Washington State Employment Law Update

***Presented by*:**

Deidra A. Nguyen

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Deidra A. Nguyen

Shareholder, Littler, San Diego

DANguyen@Littler.com

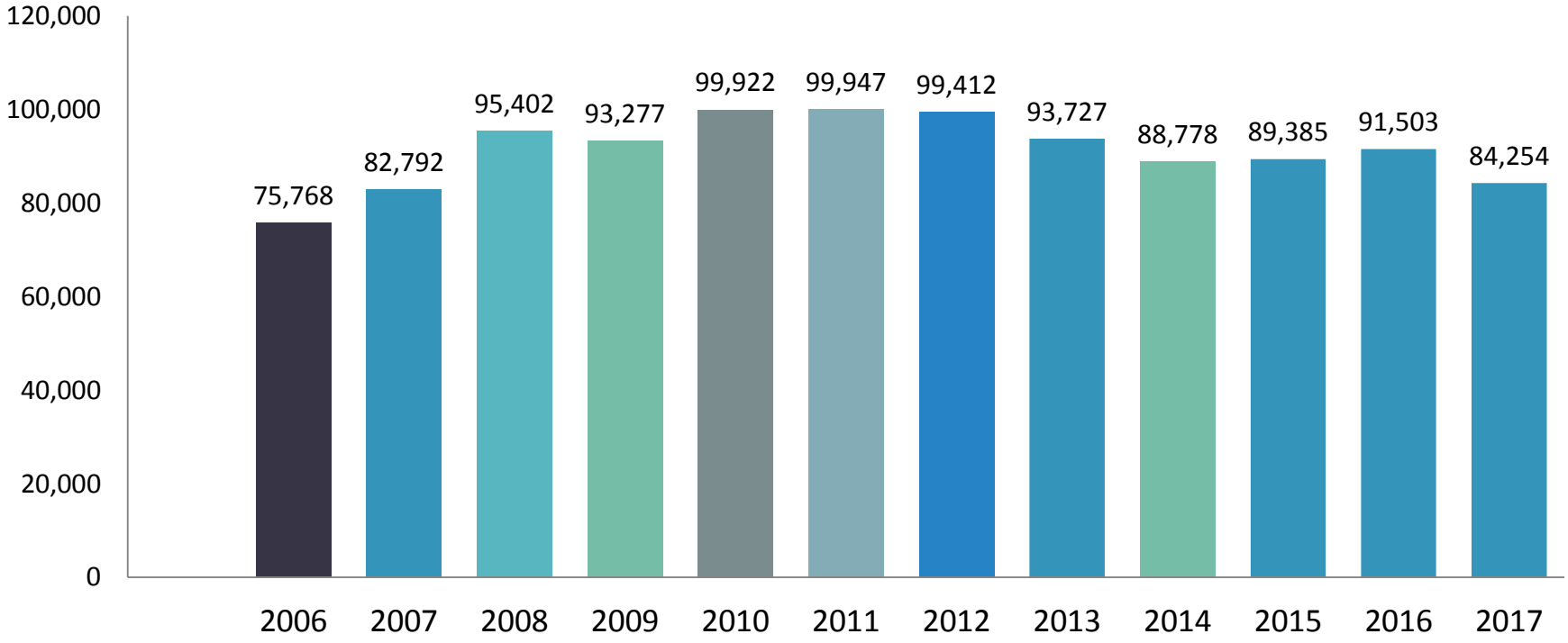
619.515.1844

Agenda

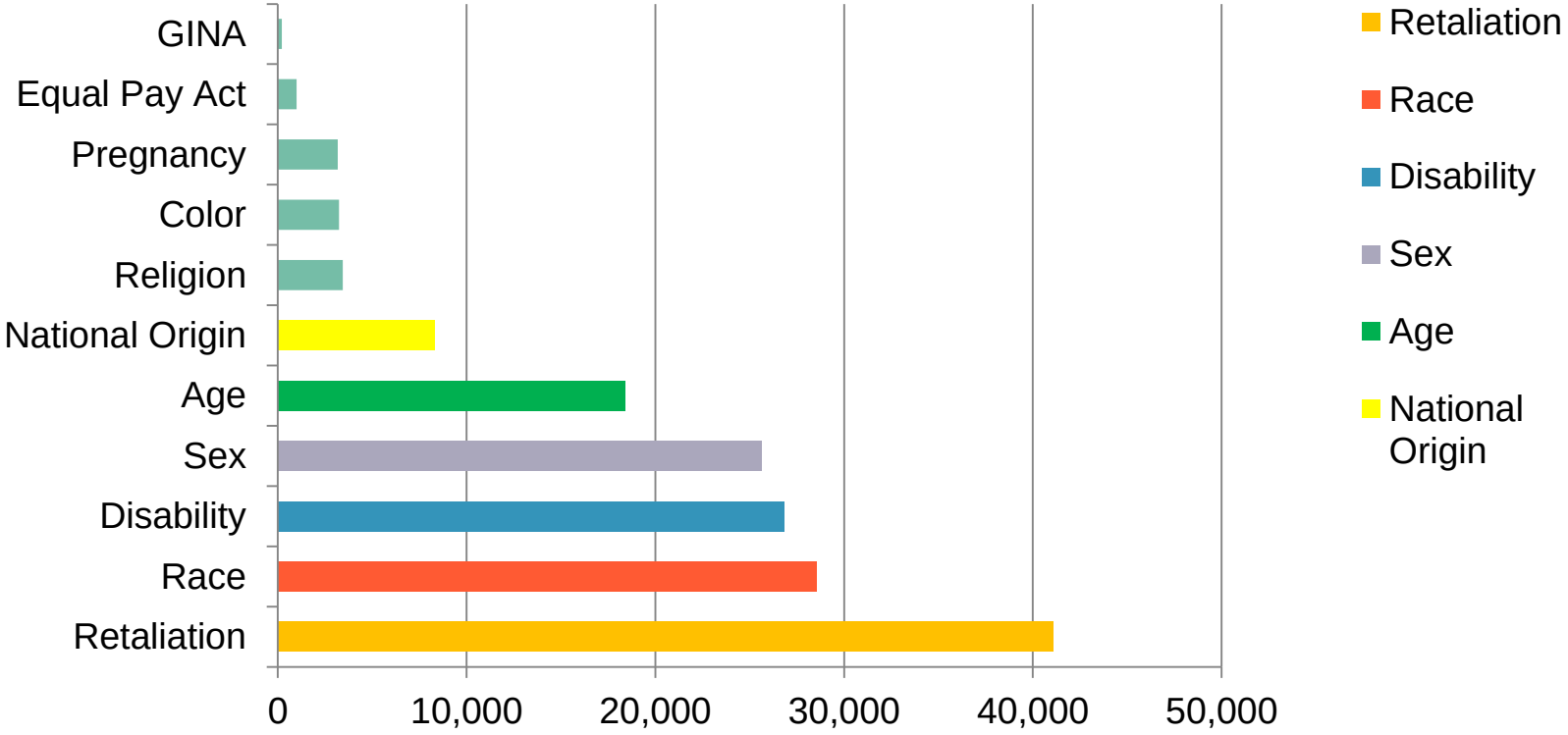
- EEOC Developments
- Marijuana in the Workplace
- Washington Paid Sick Leave
- Wage and Hour Update
- #NotYouToo
- Domestic Violence Accommodation
- Washington Bans the Box

