

# EEO Connection

## Statewide EEO Coordinators Message

### Know Your Role

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There is an Equal Employment Opportunity Program within the Executive Branch of State Government. The purpose of the program is to ensure a system that provides equal opportunity in employment on the basis of merit and fitness (SPP § 5-202); meaning that, every employee and applicant has a right to fair and equal opportunity in employment, whether it is during the application/interview process or while performing the duties of the job.

Equal Employment Opportunity (EEO) positions are mandated by State law. As Equal Employment Opportunity professionals, our primary responsibility is to ensure that our agencies comply with all State and federal non-discrimination and EEO laws and policies.

It is important to understand that EEO and human resource departments are interdependent. The personnel decisions that affect employees and applicants are subject to monitoring and investigation by EEO professionals. It is essential that EEO professionals have sufficient authority and independence from other human resource departments to objectively monitor and assess the department's personnel policies and practices; to recommend changes to prevent discrimination and to facilitate equal employment opportunity when needed. In essence, our role was created to protect and maintain the credibility of State agencies and help the agencies to avoid costly lawsuits. We should all support the EEO professionals in our agencies.

Please, continue to read the remainder of this newsletter. It is full of interesting articles and information for everyone.

Enjoy,

Glynis Watford  
Statewide EEO Coordinator

## Office of The Statewide EEO Coordinator

# MISSION statement

- 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.

## The Importance of Adapting to Change and Growing in the Process



### ***The Only Thing Constant in Life Is Change.***

It's often said that change is inevitable, while growth is optional. Are you growing?

Over the last 10 months, the Office of the Statewide EEO Coordinator (OSEEOC) team has worked to create change in its initiatives as it relates to educating the EEO community. Initiatives such as the EEO Group Meeting, Movie & Discussion series, and Faith In the Workplace Symposium are ways in which we are contributing to the growth of EEO professionals. While some may resist change, we welcome it and are excited to roll out new initiatives in the future. With a new year approaching, we hope that you will join us in welcoming change in the various forms in which it may come, while also being excited about the growth opportunities that are sure to follow.

**- OSEEOC Team**

## NOTEWORTHY RULINGS

### Pregnant Chipotle Worker Awarded \$550K in Discrimination Lawsuit

A jury has awarded a Chipotle Mexican Grill worker over half a million dollars on her claim that she was fired because she was pregnant (*Garcia Hernandez v. Chipotle Mexican Grill Inc.*, D.D.C., No. 1:14-cv-00297). Doris Garcia Hernandez—a former employee at a Washington, D.C., Chipotle restaurant—said she received positive feedback about her performance before she announced that she was pregnant. After that, she alleged, the supervisor harassed her and ultimately fired her because of her pregnancy in violation of federal anti-discrimination laws and the District of Columbia Human Rights Act (DCHRA). On Aug. 4, the jury found in favor of Garcia Hernandez and awarded her \$50,000 in compensatory damages and another \$500,000 in punitive damages. Punitive damages are generally imposed on a defendant as a punishment for willful or reckless violations and as a deterrent from engaging in the unlawful conduct again.

#### Disparate Policies

Chipotle operates a chain of fast-casual restaurants that offer tacos and burritos, which are assembled by employees on a food-service line. Workers on these lines are often on their feet for long periods, said Christine Tschiderer, an attorney with the Washington Lawyers' Committee for Civil Rights and Urban Affairs, who represented Garcia Hernandez in this case. Garcia Hernandez claimed that after learning of her pregnancy, her supervisor made her announce to co-workers whenever she needed a bathroom break so that someone could cover her work on the line. This requirement wasn't imposed on non pregnant employees, according to her complaint.

