

# EEO CONNECTION

## Statewide EEO Coordinators Message

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### Will We Ever Get It?

When I hear on the news or read an article about a company or government agency appearing before a judge, EEOC or Department of Justice for committing a discriminatory act and having to pay thousands and millions of dollars, I think to myself, "will we ever get it?" There's an old adage that says, what you do in the dark, comes to light. When decisions are made with the intent to exclude a particular group or create an harassing or hostile environment for someone because of their skin color, religion, sex, sexual orientation, disability or any other protected category, you will probably find yourself in a court battle, which can lead to costly litigation, a tarnished reputation, low employee morale and low production.

It is so much easier to practice good work ethics; create a diversified inclusive work environment; and show your commitment to equality by posting your EEO policy, training your staff on EEO, and promoting and supporting a respectful work place. Being proactive instead of reactive will save you time and money. Let's finally get it.

In this edition of the EEO Connection, we are keeping it interesting, newsworthy and thought-provoking. Since 72 percent of the State's workforce is at or near retirement age, learn techniques for recruiting our next generation (Millennials) on page 3. Read in the Noteworthy Ruling section why the Justice Department sued a Wyoming State agency and the EEOC sued a New York Tire Company for sex discrimination. Do you think a company is safe from liability by replacing older workers with those who are younger, but over the age of 40? Read more on page 6. Learn why a Missouri company is being sued by EEOC for violating federal law for requiring all job applicants to complete a three-page health history on page 7.

We would also like to welcome back Debra Mack to the OSEEOC team. Read more on page 10 about Debra's return. Have an interest in growing professionally in the EEO arena? Read about various training opportunities on page 11. Let's honor and celebrate the vast diversity in this country. Take the lead in your agencies to learn about a new culture or give some of your time towards a worthy cause. Learn more in the diversity corner. This newsletter was created with you in mind. So please,

Enjoy!

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.



## Embracing Millennials (Generation Y) In the Workplace



The workplace is constantly changing, whether it be new policies and procedures, onboarding new employees or facilitating the retirement process for others. This is the norm across many industries, but there is most certainly a factor that stands out and it is the number of individuals who are remaining employed longer before retiring. The Maryland State Government's Annual Statewide Equal Employment Opportunity Report for fiscal year 2015 reported that more than 72 percent of the State's workforce was age 40 or older. This is certainly a large percentage of the state workforce and an indication that additional measures should be taken to attract millennial talent. These are individuals who were born between 1977 and 2000. While age cannot be a determining factor of employment, efforts to attract and retain viable candidates from generation Y can and should be adopted. A work environment that is made up of professionals from different age demographics is likely to increase creativity and productivity.

Increased recruitment efforts to include advertising to publications that appeal to a diverse age demographic could be beneficial in attracting and retaining candidates and building partnerships with colleges, universities and other organizations that serve the demographic that your agency lacks is a great way to get you started. Listed below are links to resources that may be of assistance when advertising your state agency job vacancies. Contact these different organizations to learn if they have a job board you can utilize.

(University System of Maryland—Institutions)

<http://www.usmd.edu/institutions/>

(Mayor's Office of Employment Development)

<http://moed.baltimorecity.gov/>

- OSEEOC Team

## NOTEWORTHY RULINGS

### **Mavis Discount Tire to Pay \$2.1 Million to Settle EEOC Class Sex Discrimination Lawsuit**

NEW YORK - Mavis Discount Tire, Inc. / Mavis Tire Supply Corp. / Mavis Tire NY, Inc. / Cole Muffler, Inc., a large tire retailer based in the New York metropolitan area, will pay \$2.1 million and provide other relief to settle a class sex discrimination lawsuit by the U.S. Equal Employment Opportunity Commission (EEOC).

According to EEOC's lawsuit, Mavis engaged in a pattern or practice of sex discrimination by refusing to hire women for its field positions - managers, assistant managers, mechanics, and tire technicians - in the company's over 140 stores throughout Connecticut, Massachusetts, New York, and Pennsylvania. EEOC also charged that Mavis failed to make, keep, and preserve employment records.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964. EEOC filed its lawsuit in U.S. District Court for the Southern District of New York (Case No. 12-CV-00741) after first attempting to reach a pre-litigation settlement through its conciliation process.

The consent decree settling the suit, entered by Judge Katherine P. Failla on March 24, 2016, provides that Mavis will pay \$2.1 million, to be divided among 46 aggrieved women. Also, the decree provides for extensive safeguards to prevent future discrimination by implementing hiring goals for women, a comprehensive recruitment and hiring protocol, and anti-discrimination policies and training.

