

United States Equal Employment Opportunity Commission



Disability Discrimination

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VISION

Justice and Equality in the Workplace



MISSION

Stop and Remedy Unlawful
Employment Discrimination

- EEOC is an independent regulatory commission
- Enforces federal anti-discrimination laws (employment only)
- Headquartered in Washington, D.C.
- Divided into 15 Districts, with 53 field offices

*Los Angeles District includes Southern & Central California, Southern Nevada, Hawaii, & U.S. territories of American Samoa, Guam, N. Mariana Islands and Wake Island)



COMMISSION Changes



CHAIR
Jenny Yang



Commissioner
Charlotte Burrows



Commissioner
Constance Barker



Commissioner
Victoria Lipnic



Commissioner
Chai Feldblum



General Counsel
P. David Lopez



Laws Enforced by EEOC

- Title VII of the Civil Rights Act of 1964 (Title VII)
- Equal Pay Act of 1963 (EPA)
- Age Discrimination in Employment Act of 1967
- Rehabilitation Act of 1973
- Title I of the Civil Rights Act of 1991
- **Americans with Disabilities Act of 1990 (ADA)**
- **ADA Amendments Act of 2008**
- Genetic Information Non-Discrimination Act of 2008 (GINA)

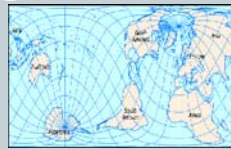
8 Protected Categories



race



color



national origin



religion



sex*



disability



age (≥ 40)



genetic information

* Gender Identity/
Transgender Status

* Sexual Orientation

& **Retaliation**



RETALIATION

It is **ILLEGAL** to fire, demote, harass or otherwise “retaliate” because employee/applicant

- filed a charge
- complained to employer about discrimination, or
- participated in an employment discrimination proceeding (i.e., investigation or lawsuit)

*** Pertains to all statutes**



STRATEGIC ENFORMENT PLAN (SEP) PRIORITIES

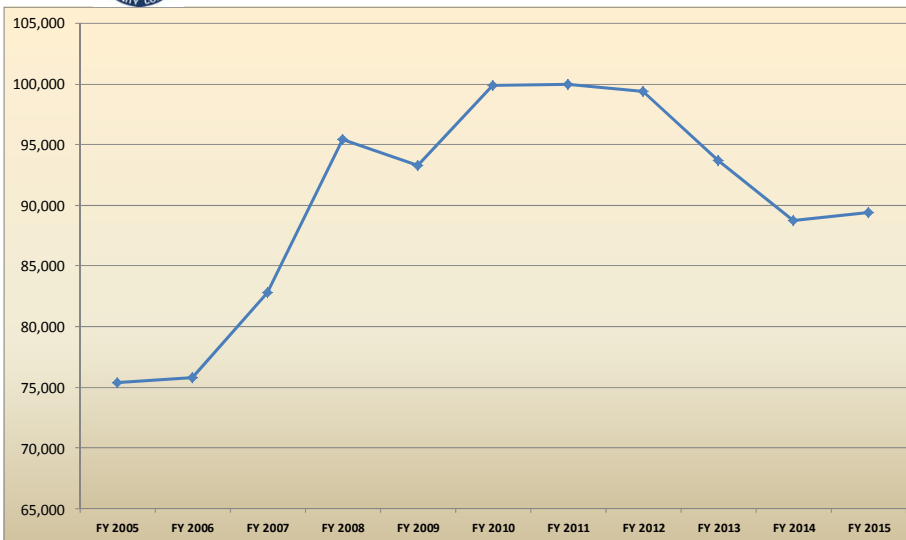
- **Eliminating barriers in recruitment & hiring**
- Protecting immigrant, migrant & vulnerable workers
- **Addressing emerging & developing employment discrimination issues**
- Enforcing equal pay laws
- Preserving access to the legal system
- Preventing harassment through systemic enforcement & targeted outreach



