because we outlast you, we outlive you, . . . we are entitled to this little crumb of equality." The need for this "little crumb of equality" was dramatically illustrated by the unexpectedly large number of sex discrimination charges filed in that first year.

To address the unexpectedly large number of sex discrimination charges that it received, the Commission developed early policy guidance shaping a new law of sex discrimination. The agency first issued Guidelines on Sex Discrimination in 1965, which were further expanded in 1966, 1968, and 1972. Through its Guidelines, Commission decisions and amicus briefs, EEOC authored many sex discrimination precedents. For example, EEOC took on the matter of statutory construction. EEOC declared that the Title VII provision permitting sex discrimination if gender was a so-called bona fide occupational qualification (BFOQ) for the job should be narrowly construed. The Commission's Guidelines stated that a BFOQ could not be established on the basis of assumptions or stereotyped views of the sexes; nor could it be based on preferences of clients, customers or co-workers. EEOC also stated through the Guidelines that it was a violation of Title VII to classify jobs as male or female, or light or heavy, or to maintain separate seniority lists. In addition, EEOC made clear that it was illegal sex discrimination to refuse to hire or promote women because they were married or had children, unless men were similarly treated. As with the disparate impact theory, the Supreme Court endorsed this last interpretation, among others, when it held in Phillips v. Martin Marietta Corp. (1971) that employers could not have hiring policies for women with young children that were different from those for men with children of a similar age.

www.eeoc.gov/eeoc/history

Percentage of EEOC Systemic Cases Hits New High

For years, the Equal Employment Opportunity Commission (EEOC) has put a laser focus on increasing the percentage of cases it brings as systemic law enforcement. In statistics unveiled Dec. 17, 2013, the agency showed that the percentage has reached a new high—23 percent of its active docket.

Litigation of systemic discrimination cases bore fruit in the past fiscal year, which ended Sept. 30, 2013, particularly in cases involving barriers to recruitment and hiring, discriminatory policies that affect vulnerable workers, discriminatory pay practices, retaliatory practices and policies, and systemic harassment.

Technological Improvements

Part of the rise in systemic cases is due to the commission's expanded use of technology that makes it easier to identify systemic violations and manage systemic investigations and litigation.

In 2013 the EEOC rolled out its systemic watch list, software that helps coordinate the investigation of multiple charges involving similar issues that are filed against the same employer. When a new charge is filed that matches another ongoing investigation or lawsuit, the program issues an automatic alert to staff working on the case, spurring collaboration among EEOC field offices and avoiding duplication of efforts.

In its *2013 Performance and Accountability Report*, the EEOC also explained that it has expanded its CaseWorks system, which provides a central shared source of litigation support tools that make the collection and review of electronic evidence easier and enable collaboration in developing cases for litigation.

Big Recoveries

The agency listed some of its largest awards and settlements in systemic litigation in 2013, noting the following:

- In *EEOC v. Burger King/ Carrolls Corp.*, the agency negotiated a consent decree providing $2.5 million to 89 women and injunctive relief after 15 years of litigation. The EEOC alleged that a Burger King franchise with restaurants in 13 states subjected female employees, many of them teens, to sexual harassment, discriminatory working conditions and retaliatory terminations for their harassment complaints.

- In *EEOC v. Mesa Systems*, the commission obtained the largest national-origin-discrimination resolution ever in Utah. A manufacturer of communication and power-transfer devices in Utah subjected Hispanic and Asian/Pacific Islander warehouse workers to an unlawfully restrictive language policy and a hostile work environment that included racist name-calling and slurs. The EEOC secured a consent decree by which Mesa Systems provided $450,000 to 18 employees, rescinded its English-only policy, changed its harassment policy and sent apology letters to all claimants.

- In *EEOC v. Interstate Distributor Company*, the EEOC alleged that the Colorado trucking company had an unlawful maximum-leave policy and a 100 percent-restriction-free return-to-work policy that denied reasonable accommodations to employees with disabilities. A consent decree provided $4.9 million to 427 claimants.