"We are pleased that as a result of this settlement, Mavis will be making concerted, verifiable efforts to hire more women at all of its field locations," EEOC Acting Regional Attorney Raechel Adams said.

Read more at <https://www1.eeoc.gov/eeoc/newsroom/release/3-25-16.cfm?renderforprint=1>



## NOTEWORTHY RULINGS

### **Justice Department Sues Wyoming State Agency for Sex Discrimination**

The Department of Justice announced today that it has filed a lawsuit against the Wyoming Military Department alleging that it discriminated against a female former employee on the basis of her sex when it failed or refused to take timely remedial actions when she was sexually harassed by her male supervisor.

According to the complaint, the supervisor's persistent and prevalent sexual harassment led to a hostile work environment based on sex, in violation of Title VII of the Civil Rights Act of 1964. Title VII is a federal statute that prohibits employment discrimination on the basis of race, color, religion, sex or national origin.

The department's complaint, in the U.S. District Court for the District of Wyoming, alleges that the former employee was regularly subjected to sexual harassment in the workplace by her immediate supervisor, the former director of the Wyoming Military Department's Youth Challenge Program. The supervisor's unwelcome conduct included unwanted emails about his personal life with his then wife; unwanted written expressions of affection for the employee, including songs and poems; and invasion of her work space to discuss personal issues to such a degree that it interfered with her ability to do her work and that she found it necessary to invent pretext to get away from him. The employee repeatedly rejected these advances and requested that her supervisor cease all of his unwanted behavior, but the supervisor persisted in his conduct. The employee filed multiple complaints with the Wyoming Military Department indicating that her supervisor's behavior was unwelcome, that she had asked him to stop his unwanted attentions and that he failed or refused to do so.

Read more at <https://www.justice.gov/opa/pr/justice-department-sues-wyoming-state-agency-sex-discrimination>



## EEO SPOTLIGHT

### Old vs. Not-Quite-as Old: The Gloves Come Off

The hiring of someone who is at least 40 years old to replace an older employee doesn't inoculate an employer from an Age Discrimination in Employment Act (ADEA) claim, even though both workers are old enough to be protected by the law. "That's not a defense," said Michelle W. Johnson, an attorney with Nelson Mullins Riley & Scarborough in Atlanta. "If the replacement is substantially younger, the employer still can be liable for age discrimination."

#### **'Substantially Younger'**

But what does "substantially younger" mean? Opinions vary. In a Dec. 18, 2015, case (Liebman v. Metropolitan Life Ins. Co., No. 14-13197), the 11th U.S. Circuit Court of Appeals allowed to continue to trial an ADEA claim by a 49-year-old fired managing director, even though he was replaced by someone who also was over 40 years of age, a 42-year-old. Seven years is substantially younger, the court stated, citing other courts that have held that five years is enough, four years suffices and even a mere three years is substantially younger. "The case law does vary from jurisdiction to jurisdiction, so it is important to know the applicable standard," said Tracy Billows, an attorney in the Chicago office of Seyfarth Shaw. "Courts will generally not dismiss an age discrimination claim based only on the fact that the replacement worker is less than six or seven years younger than the discharged worker," said Marcia Goodman, an attorney with Mayer Brown in Chicago.

#### **Progressive Discipline**

When an employer believes it may have reason to discharge an older worker, the risk of an ADEA lawsuit means an employer should be doubly sure to use progressive discipline, including proper documentation, according to Shane Muñoz, an attorney with Ford Harrison in Tampa, Fla. "Progressive discipline gives employees a sense that the employer is being fair, which should improve morale and make employees more productive. Failing to use progressive discipline can have the opposite effect," he noted. "Don't forget that the employee might turn things around" and improve his or her performance.

Read more at: [https://www.shrm.org/legalissues/federalresources/pages/old-vs-old-adea.aspx?utm\\_source=Wednesday%20-%20HR%20Daily%20PublishThis%20Template%20\(1\)&utm\\_medium=email&utm\\_content=February%2017,%202016&MID=&LN=&spMailingID=24746907&spUserID=MTQyNTcwMDQ2OTkwS0&spJobID=742850271&spReportId=NzQyODUwMjcxS0](https://www.shrm.org/legalissues/federalresources/pages/old-vs-old-adea.aspx?utm_source=Wednesday%20-%20HR%20Daily%20PublishThis%20Template%20(1)&utm_medium=email&utm_content=February%2017,%202016&MID=&LN=&spMailingID=24746907&spUserID=MTQyNTcwMDQ2OTkwS0&spJobID=742850271&spReportId=NzQyODUwMjcxS0)

## EEO SPOTLIGHT

### **EEOC Sues Grisham Farm Products for Requiring Medical Information from Job Applicants**

ST. LOUIS -- Grisham Farm Products, Inc. of Mountain Grove, Mo., violated federal law by requiring all job applicants to fill out a three-page health history before they would be considered for a job, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit. EEOC also alleged Grisham Farm Products does not maintain or retain employment records and applications for employment, as required by law.