EEOC Trends

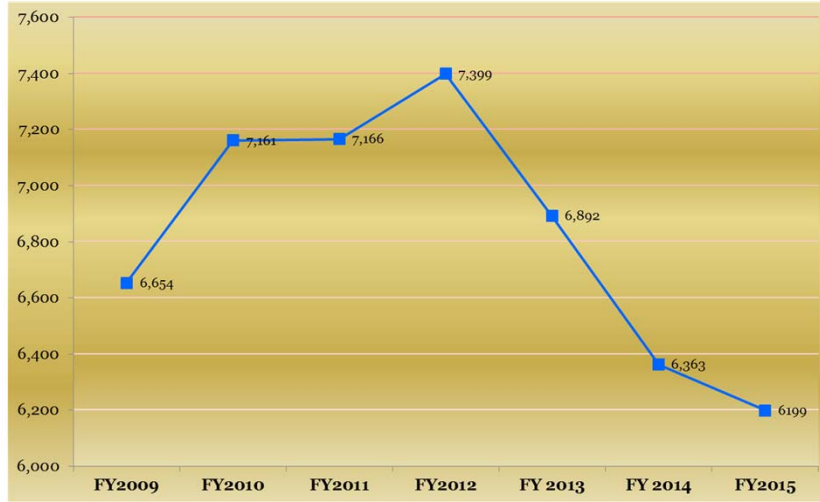


National EEOC Charge Receipts

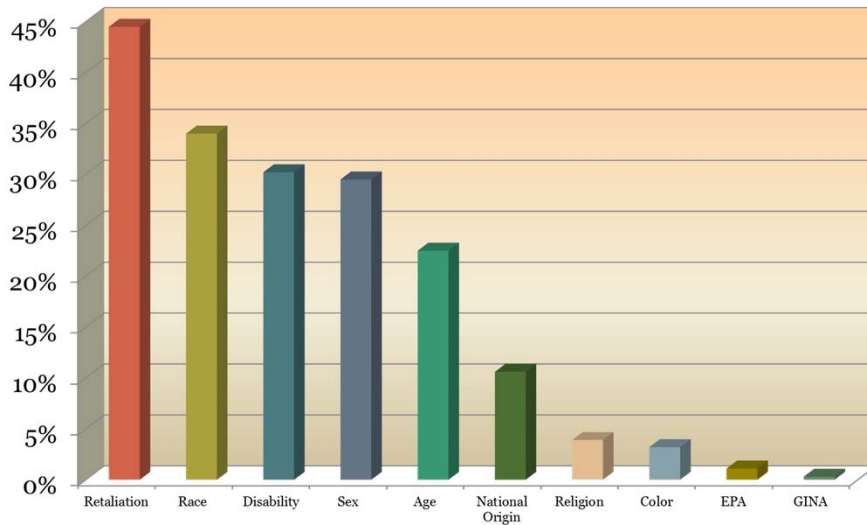


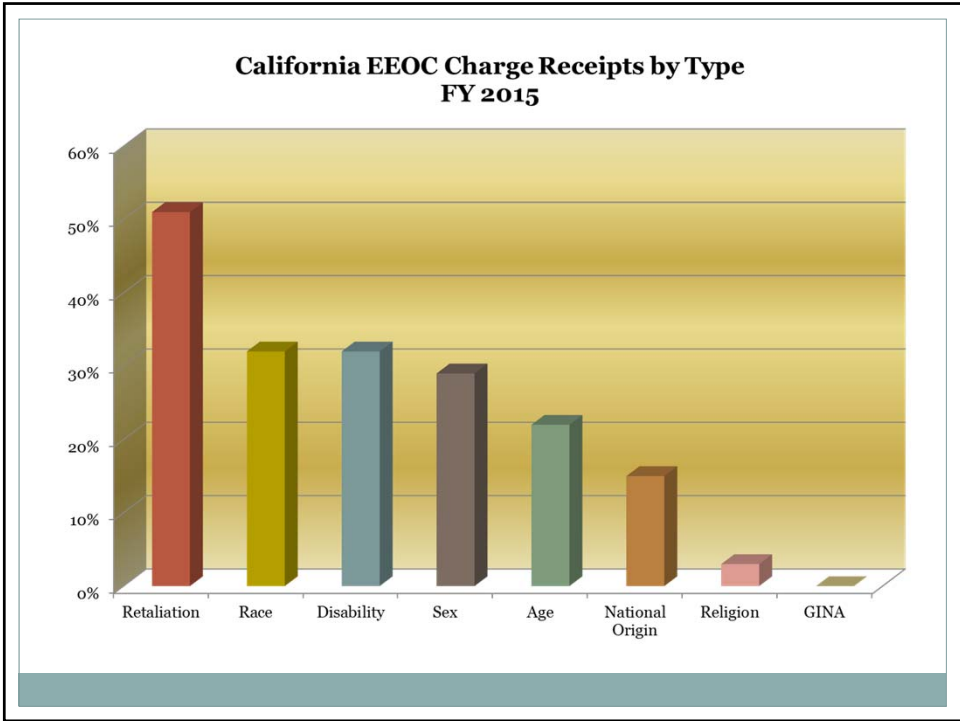


California EEOC Charge Receipts



National EEOC Charge Receipts by Type FY 2015





Who is protected by the laws enforced by EEOC?

- Employee
- Temporary Worker
- Job Applicant
- Former Employee
- Undocumented Worker

✘ *INDEPENDENT CONTRACTORS -- not covered.*

Who can file an EEOC charge?

- Individuals
- Individuals or organizations on behalf of others (third party charges)
- EEOC District Director (ADEA or EPA Directed Charge)
- EEOC Commissioner's Charge (systemic)

EEOC Charge May Be Filed Against:

- **EMPLOYERS** - both private & public sector
- **EMPLOYMENT AGENCIES**
 - Classification or referral of individuals for employment
 - Joint employer issues
- **LABOR ORGANIZATIONS (i.e., unions)**
 - Limiting, segregating or classifying membership
 - Referral of individuals for membership
 - Referral of individuals for employment

Potential Issues

- Hiring
- Firing, layoff, not recalled to work
- Pay (wages, salary, compensation)
- Assignment or classification
- Transfer
- Promotion denied
- Unfair job testing or policy
- Recruitment and job ads
- Reasonable or religious accommodation
- Segregated use of company facilities
- Training and apprenticeship programs
- Benefits (fringe, retirement)
- Disability leave
- Other terms, conditions and privileges of employment
- Harassment (all protected categories)

Required Number of Employees

EEOC Jurisdiction	Employer must have...
Title VII, ADA, GINA	15 or more employees
Age Act	20 or more
Equal Pay	1 or more
DFEH Jurisdiction	Employer must have...
FEHA	5 or more employees
Harassment	1 or more



EEOC Deadlines

- **Private Sector, State & Local Government**

File a “charge of discrimination” with EEOC

within 300 days of the last date of discrimination

(NOTE: CA DFEH within one year)

EPA: File directly in court within 2 years of the last discriminatory act (3 years if willful)

