EEO CONNECTION

Statewide EEO Coordinator's Message

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The Office of the Statewide EEO Coordinator is excited to announce our 10 year anniversary of the EEO Connection Newsletter. Looking back at all the important news and information that we've shared with you, I will say that I'm proud that we made it this far. We will continue building on the platform of delivering the latest in EEO, Diversity and Inclusion news, useful tools and insights to guide you to a better understanding of the rights, protections and responsibilities afforded to you. I'm very appreciative to everyone who has been a part of making this Newsletter a successful publication. And to our readers, I say thank you for finding value in what we have to offer and we're looking forward to many more years of serving you.

With that said, turn to page 4 and read about the first lawsuit filed about pandemic disability discrimination for denial of a telework accommodation. On page 6, read why the EEOC sued several McDonald's Restaurants for sexual harassment of younger workers and in the ADA Corner, learn why Sprouts Farmers Market had to pay \$280,000 to settle a disability discrimination claim, on page 11. Most of us have been teleworking at least some time since last year and even thought we may enjoy doing so, we can still experience stress and tension. Listen to Morra Aarons-Mele TED TALK to learn 3 steps to stop remote work burnout on page 12. That's not all, simply turn the page to read more.

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.



Ask the OSEEOC Team

1. QUESTION

May an employer withdraw a telework arrangement or a modified schedule provided as a reasonable accommodation because the employee is given an unsatisfactory performance rating?

OSEEOC ANSWER:

No. An employer may not withdraw a reasonable accommodation as punishment for the unsatisfactory performance rating. Simply withdrawing the telework arrangement or a modified schedule is no different than discontinuing an employee's use of a sign language interpreter or assistive technology as reasonable accommodations. Nor should an employer assume that an unsatisfactory rating means that the reasonable accommodation is not working. The employer can proceed with the unsatisfactory rating but may also wish to determine the cause of the performance problem to help evaluate the effectiveness of the reasonable accommodation. If the reasonable accommodation is not assisting the employee in improving his performance as intended, the employer and employee may need to explore whether any changes would make the accommodation effective, whether an additional accommodation is needed, or whether the original accommodation should be withdrawn and another should be substituted. EEOC,2008

2. QUESTION

How can I get my agency's workforce utilization data that is in the Annual Report?

OSEEOC ANSWER:

Since the State of Maryland changed to the Workday system, the OSEEOC has stopped providing each agency's utilization report. Please contact your HR representative for assistance in obtaining the workforce data.

3. QUESTION

I have an employee who will be facilitating the mandatory Sexual Harassment Prevention training. Will there be anymore sexual harassment train-the-trainer sessions this year?

OSEEOC ANSWER:

Yes. A session has been scheduled for December 2 3, 2021. If anyone is interested in attending, please send an email expressing your interest to norma.belton@maryland.gov.

Works Cited

EEOC. unknown . Applying Performance and Conduct Standards to Employees with Disabilities. Retrieved from US Equal Employment Opportunity Commission: https://www.eeoc.gov/laws/guidance/applying-performance-and-conduct-standards-employees-disabilities

EEO SPOTLIGHT

UNITED STATES: EEOC BRINGS FIRST PANDEMIC DISABILITY DISCRIMINATION SUIT OVER DENIAL OF TELEWORK ACCOMMODATION

05 October 2021

by Christine Bestor Townsend and Corissa L. Pennow

The COVID-19 pandemic has led to an explosion of remote work, including for positions traditionally not considered eligible for remote work. As employers have returned employees to office work environments, some employees who historically worked on-site have requested continued work from home as an accommodation under the Americans with Disabilities Act ADA. On September 7, 2021, the U.S. Equal Employment Opportunity Commission EEOC brought its first <u>lawsuit</u> alleging that an employer had discriminated against a disabled employee by failing to accommodate her by allowing work from home due to her increased risk of COVID-19 and by terminating her employment.