EEOC Developments

EEOC Charge Activity By Fiscal Year



EEOC 2017 Charges By Type



New EEOC Statistics Detailing LGBTQ Charges

	FY 2013*	FY 2014	FY 2015	FY 2016	FY 2017
Receipts	808	1,100	1,412	1,768	1,762
No Reasonable Cause	216	544	737	1,114	1,373
	64.1%	64.3%	64.9%	67.6%	68.1%
Reasonable Cause	4	21	42	61	86
	1.2%	2.5%	3.7%	3.7%	4.3%
Monetary Benefits (Millions)*	$0.9	$2.2	$3.3	$4.4	$5.3

Marijuana in the Workplace

Medical Marijuana Accommodation

- *Barbuto v. Advantage Sales & Marketing*
  - Massachusetts case decided July 17, 2017
  - Uses marijuana for Crohn's disease
  - Terminated for failing a pre-hire drug test after working for one day

Massachusetts Ruling on Medical Marijuana Accommodation

- The Massachusetts Medical Marijuana Act expressly states that it does not require employers to permit the use of medical marijuana in the workplace.
- This limitation "implicitly recognizes that the off-site medical use of marijuana might be a permissible accommodation, which is a term of art specific to the law of handicap discrimination."
- The fact that possession of medical marijuana violates federal law does not make it *per se* unreasonable as accommodation.
- If the requested accommodation was unreasonable, employer should have engaged in interactive process.

Medical Marijuana Statutes Compared

Washington

- MUMA expressly provides that employers are not required to accommodate “any on-site medical use of marijuana in any place of employment ….”
- “Employers may establish drug-free work policies. Nothing in this chapter requires an accommodation for the medical use of marijuana if an employer has a drug-free workplace.”

Massachusetts

- The act also makes clear that it does not require "any accommodation of any on-site medical use of marijuana in any place of employment."

Connecticut Ruling on Federal Preemption

- ***Noffsinger v. SSC Niantic Operating Company LLC, d/b/a Bride Brook Nursing & Rehabilitation Center***
  - Marinol user failed drug test and sued under Connecticut's Palliative Use of Marijuana Act ("PUMA")
  - Court found no federal preemption of PUMA
  - Court found implied private right of action under PUMA
- Epilogue: Partial summary judgment for employee

Maine

- On February 1, 2018, Maine became the first jurisdiction in the nation to protect workers from adverse employment action based on their use of marijuana and marijuana products away from the workplace.
- DOL removed marijuana from the list of drugs for which an employer may test in its "model" applicant drug-testing policy.
- Anti-discrimination provisions prohibit employers from refusing to employ or otherwise penalizing any person age 21 or older based on that person's "consuming marijuana outside the … employer's … property."
- Employers permitted to (1) prohibit the use and possession of marijuana and marijuana products "in the workplace" and (2) "discipline employees who are under the influence of marijuana in the workplace."
  - DOL spokesperson to legislature: positive drug test alone is NOT sufficient evidence that a worker was "under the influence" of marijuana.

WWWD: What Would Washington Do?

- *Roe v. Teletech Customer Care Management (Colorado), L.L.C.*, ruled that the state's Medical Use of Marijuana Act does not require accommodation of medical marijuana use.
- "[T]he statute's explicit statement against an obligation to accommodate on-site use does not require reading into MUMA an implicit obligation to accommodate off-site medical marijuana use."
- Ruling was in . . . 2011.

What does it all mean?!

- Issue ripe for reconsideration?
- Consider “drug-free workplace” policies
- Take care when disciplining for off-site medical marijuana use
- Discipline still permitted for:
  - Recreational use
  - On-site use

Washington Paid Sick Leave

Developments in Washington State

- Development and publication of regulations for statewide paid sick leave law
- Amendments to the Tacoma Paid Sick Leave Ordinance and Rules
- Amendments to the Seattle Sick and Safe Time Ordinance and Rules

Employer and Employee Eligibility

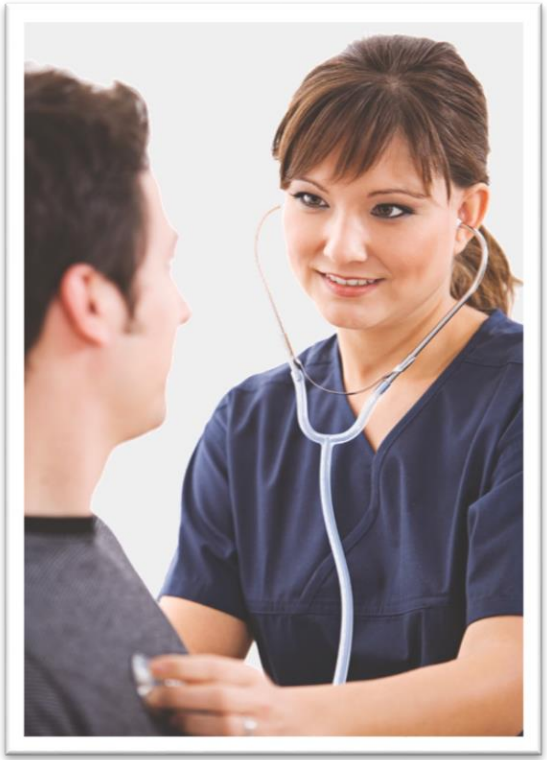
WA Sick leave law does not apply to certain exempt employees.

For example:

- Executive
- Administrative
- Professional (including computer professionals)
- Outside sales (under Washington state law)

Note: Seattle and Tacoma sick leave laws DO apply to exempt employees!