- In *EEOC v. Presrite*, the commission claimed that the Ohio metal-forging company refused to hire a class of women for entry-level laborer and operative jobs based on their sex and didn't keep employment applications. Under a consent decree, a $700,000 settlement fund was established for at least 40 women and priority consideration for jobs given to them.

- In *EEOC v. Dillard's*, the EEOC said a department store's policy requiring employees to disclose personal medical information or face discipline violated the Americans with Disabilities Act. Through a consent decree, Dillard's provided $2 million to more than 6,000 employees harmed by the policy and hired a consultant to review and monitor company policies, management training and the creation of a new complaint tracking system.

"The EEOC obtained a record $372.1 million in monetary relief for victims of private-sector workplace discrimination in fiscal year 2013," the agency noted in a release. "This is $6.7 million more than was recovered last year and the highest level obtained in the commission's history."

Allen Smith, J.D., is the manager of workplace content for SHRM.

ADA CORNER

Five Practical Tips For Providing And Maintaining Effective Job Accommodations

Why Provide Job Accommodations?

Attract Good Employees Retain Experienced Workforce Comply with the ADA

There are many reasons for employers to provide job accommodations for all employees. In times of labor shortages, employers can attract good employees by offering accommodations such as flexible scheduling, work at home opportunities, job sharing, and ergonomic workstations. Also, providing such accommodations can help employers retain an experienced workforce by improving the overall morale of the workplace. And finally, providing job accommodations allows employers to meet their legal obligations under Title I of the Americans with Disabilities Act (ADA) and similar state laws.

A recent study conducted by JAN not only confirms the benefits of providing accommodations, but also shows that providing accommodations is not costly. More than half the employers surveyed reported that there was no cost for providing an accommodation and the rest of the employers surveyed reported a typical cost of $500. For additional information on the benefits and costs of accommodation view JAN's Workplace Accommodations: Low Cost, High Impact at http://askjan.org/media/LowCostHighImpact.doc

Although there are many benefits that result from providing job accommodations, some employers are not sure how to do so. The following information provides some helpful tips for employers who want to improve their ability to provide and maintain effective job accommodations.

Develop Written Policies and Procedures

Why?

- **Awareness**
- **Consistency**
- **Documentation**

Employers should consider developing written accommodation policies and procedures. Written policies and procedures can help make sure that all employees are aware of the policies and procedures, help insure consistency when processing accommodation requests, and help document employers' efforts to provide effective accommodations.

Some things to consider when developing written policies and procedures include:

Try to Keep Them Flexible and Simple

If the goal is to make it easier to provide effective job accommodations, policies and procedures that are overly rigid, technical, or complicated are not very useful. Employers should try to develop flexible policies and simple procedures when possible.

Be Sure to Appoint a Responsible Person or Persons

Often times employees request accommodations but no one acts on the request – it gets passed around from one person to another with no one taking responsibility. Employers should decide who will be responsible for implementing and overseeing accommodation policies and procedures. It can be one responsible person, a team, or even individual supervisors or managers – the right approach may vary from workplace to workplace, but the important thing is to make someone responsible.

Inform Everyone

Policies and procedures will not be effective unless everyone knows about them. Employers should make sure to inform all employees, including supervisors, managers, and staff, about them.

Resources:

For employers who want to develop written accommodation policies and procedures, the Equal Employment Opportunity Commission (EEOC), the federal agency that enforces the ADA, provides some useful publications, including:

Establishing Procedures to Facilitate the Provision of Reasonable Accommodation at http://www.eeoc.gov policy/docs accommodation_procedures.html

EEOC's Internal Accommodation Procedures at http://www.eeoc.gov/policy/docs accommodation_procedures_eeoc.html

Practical Advice for Drafting and Implementing Reasonable Accommodation Procedures at http://www.eeoc.gov/federal implementing_accommodation.html

Additional information can be obtained from JAN's Employers' Practical Guide to Reasonable Accommodation Under the Americans with Disabilities Act (ADA) at http://askjan.org/Erguide/index.htm

Train All Managers and Supervisors How to Recognize and Respond to an Accommodation Request

Why?

