



Department of Budget and Management
Office of the Statewide Equal Employment
Opportunity Coordinator

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Issue III Volume I

EEO CONNECTION

Inside this issue:

Coordinator's Message

2011 is here and in full-swing. The staff at the OSEEOC is hard at work accomplishing its mission of administering and enforcing State and federal equal employment opportunity laws and policies, promoting a work environment free of any unlawful discrimination, harassment and retaliation, and assisting in the building of a well diversified workforce for Maryland State government employees and applicants.

In working to accomplish these goals, thus far this year, we have:

- revised the EEO Audit Questionnaire,
- revised the EEO Annual Report Guidelines,
- launched an initiative, "Coffee and Conversation with the Coordinator",*
- continued the quarterly ADA Coordinator meetings,**
- reestablished the quarterly EEO group meetings,‡
- planned the 2011 Statewide EEO Symposium,§ and
- continued the agency

EEO compliance audits.

This is only a sampling of what we have accomplished for 2011. More news and information about our plans for accomplishing our mission is sure to follow in the coming months.

I am please to present the March 2011 *EEO Connection Newsletter*. This issue spotlights President Obama's proclamation reaffirming March as Women's History Month. Read about the history and contributions of great women in America and test your knowledge in the Diversity Corner. Learn more about how Maryland's population has grown in the last decade, according to the new Census Bureau data. In the Agency News section, read about the Maryland Department of Natural Resources and learn how Richard Allen, Director of the Office of Fair Practices has been educating employees and the community about culture and diversity. This issue also spotlights EEOC's recent regulations for the Genetic Information Nondiscrimination Act

(GINA) and read about Noteworthy EEO related rulings.

Please enjoy this issue of the *EEO Connection Newsletter* and remember, "What we need to do is learn to respect and embrace our differences until our differences don't make a difference in how we are treated." – Yolanda King

Glynis Watford
Statewide EEO
Coordinator

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*Read more on page 5.

**See page 5 for details

‡Page 5 has details

§More information is forthcoming

SPOT LIGHTS

Presidential Proclamation for Women's History Month, 2011



On February 28, 2011, the White House released President Obama's proclamation reaffirming March as Women's History Month and March 8, 2011 as International Women's Day. This year marks the 100th anniversary of the holiday celebrating women. In the proclamation, the President applauds the accomplishments of women in all walks of life while reminding us that "there is still work to be done before women achieve true parity."

President Obama explains that the rights of women around the world have been a focus of the current administration's foreign policy. The United States has incorporated gender equality considerations into all aspects of development assistance as well as working to increase the participation of women in conflict resolution and prevention.

America, the President states, should be leading the world by example by supporting empowerment of women and protecting women's rights. Yet in spite of the nation's progress, "too many women continue to be paid less than male workers, and women are significantly underrepresented in the science, technology, engineering and mathematics (STEM)

fields."

The President reaffirms his administration's dedication to addressing women's concerns through The White House Council on Women and Girls. The Council's purpose is to "remove the obstacles to achievement" by supporting entrepreneurship and promoting economic stability for women, the majority of whom are financially responsible for American families. President Obama also points out that every agency within the Federal Government has been called upon and responded with "unprecedented cooperation" to working towards ending violence and abuse towards women.

Courtesy of: Power News Network

Maryland Population Grows by 480,000

Buoyed by a growing Hispanic population and the availability of steady federal jobs, Maryland grew by 9 percent in the last decade — faster than most Eastern states, according to new Census Bureau data.

Maryland population grew by 480,000 residents, to 5,773,552, with a growth rate slightly lower than the national average, Maryland maintained its ranking as the nation's 19th most populous state — and retained its seats in the House of Representatives.

The population count, mandated by the Constitution and conducted every 10 years, determines the distribution of the 435 seats in the House of Representatives and directs

the flow of billions of dollars in federal aid to local jurisdictions.

"The 2010 Census will serve as a backbone for our political and economic system for years to come," said Gary Locke, the U.S. commerce secretary, at a news conference announcing the new figures.