**Read more at** [https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/chipotle-pregnancy-verdict.aspx?utm\\_source=HR%20Daily%20Friday%20-%20Manu-al%208.12.16%20\(1\)&utm\\_medium=email&utm\\_content=August%2012,%202016&MID=01248408&spMailingID=26222951&spUserID=MTQyNTcwMDQ2OTkwS0&spJobID=862147871&spReportId=ODYyMTQ3ODcxS0](https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/chipotle-pregnancy-verdict.aspx?utm_source=HR%20Daily%20Friday%20-%20Manu-al%208.12.16%20(1)&utm_medium=email&utm_content=August%2012,%202016&MID=01248408&spMailingID=26222951&spUserID=MTQyNTcwMDQ2OTkwS0&spJobID=862147871&spReportId=ODYyMTQ3ODcxS0)



## NOTEWORTHY RULINGS

### Justice Department Settles Employment Discrimination Lawsuit Against Lubbock, Texas

The Department of Justice announced today that it has reached a settlement agreement to resolve allegations that Lubbock, Texas, engaged in a pattern or practice of employment discrimination against Hispanic and female applicants for probationary police officer positions with the Lubbock Police Department, in violation of Title VII of the Civil Rights Act of 1964.

In a joint motion filed today in the U.S. District Court for the Northern District of Texas, the Justice Department and the city of Lubbock asked the court to enter a provisional order that sets out the terms of the settlement agreement. Under the proposed settlement agreement, which is subject to court approval, Lubbock will develop a new written test and a new physical fitness test for selecting probationary police officers and provide hiring relief with retroactive seniority to 11 qualified Hispanic applicants and 13 qualified female applicants who were disqualified by the challenged employment tests. In addition to hiring relief for the 24 qualified applicants, Lubbock will also pay a total of \$725,000 to any eligible Hispanic and female applicants who were disqualified by the challenged employment tests. The motion also asks the court to schedule a fairness hearing, an opportunity provided by Title VII for those affected by the proposed agreement to comment on the settlement.

The proposed settlement agreement will resolve the complaint filed by the Justice Department on Dec. 2, 2015. In its complaint, the Justice Department alleged that Lubbock's use of its written test and physical fitness test violated Title VII by disproportionately screening out, respectively, Hispanic and female applicants for the probationary police officer position without meaningfully distinguishing between applicants who can and cannot perform the job. Title VII prohibits discrimination in employment on the basis of race, color, sex, national origin or religion, whether the discrimination is intentional or involves the use of employment practices that have a disparate impact and are not job related and consistent with business necessity. **Read more at <https://www.justice.gov/opa/pr/justice-department-settles-employment-discrimination-lawsuit-against-lubbock-texas>**



## EEO SPOTLIGHT

### Bayou City Wings Refused to Hire Older Workers at Houston Area Restaurants, EEOC Charges in Lawsuit

HOUSTON - Bayou City Wings, a Houston-based restaurant chain, has unlawfully engaged in a pattern or practice of intentional age discrimination in its hiring of host and wait staff, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit.

EEOC's lawsuit said that since at least 2008, Bayou City Wings has been discriminating against a class of applicants for "front of house" positions, such as food servers and hosts, by failing to hire them because of their age (40 years and older).

According to EEOC's lawsuit, Bayou City Wings' upper management instructed other managers not to recruit and hire older job seekers and disciplined and terminated a manager who refused to comply. The agency also charged that since at least 2008 to about November 2013, the company failed to preserve employment records, including the job applications of unsuccessful applicants, in violation of federal law.

Age discrimination, as well as the failure to preserve proper job application records, violates the Age Discrimination in Employment Act (ADEA).

EEOC filed this lawsuit (Civil Action No. 4:16-cv-03245) in U.S. District Court for the Southern District of Texas (Houston Division), after first attempting to reach a pre-litigation settlement through its conciliation process. EEOC seeks, among other things, monetary relief for applicants denied employment because of their age; the adoption of policies and procedures to remedy and prevent age discrimination; and training on discrimination for all Bayou City Wings managers and human resources staff. **Read more at <https://www.eeoc.gov/eeoc/newsroom/release/11-3-16d.cfm>**



# EEO SPOTLIGHT

## EEOC Guidance Outlines Ways Employers Can Avoid Retaliation

Employers often struggle with how to discipline an employee who has engaged in misconduct but who has also filed a complaint, such as a harassment or discrimination charge, without setting themselves up for a retaliation claim.