ADA Compliance Effective Use of New Policies and Procedures

No matter who will actually be responsible for processing accommodation requests, all managers and supervisors need to know how to recognize a request, especially from an employee who might be protected by the ADA. One of the main reasons employees file complaints under the ADA is that the employer did not respond to an accommodation request. The problem is often that a supervisor or manager did not recognize the request. Employers also need to let managers and supervisors know what to do once a request is received to make sure the request is processed.

In addition to complying with the ADA, employers who want to benefit from providing accommodations for all employees and who go to all the trouble of developing policies and procedures, will want to make sure the policies and procedures are used effectively. Training everyone how to recognize and respond to a request will help accomplish this.

ADA CORNER—cont'd

FIVE PRACTICAL TIPS FOR PROVIDING AND MAINTAINING EFFECTIVE JOB ACCOMMODATIONS—(CONT'D)

How?

So, how can supervisors or managers be trained to recognize and respond to accommodation requests? When requesting an accommodation, employees only need to use plain English and do not have to mention the ADA or use legal terminology such as the phrase "reasonable accommodation." In general, all an employee needs to say is that she needs "an adjustment or change at work for a reason related to a medical condition." So, any time an employee indicates that a medical condition is causing a problem, a supervisor or manager should treat it as an accommodation request until a definite determination is made. If there is any doubt about whether a request was made, managers and supervisors should consult with the person or persons responsible for accommodations.

In addition to recognizing a request for accommodation, employers should make sure that all managers and supervisors know the policies and procedures for how accommodation requests will be processed. If the employer appointed a responsible person, that person should be notified immediately. If managers and supervisors are responsible for processing accommodation requests, they should be trained how.

Employers should also remember that if some accommodations are available to all employees as a matter of policy, employees with disabilities should not have to jump through unnecessary hoops to get those accommodations, even if needed because of a disability.

Whatever policies and procedures are in place, employers should always respond quickly to an accommodation request and keep employees informed about the status of their requests.

Have a Process for Determining Effective Accommodations

Where to Begin?

- **Employee**
- **Employee's Medical Provider**
- **Other Resources**

Employers may have difficulty figuring out how to determine effective accommodation options for employees with disabilities. One of the best places to start the process is with the employee who requested the accommodation. Often the employee knows what is needed and can suggest effective options.

If the employee does not know what accommodation is needed or if the employer wants to explore other options, another good resource is the employee's medical provider. With the employee's permission, the medical provider may be able to provide useful information about the employee's limitations and effective accommodation options.

If neither the employee nor the employee's medical provider can suggest effective accommodations, employers can contact outside resources such as JAN.

Monitor and Update Accommodations

Do Not Forget To:

- **Monitor the Effectiveness of the Accommodation**
- **Update Periodically if Needed**
- **Keep the Lines of Communication Open**
- **Document Efforts**

Once you have successfully determined and implemented an accommodation, some accommodations may need to be monitored and periodically updated. For example, if the accommodation involved equipment, the equipment may need periodic maintenance. If the accommodation involved software that interfaces with an existing system, the software may need to be updated as the overall system is updated. If the accommodation involved a new method of doing things, the method may need to be modified as the workplace changes.

One of the best ways to monitor accommodations is to keep the lines of communication open with employees. Communication is important throughout the accommodation process, including the monitoring stage. Employees need to know that they can revisit an accommodation if needed before performance problems result.

Finally, employers may want to document their accommodation efforts. Documentation can be useful for new supervisors or managers or in case a dispute arises between the employer and an employee. Keep in mind that all documentation that contains medical information must be maintained in a confidential manner.

Train New Employees

Remember To:

- **Train New Managers and Supervisors**
- **Train New Employees**

Sometimes a new manager or supervisor decides to change the way things are done. If they do not know about accommodations that are in place, they may make changes that negatively affect these accommodations. While it is okay for a new manager or supervisor to make changes, if an accommodation for an employee with a disability is affected, a new accommodation may be necessary. New managers and supervisors need to be trained on the policies and procedures for job accommodations before a problem occurs.