Background

ISS Facility Services, Inc., a provider of office maintenance and management services, employed Ronisha Moncrief as a "Health Safety Environmental Quality Manager" in one of its manufacturing facilities. The complaint alleges that Moncrief suffers from "physical impairments, including chronic obstructive lung disease and hypertension." Around March 1, 2020, "Moncrief became sick while at work with a fever, sweats, and an uncontrollable cough"; a few days later, she was diagnosed with obstructive lung disease. Her doctor provided ISS Facility Services "ADA Reasonable Accommodation Request Medical Certification Form" recommending that she "work from home and take frequent breaks while working."

Around the same time, the COVID-19 pandemic caused ISS Facility Services to move its employees to a rotational schedule, by which employees, including Moncrief, "work[ed] from home four days per week." ISS Facility Services required its staff to resume working five days per week in the office beginning June 1, 2020.

Moncrief requested an accommodation to work from home two days per week "with frequent breaks while working on-site." Due to her obstructive lung disease, Moncrief is considered "high-risk for contracting COVID-19." ISS Facility Services denied her accommodation request on July 20, 2020, though other managers were permitted to work from home.

A few weeks later, Moncrief's supervisor "recommend[ed] that Moncrief be removed and replaced due to performance issues." ISS Facility Services terminated Moncrief's employment on or about September 11, 2020. The complaint alleges that Moncrief never received a warning that her performance was deficient.

Read the full article: <a href="https://www.mondaq.com/unitedstates/health-safety/1118030/eeoc-brings-first-pandemic-disability-discrimination-suit-over-denial-of-telework-accommodation?email access on

EEO SPOTLIGHT

...SOMETIMES TELEWORK IS NOT A REASONABLE ACCOMMODATION

By Deborah Hopkins

Out of all the training classes we present here at FELTG, maybe the biggest area where we get questions, comments, complaints, and yes even tears of frustration, is the discussion of telework as a reasonable accommodation for disability. Telework is often an effective accommodation to allow someone to perform the essential functions of her job; it's just fabulous when it works. Sometimes, though, telework is not a good option, yet agencies are afraid to say "no" to someone who brings in a doctor's note that says "Employee X needs to telework because of a medical condition" because they fear getting in trouble if they deny the request or ask for more information. Does this sound familiar? If so, then it's time to rejoice, because I have a few points to share that will help you legally deny telework as accommodation:

When the employee does not have a medically-documented disability. If an employee claims to have a disability and requests telework as accommodation, that employee must provide medical documentation that says they have a physical or mental impairment that affects their ability to perform an essential function of the job. The employee must also explain to the agency how the accommodation in this case, telework would allow him to perform that essential function from home. If the person does not provide medical documentation, then you do NOT have to grant him telework because he is NOT qualified. In other words, if he refuses to provide specific medical documentation diagnosis, prognosis, functional limitations, then he waives his entitlement to the reasonable accommodation process. See Complainant v. DLA, EEOC Appeal No. 0120114081 2013 employee's medical documentation was vague and did not describe the limitations on her essential functions, so the agency was not obligated to accommodate her request. No documentation, no disability. No disability, no accommodation.

When telework is not an effective accommodation. Some jobs can't be done from home because the essential functions require the person to be onsite. In those cases, telework is not an effective accommodation and should not be granted. See Humphries v. Navy, EEOC Appeal No. 0120113552 2013 telework was not an effective accommodation because face-to-face interaction with clients was an essential function of the employee's job; Gemmill v. FAA, EEOC Appeal No. 0120072201 2009 telework was not an effective accommodation because the employee needed to access computer systems and confidential documents that were kept securely at the agency facility. If an essential function of the job requires the employee to be at work to do something, and the employee can't be at work to do the thing, and no accommodation at work will allow the employee to do the thing, the employee is not a qualified individual.