The United States' population grew to 308,745,538, a 9.7 percent jump since 2000, according to the tally. The most robust growth in Southern and Western states. Maryland is one of 32 states that will see no change in its representation in Congress.

In Maryland, the population continued its trajectory of increasing racial and ethnic diversity in the last

10 years, according to separate estimates updated each year by the Census Bureau. The state is one of a handful in the country — and the only one among its neighbors — where whites are the majority but make up less than 60 percent of the population. Whites now make up about 57 percent of Maryland's population, compared to 62 percent 10 years ago.

The state's Black, Non-Hispanic population has remained relatively stable, at about 29 percent. And though Latinos make up about 7 percent of Maryland's population, they have accounted for about 40 percent of the state's growth since 2000.

Courtesy of The Baltimore Sun

SPOTLIGHT (cont.)

GINA Regulations Are Finally Here: What You Need To Know

The Equal Employment Opportunity Commission (EEOC) has issued final regulations that interpret and implement the employment provisions of the Genetic Information Nondiscrimination Act of 2008 (GINA). GINA prohibits employers, employment agencies, labor organizations, joint labor-management committees (collectively, “covered entities”) from discriminating against employees (including former employees and job applicants) based on genetic information and restricts the acquisition and disclosure of genetic information.

The final regulations aren’t substantially different from the proposed regulations issued in March 2009, but the EEOC has clarified and refined the preamble and the regulations also provide specific examples of what you must do (or avoid doing) to comply with GINA.

Elimination of Intent Requirement

The EEOC revised the final regulations to eliminate the reference to “deliberate acquisition” of genetic information, which means employers may violate GINA without specific intent to obtain genetic information. After the removal of the intent requirements, the regulations now state that GINA restricts “requesting, requiring, or purchasing genetic information.” However, the preamble does clarify that the EEOC recognizes that not every acquisition of genetic information violates the Act.

Definitions

The regulations include definitions that aren’t found in any other discrimination statutes enforced by the EEOC and provide additional guidance regarding those terms, including several examples to help clarify the terms’ meanings. The final regulations amended the proposed rules by:

- Adding a statement that the term “genetic information” doesn’t include information about an individual’s race or ethnicity that

isn’t derived from a genetic test;

- Listing examples of “genetic tests” (e.g., a test for a genetic variant for Huntington’s disease and a test to determine whether someone has the BRCA1 or BRCA2 variant evidencing a predisposition to breast cancer); and
- Listing examples of tests that aren’t “genetic tests” (e.g., complete blood counts, cholesterol tests, and liver-function tests).

Clarification of Request

GINA generally provides that a covered entity may not request, require, or purchase the genetic information of any employee or an employee’s family member. The final regulations add that a “request” includes:

- Performing Internet searches on individuals in a way that is likely to reveal genetic information;
- Trying to acquire genetic information by actively listening to third-party conversations or searching someone’s personal effects; and
- Requesting information about someone’s current health status in a way that is likely to reveal genetic information.

Inadvertent Violation Exception

The regulations provide six exceptions to the general rule that you may not acquire genetic information from employees, including when a covered entity inadvertently requests or requires genetic information. The final regulations attempt to further clarify this exception by including a couple of examples that reveal:

- A covered entity that inadvertently obtains genetic information about an employee’s family member after asking a general question about that person’s health may not ask follow-up questions that are probing in nature; and
- A covered entity may inadvertently acquire genetic information from social media websites.

Medical Information

The most important news for employers is that the regulations provide specific language you can use in medical inquiry forms, such as pre- and post offer medical exams and fitness-for-duty exams. By using the “safe harbor” language, you can avoid liability under GINA if you receive protected genetic information in response to those inquiries.

If a medical provider discloses genetic information to you in spite of that warning, the disclosure will be deemed inadvertent and no in violation of GINA. The regulations also provide that you may choose to convey the information verbally if the request for medical information itself is also verbal.