An HR professional who is unaware of the complaint could investigate the employee's performance before the manager disciplines the worker to reduce the chances of a retaliation claim, recommended Daniel Kaufman, an attorney with Michael Best & Friedrich in Chicago. "Then if discipline is imposed, the company is able to say that someone who was not aware of the claim reviewed the misconduct," he said.

Retaliation cannot be shown without establishing that the decision-maker—or someone who influenced the decision-maker—knew of any protected complaint activity, the Equal Employment Opportunity Commission (EEOC) notes in its Aug. 29, 2016, guidance on retaliation.

### Disproving Retaliation

Other ways an employer can disprove retaliation, according to the EEOC in its guidance, include reliance on:

- A legitimate non retaliatory motive for discipline or termination, such as poor performance; inadequate qualifications for the sought position; qualifications, application or interview performance that were inferior to the person selected; negative job references; misconduct, such as threats, insubordination, unexcused absences, dishonesty, abusive or threatening conduct, or theft; and reduction in force.
- The similar treatment of applicants or employees who did not file complaints.
- The adverse action, such as a reduction in force, occurring anyway, despite the existence of a possible retaliatory motive.

Read more at [https://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/EEOC-guidance-retaliation.aspx?utm\\_source=SHRM%20Thursday%20-%](https://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/EEOC-guidance-retaliation.aspx?utm_source=SHRM%20Thursday%20-%)



## EEO SPOTLIGHT

### Why the Fourth Circuit Court's Recent Decision in a Harassment/Retaliation Case is a Potential "Game Changer" for Maryland Employers

In a decision likely to have wide-ranging implications for employers, the U.S. Court of Appeals for the Fourth Circuit, in *Reya Boyer-Liberto v. Fontainebleau Corp.*, held for the first time that (i) an isolated incident of harassment, if extremely serious, can create a hostile work environment and (ii) an employee is protected from retaliation when he or she reports an isolated incident of harassment physically threatening or humiliating, even if a hostile work environment is not created by that incident alone. In so ruling, the Fourth Circuit took the unusual step of overruling a decision it had issued nearly nine years earlier that addressed similar claims.

#### Factual Summary

In *Liberto*, an employee complained to her employer after a woman whom she regarded as her supervisor called her a "porch monkey" on at least one occasion. The employer terminated the employee shortly after she made her complaint. The U.S. District Court for the District of Maryland granted summary judgment in favor of the defendants. The court found that while the comments were offensive and extreme, because they were an isolated incident, they legally could not support a claim of hostile work environment harassment or a claim of retaliation.

However, the Fourth Circuit, in an *en banc* decision (a case heard before all of the judges of the court), reversed the district court's decision and remanded the case for further proceedings. In arriving at its decision, the Fourth Circuit reviewed several cases that define when and under what circumstances an individual may pursue hostile work environment and retaliation claims. A hostile work environment exists when the workplace is permeated with discriminatory intimidation, ridicule, and insult sufficiently severe and pervasive to alter the conditions of the victim's employment and to create an abusive working environment. To prevail on a Title VII claim that a workplace is racially hostile, a plaintiff must show there is (1) unwelcome conduct; (2) the unwelcome conduct is based on the plaintiff's race; (3) the unwelcome conduct is sufficiently severe or pervasive to alter the plaintiff's conditions of employment and to create an abusive work environment; and (4) the employer is responsible for the unwelcome conduct. To state a *prima facie* case of retaliation in violation of Title VII, the plaintiff must prove (1) that she was engaged in protected activity; (2) that her employer took an adverse employment action against her; and (3) there was a causal link between the two. Read more at <http://www.lerchearly.com/publications/1239-why-fourth-circuit-courts-recent-decision-harassment-retaliation-case#.WCuBu18cDMo.email>



## ADA CORNER

### Safeway Will Rehire Store Clerk and Pay \$27,000 to Settle EEOC Disability Discrimination Lawsuit

BALTIMORE - Safeway, Inc. will pay \$27,000 in monetary damages and furnish significant equitable relief, including returning an employee to work, to resolve a federal disability discrimination lawsuit, the U.S. Equal Employment Opportunity Commission (EEOC) announced today.