According to EEOC's lawsuit, Phillip Sullivan, a retired law enforcement officer who sought employment with Grisham Farm Products, was told by the company that if he did not fully complete and submit a three-page health history form with his application, he would not be considered for any job.

Because the pre-employment form requested information that could cause an applicant to identify himself or herself as a person with a disability, its use violated Title I of the Americans with Disabilities Act (ADA), EEOC said. The suit further claimed the form does not comply with the Genetic Information Nondiscrimination Act (GINA), which prohibits employers from requesting or requiring genetic information, including medical histories, regarding applicants or their family members, except in limited circumstances allowed by statute.

EEOC filed its lawsuit (*Equal Employment Opportunity Commission v. Grisham Farm Products, Inc.*, Civil Action No. 6:16-cv-3105) in U.S. District Court for the Western District of Missouri, Southern Division, after first attempting to reach a pre-litigation settlement through its conciliation process. EEOC seeks monetary relief and an order requiring Grisham Farm Products to implement policies and practices to prevent discrimination.

- Read more at <https://www1.eeoc.gov/eeoc/newsroom/release/3-22-16.cfm?renderforprint=1>



## EEO SPOTLIGHT

### **Retaliation, ADA Charges Rise**

Employee-friendly U.S. Supreme Court decisions on retaliation and legislative changes to the Americans with Disabilities Act (ADA) that occurred years ago are still boosting the number of charges filed with the Equal Employment Opportunity Commission (EEOC). However, employers can take steps to reduce the likelihood that they will get hit with those types of charges, legal experts say. Retaliation charges increased by nearly 5 percent in 2015, rising from 37,955 charges in 2014 to 39,757 last year, according to EEOC enforcement data released Feb. 11. ADA claims rose by 6 percent, from 25,369 in 2014 to 26,968 in 2015, surpassing gender discrimination charges as the third most common type of allegation. Retaliation remains first, and race discrimination is second. Overall charges rose from 88,778 in 2014 to 89,385 in 2015. The upward trend in retaliation claims is due to the Supreme Court deciding every retaliation case before it in the last 10 years in favor of employees, said Frank Morris Jr., an attorney with Epstein Becker Green in Washington, D.C. ADA claims continue to rise because of the ADA Amendments Act of 2008, which expanded the definition of “disability,” he added. Staving Off Retaliation Claims Many jurors believe retaliation is commonplace, said Michael Reiss, an attorney with Davis Wright Tremaine in Seattle. And employers should expect to see more retaliation claims in light of the EEOC’s Jan. 21 proposed guidance, which broadly interpreted “retaliation,” noted Bernard Tisdale, an attorney with Ogletree Deakins in Charlotte, N.C. So, employers should have a specific policy that retaliation against anyone in response to a complaint or investigation will not be tolerated, Morris said. Threatened retaliation should be prohibited as well. When a lawsuit by an employee includes claims against a manager, that manager should be “intensively trained” on the law’s prohibition on retaliation. Thoughts about retaliation may be a natural reaction, but the manager must not take action along those lines, Morris noted.

Read more at [https://www.shrm.org/legalissues/federalresources/pages/retaliation-ada-charges.aspx?utm\\_source=Wednesday%20-%20HR%20Daily%20PublishThis%20Template%20\(1\)&utm\\_medium=email&utm\\_content=February%2017,%202016&MID=&LN=&spMailingID=24746907&spUserID=MTQyNTcwMDQ2OTkwS0&spJobID=742850271&spReportId=NzQyODUwMjcxS0](https://www.shrm.org/legalissues/federalresources/pages/retaliation-ada-charges.aspx?utm_source=Wednesday%20-%20HR%20Daily%20PublishThis%20Template%20(1)&utm_medium=email&utm_content=February%2017,%202016&MID=&LN=&spMailingID=24746907&spUserID=MTQyNTcwMDQ2OTkwS0&spJobID=742850271&spReportId=NzQyODUwMjcxS0)

## ADA CORNER

### **Two Hawk Employment Services Sued By EEOC for Disability Discrimination**

RALEIGH, N.C. - A temporary employment agency violated federal law when it asked an applicant illegal medical questions during its application process and then refused to hire the applicant because of her responses to those illegal medical inquiries, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit. In addition, the suit alleges that Two Hawk failed to retain employment applications as required by federal law.