Reasons for Use



- Diagnosis, care, treatment of existing health condition, or preventive care for self and family member = sick time
- Public health closure of school or work = sick time (excluding weather closures)
  - Some differences in Tacoma
- Reasons related to domestic violence/ assault/stalking = safe time
- Tacoma - bereavement

Accrual Rate, Accrual Cap and Use Cap

Accrual Rate:	1 hour for every 40 hours worked (including overtime hours)
	Note: Seattle requires 1 for 30 hours for larger employers.
Accrual Cap:	NONE
Use Cap:	NONE
Carryover Cap:	40 hours
	Note: Seattle requires higher caps for employers with 50+ employees.

Increment of Use

Employers must allow employees to use paid sick leave in increments **consistent with the employer's payroll system and practices, not to exceed one hour**, unless the WA Department of Labor and Industries grants a variance for "good cause."

For exempts in Seattle and Tacoma, deductions may be made as required by state and federal law (no less than one hour).

Notice to Use Paid Sick Leave

- An employer may require an employee to provide “reasonable” notice of use of paid sick leave as follows:
  - **Foreseeable absence**: At least 10 calendar days, or as early as practicable, in advance of the use of paid sick leave;
  - **Unforeseeable absence**: As soon as possible before the start of the shift, unless it is not practicable to do so, in which case the employee must provide notice as soon as practicable.
    - WA - When it is not practicable to personally provide notice of unforeseeable sick leave use, someone else may provide notice on the employee’s behalf.

Notice/Policy Requirement

Employers must notify employees in writing of the following topics and make this information “readily available to all employees”:

- Entitlement to paid sick leave;
- Accrual rate;
- Information about frontloading, if any;
- Authorized uses;
- Notice requirements by employee for use;
- Verification requirements, including the employee’s right to assert that the verification requirement results in an unreasonable burden or expense;
- A description of any “shared paid sick leave program”; and
- Retaliation for exercising protected rights is prohibited.

*Seattle and Tacoma have additional requirements!

Reporting on Paid Sick Leave Balances

At least monthly, employers must also provide employees with written or **electronic** notification detailing:

- The amount of leave **accrued** since the last notification;
- The amount of leave **reduced** since the last notification; and
- The amount of unused leave **available for use** by the employee.

Employers can satisfy this requirement by providing the information on regular payroll statements.

Seattle requires notice each time wages are paid.

Verification

- **After** sick leave use of three consecutive days that employee was scheduled to work
- As long as no unreasonable burden or expense on the employee
- No requirement to explain the **nature** of the condition
- Health care information treated as confidential

Tacoma requires a written policy outlining 1) forms/types of documentation and the circumstances for requiring each form/type; 2) the time period for submitting; 3) any consequences for failure/delay in submitting; and 4) the employee's right to assert unreasonable burden or expense.

Verification Continued

In response to a verification request, employees must be permitted to provide an oral or written explanation, which asserts:

- That the employee's use of paid sick leave was for an authorized purpose under the law, and
- How the verification requirement creates an unreasonable burden or expense on the employee.

Within 10 days of receiving such an explanation, the employer must make a reasonable effort to provide alternatives.

Termination, Payout and Reinstatement

- **Cash-out** not required, but if you do written agreement required
- **Reinstatement:** within 12 months, unless reinstatement is in subsequent benefit year, then only 40 hours (or applicable carryover limit in Seattle)
- **Eligibility For Use Upon Rehire**:
  Immediately upon rehire if previously eligible
  - Upon rehire, employer must provide notice of the amount of accrued, unused paid sick leave available for use.

CBA

No CBA exemption under State law

Limited waiver through 2018 in Seattle and unclear in Tacoma

Interaction with Other Local Sick Leave Laws

The WA Paid Sick Leave Law does not supersede any local law that provides greater sick leave rights than the state law provides.

Seattle Enforcement

- New ordinance expands the power of the Director of the Office of Labor Standards to investigate anyone suspected of violating any of Seattle's labor standard ordinances, effective July 1.
  - Paid Sick Time and Safe Time Ordinance
  - Fair Chance Employment Ordinance
  - Minimum Wage Ordinance
  - Wage Theft Ordinance
  - Secure Scheduling Ordinance
  - and more

Seattle Enforcement

- Deference in conducting investigations
  - Call settlement conferences
  - Conduct interviews
  - Submit discovery requests
  - Issue subpoenas.
- Failure to comply?
  - Default determination and of violation.
  - Director can determine unpaid compensation that must be paid and order liquidated damages, fines, and penalties against a party found to have violated the law.

Key PSL Policy Requirements

Policy	Deidra	State of Washington	City of Seattle	City of Tacoma
Provided to comply with the law (right to sick leave)	✔		✔	
Eligible employees	✔		✔	
Benefit year	✔		✔	
Tier size	✔		✔	
Accrual rate	✔		✔	
Use of frontloaded/advanced time (if used)	✔	✔	✔	✔
Carryover cap (if used)	✔		✔	
Permissible uses	✔		✔	
Covered relations	✔		✔	
Increment of use	✔			
Notice requirements	✔	✔	✔	✔
Documentation requirements (if any)	✔	✔	✔	✔
Rights re undue burden of documentation requirements	✔	✔	✔	✔
Deadline for providing documentation (if any)	✔	✔	✔	✔
Forms and types of documentation	✔			✔
Consequences failure/delay re: documentation	✔			✔
No need to find replacement worker	✔			
Anti-retaliation	✔		✔	
Cash-out at termination	✔			
Reinstatement upon rehire	✔			
How employees will receive notice of balance etc.	✔		✔	
Right to receive normal hourly compensation when using	✔		✔	
Donation of paid sick leave (if used)	✔	✔	✔	✔
Universal paid leave (if used)	✔		✔	✔
Premium pay program (if used)	✔			✔

Wage and Hour Update

Brady v. AutoZone
188 Wash.2d 576, 397 P.3d 120 (June 29, 2017) (questions certified)

- WA Supreme Court answers several meal break questions certified by WAWD:
  - Employer is not *automatically liable* if meal missed
  - Employees may waive meal breaks
  - Meal break waivers do not have to be in writing
  - Employee has initial burden of proof in a meal break case
  - Employee provides evidence that did not receive timely meal break
  - Employer may rebut by showing no violation OR valid waiver exists

Pay Equity Compensation Requirements

2SHB 1506: Equal Pay Opportunity Act (effective 6/7/18)

- Prohibits discrimination in compensation based on gender
  - Compensation includes wages, bonuses, benefits, etc.

- Employees are similarly employed if:
  - Work for same employer
  - Job requires similar skill, effort, and responsibility
  - Similar working conditions

- Job titles not determinative

What if There Are Differences in Compensation?