Wellness Programs

The regulations clarify how GINA applies to voluntary wellness programs and the health risk assessments (HRAs) that are used in conjunction with them. In general, you may not offer a financial inducement for employees to provide genetic information. However, you may offer financial inducements for employees to complete an HRA that includes questions about family medical history or other genetic information if:

- The assessment specifically identifies which questions request genetic information; and
- You make clear, in language that is reasonably likely to be understood by those completing the HRA, that the questions are optional and the financial reward will be provided to employees whether or not they complete that portion of the assessment.

The regulations provide examples that illustrate the appropriate use of HRAs.

The regulations also reveal how you can provide financial inducements to encourage employees to participate in disease-management programs or other programs that promote healthy lifestyles and/or meet particular health goals as part of a health or genetic service. The regulations outline the requirements for offering such services and provide illustrative examples.

Courtesy of: Maryland Law Letter

NOTEWORTHY RULINGS

A Look at the Supreme Court's Retaliation Cases for 2010-2011

The Court is set to hear two different retaliation cases. The first, *Thompson v. North American Stainless, LP*, involves third-party (or associational) retaliation. Eric Thompson worked at North American Stainless, LP (NAS), with his then-fiancée, Miriam Regalado, who filed a gender discrimination charge with the Equal Employment Opportunity Commission (EEOC). A few weeks after the EEOC informed NAS of Regalado's charge, the company terminated Thompson's employment. He sued NAS, claiming it retaliated against him for his fiancée's protected activity.

The trial court ruled in NAS' favor, and the Sixth U.S. Circuit Court of Appeals agreed, holding that Thompson couldn't sue under Title VII because he didn't engage in protected activity. The Supreme Court must decide whether Title VII prohibits an employer from retaliating against an employee based on his close association with an individual who engaged in protected activity and, if so, whether the third-party employee can pursue a retaliation

claim against the employer.

On January 24, 2011, the U. S. Supreme Court recognized that an employer may be liable under title VII of the Civil Rights Act of 1964 for retaliation with an employee who has filed a discrimination charge. The Court applied a "zone of interest" test, which confers upon an individual right to sue if s/he "falls within the zone of interests' sought to be protected by the statute." The Supreme Court ruled that Thompson falls within the zone of interest protected by Title VII. He was an employee of NAS, and Title VII was intended to protect employees for the unlawful actions of their employers.

In addition, if the acts alleged by Thompson are true, then injuring him was the "intended means of harming Regalado." As a result, the court concluded that Thompson was intended beneficiary of the Title VII anti-retaliation protections. *Thompson v. North American Stainless, LP, U.S. No. 09-291.*

The second retaliation case looks at whether a Fair Labor Standards Act (FLSA) violation complaint is protected by the law's anti-retaliation provision if it is made orally or whether such a complaint must be in writing. In *Kasten v. Saint-Gobain Performance Plastics Corp.*, Kevin Kasten sued under the FLSA, asserting that he was fired in retaliation for orally complaining about his employer's time-clock placement. The FLSA prohibits employers from retaliating against employees who have "filed any complaint" under the statute.

The Seventh Circuit ruled for the employer, holding that FLSA complaints must be made in writing because of the "filed" language (*i.e.*, an oral complaint can't be "filed"). The Supreme Court must determine whether the FLSA's anti-retaliation provision protects only written complaints or whether oral complaints also are protected.

Courtesy of the Maryland Law Letter

Home Health Care Provider Shells Out \$150,000 to Settle Race Bias Suit

On December 31, 2010, Hi Care, Inc., DBA Home Instead Senior Care, agreed to pay \$150,000 and furnish other relief to settle a race discrimination lawsuit filed by the Equal Employment Opportunity Commission (EEOC).

In its lawsuit, the EEOC alleged that beginning in October 2007, Hi Care illegally engaged in a pattern and practice of race-based assignments of its care giving employees. According to the EEOC, the company employed racial coding to identify clients who preferred Caucasian caregivers as "circle dots" and catered to the racial preferences of its clients

at its Arnold and Ellicott City offices.