Two Hawk Employment Services, LLC operates a temporary staffing agency based in Lumberton, N.C. As a staffing agency, Two Hawk places temporary workers at a number of employers.

According to EEOC's lawsuit, Nicole Bullard applied for employment with Two Hawk in May 2013 and was required to fill out a medical history form during the application process. The form asked Bullard to identify medical conditions she has or had in the past, as well as to disclose whether she was taking any medications that might affect her ability to perform the essential functions of the job. The form further asked Bullard to state whether she had physical or mental conditions that require accommodation, and whether she had any restrictions in activity. In response to the application's questions, Bullard disclosed that she was taking two prescription medications.

Read more at <https://www.eeoc.gov/eeoc/newsroom/release/2-22-16.cfm>



## EEO PROFESSIONAL FEATURE



**Debra Mack**

*EEO Compliance Officer*

Office of the Statewide Equal  
Employment Opportunity Coordinator

Debra Mack was hired by the Office of the Statewide Equal Employment Opportunity Coordinator in April 2016. As many of you may remember, Debra worked as the Compliance Coordinator in the OSEEOC for seven years. Debra brings a vast amount of EEO experience to her new role. She will serve as the EEO Officer and ADA Coordinator for the Department of Budget and Management, as well as conduct investigations into Whistleblower complaints, and appeals and work on various projects with the OSEEOC team.

## MEETINGS & TRAININGS

The Job Accommodation Network (JAN) has a number of trainings for professionals to utilize at their convenience. Click here to learn more <https://askjan.org/training/index.htm>

### May 2016

*Chesapeake Human Resources Association*

Annual Diversity Meeting/Monthly Education Program: May 11, 2016

Register at : <http://www.chra.com/events/EventDetails.aspx?id=803124>

### June 2016

*Chesapeake Human Resources Association*

15th Annual HR Leadership Awards: June 7, 2016

Register at: <http://www.chra.com/events/EventDetails.aspx?id=759769>

Chesapeake Human Resources Association at the Maryland Zoo in Baltimore!

Quarterly Networking Event June 9, 2016

Register at: <http://www.chra.com/events/EventDetails.aspx?id=775186>

*Maryland State Agency ADA Coordinators Meeting*

June 14, 2016, 9:30 a.m.—11:30 a.m.

Location: Maryland Department of Transportation (MDOT),  
7201 Corporate Ctr. Drive, Hanover, MD

*Federal Executive Board 5th Annual EEO and Diversity & Inclusion Conference*

June 17, 2016

Location: 692 Maritime Blvd, Linthicum Heights, Maryland

Cost: \$99.00

For information contact 410-962-4047

*Society for Human Resource Management (SHRM) Annual Conference*

June 19-22, 2016

Location: Washington, D.C.

Register at: <http://annual.shrm.org/>

### July 2016 - *Mark Your Calendars*

Office of the Statewide EEO Coordinator, Maryland Commission on Civil Rights and University of Baltimore *presents: "Faith In the Workplace" One Day Symposium*

July 21, 2016, 8:30 a.m.—4:00 p.m.

Location: University of Baltimore\

[More Information Coming Soon!!](#)

## DIVERSITY

### **April 2016**

- Autism Awareness Month (World Autism Awareness Day— April 2)
- Passover (April 3-11)
- Easter (April 5)
- Holocaust Remembrance Day (April 15-16)
- Global Youth Service Day (April 17-19)

### **May 2016**

- Jewish American Heritage Month
- Better Hearing and Speech Month
- National Teacher Appreciation Week ( May 4-8)
- Cinco de Mayo (May 5)
- Mothers Day (May 10)
- Anniversary of School Desegregation Ruling (May 17)
- Shavuot (May 23-25)
- Pentecost Sunday (May 24)
- Memorial Day (May 25)

### **June 2016**

- World Environment Day (June 5)
- Flag Day (June 14)
- Anniversary of the First Woman in Space (June 16)
- Father's Day (June 21)
- Anniversary of the First American Woman in Space (June 18)
- Ramadan (June 17-July 17)
- Juneteenth (June 19)

## 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>



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