In addition, employers need to remember to train new staff. Training new employees helps insure that accommodation policies and procedures will continue to be effective.

Job Accommodation Network (JAN)

For more information visit http://askjan.org/

The State of Maryland has a Statewide Reasonable Accommodation Policy and Procedure. Each agency has an ADA Coordinator to handle ADA and Reasonable Accommodation (RA) requests. The ADA Coordinator is responsible for:

- Implementing and overseeing policies and procedures;
- Processing RA requests;
- Training staff, managers and supervisors on ADA and RA policies and procedures;
- Posting policies and procedures; and
- Keeping records.

ADA CORNER—cont'd

LAUNCH OF STATEWIDE VISUAL COMMUNICATION SERVICES CONTRACT

Effective January 1, 2014, the State of Maryland launched its statewide Visual Communication Services (VCS) contract to provide sign language interpreters and computer-assisted real time transcription (CART) to its staff and constituents. Last year, the Maryland Department of Budget and Management (DBM) issued a Request for Proposals (RFP) to providers of sign language interpreters and CART services. The RFP process is now complete and the list of regional/statewide awardees has been posted on the DBM website. The awarded contracts will be for three years with options for two one-year renewals. The VCS contract includes four services: on-site sign language interpreters, remote sign language interpreters (VRI), on-site CART, and remote CART.

"It is significant that the State recognizes the importance of meeting the communication needs of all its residents, including those who are deaf, hard of hearing, and deafblind," ODHH Executive Director Lisa Kornberg said. "Creating a statewide contract provides a vehicle to ensure State agencies can address these critically needed services."

Aside from being available for use by all State of Maryland agencies, the VCS contract may also be used by Maryland local governments, many not-for-profit organizations, and some governments outside of Maryland. While the contract is not mandatory, the use of services through the VCS contract will offer both cost savings and improved quality. All of the vendors are required to use interpreters and transcribers who are licensed and/or certified either locally or nationally. It is the hope of the Department that this new contract will make it easier for State personnel and others to request and provide the appropriate accommodation. Those looking to obtain services through the VCS contract may do so starting now for assignments occurring after January 1, 2014 at:

http://www.dbm.maryland.gov/contractors/swcontracts/Pages/VCSContractHome.aspx

EMPLOYEE COMPLAINT ASSISTANCE PROGRAM UPDATE

The Employee Complaint Assistance Program (ECAP) is up and running. A group of volunteer EEO Investigators have been trained on the task of conducting investigations for sister agencies when a need arises, given that the requesting agency meets certain criteria. Visit the OSEEOC website at http://dbm.maryland.gov/eeo/Pages/EEOFairPracCorner.aspx to download more information about the program. Should you have any questions, please contact Carolyn Brown at (410) 767-4761, or email carolyn.brown@maryland.gov.

EEO CASE REVIEW

Whitaker v. Secretary of Veterans Affairs, EEOC App. No. 0120123492 (2013)

Issue:

Whether the Agency's final decision, that it did not breach the terms of a settlement agreement entered into with Complainant, was valid?

Facts:

During the period that gave rise to the complaint, the Complainant worked as an Insurance Verification Manager at a Kansas facility. The Complainant alleged that she had been subjected to ongoing harassment/hostile work environment on the basis of her race (African American) and sex (female).

Prior to filing her formal complaint, the Complainant agreed to participate in a mediation program sponsored by the Agency. Following the June 2012 mediation, the Complainant and the Agency reached a settlement agreement. The signed settlement agreement provided that she would withdraw all pending EEO complaints. The settlement enumerated a list of terms binding the Agency.

In July of 2012, the Complainant filed a formal EEO complaint alleging that she had been subjected to ongoing harassment/hostile work environment on the basis of her race (African American), sex (female), and/or retaliation for prior EEO activity.

In August 2012, the Agency issued a Notice of Partial Acceptance of Complainant's EEO complaint. The Agency accepted the Complainant's harassment/hostile work environment claims, but rejected numerous allegations regarding mediation. In response, the Complainant requested to amend her complainant. She asserted that the Agency was refusing to comply with the terms of the settlement agreement. Additionally, she requested to amend her complaint to include new claims of reprisal.

