

EEO CONNECTION

Statewide EEO Coordinators Message

INSIDE THIS ISSUE:

OSEEOC Mission	2
New Policy Alert	3
Ask the OSEEOC	4
Noteworthy Rulings	5-6
EEO Spotlights	7-8
ADA Corner	9-10
Diversity Quiz	11
Meetings & Trainings	12
Diversity Calendar	13

Summer is just about over and students are heading back to school around the State. A new season is fast approaching and the leaves on the trees will soon be changing colors. This is the perfect time for us to review and reevaluate our EEO goals and employment practices and ensure that our agencies are compliant with employment laws. By now you should have received your EEO report documents and guidelines report. Remember: these documents must be sent back to the OSEEOC no later than **October 15, 2018**. Submitting your data on time ensures that we can get the Annual Statewide EEO Report completed and distributed on time. We all have lots of work to do, but know that what you do matters and is very much appreciated.

In this issue of the EEO Connection, we have spotlighted one of our own, Mr. Dan Leonard. Dan is the EEO and Fair Practices Director at the Department of Commerce. Read more about Dan on page 3. The OSEEOC has received some interesting questions over the past few months. Read these questions and see how we responded on page 4. On page 5, read why the City of Jacksonville, Florida has agreed to pay \$4.9 million to settle a discrimination lawsuit. Learn how to properly store employees' medical records on page 8. The Maryland Commission on Civil Rights and the University of Baltimore have teamed up to offer professionals an opportunity to participate in their Equity & Inclusion Leadership Program. Read more about it on page 9. Don't forget to check out the upcoming meetings and trainings on page 13. There is so much more, so turn the page.

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.



OSEEOC Special Feature - **NEW**



Photo: Dan Leonard, Director of EEO & Fair Practices, Maryland Department of Commerce

The Maryland Department of Commerce has a new Director of EEO & Fair Practices, Mr. Daniel “Dan” Leonard, and he’s excited about his new role. He also shares how he got started in the EEO field, and how it prepared him for his current role.

Dan says that he became a human resources professional by accident. He was a local sort operation supervisor at UPS when the HR supervisor quit during peak season. With little time to make a decision, the HR Director thought that he might have the right personality to replace the HR Supervisor. At that time, Dan had absolutely no educational training or experience doing HR work, but he approached the opportunity with an open mind and strong work ethic. He hit the ground running in order to learn what he needed to know quickly, and he has been working in the field of employment/labor law ever since.

In 1994, he was hired as the Fair Practices Officer at Towson University and worked there until starting his employment with the Maryland Department of Commerce in 2017, as the Director of EEO and Fair Practices.

Dan says the part he likes most about his new job is that he gets to make a difference in his work environment. Dan says that his presence helps ensure that employees are being treated fairly, equitably, and professionally. Lastly, Dan helps to prevent problems from occurring in the workplace, but when problems do occur, he is focused on being part of the solution.

Ask the OSEEOC Team

The OSEEOC Team has incorporated this section of the newsletter to allow our readers to ask anonymous questions and get the answers they need. If you have a question, please be sure to email Nicole Webb at Nicole.webb@maryland.gov, and it may be featured in the next newsletter!

QUESTION

Can an employee request an ADA Reasonable Accommodation for an immediate relative whom they provide care for and has a certified disability?

OSEEOC ANSWER:

No, the ADA Reasonable Accommodation benefit is for employees only. However, the Family Medical Leave Act does provide specific benefits to qualified employees who need to care for relatives. Contact your Human Resources Office for more information on Family Medical Leave.

You can also check into the Maryland Healthy Working Families Act that went into effect February 11, 2018. This new law permits certain state employees to use earned “sick and safe leave” for certain specified reasons. Contact your Human Resources Office for more information.

QUESTION

Can teleworking be approved as a reasonable accommodation, even if the agency in which an employee works does not allow teleworking as an option?

OSEEOC ANSWER:

Yes, however each reasonable accommodation request is reviewed carefully in order to determine the most effective accommodation. Additionally the employee should work closely with their designated ADA Coordinator to make a reasonable accommodation request, and engage in the interactive process.

QUESTION

Can a complaint be filed against a fellow co-worker who subjected you to unwanted sexual behavior while away on a business trip that was sponsored by your employer?

OSEEOC ANSWER:

Yes! Since the incident occurred during a work related event and was a violation of the company policy, a complaint can certainly be filed.