Read the full article: https://feltg.com/good-news-yall-sometimes-telework-is-not-a-reasonable-accommodation/

NOTEWORTY RULINGS

EEOC SUES MCDONALD'S RESTAURANTS FOR SEXUAL HARASSMENT OF YOUNG WORKERS

Franchise Owner's Pervasive Culture of Harassment Spanned Across Three States, Federal Agency Charges

LAS VEGAS – AMTCR, Inc., AMTCR Nevada, Inc., and AMTCR California, LLC violated federal law by allowing a class of male and female workers to be subjected to egregious sexual harassment, the U.S. Equal Employment Opportunity Commission EEOC charged in a lawsuit. Headquartered in Kingman, Ariz., AMTCR is a franchise owner currently operating approximately 22 McDonald's fast food restaurants in Nevada, Arizona and California.

According to the lawsuit, the federal agency alleges that since at least 2017, AMTCR was aware of, perpetuated, and tolerated sexual harassment by supervisors, managers, and coworkers at various McDonald's restaurants throughout the tri-state area. The harassment, which was mainly focused on young, teenage employees, included frequent unwanted groping and touching, offensive comments and gestures regarding male genitalia, unwelcome sexual advances, sexual ridicule, intimidation, and insults. The EEOC contends that AMTCR failed to adequately respond to multiple complaints of sexual harassment over a period of time, instead ignoring and downplaying these complaints. Due to the increasingly heavy emotional and mental toll from the ongoing sexual harassment, as well as the franchise owner's failure to address the conduct, many workers eventually found the working conditions so intolerable that they had no choice but to quit.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964. EEOC filed its suit against the company in U.S. District Court for Nevada EEOC v. AMTCR, Inc., et. al., Case No: 2:21-cv-01808, after first attempting to reach a pre-litigation settlement through its conciliation process. EEOC's suit seeks back wages, out of pocket costs, and compensatory and punitive damages for a class of employees, as well as injunctive relief intended to prevent further sexual harassment by the company.

"Young workers are particularly vulnerable to harassment in the workplace as they are more likely to be unaware of their rights and can be taken advantage by their employer," said Anna Park, regional attorney for EEOC's Los Angeles District Office, whose jurisdiction includes Las Vegas. "Ensuring workers' rights to a safe workplace free of discrimination and harassment, especially vulnerable workers who are more likely to be exploited by an employer, is a top priority for the Commission."

Read the full article: https://www.eeoc.gov/newsroom/eeoc-sues-mcdonalds-restaurants-sexual-harassment-young-workers



NOTEWORTY RULINGS

CHICAGO MEAT AUTHORITY TO PAY \$1.1 MILLION TO SETTLE EEOC RACIAL DISCRIMINATION AND RETALIATION SUIT

Meat Processing Company Harassed Black Employees, Rejected Them for Hire, and Fired a Black Employee for Complaining, Federal Agency Charged

CHICAGO – Chicago Meat Authority, a Chicago meat processing plant, will pay \$1.1 million and furnish other relief to settle a race discrimination case brought by the U.S. Equal Employment Opportunity Commission EEOC, the federal agency announced.

The EEOCs lawsuit charged that Chicago Meat Authority discriminated against Black applicants in hiring, subjected African American employees who were in the workforce to racial harassment, and fired a Black employee because of his race and in retaliation for complaining about racial harassment.

The EEOC's investigation revealed that the company favored hiring Hispanic employees over African American employees, even though the company is located in a largely Black neighborhood on Chicago's South Side. The investigation further revealed that African American employees who were hired were subjected to repeated racial slurs by both co-workers and managers.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964. The EEOC brought its lawsuit, EEOC v. Chicago Meat Authority, N.D. Illinois, No. 18-cv-01357, on Feb. 22, 2018 after the agency first attempted to reach a pre-litigation conciliation with the company.

The consent decree settling the suit was entered this morning by Judge John Kness of U.S. District Court for the Northern District of Illinois in Chicago. In addition to providing \$1.1 million in monetary relief to the discrimination victims, the decree requires significant injunctive relief. The decree prohibits the company from discriminating in the future; mandates the hiring of rejected applicants who still want jobs at the company; requires the company to make good faith efforts to reach hiring goals for Black employees; and mandates implementation of anti-harassment training and policies.