In response to the Complainant's requested amendment, the Agency stated that the Notice of Partial Acceptance should not have been issued because the parties had entered into the June settlement agreement. The Agency stated that the Complainant would have to process a new complaint if she wished to pursue the new reprisal claims because the terms of the settlement agreement had closed her previous formal complaint.

In October 2012, the Agency issued a determination regarding the Complainant's settlement breach allegations. The determination found that the June settlement agreement was void. The Agency asserted that the Agency official who conducted the mediation lacked the authority to enter into a settlement. Additionally, the Agency maintained that the Complainant was aware that the settlement agreement was merely a draft that still required final Agency approval. Thus, the Agency asserted that the parties were not bound by the settlement agreement. Accordingly, the Agency contended that it would reinstate the Complainant's EEO complaint including the recently requested reprisal amendments.

Procedural History:

The Complainant filed an appeal with the Commission regarding the Agency's October decision that determined that the Agency did not breach the terms of the settlement agreement.

Decision:

Holding:

The Commission reversed the Agency's final decision and remanded the case back to the Agency, ordering it to fully comply with the terms of the June settlement agreement and submit a report proving that the order had been implemented.

Analysis:

The Commission stated that the Complainant sought the enforcement of the settlement agreement, not the reinstatement of her EEO complaint. Thus, the Commission sought to determine whether there was a valid settlement agreement and whether the Agency breached terms of that agreement.

The Commission stated that the Agency had the burden of providing evidence to justify its final decision. The Commission found that the Agency failed to provide any evidence supporting its claims that the mediating official did not have the authority to settle and that Complainant understood the agreement to be a draft.

In accordance with basic contract law principles, the Commission looked to the signed settlement agreement in the record to determine its plain meaning. The Commission determined the signed agreement unambiguously indicated that it would become effective upon the date signed. Therefore, the Commission found the agreement valid and that the Agency breached its terms.

Federal Employment Law Training Group

301 W. Preston Street
Baltimore, MD 21201

Phone: 410-767-3800
Fax: 410-333-5004

TRAININGS & MEETINGS

February

02/26/14-***MD Technology Assistance Program (MDTAP) Library Tour, (1:00 p.m. - 3:00 p.m.), Workforce Technology Center (WTC), 2301 Argonne Drive, Baltimore, MD 21218—*** *Contact Lori Markland (lmarkland@mdtap.org)*

March

State EEO Professionals Group Meeting
Date & Location: - TBD

03/2014—**State ADA Coordinators Meeting**
Location—TBD

April

04/7– 04/11/2014 - **EEO Law Week Training**
Federal Employment Law Training Group (FELTG)/ International Student House / 1825 R Street, NW / Washington. D.C.

For more information visit: http://www.feltg.com/EEOC_Law_Week.html

May

05/08-05/09/2014 - **Employment Law Conference - Mid-Year/ Washington, DC, Ritz-Carlton Pentagon City** /1250 South Hayes Street, Arlington, VA 22202/Phone: (703) 415-5000 or (800) 241-3333/**Group Rate:** Single/Double - TBA (exclusive of 10.25% tax)
For more information visit: http://www.neli.org/details.asp?ProgramID=4&LocationID=333

July

07/2014—Statewide EEO Conference, More information to come

DIVERSITY CORNER

February 1st –29th
Black History Month

February 17th
President's Day

March 1st—March 31
Women in History Month
National Retardation Awareness Month

March 5th
Ash Wednesday

March 8th
International Women's Day

March 13th—April 15th
Deaf History Month

April 1st—30th
Celebrate Diversity Month
Autism Awareness Month

April 8th
Ram Navami

April 14th (sunset)—April 22nd(sunset)
Kwanzaa

April 13th
Palm Sunday

April 18th
Good Friday

April 20th
Easter

May
Asian-American Pacific Islander Heritage Month
Older Americans Month

May 21st
World Day for Cultural Diversity

May 25th
Lailat al Mairaj