NOTEWORTHY RULINGS

Alorica Settles EEOC Sexual Harassment Lawsuit For \$3.5 Million

LOS ANGELES / FRESNO -- The U.S. District Court approved a consent decree between Alorica, Inc. and the United States Equal Employment Opportunity Commission (EEOC) for \$3.5 million and remedial measures to resolve a sexual harassment lawsuit.

According to the EEOC, male and female customer service employees were subjected to harassment, including a sexually hostile work environment, by managers and coworkers. The EEOC further alleged that the onsite human resources staff failed to properly address the harassment despite repeated complaints by employees, which the EEOC contends violates Title VII of the Civil Rights Act of 1964.

The EEOC filed suit in the U.S. District Court for the Eastern District of California (*U.S. EEOC v. Alorica, Inc.*, Case No.: 1:17-cv-1270-LJO-MJS) and reached an early settlement of the lawsuit. The court approved the consent decree that resolves the case, which remains under the court's jurisdiction during the term of the decree.

The \$3.5 million will be distributed among a class of victims of sexual harassment from the Fresno and Clovis, Calif. facilities, pursuant to a claims process set forth in the decree. In addition to the monetary relief, Alorica agreed to significant injunctive relief in the form of a three-year consent decree, which includes the hiring of a third-party monitor; the creation of an internal equal employment opportunity consultant and internal compliance officer; and, sexual harassment training, including incorporating civility and bystander intervention training for its employees. The company also agreed to revise its anti-discrimination and retaliation policies and procedures as well as maintain records of any future sexual harassment and retaliation complaints, audits, and reporting.

"While no one should have to experience harassment on the job, I commend the women and men who bravely came forward in this case and brought their experience of harassment to the EEOC," said EEOC Acting Chair Victoria A. Lipnic. "I also commend our enforcement and legal teams, and the parties involved, for coming to a resolution that both provides relief to these women and men, and makes positive changes to the company's workplace practices."

Read more at <https://www.eeoc.gov/eeoc/newsroom/release/8-1-18.cfm>



NOTEWORTHY RULINGS

The City of Jacksonville Agrees to Pay \$4.9 Million to Settle Employment Discrimination Lawsuit

The Department of Justice announced that it has reached a settlement agreement with the City of Jacksonville, Florida (the “City”) to resolve allegations that the City’s promotional practices for positions in the Jacksonville Fire and Rescue Department (JFRD) violated Title VII of the Civil Rights Act of 1964. Title VII is a federal law that prohibits employment discrimination on the basis of race, color, sex, national origin, or religion. The proposed settlement agreement, which must still be approved by a federal judge, finalizes an agreement in principle reached by the parties in January 2017.

In a joint motion filed by the parties in the United States District Court for the Middle District of Florida, the Justice Department, the City, the International Association of Fire Firefighters (the “Union”), the Equal Employment Opportunity Commission (EEOC), and various private plaintiffs asked the court to enter a provisional order that sets out the terms of the settlement agreement. Under the terms of the settlement, the City agrees to develop new promotional examinations for the selection of certain positions in the JFRD. The City also will offer settlement promotions to qualified African Americans and will establish a \$4.9 million settlement fund for eligible claimants.

“The Justice Department is committed to enforcing Title VII to remove unlawful discriminatory barriers. The Settlement Agreement announced ensures that all promotional candidates in the JFRD are given a fair opportunity to compete for advancement,” said John Gore, Acting Assistant Attorney General of the Civil Rights Division.

The proposed settlement agreement will resolve the complaint filed by the Justice Department in federal court on April 23, 2012, a separate lawsuit filed against the Union by the EEOC, and claims brought against the City and/or Union by various private plaintiffs, including the National Association for the Advancement of Colored People, Jacksonville Branch, and the Jacksonville Brotherhood of Firefighters.

This matter was handled for the United States by Jay Adelstein, Hector Ruiz, Brian McEntire, Jeremy Monteiro, Sharyn Tejani, and Clare Geller, all current or former attorneys in the Civil Rights’ Division’s Employment Litigation Section. Additional information about Title VII and other federal employment laws is available on the Civil Rights Division’s website at <https://www.justice.gov/crt>



THE UNITED STATES
DEPARTMENT *of* JUSTICE

EEO SPOTLIGHT

EEOC Acting Chair Lipnic Releases Report on The State Of Older Workers And Age Discrimination 50 Years After The ADEA

WASHINGTON - Victoria A. Lipnic, Acting Chair of the U.S. Equal Employment Opportunity Commission (EEOC), issued a report on the State of Older Workers and Age Discrimination 50 Years After the Age Discrimination in Employment Act (ADEA). The ADEA was signed into law in December 1967 and took effect 50 years ago this month, in June 1968. The ADEA was an important part of 1960s civil rights legislation that was intended to ensure equal opportunity for older workers.