According to the suit, Patricia Bonds worked as a food clerk at Safeway's Westminster, Md., store when she sustained a work-related injury that substantially limited her in her lifting ability. Although Safeway initially accommodated Bonds' disability by reassigning her to work at the customer service desk, the store abruptly placed her on indefinite unpaid leave, claiming that she had exhausted her time limits for modified duty. EEOC charged that Safeway refused to observe its legal duty to provide a reasonable accommodation and then unlawfully fired Bonds because of her disability.

The Americans with Disabilities Act (ADA) prohibits disability discrimination. The ADA also requires employers to provide a reasonable accommodation, including reassignment to a vacant position, unless it would cause a significant expense or difficulty to the employer. EEOC filed suit (*EEOC v. Safeway Inc.*, Civil Action No. 1:15-cv-02955) in U.S. District Court for the District of Maryland, Baltimore Division, after first attempting to reach a pre-litigation settlement through its conciliation process.

In addition to the \$27,000 in monetary relief, the three-year consent decree resolving the suit requires Safeway to rehire Bonds with her continued seniority status and to provide her with a hand scanner or other reasonable accommodation to allow her to perform the food clerk job duties. Safeway is enjoined from violating the ADA, including refusing to provide reasonable accommodations. Safeway will provide annual ADA training to all managers and supervisors at its Westminster store and to all members of its eastern division accommodations committee. The grocery store will also report to EEOC on how it handles any complaints of disability discrimination and post a notice regarding the settlement.

EEOC Philadelphia District Director Spencer H. Lewis, Jr. pointed out that according to the Job Accommodation Network (JAN), a service from the U.S. Department of Labor's Office of Disability Employment Policy, a high percentage (59%) of accommodations cost absolutely nothing to make, while the rest typically cost only \$500. Available resources to learn about reasonable accommodations include <http://askjan.org> and [www.eeoc.gov](http://www.eeoc.gov). **Read more at** <https://www.eeoc.gov/eeoc/newsroom/release/11-2-16a.cfm>



## ADA CORNER

### Do Employers Need To Accommodate If The Employee Does Not Ask?

Most employers are aware of their obligation to explore reasonable disability accommodations when an employee asks for such a measure. But, what if the employee never asks? A new decision out of the United States Court of Appeals for the Eighth Circuit raises the concerning possibility that an employer could indeed be held liable for failing to provide a disability accommodation even if the employee never requested one.

In that case, a respiratory therapist at a North Dakota hospital took a leave of absence to undergo spinal surgery. After the surgery, she returned to her job with lifting and work hours restrictions. Not long after her return, the hospital reminded employees of the need to complete a CPR certification test. The respiratory therapist took and passed the written portion of the test, but notified her employer that she could not complete the physical portion until cleared by her physician. Because CPR certification was an essential function of the respiratory therapist position, the hospital terminated her employment.

The employee sued under the Americans with Disabilities Act (ADA), claiming that the hospital should have allowed her additional time to obtain CPR certification, or transferred her to another position that did not require this certification. In response, the employer noted that the respiratory therapist never requested any such accommodations.