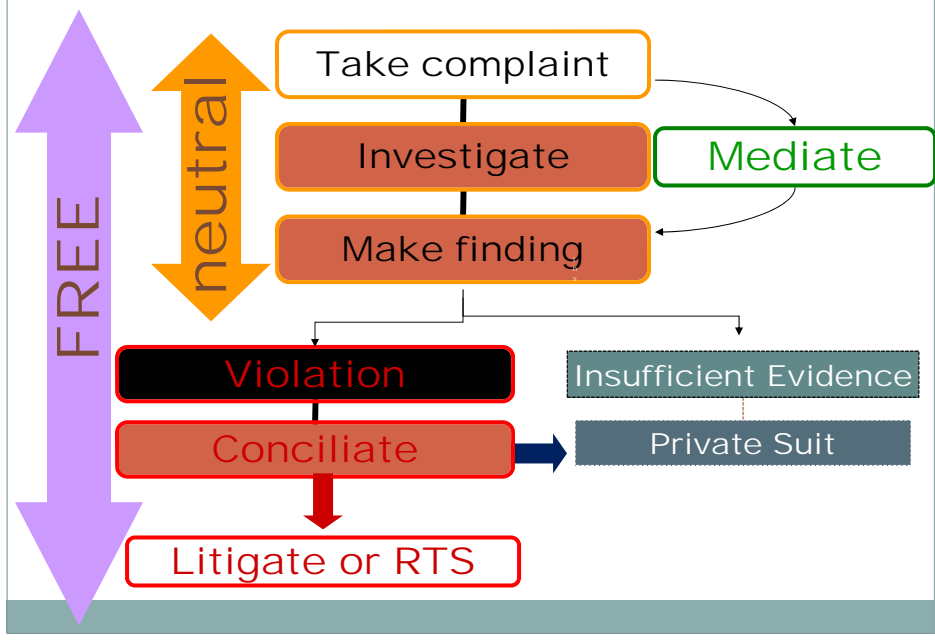
- **Federal Government Employer**

File an “EEO complaint” with your agency

within 45 days

of the last date of discrimination

EEOC’s Process



Remedies

- Back pay and or front pay
- Hiring
- Promotion
- Reinstatement
- Reasonable accommodation
- Other actions to place the individual in the position they would be in had no discrimination occurred.
- Other compensatory damages
- Punitive or liquidated damages
- Attorney's fees, expert witness fees, court costs

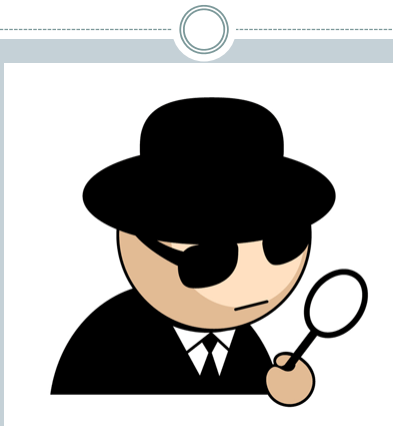
Remedies

- Change in company EEO policy to promote a working environment free of discrimination, harassment and retaliation
- Mandated process by which employees can report instances of discrimination, harassment & retaliation
- Mandated training for staff to comply with policies, procedures & federal EEO laws
- Requirements for centralized tracking systems for complaints
- Reporting to EEOC, posting and/or news releases to publicize issues.

Remedies

- Monetary cap (per person) for damages in federal court depends on the size of the employer:
 - 15 – 100 employees: \$50,000
 - 101 – 200 employees: \$100,000
 - 201 – 500 employees: \$200,000
 - Over 500 employees: \$300,000

How Do We Analyze Cases?



DISPARATE TREATMENT

- Employers prohibited from disparate treatment (treating one group less favorably) based on a protected basis
- Disparate treatment is a violation whether motivated by bias against or preference toward an applicant or employee due to their protected group

DISPARATE IMPACT

- ✦ The EEO laws also prohibit employers from using neutral tests or selection procedures that have the **effect** of disproportionately excluding persons based on race, color, religion, sex, or national origin, where the tests or selection procedures are not “job-related and consistent with business necessity.”
- ✦ This is called “**disparate impact**” discrimination.



Protections Under the **Americans with Disabilities Act**



Definition of “Disability” + who is entitled to accommodation

- A **physical or mental impairment** that substantially limits a **major life activity**
 - Reasonable accommodation
- A **record** of such an impairment
 - Reasonable accommodation
- Being **regarded as** having such an impairment
 - No accommodation

What is a Major Life Activity?



- Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working;
- Functions of the immune system, normal cell growth; digestive, bowel, bladder, neurological, brain, respiratory, circulatory cardiovascular, hemic, lymphatic, musculoskeletal, endocrine, and reproductive functions
- Both lists of examples are non-exhaustive



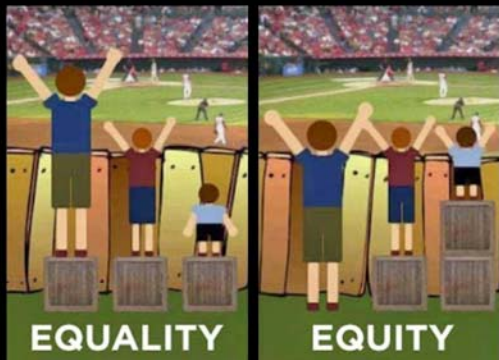
“Qualified” Individual with a Disability

- Has the **skill, experience, education and other requirements** of the position held or desired

and

- Can do the **essential functions** of the job with or without a reasonable accommodation.