The report finds that age discrimination remains too common and too accepted as outdated assumptions about older workers and ability persist, even though today's experienced workers are more diverse, better educated and working longer than previous generations.

"As we've studied the current state of age discrimination this past year in commemorating the ADEA, we've seen many similarities between age discrimination and harassment," explained Acting EEOC Chair Victoria A. Lipnic. "Like harassment, everyone knows it happens every day to workers in all kinds of jobs, but few speak up. It's an open secret."

The report recognizes the similarities between age discrimination and other discrimination. Only about 3 percent of those who have experienced age discrimination complained to their employer or a government agency, according to recent research. Studies find that more than three-fourths of older workers surveyed report their age is an obstacle in getting a job. Even with a booming economy and low unemployment, older workers still report they have difficulties getting hired.

Read more at <https://www.eeoc.gov/eeoc/newsroom/release/6-26-18a.cfm>



EEO SPOTLIGHT

Tips from the Other Side, Part 3

By Meghan Droste, March 14, 2018

As spring approaches, notwithstanding the snow that some of you were fortunate enough to get in recent weeks, the stores are filled with Easter-themed candy. My personal favorite is the chocolate egg filled with peanut butter. It is truly the perfect balance of two perfect flavors. Don't believe me? I'll wait while you compare those to the standard peanut butter-filled chocolate cups. See what I mean? (I'll trust that you do.)

Seeing, and trying to avoid eating, too many of these Easter egg candies brought to my mind the other kind of Easter egg – an unexpected feature or item that you might find in a movie, video game, or other media. If you would like an example, Google the word “askew.” You'll find that the results page is tilted. An Easter egg in this context is just another type of treat that you might stumble upon. What does all of this have to do with the federal sector EEO process, you might ask? Well, sometimes in the course of an investigation or discovery, I stumble upon what we can think of as an Easter egg – an additional, unexpected cause of action that neither I nor my client had any knowledge of at the outset of the complaint. One good, and unfortunately still common, example is improperly stored medical documentation. Agencies are required to maintain the confidentiality of any and all medical documentation that they collect from their employees. This means that supervisors, reasonable accommodation coordinators, anyone who touches an employee's medical documentation, must keep that information in a separate, confidential file. The medical documentation should not be stored in the same file as performance evaluations, counseling memos, examples of the employee's work product or anything else that someone might maintain regarding that employee. There is no room for interpretation on this one—the information must be stored separately.

I frequently request copies of personnel files, including unofficial supervisory files, during the course of litigation. Often times, there isn't anything that either helps or hurts the case in any real way. But every once in a while, I find out that the supervisor has comingled my client's medical documentation with his or her notes about my client, or with other unrelated information. When I find that, I automatically seek to amend the complaint, because this is a separate cause of action.

These types of claims are rarely going to end well for the agency. A complainant does not need to prove discriminatory intent or establish that someone who should not have had access to the documentation actually saw it. It is enough to show that someone improperly comingled the records. See *Mayo v. Dep't of Justice*, EEOC App. No. 0720120004 (October 24, 2012) (holding that “[t]he Agency's failure to maintain Complainant's medical information in separate medical files constitutes a violation of the Rehabilitation Act, even in the absence of an unauthorized disclosure”).

You can keep me from stumbling upon this kind of Easter egg by establishing a clear procedure for the storage of medical documentation and ensuring that everyone receives regular training on the procedure. Feel free to send the chocolate and peanut butter kind my way!

This article was taken from the Federal Employment Law Training Group

https://feltg.com/tips-from-the-other-side-part-3/?utm_source=March+2018+-+FELTG+Newsletter&utm_campaign=March+2018+Newsletter&utm_medium=email

EEO SPOTLIGHT



[Maryland Equity & Inclusion Leadership Program \(MEILP\)](#)

[MEILP](#) is now accepting applications for the 2019 program. For more information and to submit your application, please visit <http://meilp.ubalt.edu>.

Applications are due by September 17, 2018.