In addition to the monetary settlement, Hi Care consented to stop allowing its clients to dictate the assignment of caregivers based on their racial preference. It also agreed to (1) annually train all current and newly hired recruiters and HR personnel, (2) implement a policy prohibiting race-based assignments, (3) post notices affirming the company's commitment to maintaining an environment free of race discrimination, and (4) allow monitoring by the EEOC.

Hi Care, headquartered in Omaha, Nebraska, has more than

8 — independently owned and operated franchises providing non-medical senior care.

EEOC v. Hi Care, Inc., D.C.MD Civil Action No. 1:10-CV-02692-WMN

Courtesy of Maryland Law Letter

Community Awareness

OSEEEOC OUTREACH INITIATIVE



The OSEEEOC has launched a new outreach initiative for 2011, Coffee and Conversation with the Coordinator. The Coordinator is traveling around the State meeting with the Fair Practices Staff at each agency. The goal of the initiative is to promote better communication in our EEO community, reinforce our team spirit and gain new ideas to bring about positive changes to the State's EEO program. The conversations and feedback thus far have been very positive and informative.

The OSEEEOC continually strives towards providing resources and guidance, the most recent changes to EEO laws and policies, and the tools necessary to ensure that our employees are provided with a fair opportunity to pursue their careers in an environment free of any unlawful discrimination or harassment.

Thanks you,

Glynis Watford
Statewide EEO Coordinator

TRAINING OPPORTUNITIES



ADA Coordinators Group Meeting

Tuesday, March 29, 2011

9:30 a.m.-11:00 a.m.

Speaker: LeAnn Browning-McNee,

Deputy Director of the Mental Health Association

Topic:

- Mental Health Issues Facing Our Workforce
- Accommodations
- Resources

EEO Group Meeting

Tuesday, March 15, 2011

9:00 a.m.—11:30 a.m.

Speaker: Mary Tanner (EEOC)

Topic:

- EEOC Charge Processing Procedure
- Genetic Information Non-discrimination Act (GINA)

EEO Symposium

Thursday, June 23, 2011

10:00 a.m.— 4:00 p.m.

Speakers: Dr. John Wolfe, Assoc. Vice Chancellor for Diversity, USM and Dr. William L. Howard, Asst. VP of Academic Affairs, St. Mary's College

Topic:

- Diversity In The Workplace-Generational Differences

Webinars

Wednesday, March 16, 2011

1:00 p.m.- 2:00 p.m.

Speaker: EEOC

Topic:

- HIV/AIDS and the ADA: What Employers Need to Know

Cost: \$149.00

October 13, 2011

Speaker: EEOC

Topic:

- EEO Laws Refresher Course

Cost: \$175.00



The Maryland Dept. of Natural Resources-Office of Fair Practices Equal Opportunity/Diversity Services in Motion

The headquarters of the Maryland Department of Natural Resources (MD DNR) is located at the Tawes Building in Annapolis, Maryland. MD DNR operates and maintains approximately 55 Parks and over 45 wildlife management-natural resource-environmental areas. This represents 500, 000 acres of public lands and over 17, 000 miles of public riverways. MD DNR is a national leader in land conservation, with the MD Park Service providing natural resource, historic, recreational, and cultural interpretation services to 11 million visitors, annually.

The MD DNR agency currently employs 1,207 permanent employees, in addition to a significant number of seasonal employees. Approximately 66% of our employees work outside of headquarters in Annapolis, Maryland, within the various parks, wildlife and management areas, field offices, and regional offices of MD DNR.

The MD DNR Office of Fair Practices provides equal opportunity/workforce diversity services, to its employees and community. Last year, the MD DNR Office of Fair Practices' coordinated eight employee-community programs in celebration of Dr. Martin L. King, Jr. Birthday/Holiday, Black History Month, Women's History Month, Asian-Pacific American Heritage Month, Hispanic Heritage Month, MD Disabilities and Awareness Month, Veterans Day, and American Indian Heritage Month. These programs can be viewed on our webpage at www.dnr.maryland.gov/ofp. 2011 programs have been held for the Dr. Martin L. King, Jr. and Black History Month observances. The MD DNR "Women's History Month" program will feature Dr. Anne Hairston-Strang, MD DNR Forest Hydrologist, at Noontime, on Tuesday, March 15th here at the Tawes Building. Other programs are being scheduled throughout 2011.