The court sided with the employee, determining that a jury could reasonably conclude that she had sufficiently "made her employer aware of the need for an accommodation" – even if she did not actually request one – when she informed the hospital of her surgery and resulting limitations. The court reasoned that an employee is not required to "invoke the magic words 'reasonable accommodation'" to trigger the employer's obligation to explore the need for a reasonable accommodation through the interactive process. Read more at <http://www.mondaq.com/article.asp?articleid=539364&friend=1>



## EEO QUIZ

1. Each State of Maryland agency has a designated Fair Practices and EEO Officer.

True \_\_\_\_\_ False \_\_\_\_\_

2. The Maryland Commission on Civil Rights is the federal agency that enforces non-discrimination laws.

True \_\_\_\_\_ False \_\_\_\_\_

3. All internal EEO complaints filed by employees with their designated agency EEO Officer must be investigated within 45 business days.

True \_\_\_\_\_ or False \_\_\_\_\_

4. The Joint Committee on Fair Practices & State Personnel Oversight oversees, reviews, evaluates, and makes recommendations on equal opportunity policies and practices.

True \_\_\_\_\_ or False \_\_\_\_\_

5. Job applicants don't have the right to file an internal complaint of discrimination with the agency whom they applied.

True \_\_\_\_\_ or False \_\_\_\_\_

Answers: 1. True, 2. False, 3. False, 4. True, 5. False

## Meetings & Trainings

### November 2016

#### **National Federation of the Blind**

Android Accessibility Training

Monday, November 14, 2016

3:00 p.m.—5:00 p.m.

**RSVP to [cvangerven@nfb.org](mailto:cvangerven@nfb.org)**

#### **Job Accommodation Network (JAN)**

Hidden Disabilities, Disclosures and Accommodations

Tuesday, November 15, 2016

2:00 p.m.

**Register at <http://prod.askjan.org/webcast/registration.cfm>**

### December 2016

#### **ADA Coordinators Meeting**

Special Movie & Discussion Event—**Invite Only**

201 W. Preston Street, L4 location

December 1, 2016

9:00 a.m.—12:30 p.m.

#### **Chesapeake Human Resources Association (CHRA)**

Members Only - Holiday Party

December 8, 2016

5:30 p.m.—7:30 p.m.

**Read more at [http://www.chra.com/events/event\\_list.asp](http://www.chra.com/events/event_list.asp)**

#### **National Federation of the Blind**

Chromebooks Accessibility Training

Thursday, December 8, 2016

8:00 a.m.—10:00 a.m.

**RSVP to [cvangerven@nfb.org](mailto:cvangerven@nfb.org)**

## **Diversity Calendar**

### **November 2016**

#### **National Native American Heritage Month**

**November 1**—All Saints Day

**November 2**— All Souls Day

**November 11**—Veterans Day

**November 11— 15**— Diwali

**November 12**—The Birth of Baha'u'llah

**November 13**—Dedication of Vietnam Memorial

**November 16—20**—American Education Week

**November 20**—Transgender Day of Remembrance

**November 22**—Feast of Christ the King

**November 26**—Thanksgiving Day

**November 27**—The beginning of Advent in Western Christianity

### **December 2016**

**December 1**— World AIDS Day

**December 3**— International Day of Disabled Persons

**December 8**— Bodhi Day

**December 10**—International Human Rights Day

**December 12**— Feast Day at Our Lady of Guadalupe

**December 12**— Eid Milad Un Nabi (Islamic holiday)

**December 13**— St. Lucia's Day

**December 25**— Christmas

**December 25— January 1**—Hanukkah (Chanukah)

**December 26— January 1**— Kwanzaa

**December 31**—New Years Eve

## **Resources for EEO Professionals**

### **Division of Rehabilitation Services (DORS)**

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

### **Department of Labor**

<http://www.dol.gov/>

### **Employee Assistance Program (EAP)**

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

### **Equal Employment Opportunity Commission (EEOC)**

<http://www.eeoc.gov/>

### **Job Accommodation Network (JAN)**

<https://askjan.org/>

### **Maryland Commission on Civil Rights (MCCR)**

<http://mccr.maryland.gov/>

### **Society for Human Resource Management (SHRM)**

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

**Office of the Statewide EEO Coordinator**  
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