About the Program

A partnership of the [Maryland Commission on Civil Rights](#) (MCCR) and the [University of Baltimore Schaefer Center for Public Policy](#), MEILP aims to develop, engage, and support current and emerging leaders from private, public, and nonprofit sectors who are interested and committed to helping their organizations become more diverse, equitable, and inclusive at various levels. This program is ideal for developing and experienced professionals who want to design, lead, and promote diversity, equity, and inclusion (DEI) initiatives within their respective organizations. It is open to executive, mid-level, and emerging leaders without substantial DEI knowledge or experience, and who wish to acquire the requisite knowledge, attitudes, and skills to develop and support DEI in their organizations.

Program participants will learn from and network with DEI industry experts, experienced practitioners, scholar-researchers, and their peers to gain a deep and comprehensive understanding of various DEI issues facing individuals, groups, organizations, and whole communities, including best practices and evidence-based strategies for addressing these issues.

ADA CORNER

GOLDEN CORRAL FRANCHISEE TO PAY \$85,000 TO SETTLE EEOC DISABILITY AND SEX HARASSMENT LAWSUIT

Charlotte, N.C. – Jax, LLC, which operates a Golden Corral restaurant in Matthews, N.C., has agreed to pay \$85,000 and provide other relief to settle a lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC had charged that Jax discriminated against an employee when it subjected him to a hostile work environment based on both his disability (autism) and his sex (male). The EEOC had also charged that the employee was forced to resign because of the harassment.

According to the EEOC's suit, Sean Fernandez worked as a dishwasher at the Matthews Golden Corral. Fernandez has high-functioning autism, which limits his ability to communicate and interact with others. The EEOC alleged that, from around March or April 2014 until January 2016, a male assistant manager created a hostile work environment by repeatedly referring to Fernandez as "retard," calling him "stupid," and using profanity. The assistant manager also asked for oral sex from Fernandez, threatened to sexually assault him, and subjected him to unwanted physical contact, the EEOC said. Fernandez filed a complaint with the general and district managers, but the company failed to take effective action to prevent and correct the hostile work environment. Fernandez resigned his employment because he was fearful of encountering the assistant manager again, the EEOC said.

Such alleged conduct violates the Americans with Disabilities Act (ADA), which protects employees from discrimination based on their disabilities, as well as Title VII of the Civil Rights Act of 1964, which prohibits sexual harassment. The EEOC filed suit in U.S. District Court for the Western District of North Carolina, Charlotte Division (EEOC v. Jax, LLC d/b/a Golden Corral, Civil Action No. 3:17-cv-535) after first attempting to reach a pre-litigation settlement through its conciliation process.

In addition to providing monetary relief to Fernandez, Jax, LLC entered into a two-year consent decree requiring the company to implement an anti-discrimination policy that prohibits disability-based and sex-based discrimination. The decree further requires the company to conduct annual training for its Matthews employees and managers on the ADA and Title VII. Jax must also post an employee notice about the lawsuit and about employee rights under federal anti-discrimination laws at its Matthews facility, and must provide periodic reports to the EEOC.

"Employers must take appropriate action to stop employees from harassing other employees," said Kara G. Haden, acting regional attorney for the EEOC's Charlotte District. "It is particularly problematic when the harassment is perpetrated by a supervisor. The EEOC takes the conduct and an employer's failure to stop it seriously, and will prosecute cases where this kind of abuse occurs."

ADA CORNER

CAMBER CORPORATION TO PAY \$100,000 TO SETTLE EEOC DISABILITY AND AGE DISCRIMINATION SUIT

WASHINGTON – Federal contractor Camber Corporation has agreed to pay \$100,000 and furnish other relief to settle a disability and age discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC charged that Camber Corporation violated federal law when it denied an employee a transfer based on his son's medical condition and then fired him, replacing him with someone more than 20 years younger.

According to the EEOC, employee Ashok Pai's son sustained catastrophic injuries in a car accident as a child and, as a result, has been disabled for more than 25 years. Pai sought a transfer to work nearer to where his son lived and requested leave to assist with his care. Further, immediately after management learned that Pai was exploring the transfer to care for his disabled son, Camber classified him as "re-signed," began processing termination paperwork and ultimately fired him for pretextual reasons, the EEOC said. Camber then replaced Pai, who was then in his mid-60s, with a much younger worker.

