



MS STATE PERSONNEL BOARD EEO LAW UPDATE

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FY 2012 EEOC Charge Statistics Mississippi

- **Total Charges Filed – 1,869 (1.9% of US)**
 - Race/Color – 884 (47.3% of state)
 - Sex – 605 (32.4% of state)
 - Disability – 337 (18% of state)
 - Age – 282 (15.3% of state)
 - National Origin – 46 (2.5% of state)
 - Religion – 38 (2% of state)
 - Equal Pay Act – 10 (.5% of state)
 - GINA – 5 (.3% of state)

EEOC Litigation Statistics

■ EEOC Enforcement Lawsuits

- Title VII, ADA, ADEA, & EPA
- Drop from **300** in 2011 to **155** in 2012
- Biggest drop in Title VII Enforcement Suits – almost 100 fewer enforcement lawsuits in '11 than in '12.

■ Monetary Benefits Recovered

- Drop from \$91 million in 2011 to \$44.2 million in 2012
- Biggest drop in Disability related claims – decreased by about \$22 million from '11 to '12

EEOC Update

- Look for upswing in administrative charges and lawsuits in 2013 and beyond – Reason? The recently released Strategic Enforcement Plan.
- Strategic Enforcement Plan (SEP)
 - Released October 1, 2012
 - Effective until **September 30, 2016**
 - Specific issues targeted by plan
 - Six major points emphasized



Six Priorities of SEP

1. Eliminate systematic barriers in recruitment and hiring
2. Protect immigrant and other vulnerable workers as to disparate pay, job segregation, and discriminatory language policies
3. Address emerging issues – ADAA, sexual orientation and pregnancy accommodation issues

Six Priorities of SEP

4. Enforce equal pay laws
5. Preserving access to legal system by targeting policies and practices discouraging the exercise of rights – i.e. retaliatory practices, overly broad waivers, etc.
6. Combating harassment (on all grounds) with a targeted outreach program to assist employers with prevention training and responding to workplace harassment

Genetic Information Nondiscrimination Act

- What is it?
 - Individual or family medical history – test and/or information which may have the purpose of detecting increased risk of developing certain diseases (cancer, heart disease, etc.)
- What does GINA prohibit?
 - Employers may never use in employment decisions
 - Employers may not request, require, or purchase an applicant's or employee's genetic information
 - Exceptions to acquiring information
 - Inadvertent; pursuant to FMLA; employee receives genetic services offered by employer; or learned via sources that are “commercially and publicly available”
- Confidentiality

EEOC Taking Action Under GINA

- Two Recent Lawsuits
 - Founders Pavilion, Inc. (W.D.N.Y.)
 - Fabricut, Inc. (N.D.OK)
- Conducted post-offer, pre-employment medical exams and repeated annually
- Part of exam required disclosure of family medical history
- Fabricut settled for \$50,000 under consent decree filed May 7, 2013
- EEOC: *“[R]equesting family medical history, even through a contract medical examiner, violates this law.”*

EEOC Update

■ Guidance for Use of Criminal Records

- Published April 25, 2012
- Addresses disparate treatment and disparate impact from background checks
- “job-related and consistent with business necessity” – 3 factors considered
 - Nature & gravity of crime
 - Time passed since crime or completion of sentence
 - Specific duties of job sought or held
- Arrests v. Convictions
- Seek explanation

EEOC Update

■ Transgender Employees Protected

- Stems from Strategic Enforcement Plan and EEOC ruling in *Macy v. Holder* (April 20, 2012)
- Title VII – sex discrimination
 - Homosexual and bi-sexual harassment
 - Same sex harassment
- Gender stereotyping
 - “You act like a girl.” or “You act like a man.”

Notable Mississippi Laws

- **Miss. Code Ann. §25-9-149**

No person seeking employment in state service or employed in state service shall be discriminated against on the basis of race, color, religion, sex, national origin, age or handicap.

- **Provision governs all aspects of public employment with regard to terms and conditions of the employment relationship including hiring, firing or discipline.**

Notable Mississippi Laws

- **Miss. Code Ann. §25-9-173**

A public employer may not dismiss or otherwise adversely affect the compensation or employment status of any public employee because he/she testified or provided information to a state investigative body.

- **Prohibits retaliation re. unwarranted reprimands, evaluations, demotions, reductions in pay, denial of promotions, suspension, discharge or refusal to hire**
- **False information – knowingly and intentionally provided**

Notable Mississippi Laws

- **Miss. Code Ann. § 71-7-33**
 - Abstention from tobacco use – may not refuse to hire or be reason for termination
- **Miss. Code Ann. §45-9-55**
 - Storing firearm in a locked personal vehicle in any parking lot, parking garage, or other designated area – may not terminate
- **Miss. Code Ann. §71-1-55**
 - Prohibits discrimination against breast-feeding mothers who use lawful break to express milk
- **Miss. Code Ann. §71-11-3**
 - Every employer required to register with and use status verification system to verify federal employment authorization status of all new hires



Case Law Update

- United States Supreme Court Cases
- Fifth Circuit Court of Appeals Decisions

QUESTIONS/CONCERNS

