

EEOC claims \$486 million for victims of workplace bias in 2019

The EEOC secured \$486 million for victims of discrimination in the workplace in fiscal year 2019, according to the commission's annual financial report. That's down slightly from the \$505 million collected last year, but on par with FY2017's \$484 million.

Here's a closer look at some of those big wins for the EEOC and the lessons learned from these cases.

Hiring doesn't end the accommodation process

Most employers understand their obligation under the ADA to hire otherwise qualified disabled applicants who can perform the essential functions of a job with or without a reasonable accommodation.

But some forget that their obligation to find and implement reasonable accommodations doesn't end with hiring. That obligation is ongoing, throughout the disabled employee's tenure on the job. That's the lesson recently learned by an employer that should have known better.

Goodwill Enterprises of Greater New York and Northern New Jersey provides job training and employment opportunities to people with disabilities.

To that end, it runs a janitorial service that primarily employs individuals with disabilities. When Goodwill hires people to work for the service, it knows they are disabled and qualify for protection under the ADA.

One of Goodwill's janitorial employees encountered problems doing his job. According to a lawsuit eventually filed by the EEOC, he needed additional training or job coaching to properly understand the work rules he had to follow.

Instead, Goodwill wrote him up. However, he was unable to read those disciplinary warnings. He didn't receive any additional training or coaching. Ultimately, he was fired for alleged poor performance.

The EEOC sued, alleging that Goodwill had failed its obligation to provide reasonable accommodations to workers with known disabilities. It didn't suggest job accommodations, nor did it engage in the interactive accommodations process.

The EEOC conceded the employee did not directly ask for an accommodation. However, it said Goodwill should have known the employee needed reasonable accommodations.

Before the lawsuit could go to trial, Goodwill agreed to settle for \$65,000. The former employee will receive the entire amount as back pay and damages. Goodwill agreed to provide additional supervisor training and report all denied accommodation requests to the EEOC. (*EEOC v. Goodwill Industries*, ED NY, 2019)

Background checks cost retailer \$6 million

You may think it's good business to run criminal background checks on all applicants. It's not. In fact, poorly run criminal background checks can be a multi-million dollar mistake. To pass legal muster, background checks must be narrowly tailored to the applicant's job. They must be driven by business necessity.

If you screen out too many applicants because of criminal records, you could be sued.

Reason: Extensive checks may have a disparate impact on protected classes of applicants.

Dollar General, the largest discount retailer in the U.S., runs a criminal records background check for all applicants and current employees. Several black women who once worked for Dollar General reported to the EEOC that they had been fired after background checks revealed past criminal convictions.

The EEOC investigated and concluded that the background checks were evidence of discrimination against black applicants. In the words of EEOC Chicago District Director Julianne Bowman, "... use of criminal background checks often has a disparate impact on African Americans."

Dollar General has now agreed to settle the lawsuit before it got to trial. The price tag: \$6 million.

The money will be split by a class that includes black individuals who were either not hired or were fired after undergoing criminal background checks. Some of the money will also go to black would-be candidates who were discouraged from applying after they revealed they had criminal records.

Dollar General must revamp its background check practices to take into account time since an individual's conviction, the number of offenses, their nature and gravity and the risk of recidivism. In addition, the chain will create a process to reconsider applicants discovered to have criminal records. (*EEOC v. Dolgencorp*, ND IL, 2019)

Federal jury: Walmart must pay \$5.2 million for ADA violation

The EEOC won a major victory in federal court this past fall when a jury awarded \$5.2 million to a long-time Walmart employee who was suddenly denied an ADA accommodation that had been working for years.

According to the EEOC's lawsuit, an employee—who has a developmental disability and is deaf and visually impaired—worked as a cart pusher in a Wisconsin Walmart for 16 years before a new manager started at the store. In his first month, the new store manager suspended the employee and forced him to resubmit medical paperwork in order to keep his reasonable accommodations—help from a publicly funded job coach.

The employee's conditions had not changed, the EEOC said.

When the employee and his legal guardian submitted new medical paperwork requesting the coach's continued assistance, the store cut off communication and effectively terminated him, the EEOC charged.

The jury awarded \$200,000 in compensatory damages—and \$5 million in punitive damages. Walmart plans to appeal the judgment.

Territory bias was a million-dollar mistake

Here's a warning for managers who assign sales or service territories to employees: Never make assumptions about who can best serve your customers on the basis of race, national origin or other protected characteristics.

If you assign sales territories based even in part on territory demographics that mirror your employee's

protected characteristics, you may end up losing a discrimination lawsuit.

That's particularly true if one territory ends up being less lucrative for the employee than another might be. In short, making assumptions about customer preference for a salesperson of similar background can prove very costly.

The EEOC opened an investigation into how Breakthru Beverages, an Illinois alcoholic beverage distributor, assigned sales and service territories.

The company allegedly offered account and territory assignments based on national origin, race or a combination of those characteristics. In similar cases, for example, black sales reps have been assigned to work in mostly black neighborhoods.

Five Breakthru Beverages employees who accepted the territories claimed they suffered national origin and race discrimination, even though their earnings may not have been directly affected.

The EEOC concluded that the act of dividing and segregating the workforce could lead to decreased employee morale and reduced promotional opportunities.

The EEOC brokered a settlement before filing a lawsuit against Breakthru. The company will pay more than \$950,000 to settle the case. It will also revise its internal policies to prohibit assignments based on protected characteristics.

The settlement is designed to offer all five employees an equal opportunity to service the accounts and work in the territories of their choice, based strictly on their skills and abilities.

Advice: The best way to approach territory assignments is to ask employees their preferences while fully disclosing potential earnings in particular territories based on past results.