Reasonable Accommodation



EQUALITY

EQUITY

Equality is about Sameness

Equality promotes fairness and justice by giving everyone the same thing.

It can only work if everyone starts from the same place.

Equity is about Fairness

Equity gives people access to the same opportunities.

Our differences and/or history can create barriers to participation, so we must first insure equity before we can enjoy equality.

What is Reasonable Accommodation?

Allows employee with disability to

- Perform essential functions of job
- Enjoy privileges and benefits of employment

- Assistive tools, devices, personnel



- Exceptions to policies/rules



Examples of Reasonable Accommodations

- Change in job structure
- Flexible work schedule
- Providing additional unpaid leave of absence
- Reassignment to an open position
- Getting or changing equipment or devices
- Modifying examinations
- Training materials or policies

Does **NOT** include eyeglasses or hearing aids.

A Word on Reassignment

- Employee must be minimally qualified for the job
- Employer is not required to assist the employee to become qualified
- Need not apply/compete for the job
- Look for equivalent jobs first, then lower positions
- Not limited to employees department, job classification or location
- Employer never has to promote
- Employer never has to create position

Test Taking & Accommodations



- Kirksey, blind since April 2002, applied to work for ITT Tech.
- Asked to take an online assessment test, he found JAWS read the timed test too slowly.
- He requested accommodation – more time or a reader.
- ITT Tech refused.

Settled April 2013 2015: \$100,000
+ revised policies and training

Reasonable Options



- Provide accommodations to ensure that the test accurately reflects the ability of the person to do the essential functions of the job

OR

- Waive the test and develop alternate method of verifying the skills and abilities.

Undue Burden

Which of the following is NOT an employer defense to providing reasonable accommodation?

- Is financially difficult
- Is unduly extensive or disruptive
- Fundamentally alters the nature or operation of the business
- Causes discord among employees not receiving the accommodation

Undue Burden



ANSWER: d)
Causes discord among employees not receiving the accommodation

An employer **cannot** claim undue hardship based on employees' (or customers') fears or prejudices, or because providing a reasonable accommodation might have a negative impact on employee morale.

EEOC v. Kaiser Permanente

Disability Discrimination – San Diego, CA (2014)



- Individual with hydrocephalus (condition causes issues with memory, dizziness) hired as food service worker
 - Worker requested additional training time & temporary job coach (provided for free by a non-profit) to learn job
 - Kaiser chose to fire the worker rather than grant the reasonable accommodation
- \$75,000 for individual; company-wide revisions to reasonable accommodation policy & training for staff.**

EEOC v. Target

Disability Discrimination (2011)



- Former Cart Attendant, Jeremy Schott, has cerebral palsy
- Jeremy was the “Target Hero of the Month” when allowed to have a job coach
- New supervisor did not provide a job coach and cut his hours dramatically after a seizure-related leave of absence

\$160,000 for Jeremy; company-wide changes to reasonable accommodation policy & training for staff.

BEFORE HIRE, An Employer CANNOT:

- Ask if you are disabled
- Ask information about your genetic information, or family medical history
- Ask about the nature of severity of your disability
- Require you to take a medical examination
- Deny a request for accommodation during a job interview (if no undue hardship).