"Stopping race discrimination in hiring is one of the fundamental objectives the EEOC was created to address more than 50 years ago," said EEOC Chicago Regional Attorney Gregory Gochanour. "Unfortunately, there is a continuing need for law enforcement work in this area. The consent decree in Chicago Meat Authority makes a very important contribution to that work by providing job opportunities to qualified applicants who were denied them in the past, and requiring that the company take steps to reform its hiring practices in the future."

Read the full article at: https://www.eeoc.gov/newsroom/chicago-meat-authority-pay-11-million-settle-eeoc-racial-discrimination-and-retaliation



NOTEWORTY RULINGS

EDWARD JONES CO. FINANCIAL ADVISORS REACH \$34 MILLION SETTLEMENT IN DISCRIMINATION CASE

Monday, August 2, 2021

A federal court recently gave its stamp of approval to a \$34 million settlement agreement between Edward Jones Co. and the company's Black financial advisors FAs. The settlement resolves a years-long litigation battle and includes provisions aimed at promoting a more inclusive corporate culture going forward.

Background

The lawsuit, which was first filed in 2018, described "systemic, intentional race discrimination" within the company, leading to the underrepresentation of Black FAs as well as lower pay than their counterparts. According to the plaintiffs' complaint, only 6 percent of FAs employed by Edward Jones were non-white, lagging well behind the national average of 21 percent. Moreover, the suit alleged that Black FAs who work for Edward Jones are put at a disadvantage compared to their non-Black colleagues.

Specifically, the plaintiffs argued that Edward Jones disadvantages its Black FAs in several key ways:

Edward Jones selected Black FAs for its "Goodknight" and "Legacy" programs at a disproportionately low rate. These programs guarantee new FAs a dedicated office space, mentorship, and assistance in finding clients. FAs not selected usually begin their careers working from home with minimal support.

Black FAs were disproportionately relegated to less lucrative territories.

Black FAs were disproportionately disfavored by the firm's retirement policy, which allowed a retiring FA to redistribute their clients to another FA.

Additionally, the plaintiffs took issue with Edward Jones' burdensome repayment policies, which required employees who leave for a different company to repay \$75,000 in training costs.

The suit was led by three named plaintiffs who were FAs with Edward Jones and were denied opportunities despite their qualifications. All three raised their concerns about discrimination to management and experienced retaliation as a result.

Read the full article: https://www.natlawreview.com/article/edward-jones-co-financial-advisors-reach-34-million-settlement-discrimination-case#google_vignette

ADA CORNER

TRIPLE-S VIDA, INC. SUED BY EEOC FOR DISABILITY DISCRIMINATION

Life Insurance Company Refused to Accommodate Employee, Federal Agency Charges

San Juan, Puerto Rico – Triple-S Vida, Inc., the leading life insurance company in Puerto Rico, violated federal law by refusing to accommodate an employee with a disability, the U.S. Equal Employment Opportunity Commission EEOC charged in a lawsuit filed.

According to the EEOC's suit, the employee worked for Triple-S Vida, Inc. "Triple-S Vida" as an Authorized Sales Representative, a position which required extensive driving, when she was diagnosed with fibromyalgia, which caused her bodily pain and fatigue. In 2018, the employee requested reassignment to a position that did not involve driving. Triple-S Vida refused to provide her with a reasonable accommodation such as reassignment to a vacant non-driving position for which she was qualified. Instead, Triple-S Vida directed her to apply to company postings on her own. Despite the employee's applications over the course of several years to open positions for which she was qualified, Triple-S Vida refused to reassign her to any of the positions to which she applied. Triple-S Vida reassigned her to a non-driving position in 2021 only after she filed a charge with the EEOC, and the EEOC issued a letter of determination finding reasonable cause to believe Triple-S Vida had violated federal law. In addition to inflicting pain and suffering, Triple-S Vida's refusal to accommodate the employee for years caused her health to decline.

Such alleged conduct violates the Americans with Disabilities Act ADA. The EEOC filed suit in U.S. District Court for the District of Puerto Rico EEOC v. Triple S Vida, Inc., Case No. 3:21-cv-01463 after first attempting to reach a pre-litigation settlement through its conciliation process. The agency seeks back pay and compensatory and punitive damages for the employee. The suit also seeks injunctive relief to prevent and correct disability discrimination and training of managers about federal equal employment opportunity laws.