Such alleged behavior violates the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA). The EEOC filed its suit (EEOC v. Camber Corporation, Case No. 1:17-cv-01084-AJT-JFA) in U.S. District Court for the Eastern District of Virginia after first attempting to reach a pre-litigation settlement through its conciliation process.

On July 2, 2018, U.S. District Court Judge Anthony J. Trenga entered a consent decree resolving the case. In addition to a \$100,000 award for lost wages, the two-year decree includes injunctive relief to prevent disability and age discrimination from occurring at the company in the future. The decree requires continued annual training on the protections of the ADA and ADEA, including the ADA provision barring employers from discriminating against workers because of their association with disabled persons. The company must also post anti-discrimination notices at its Huntsville, Ala., and Fairfax, Va., locations.

"The ADA not only prohibits employers from discriminating against people with disabilities, it also bans discrimination against employees and applicants based on their association with a person with a disability -- for good reasons," said Washington Field Office Acting Director Mindy Weinstein. "Mr. Pai simply asked for a transfer to help deal with his son's severe disability, and the company made a bad situation worse by punishing him for trying to do the right thing and showing age bias at the same time. The EEOC is here to fight for the rights of people like Ashok Pai."

EEOC Regional Attorney Debra M. Lawrence added, "When employers violate the law, the EEOC will hold them accountable. We are pleased that the parties were able to reach a resolution to better protect the rights of employees under federal law."

Camber Corporation was headquartered in Huntsville, Ala. This discrimination took place in Falls Church, Va., where the employee worked for Camber at an office within the U.S. Department of Justice. The EEOC's Washington Field Office has jurisdiction over the District of Columbia and the Virginia counties of Arlington, Clarke, Fairfax, Fauquier, Frederick, Loudoun, Prince William, Stafford and Warren; and the independent Virginia cities of Alexandria, Fairfax City, Falls Church, Manassas, Manassas Park and Winchester.

DIVERSITY QUIZ

1. President George H.W. Bush signed the ADA into law in 1990.

True: _____ False: _____

2. The ADA Law is the world's first comprehensive civil rights law for people with disabilities .

True: _____ False: _____

3. July 26, 2018 marked the 28th anniversary of the ADA.

True: _____ False: _____

4. The ADA Amendments Act of 2008 (ADAAA) was enacted on September 25, 2008, and made a number of significant changes to the definition of "disability" under the Americans with Disabilities Act (ADA).

True: _____ False: _____

5. The ADAAA states that the definition of disability should be interpreted in favor of broad coverage of individuals.

True: _____ False: _____

1. True, 2. True, 3. True, 4. True, 5. True

Answers

MEETINGS & TRAININGS

August

Public Sector EEO and Employment Law Update

Hosted by: National Employment Law Institute

Date: August 23-24, 2018

Location: Washington, DC

Register at: <https://www.neli.org/programs2.asp?programid=13>

Embracing Accessibility in the Whole Organization: New Approaches and Resources—Webinar

Hosted by: TransCen, Inc. and the Mid-Atlantic ADA Center

Date: August 30, 2018

Time: 12:30pm to 1:00pm

Register at: <http://www.adainfo.org/training/embracing-accessibility>

September

Mid-Atlantic ADA Update

Hosted by: Mid-Atlantic ADA Center

Date: September 4-6, 2018

Location: 8661 Leesburg Pike, Tysons, Virginia 22182

Register at: <http://www.adainfo.org/Content/ADA-Update>

Maryland Equity & Inclusion Leadership Program

Hosted by: Maryland Commission on Civil Rights

Applications due by: September 17, 2018

Register at: <http://meilp.ubalt.edu/>

October

2018 SHRM Diversity & Inclusion Conference & Exposition

Hosted by: Society for Human Resource Management

Date: October 22-24, 2018

Location: Atlanta, GA

Register at: <https://www.shrm.org/mlp/pages/diversity2018.aspx>

Executive Leadership Training Conference

Hosted by: Equal Employment Opportunity Commission

Date: Oct. 29-31, 2018

Location: Charlottesville, VA

Register at: <http://eeocleadershipconference.com/default.asp>

DIVERSITY CALENDAR

August 2018

August 26—Women's Equality Day

September 2018

(Hispanic Heritage Month)

September 3—Labor Day

September 9-11— Rosh-Hashanah

September 18-19 — Yom Kippur

October 2018

(National Disability Employment Awareness Month)

October 11—National Coming Out Day



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>



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