The MD DNR Office of Fair Practices' appreciates this opportunity provided by the Maryland Statewide EEO Coordinator's Office, to share information on our equal opportunity/workforce diversity program, on behalf of our employees and members of the public.

Richard W. Allen, Director, Office of Fair Practices

Diversity Corner

Our History is Our Strength

March is celebrated as **National Women's History Month** in thousands of schools, communities and workplaces across the nation as well as on military bases throughout the world.

This celebration, designated by Joint Resolutions of the House and Senate and Proclamations by six American Presidents, is an opportunity to honor and celebrate women's historic achievements.

Each year **National Women's History Month** employs a unifying theme and honors women around the country whose work and lives testify to that theme.

For 2011, the theme is **Our History is Our Strength**. To date, we have recognized National Honorees, but this year local communities, organizations and institutions are invited to honor women within their own communities or organizations.

Our History is Our Strength pays tribute to the millions of women who helped create a better world for the times in which they lived as well as for future generations. Knowing the challenges these women faced, grappled with, and over-came can be an enormous source of strength to all of us. During today's difficult times,

Our History is Our Strength can serve as an important reminder to our nation that adversity can be overcome.

Women have played and continue to play a crucial role in several important movements throughout U.S.

history:

☐ **The Labor Movement** which began as early as 1765 when women formed the first society of working women.

☐ **The Women's Suffrage Movement** which was launched in 1848 at the first women's right conference held at Seneca Falls, NY.

☐ **The Civil Rights Movement** in which women held a variety of roles from leadership to organizers to participants.

☐ **The Women's Rights Movement** which was re-energized in the 20th Century with what is called the Second Wave.

☐ **The Environmental Movement** in which women played a key role from the early 19th century and which was officially launched on Earth Day, April 22, 1970.

Here are some women who participated in these movements:

Frances Perkins, U.S. Secretary of Labor, began her advocacy for the labor movement when she witnessed the Triangle Shirtwaist Factory Fire in 1911. Appointed to the Cabinet in 1933, **Perkins** worked hard to secure legislation to enact unemployment relief, public works, Social Security, minimum wage, and the prohibition of child labor.

Alice Paul, represented the last generation of suffrage leaders, and brought fearlessness and tenacity to the fight for women's right to vote. She organized the first pickets at the White House in 1916 and 1917. Along with dozens of women, **Paul** was imprisoned, went on a hunger strike, and was force fed. After winning the vote, she worked to enact the Equal Rights

Amendment.

Minnijean Brown Trickey was only 16 years old when she became one of the Little Rock Nine who integrated Central High School in 1957. Along with eight other African-American teenagers, she defied death threats, hostile white demonstrators, and even the Arkansas National Guard, to attend the all-white high school. **Brown-Trickey's** courage helped change the lives and education of all students throughout the country.

Bella Abzug, one of the most recognized and bold leaders of the 20th Century's Women's Movement, was elected to the U.S. Congress at the age of 50. She presided over the first government sponsored National Women's Conference at Houston in 1977. With great joy, **Abzug** took part in the last leg of the relay which had carried a torch from Seneca Falls, site of the first women's rights convention, into the stadium at Houston.

Rachel Carson is known as the founder of the contemporary environmental movement. In 1962, **Carson** published "Silent Spring," which documented the dangers of air pollutants and pesticides on animals, people, and land. Her writing boldly challenged the practices of agricultural scientists and even the government. **Carson** called for a change in the way humankind viewed the natural world.

Learn more about women's history

National Women's History Project
WWW.NWHP.ORG

Our HISTORY is Our Strength