- Employer must justify any differences based on **bona fide job-related factors**:
  - Consistent with **business necessity**
  - **Not gender-based**
  - Account for **entire differential**

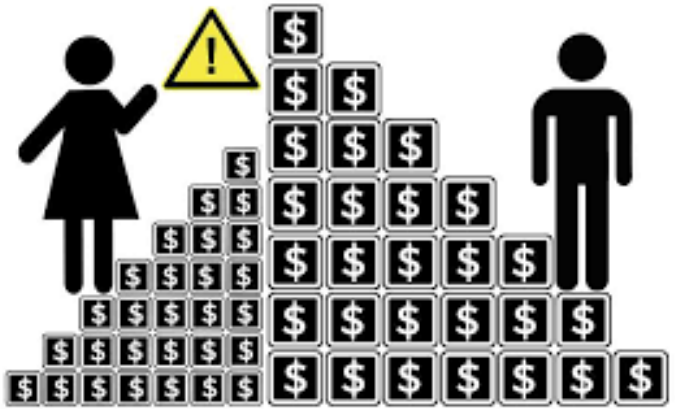
- **Employer has burden** of proving defense

What if There Are Differences in Compensation?

- Examples of on bona fide job-related factors:
  - Education, training, and experience
  - Seniority system
  - Merit system
  - Production-based earnings
  - Regional differences in compensation
    - Including differences in local minimum wage
  - Not previous wage history

Equal Career Advancement Opportunities

- Employers must ensure that employees have **equal opportunities for advancement**
- Cannot limit or deprive employees of “career advancement opportunities” on the basis of gender
- **No definition** of what this means
  - Assignments given to employees?
  - Trainings offered to employees?
  - Conferences attended by employees?
  - Promotional announcements and processes?
- **Job-related defenses** are available, <u>except</u> regional differences



Prohibitions and Remedies to Promote Equal Pay

- Employers cannot prohibit employees from **disclosing wages**
  - Exception: employees who have access to compensation data as part of job duties

- Employers cannot **retaliate** against employees for:
  - Discussing wages
  - Asking for explanations about wages or advancement opportunities
  - Exercising their rights or assisting other employees
- Attorneys' fees and costs (including costs to L&I)

Prohibitions and Remedies to Promote Equal Pay

- Employees can file lawsuits and/or complaints with L&I
  - Actual damages
  - Statutory damages equal to actual damages or $5,000
  - Interest of 1% per month
  - Attorneys' fees and costs (including costs to L&I)

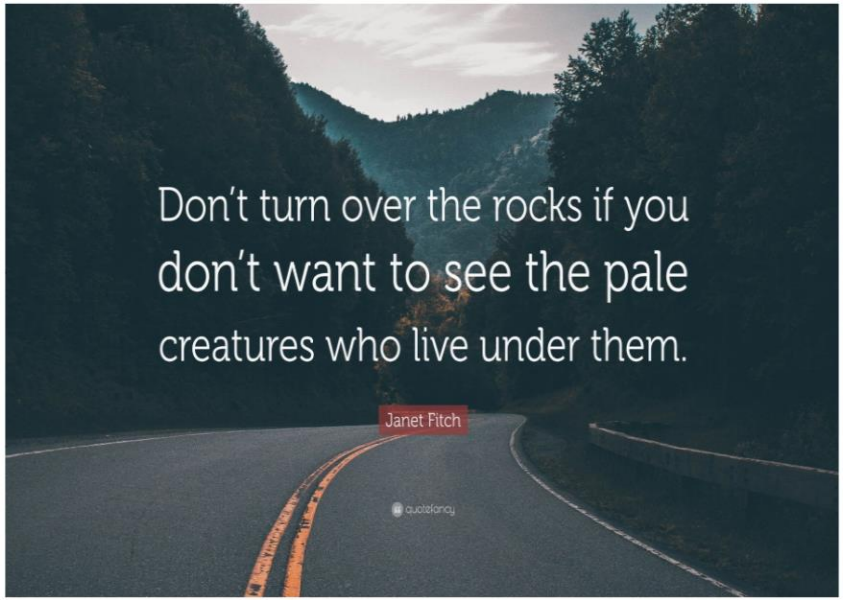
How About Prior Salary?

- Washington salary history ban (SB 5555) stuck in committee
- Ninth Circuit: Prior salary, by itself, can not justify a gender-based pay disparity.
  - *Rizo v. Yovino* (9th Cir. 2018)

Pay Equity Audits – Yes or No?

- More employers are conducting audits.
- Audits can help identify pay disparities and determine whether they are statistically significant.
- But poorly done audits draw attention to potential claims while failing to detect illegal salary gaps.

If you are going to do it, do it right!



- Conducting an audit can be as risky as not conducting one at all.
- Must be committed to dealing with the results if an inequality is found; may not reduce wages to equalize pay.

Attorney-Client Privilege; Work Product

- Since “you don’t know what you don’t know” going into an audit, conservative approach is to take appropriate steps from the outset to protect the audit and its results to the greatest extent possible.
- More freedom to share information regarding issues and solutions.

Littler's Pay Equity Assessment

Pay Equity Recommendations

- Conduct a **privileged audit** of wages and benefits of similar employees
- Review **policies for setting compensation** of new hires & promoted employees
- Review or implement **career advancement policies**
- Revise any policy that prohibits employees from **disclosing wages**
- Adopt an **internal complaint procedure**
- Discontinue requesting applicants' **salary history**
- **Train** HR professionals and managers

Seattle Expense Reimbursement

"Compensation" means payment owed to an employee by reason of employment including, but not limited to, salaries, wages, tips, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required paid leave, and reimbursement for employer expenses. *For reimbursement for employer expenses, an employer shall indemnify the employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties, or of the employee's obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*

Seattle Municipal Code 14.20.010

Look Familiar?