"The Americans with Disabilities Act prohibits disability discrimination and requires that employers provide reasonable accommodations to employees' disabilities as long as it causes no undue hardship." said Robert E. Weisberg, regional attorney for the EEOC's Miami District. "Under the ADA, reassignment to a vacant position is included as a possible reasonable accommodation."

Read the full article at: https://www.eeoc.gov/newsroom/triple-s-vida-inc-sued-eeoc-disability-discrimination



ADA CORNER

EEOC FILES DISABILITY LAWSUITS IN EL PASO AND FT. WORTH BASED ON COVID RELATED DISCRIMINATION

Fabens Pharmacy and 151 Coffee Took Different Approaches to COVID-19, But Both Violated the ADA, EEOC Charged

DALLAS – The EEOC filed two lawsuits in Texas courts, alleging that a pharmacy in Fabens and a coffeehouse in Ft. Worth both discriminated against employees with disabilities that rendered them vulnerable to serious illness if they contracted COVID-19. The two employers took different approaches to the virus, but both ran afoul of the ADA.

According to the EEOC's suit against U.S. Drug Mart d/b/a Fabens Pharmacy, the pharmacy discriminated against a pharmacy technician with asthma who asked to wear a facemask at work as an accommodation of his disability immediately following the COVID-19 outbreak to help protect him from the virus. The employee was harassed because he requested this accommodation and was sent home twice when he asked to wear a mask, and then taunted and humiliated for questioning management's policy prohibiting masks, leading him to quit, according to the suit.

The EEOC filed its suit, Civil Action No. 3:21-cv-00232, in U.S. District Court for the Western District of Texas, El Paso Division, after first attempting to reach a pre-litigation settlement through its conciliation process. In this case, the EEOC seeks back pay, compensatory and punitive damages and injunctive relief.

EEOC filed suit in Ft. Worth against 151 Coffee, LLC alleging that the company violated the ADA by denying reasonable accommodation to two baristas with disabilities and terminating their employment. According to the EEOC's complaint, the employees were not allowed to return to work until a vaccine for COVID-19 was developed, even though they were ready and willing to work.

The EEOC filed suit, Civil Action No. 4:21-cv-01081, in U.S. District Court for the Northern District of Texas, Ft. Worth Division, after first attempting to reach a pre-litigation settlement through its conciliation process. In this case, the EEOC seeks back pay, compensatory and punitive damages and injunctive relief.

Read the full article at: https://www.eeoc.gov/newsroom/eeoc-files-disability-lawsuits-el-paso-and-ft-worth-based-covid-related-discrimination





ADA CORNER

SPROUTS FARMERS MARKET TO PAY \$280,0000 TO SETTLE EEOC DISABILITY DISCRIMINATION SUITS

Grocery Store Chain Settles Claims of Discrimination Based on Failure to Hire Deaf Applicants, Federal Agency Charged

DENVER, Colo. – SFM, LLC, doing business as Sprouts Farmers Market — which operates grocery stores in Colorado and other states — will pay \$280,000 to three Deaf injured parties and provide other significant relief to settle lawsuits filed by the U.S. Equal Employment Opportunity Commission EEOC and Raymond Clark, the federal agency announced. The lawsuits charged that Sprouts denied employment to applicants because of their disabilities and that Sprouts denied them reasonable accommodation in the application and hiring process.

According to the lawsuits filed by the EEOC and Clark, after Sprouts managers contacted the applicants to interview them for available positions in Colorado, the applicants requested the assistance of an American Sign Language ASL interpreter for their interviews. The EEOC alleged Sprouts managers failed to make any arrangements for ASL interpreters and ignored the applicants when they followed up about their requests for an accommodation and the interviews.

Such alleged conduct violates the Americans with Disabilities Act ADA, which prohibits discrimination based on disability and also requires an employer to provide reasonable accommodation to applicants with disabilities unless doing so would cause significant difficulty or expense for the employer.

