

EEOC's virtual newsroom provides learning opportunities for employers

Memphis Business Journal by Barbara Richman

Employers can research various aspects of employment discrimination by accessing the Equal Employment Commission's (EEOC) website, www.eeoc.gov. The site provides a vast amount of information regarding federal laws covered by the agency.

A section designated as the "Newsroom" contains press releases that provide valuable insights into the agency's enforcement and other activities. Employers can stay abreast of announcements by reviewing these updates on a regular basis.

Clicking on a link to a November press release, "EEOC Intake, Relief Obtained and Charges Resolved Hit Record Highs in 2011," leads employers to recently released information about the level of the agency's activities. According to the release, the EEOC received a record number of discrimination charges, achieved the "highest ever" monetary amounts from employers, and ended the fiscal year with its first reduction in pending charges since 2002, due partly to increases in staffing.

Employers also can find links to numerous cases that have been filed, settled, or litigated. Each link includes the name of the organization, status of the case and any dollar amounts involved. Cases were brought against a broad range of employers, including restaurants, manufacturers, banks, stores, hotels and hospitals.

Lessons can be learned by examining the nature of the charges and findings in these cases, many of which prove to be costly to organizations in terms of time, dollars, reputation and employee morale. Once charges are filed and decisions rendered, employers are required to take actions, such as instituting policies and training, which could have been implemented proactively to prevent these negative consequences. Employers also may be bound by reporting and other burdensome requirements that are part and parcel of many decisions.

The following are overviews of several cases covered in recent press releases. Each is followed by a quote from an EEOC spokesperson that provides advice tailored to the specific law.

1. Family Dollar Stores of Virginia Inc. agreed to pay \$45,000 to settle a sexual harassment lawsuit after the EEOC charged that a female employee was harassed by her male store manager. In settlement, the organization also agreed to provide employees with copies of the company's anti-discrimination policies and complaint procedures, post copies of the harassment policy in

district stores, train managers and employees on the policies, and post a notice about the lawsuit in the store where the harassment occurred.

“Employers are reminded that it is not enough to have policies prohibiting sexual harassment in place, hidden away in a handbook somewhere. Employers must ensure that employees are adequately informed of these policies and of procedures for making complaints about sexual harassment.”

2. Pepsi Beverages agreed to pay \$3.13 million to resolve a charge of race discrimination resulting from the organization’s application of its background check policy. The EEOC found reasonable cause to believe that black applicants were disproportionately excluded from permanent employment based on their arrest and conviction records. In addition to the monetary payment, Pepsi adopted a new policy and agreed to provide employment opportunities and financial relief to victims of the former policy, conduct Title VII training for hiring personnel and managers, and supply the EEOC with regular reports on its hiring practices.

“When employers contemplate instituting a background check policy, the EEOC recommends that they take into consideration the nature and gravity of the offense, the time that has passed since the conviction and/or completion of the sentence, and the nature of the job sought in order to be sure that the exclusion is important for the particular position. Such exclusions can create an adverse impact based on race in violation of Title VII.”

3. Jim Robinson Ford-Lincoln-Mercury agreed to pay \$56,000 to settle a disability discrimination lawsuit filed by the EEOC charging that the company unlawfully refused to accommodate the disability of a salesperson and subsequently fired him in violation of the Americans with Disabilities Act (ADA). In addition to the monetary payment, the car dealership entered into a three-year consent decree that enjoined the company from engaging in further employment practices that discriminate based on disability or retaliation. Additionally, the company was required to adopt certain procedures and training to enable it to accurately assess whether disabled employees can perform the essential functions of their jobs and to identify reasonable accommodations.

“When an employer is on notice that one of its employees cannot perform a job function due to a disability, the ADA requires that the employer distinguish between the essential and non-essential functions of that job. The employer must then work to identify a reasonable accommodation for the employee’s disability. Earnest, interactive communication with the employee, viewing the purpose of the job and its functions realistically, and carefully researching and considering options for reasonable accommodation of the disability are all keys to ADA compliance.”

Additional information on these and other cases as well as current updates can be found by accessing the Newsroom.

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