Seafornia Municipal Code 14.20.010

[A]n employer shall indemnify the employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties, or of the employee's obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

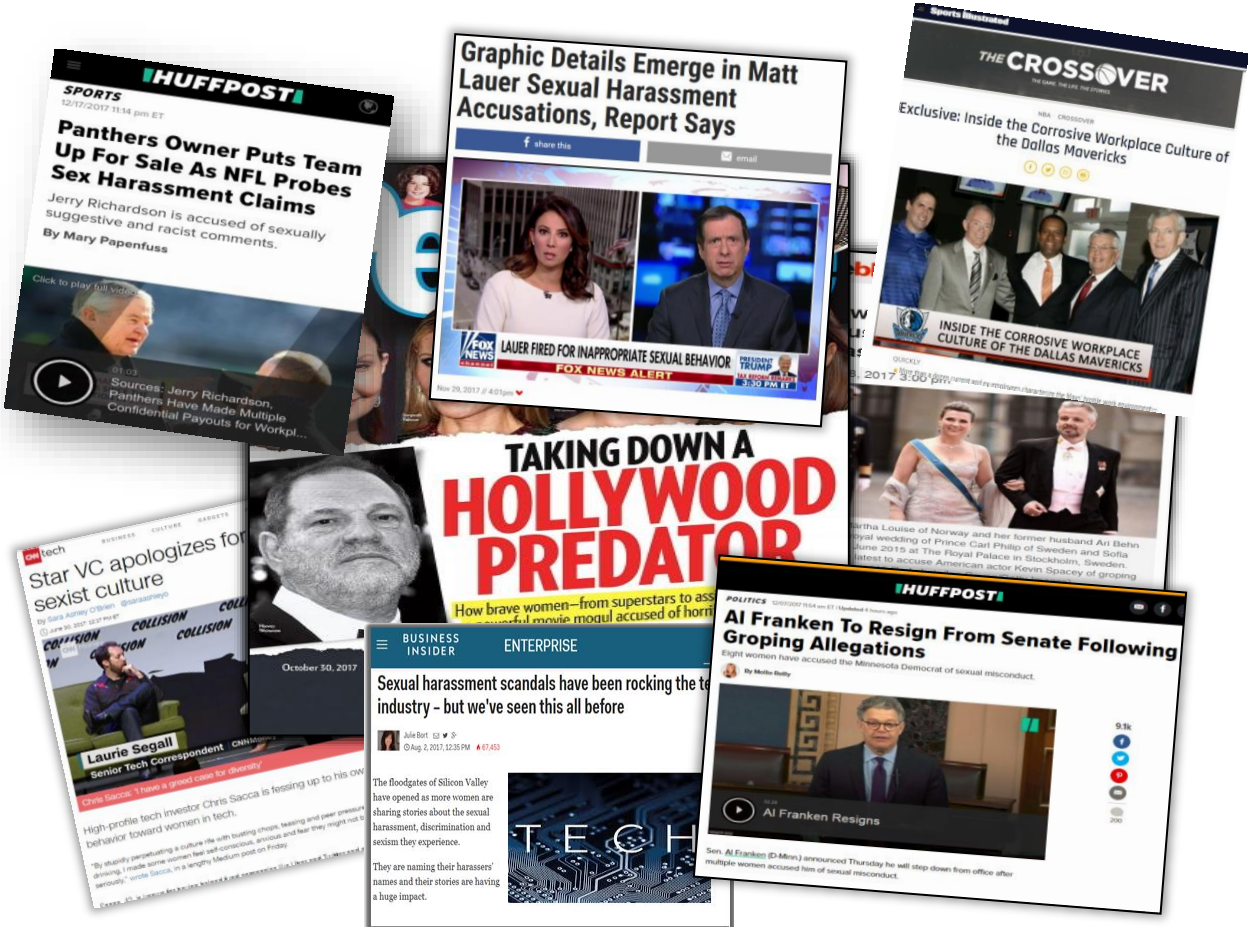
California Labor Code 2802(a)

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.


Person of the Year
TIME
THE SILENCE BREAKERS
THE VOICES THAT LAUNCHED A MOVEMENT

#NotYouToo

Sexual Harassment Scandals Rocking Multiple Industries



Investigations Under the Microscope

- What Do You Think?
  - What has changed?
  - What are the dangers?
  - What are the opportunities?

Investigations Are More Important Than Ever

(Despite Recent “On-the-spot” Terminations)

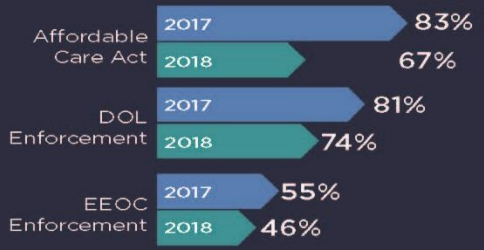
- You Cannot Wait Until the House is on Fire
- #MeToo is Not a Fad
- Never Assume a Claim is Frivolous

The Littler® Annual Employer Survey 2018

Littler's seventh annual survey, completed by 1,111 in-house counsel, HR professionals and C-suite executives, analyzes the legal, technological and social issues having the greatest impact on the workplace. Here are some of the highlights from the survey results.

1 Regulation Rollback Brings Relief, Challenges

- Employers cautiously anticipate less impact from key regulatory issues compared to 2017 survey



But major changes in federal workplace policy have brought new challenges

64% Agree that the frequent and dramatic reversal of workplace regulations with changes in political power creates a burden for their businesses

75% Agree that new labor and employment requirements at the state and local levels have led to compliance challenges

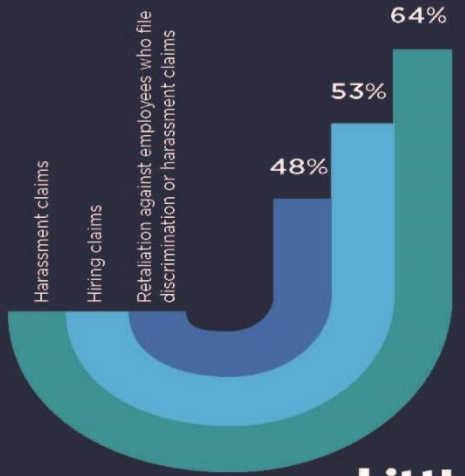
2 Sexual Harassment, Pay Equity, Immigration Top of Mind

- Issues in the headlines most impacting the workplace
  - **66%** ranked **sexual harassment** 1st or 2nd
  - **41%** ranked **gender pay equity** 1st or 2nd
  - **28%** ranked **immigration policy changes/enforcement** 1st or 2nd
- #MeToo movement has led:
  - **55%** to add training for supervisors and employees
  - **38%** to update HR policies or handbooks
- To address gender pay equity:
  - **61%** have conducted audits of current pay practices and salary data
  - **34%** have revised hiring practices
- Immigration changes most impacting employers
  - **48%** Tighter restrictions on visa adjudications
  - **36%** Increased workplace immigration enforcement

3 Continued EEOC Enforcement

- Virtually no change in the impact employers are anticipating from EEOC enforcement