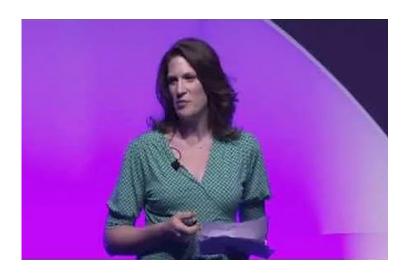
The EEOC filed suit in U.S. District Court for the District of Colorado, Civil Action No. 1:21-cv-02600 NYW, after first attempting to reach a pre-litigation settlement through its conciliation process and continued negotiations prior to filing suit. Clark joined in the EEOC's lawsuit, which sought relief for the other two charging parties, and was represented by his own attorney. Under the three-year consent decree settling the suit, Sprouts will pay a total of \$280,000 to resolve the claims in these lawsuits. The decree enjoins Sprouts from engaging in discrimination based on disability in the future; requires that Sprouts review and revise its ADA policies; adopt written guidance on reasonable accommodations; and provide ADA training. Sprouts will also send a letter of apology to each of the charging parties.

Read full article: https://www.eeoc.gov/newsroom/sprouts-farmers-market-pay-2800000-settle-eeoc-disability-discrimination-suits



DIVERSITY AND INCLUSION TED TALK

3 STEPS TO STOP REMOTE WORK BURNOUT



Morra Aarons-Mele

Too much screen time, too many video calls and too few boundaries make working from home hard for all of us. Podcast host and writer Morra Aarons-Mele shares honest advice on what you can learn from the introverts in your life about protecting your energy and your limits.

https://www.youtube.com/watch?v PZr142ka96k



Meetings Trainings

HR Virtual Summit 2021

Hosted by: BambooHR November 4, 2021

8a - 4p

Register:

https://www.bamboohr.com/virtual/?utm_source_SE_utm_medium_PSE_utm_campaign_GOOG-EV-2021HRVirt-20210901-

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aAinOEALw wcB Network g Device c Keyword hr%20webinar AdExtensionID b t 542720357199 bk hr%20webinar bm p bn g bg 62184666627 gclid Cj0KCQj wqp-LBhDQARIsAO0a6aLFvffePtjiCjBjo uUBIoUNtJTyDNrehcU8LhJthUBYCCKyz-xsWlaAinOEALw wcB

Diversity and Inclusion Conversation "Another Seat at the Table"

Hosted by: Ericka Kelly of EK Enterprises

December 8, 2021

11a—12p

More information and to apply online:

https://www.eventbrite.com/e/diversity-and-inclusion-conversation-another-seat-at-the-table-tickets-154027276731?aff ebdssbeditorialcollection

Civil Rights Leadership Program

Hosted by: MCCR March 5-7, 2022

Deadline to Apply: December 1, 2021

More information and to apply online: https://mccr.maryland.gov/Pages/CRLP.aspx

Free online courses on diversity, equity and inclusion

Hosted by: Insider

Information: https://www.businessinsider.com/free-online-courses-diversity-equity-

<u>inclusion-2020-10</u>

Business Writing Course

Hosted by: Custom Guide

Information:

https://www.customguide.com/training/business-writing?utm_source_general-

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2021 DIVERSITY CALENDAR

October 2021

Bullying Prevention Month
Filipino-American Heritage Month
Italian-American Heritage Month
Polish-American Heritage Month
German-American Heritage Month

11/11 Columbus Day

November 2021

Native American Heritage Month
American Indian Alaska Native Heritage Month

11/2 Election Day11/11 Veteran's Day11/26 Thanksgiving11/28-12/6 Hanukkah

December 2021

12/1 World AIDS day

12/25 Christmas 12/26-1/1 Kwanzaa



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

Out Equal Workplace Advocates

http://outandequal.org/

National Service Animal Registry

https://www.nsarco.com/_

Maryland LGBT Chamber of Commerce

https://mdlgbt.org

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