This includes inquiries on job applications

BEFORE HIRE, An Employer **MAY Ask:**

- If you can perform the duties of the job with or without a reasonable accommodation
- If you need an accommodation for the hiring process
- You to describe or demonstrate how, with or without a reasonable accommodation you perform the duties of the job

**AFTER A JOB OFFER, an
employer CANNOT:**

- Require you to take a medical examination as a condition of employment if all employees for that job category are not required to do so.
- Reject you for employment due to results of a medical examination unless the reasons are job-related and necessary to conduct business.
- Ask information about your genetic information, or family medical history

**AFTER A JOB OFFER, an
employer CANNOT:**

- Disclose information about your disability to others
- Co-mingle documents pertaining to your disability with other personnel documents. It must be kept in a separate file.
- Fail to engage in the interactive process with you about regarding any reasonable accommodation requests

AFTER A JOB OFFER, an employer MAY:

- Condition that offer on your passing a required medical examination if all entering employees for that job are also required to do so.
- Can ask job-related questions about your disability (i.e., how will you do a particular function)
- Conduct voluntary medical exams as part of an employee health program

11/2014: EEOC v. All Star Seed et al

- El Centro, Calif. based seed & fertilizer provider required job applicants to undergo physical exams & fill out health questionnaires w/ inquiries about applicants' medical conditions and family medical histories.
- At least one temp was denied hire after he shared a prior medical condition shared by others in his family even though he worked well as a temp. At least 4 others subjected to inquiries
- **\$187,500 for class members; revision of company policies to comply with ADA/GINA, ongoing training of management to comply with policies & laws.**



12/2012: EEOC v. Dillard's



- \$2 million settlement for thousands of workers illegally required to disclose medical information & for those terminated for taking sick leave beyond maximum time allowed.

A note on HARASSMENT

- Harassment is any *unwelcome* verbal, visual or physical conduct.
- Employers must protect employees or applicants from harassment based on a protected category.
- Illegal when ***severe*** or ***pervasive*** or when it results in an ***adverse employment action***
- Harasser can be supervisor, co-worker or third party; greater liability when a supervisor is the harasser.

EEOC v. Henry's Turkey

\$240 million jury verdict for 32 intellectually disabled workers housed at this facility in Iowa



- Workers paid \$2/day for 20 – 30 years; housed in squalid conditions; many ended up with medical conditions as a result. Workers were kicked, hit and handcuffed by supervisors. Company now out of business.



Employers should...

- Implement a strong EEO policy that is embraced at the top levels of the organization. Include a process by which employees can report EEO violations.
- Train managers, supervisors and employees on its contents, enforce it, and hold them accountable.
- Promote an inclusive culture that is free of harassment and discrimination.
- Promptly investigate complaints of discrimination, harassment or retaliation.
- Take immediate measures to correct instances of discrimination, harassment or retaliation.



Employers should...

- Use neutral & objective criteria when making employment decisions to avoid personal stereotypes or hidden biases.
- **Engage in the interactive process to find effective accommodations for applicants & employees with disabilities.**
- Review criminal conviction & credit check policies for compliance with Title VII.
- **Review leave policies for compliance with ADA & Title VII – e.g., pregnancy leave, return-to-work and 100% heal policies.**



Employers should...

- Recruit, hire, and promote with EEO principles in mind, ensuring that a diverse pool of candidates is considered for employment.
- Internally monitor for EEO compliance by conducting self-analyses to ensure particular groups of people are not treated differently.
- Provide clear assurance that employees who make complaints or provide information related to complaints will be protected against retaliation.



Potential Victims: *Questions to Consider*

- Size of the employer (15 or more for ADA; 5 at DFEH)
- Date of last discriminatory act (must file with EEOC within 300 days of this date)
- If has a disability, is the person qualified & able to do the essential functions of the job with or without accommodation?
- Who/What/When/Where/How – Dates, names, details for accommodation requests, incidents of harassment, rejection for jobs, discipline/discharge reasons, etc.



Potential Victims: *Questions to Consider*

- Do you have documentation? Keep copies including complaints, paystubs, evaluations, disciplinary notices, requests for accommodation & responses, voicemails, emails, texts, photos, etc.
- Names & contact information of players, discriminating officials, witnesses & other potential victims ***only if available***.
- Willing to file an EEOC charge? If so, refer as soon as possible.

Questions?



Contact Information & Resources



U.S. Equal Employment Opportunity Commission



Toll-free: 1-800-669-4000

TTY: 1-800-669-6820

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Training/Questions?

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