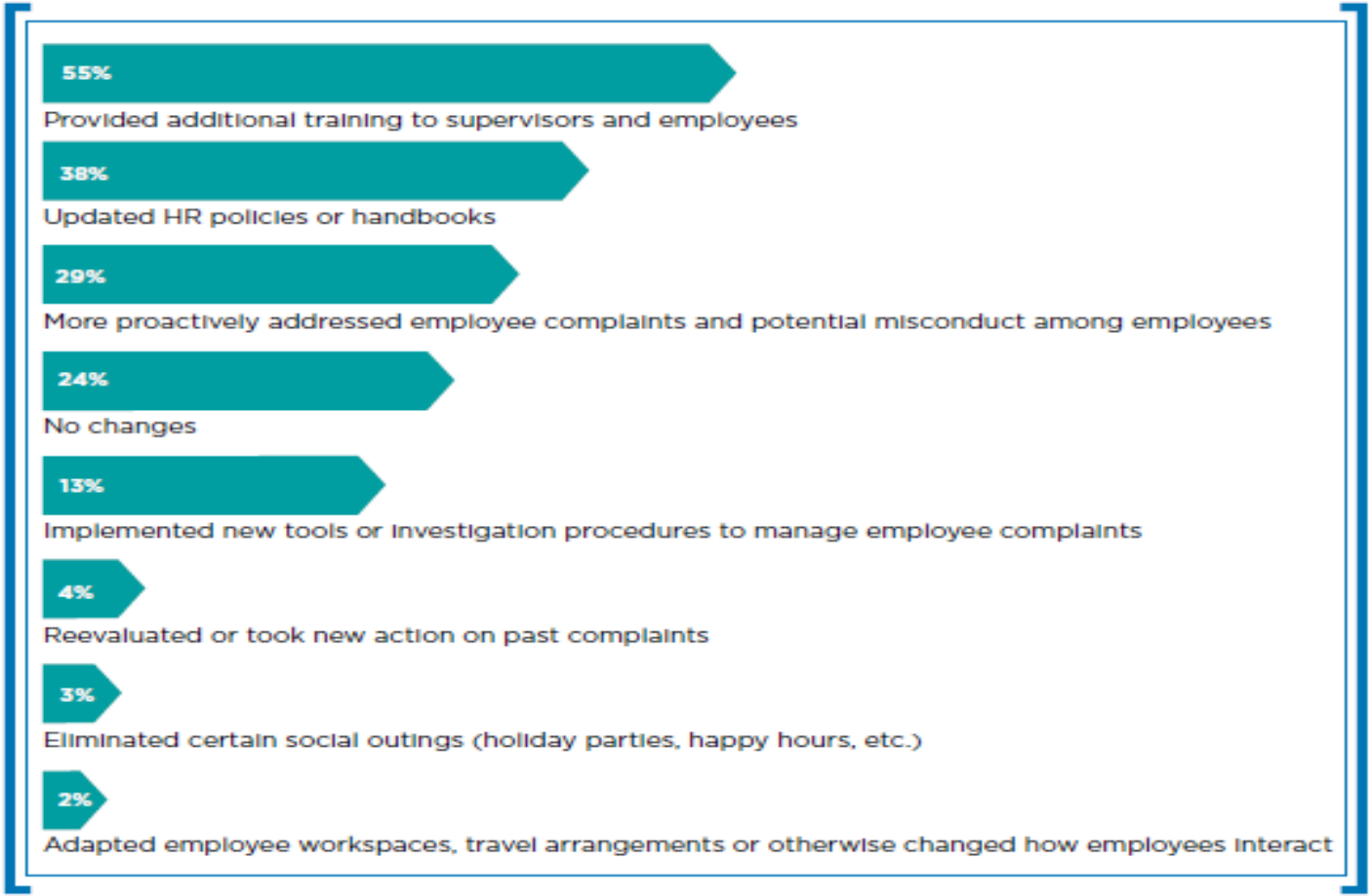
- Areas expected to see a rise in EEOC discrimination claims over the next year



Littler

For the complete report, please visit: littler.com/2018-employer-survey

In response to the increase in sexual harassment accusations and the #MeToo movement, which of the following actions has your company taken over the past year? (check all that apply)

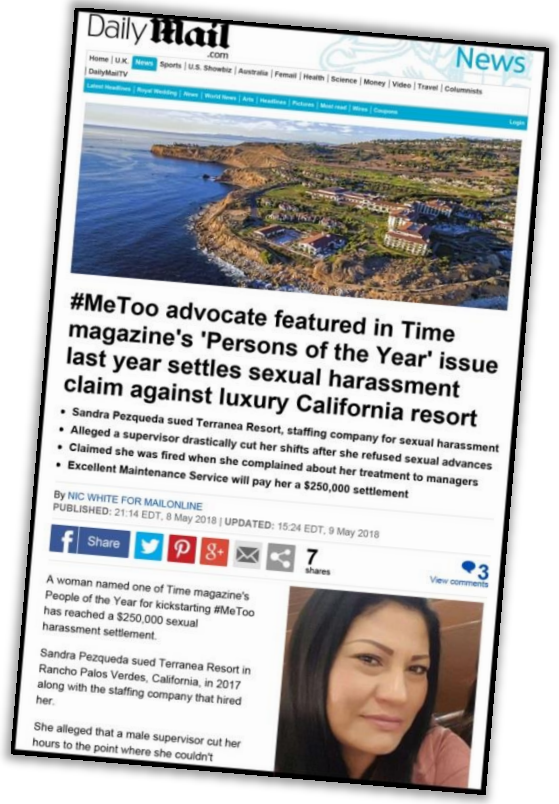


Consequences of the #MeToo Movement

"I think that employers, generally speaking, are going to be much more cautious about going to trial now that women are being believed about their sexual harassment allegations, and every potential juror knows somebody who has had a #MeToo moment."

- Lauren Teukolsky

Sandra Pezqueda's Attorney



Daily Mail .com News

#MeToo advocate featured in Time magazine's 'Persons of the Year' issue last year settles sexual harassment claim against luxury California resort

- Sandra Pezqueda sued Terranea Resort, staffing company for sexual harassment
- Alleged a supervisor drastically cut her shifts after she refused sexual advances
- Claimed she was fired when she complained about her treatment to managers
- Excellent Maintenance Service will pay her a $250,000 settlement

By NIC WHITE FOR MAILONLINE
PUBLISHED: 21:14 EDT, 8 May 2018 | UPDATED: 15:24 EDT, 9 May 2018

Share 7 shares 3 View comments

A woman named one of Time magazine's People of the Year for kickstarting #MeToo has reached a $250,000 sexual harassment settlement.

