Disability Discrimination
Nicole St. Germain
Outreach & Education Coordinator
EEOC Los Angeles District

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)
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
**RETAILIATION**

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

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**STRATEGIC ENFORCEMENT 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
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

<table>
<thead>
<tr>
<th>EEOC Jurisdiction</th>
<th>Employer must have...</th>
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<tbody>
<tr>
<td>Title VII, ADA, GINA</td>
<td><strong>15 or more employees</strong></td>
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<tr>
<td>Age Act</td>
<td>20 or more</td>
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<tr>
<td>Equal Pay</td>
<td>1 or more</td>
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<table>
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<tr>
<th>DFEH Jurisdiction</th>
<th>Employer must have...</th>
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<tr>
<td>FEHA</td>
<td><strong>5 or more employees</strong></td>
</tr>
<tr>
<td>Harassment</td>
<td>1 or more</td>
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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

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**EEOC’s Process**

- **Take complaint**
- **Investigate**
- **Make finding**
- **Mediate**
- **Violate**
- **Conciliate**
- **Litigate or RTS**
- **Insufficient Evidence**
- **Private Suit**
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

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?

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<th>• Is financially difficult</th>
<th>• Fundamentally alters the nature or operation of the business</th>
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<td>• Is unduly extensive or disruptive</td>
<td>• Causes discord among employees not receiving the accommodation</td>
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#### 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.*

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**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.
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.

**EEOC v. Henry’s Turkey**

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

- 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

Training/Questions?
Nicole St. Germain
Outreach & Education Coordinator
213-894-1045
nicole.stgermain@eeoc.gov

www.eeoc.gov