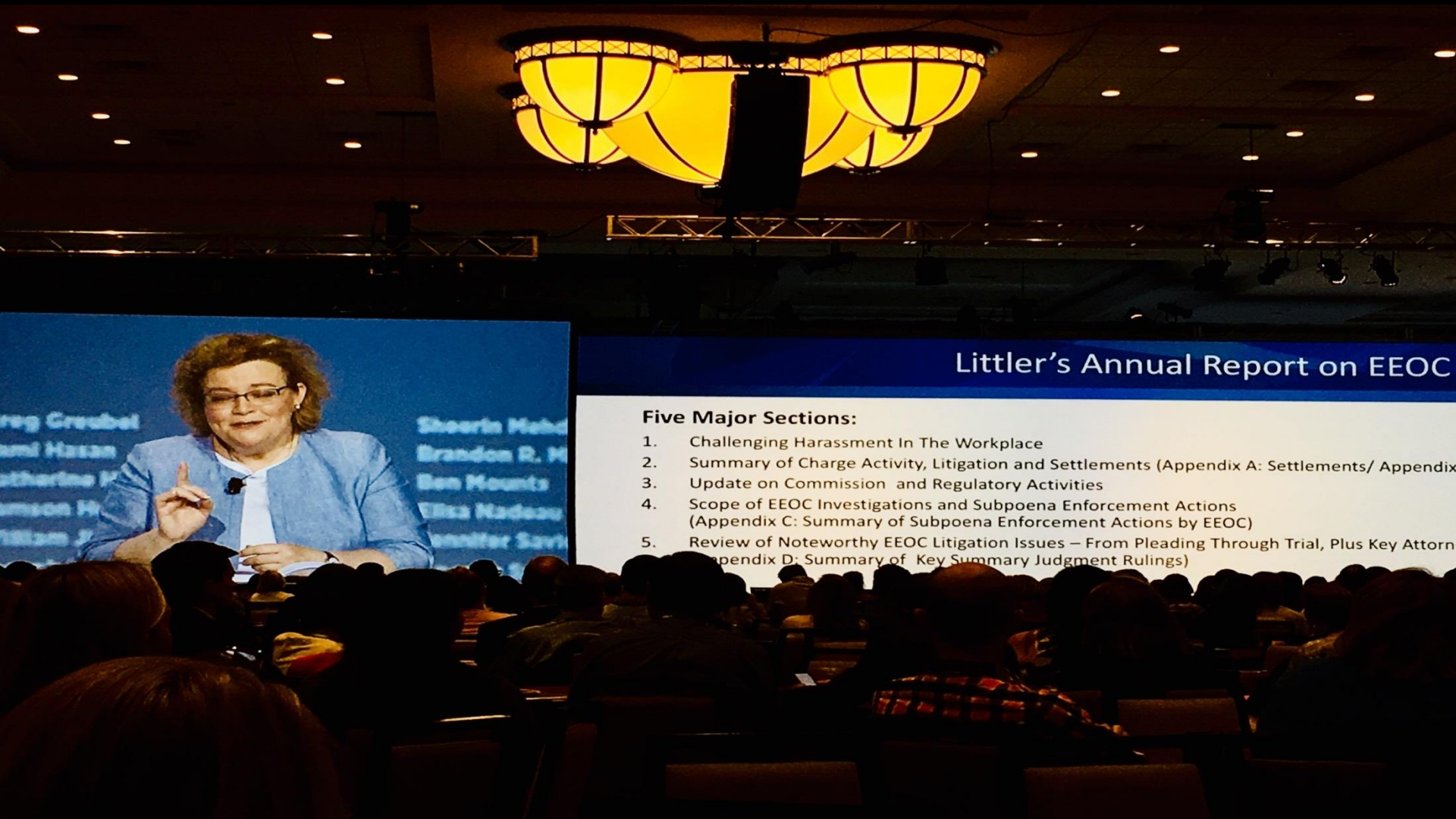
Sandra Pezqueda sued Terranea Resort in Rancho Palos Verdes, California, in 2017 along with the staffing company that hired her.

She alleged that a male supervisor cut her hours to the point where she couldn't

Consequences of the #MeToo Movement

- Settlement Demands
- “Non-Legal” Allegations
- Revival of Prior Allegations
- Training
- EEOC Charges?

Is this really new?!


Littler's Annual Report on EEOC
Five Major Sections:
1. Challenging Harassment In The Workplace
2. Summary of Charge Activity, Litigation and Settlements (Appendix A: Settlements/ Appendix
3. Update on Commission and Regulatory Activities
4. Scope of EEOC Investigations and Subpoena Enforcement Actions
(Appendix C: Summary of Subpoena Enforcement Actions by EEOC)
5. Review of Noteworthy EEOC Litigation Issues – From Pleading Through Trial, Plus Key Attorn
ppendix D: Summary of Key Summary Judgment Rulings)

Report of The Co-Chairs of The EEOC Select Task Force on The Study of Harassment In The Workplace, June 2016

- “Complaint procedures must be adequately funded in the organization’s budget and sufficient time must be allocated from employee schedules to ensure appropriate investigations”
- “An employer that has an effective anti-harassment program, including an effective and safe reporting system, a thorough workplace investigation system, and proportionate corrective actions, communicates to employees by those measures that the employer takes harassment seriously.”
- “If those responsible for investigations and corrective actions do not commence or conclude an investigation promptly, do not engage in a thorough or fair investigation, or do not take appropriate action when offending conduct is found, that person must be held accountable. ”
- “Employers should devote sufficient resources so that workplace investigations are prompt, objective, and thorough.”

Report of The Co-Chairs of The EEOC Select Task Force on The Study of Harassment In The Workplace, June 2016

- EEOC's position, which after our study we believe remains sound, is that employers should adopt a robust anti-harassment policy, regularly train each employee on its contents, and vigorously follow and enforce the policy. EEOC recommends that a policy generally include:
  - A clear explanation of prohibited conduct, including examples;
  - Clear assurance that employees who make complaints or provide information related to complaints, witnesses, and others who participate in the investigation will be protected against retaliation;
  - A clearly described complaint process that provides multiple, accessible avenues of complaint;
  - Assurance that the employer will protect the confidentiality of harassment complaints to the extent possible;
  - A complaint process that provides a prompt, thorough, and impartial investigation; and
  - Assurance that the employer will take immediate and proportionate corrective action when it determines that harassment has occurred, and respond appropriately to behavior which may not be legally-actionable "harassment" but which, left unchecked, may lead to same.

Report of The Co-Chairs of The EEOC Select Task Force on The Study of Harassment In The Workplace, June 2016

- Employees who receive harassment complaints must take the complaints seriously.
- The reporting system must provide timely responses and investigations.
- The system must provide a supportive environment where employees feel safe to express their views and do not experience retribution.
- The system must ensure that investigators are well-trained, objective, and neutral, especially where investigators are internal company employees.
- The privacy of both the accuser and the accused should be protected to the greatest extent possible, consistent with legal obligations and conducting a thorough, effective investigation.
- Investigators should document all steps taken from the point of first contact, prepare a written report using guidelines to weigh credibility, and communicate the determination to all relevant parties.

California Department of Fair Employment and Housing Workplace Harassment Guide For California Employers, May 2017

STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency GOVERNOR EDMUND G. BROWN JR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING DIRECTOR KEVIN KISH

2218 Kausen Drive, Suite 100 I Elk Grove I CA I 95758
800-884-1684 (voice) I 800-700-2320 (TTY) | California's Relay Service at 711
www.dfeh.ca.gov I email: contact.center@dfeh.ca.gov

May 2, 2017
For Immediate Release

Contact: Fahizah Alim
(916) 585-7076
Fahizah.Alim@dfeh.ca.gov

DFEH ISSUES WORKPLACE HARASSMENT GUIDE FOR CALIFORNIA EMPLOYERS

Guide provides recommended practices for preventing and addressing workplace harassment

Sacramento – The Department of Fair Employment and Housing (DFEH) announced today the release of a guide for California employers regarding their obligation to take reasonable steps to prevent and correct workplace harassment.

Developed in conjunction with the California Sexual Harassment Task Force, the guide is aimed at helping employers develop an effective anti-harassment program; know what to do and how to investigate reports of harassment; and understand what remedial measures they might pursue. The guide is relevant to addressing all forms of workplace harassment, including harassment based on sex.

In addition, the Department issued a revised brochure detailing California's legal protections against sexual harassment in particular and the steps all California employers must take to

Washington Responds to the #MeToo Movement

- SB 6068: Right to Testify re Sexual Harassment
- Nondisclosure policies or agreements (including arbitration agreements) that limit disclosure of past instances of sexual harassment/assault contrary to public policy and unenforceable.
- No effect on discovery or availability of witness testimony in civil action.
- Court may enter appropriate orders to protect identities of alleged victims from disclosure.
  - Effective date: June 7, 2018

Washington Responds to the #MeToo Movement

SB 5996: Right to Disclose Sexual Harassment

- Employers cannot require employees to sign nondisclosure agreement, waiver, or other document preventing disclosure of work-related sexual harassment/assault as a condition of employment.
- Agreements, waivers, or other documents with purpose/effect of preventing such disclosure are against public policy, void, and unenforceable.
- Unfair practice to discharge/retaliate against employee for disclosing or discussing work-related sexual harassment/assault.
- No prohibition of settlement agreements between current/former employee and employer alleging sexual harassment and containing confidentiality provisions.

Effective date: June 7, 2018

A Reminder

- The December Tax Bill includes Section 13307: *Denial of Deduction for Settlements Subject to Nondisclosure Agreements Paid in Connection With Sexual Harassment or Sexual Abuse.*
- Provisions amend tax code that allowed businesses to deduct as an ordinary expense settlements or payments related to sexual harassment or abuse and attorney's fees
  - IF such settlement or payment is subject to a nondisclosure agreement.
- Employers must weigh the amount of the deduction vs. the nondisclosure provisions.

Washington Responds to the #MeToo Movement

SB 6313: Right to Publicly File Complaint

- Provision of employment contract/agreement against public policy, void, and unenforceable if requires:
  - waiver of right to publicly pursue cause of action under Washington Law Against Discrimination or federal antidiscrimination laws;
  - waiver of right to publicly file complaint with state/federal agencies; or
  - resolution of discrimination claims in confidential dispute resolution process

Effective date: June 7, 2018

Washington Responds to the #MeToo Movement

SB 6471: Model Sexual Harassment Policies

- Washington Human Rights Commission to “develop model policies and best practices for employers and employees to keep workplaces safe from sexual harassment.”
- *(Can you think of another state that dictates what should be in a harassment policy?)*
- Items to consider:
  - How to create and protect anonymous reporting channels
  - How to ensure human resource departments are accountable for enforcing sexual harassment policies, aiding victims of sexual harassment, and encouraging victims to speak up
  - How to protect against retaliation for complainants and observers
  - Providing the opportunity for employees to establish affinity groups as a mechanism for sharing concerns

SB 6471 Cont'd

- The use of exit surveys to identify the reason employees leave the workplace and to enhance working conditions to promote retention and an inclusive environment
- The use of employee engagement surveys that contain questions regarding sexual harassment prevention
- Using new employee orientations to emphasize inclusion and sexual harassment prevention
- Evaluating executives, managers, and supervisors on their specific efforts to support an inclusive workplace and prevent sexual harassment
- Requiring training for all employees in a classroom environment

Model policies required January 1, 2019

Domestic Violence Accommodation

Domestic Violence Safety Accommodations

- New Section added to existing Domestic Violence Leave Law
- "Safety accommodations" for victims of domestic violence, sexual assault of stalking, **UNLESS** the accommodation would impose an undue hardship
  - *(Can you think of another state that requires domestic violence accommodation in addition to leave?)*
- Also, cannot refuse to hire or retaliate against a victim of domestic violence, sexual assault of stalking
- Effective June 2018

Sample Safety Accommodations

- A transfer
- Reassignment
- Modified schedule
- Changed work telephone number
- Changed work email address
- Changed workstation
- Installed lock
- Implemented safety procedure
- Or any other adjustment to a job structure, workplace facility, or work requirement in response to actual or threatened domestic violence, sexual assault or stalking

Washington Bans the Box

Washington Fair Chance Act

Effective June 2018

- Prohibits employers from making inquiries related to criminal records orally or in writing until after initially determining the applicant is qualified for the position.
- Prohibits ads or policies excluding applicants with criminal records.
- Authorizes the attorney general to enforce the Washington Fair Chance Act and provides penalties.

BAN THE BOX

A Reminder

- April 25, 2012, EEOC issues updated guidance on criminal history
  - Disparate impact discrimination
  - Targeted screen
  - “Individualized assessment”
  - Procedural protections

EEOC Guidance

- First Step: Targeted Screen
  - Consider *at least*
    - The nature of the crime;
    - The time elapsed; and
    - The nature of the job.
- Second Step: Individualized Assessment
  - Individually assess those screened out.

- *Employers may opt to* never *conduct individualized assessment if the targeted screen is always job-related and consistent with business necessity.*

Additional Resources

ASAP®

Insight

Questions

Thank You!

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