



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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U.S. Equal Employment Opportunity Commission
Civil Rights in the Central Valley
Public Testimony – Employment Issues
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Good Morning. My name is Melissa Barrios and I am the Director of the U.S. Equal Employment Opportunity Commission, Fresno Local Office. Thank you to the Fair Employment and Housing Council and Kevin Kish, Director of the California Department of Fair Employment and Housing for the opportunity to provide testimony today.

The U.S. EEOC is a federal agency whose mission is to prevent and remedy unlawful employment discrimination and advance equal opportunity for all in the workplace. Our laws are designed to protect all individuals from employment discrimination based on race, color, religion, sex, national origin, age, disability and genetic information. The Fresno Local Office has a 10-county service area which includes Kern, Kings, Tulare, Fresno, Madera, Merced, Mariposa, San Benito, Mono and Inyo counties. In FY 2017, which runs from October 1, 2016 - September 30th, 2017, the Fresno Local office received, 625 inquiries resulting in 396 filed charges.

Today, I would like to provide you with a snapshot of the types of discrimination complaints we are receiving in the Central Valley. The charges received cover a spectrum of industries, from agriculture food processing plants, hospitals, nurseries, insurance companies, and car dealerships to temporary agencies and unions – no industry is immune from the potential for discriminatory conduct.

I'm now going to focus on highlighting some recent cases that were filed in court following a finding issued by the Commission. Some of these cases have been resolved through a public conciliation or court consent decree while others are currently in litigation.

In EEOC v. Dash Dream Plant, Inc. a female employee working at a nursery that grows orchids for retail and wholesale buyers in Dos Palos, Merced County became pregnant. She informed the General Manager. The following day, she was transferred to a different position and told not to lift heavy items. Charging Party had not requested any modifications to her job. Soon thereafter, she was placed on involuntary leave though she wanted and could continue to work. Witness testimony gathered through the Commission's investigation revealed the employer's animus toward pregnant females – he would hold staff meetings instructing female employees not to get pregnant and if they did, they should consider themselves, fired. When the charging party tried to return to work following childbirth, she was repeatedly told there was no work. This case resolved through a consent decree for \$110,000.00 along with injunctive relief.

In another example of pregnancy discrimination, a female employee who worked as a packer at Peninsula Packaging in San Juan Bautista, (San Benito County) was denied a job modification during her pregnancy. Peninsula Packaging provides design, development, and production of packaging for consumer-ready produce, bakery, deli, and other on-the-go food items. The EEOC Fresno office investigated the allegations and issued a finding that the company had placed the pregnant employee on involuntary leave rather than modify her work duties in violation of Title VII as amended by the Pregnancy Discrimination Act. Fortunately, this case was resolved and the Commission negotiated a public conciliation resulting in \$45,000.00 for the Charging Party and injunctive relief. Peninsula agreed to hire an outside equal employment opportunity consultant to develop and conduct effective training for all employees on discrimination with an emphasis on pregnancy discrimination, as well as develop reporting procedures, and assist the company with revising and modifying its discrimination policies.

In another case, EEOC v. Pape Material Handling, Inc., the Commission filed a case alleging that Pape, a company that sells, rents and services fork lift products, engaged in national origin harassment by regularly subjecting Hispanic employees to derogatory slurs, threatening Hispanic employees and mocking their accents. The Charging Party, who worked at one of Pape's Fresno County locations reported the offensive conduct to company officials; however, the company did not take corrective action to remedy the situation. This case is pending resolution in the U.S. District Court for the Eastern District of CA, Fresno.

Race discrimination continues to be a problem in Central Valley communities. For example, in Hanford, Kings County, the Fresno office investigated allegations made against Marquez Brothers, a company that produces and distributes Mexican style dairy products, meat items, canned and dry goods. In this case, the charging parties alleged that Marquez had a Hispanic hiring preference and they were not hired for entry-level positions because of their race. Following a determination and pre-litigation conciliation efforts, the Commission filed EEOC v. Marquez Brothers, International, Inc. et al. alleging that less qualified Hispanic job applicants were favored over all other races (including black, white and Asian applicants), and that Marquez discouraged non-Hispanic applicants from applying for open positions, asking them if they spoke Spanish although it was not a job requirement. This case is pending resolution in the U.S. District Court for the Eastern District of CA, Fresno.

The work of the Fresno office also includes pursuing issues that impact the disabled. Employers continue to improperly address reasonable accommodation requests, require employees to be 100% to be able return to work, or outright refuse to hire anyone with a disability or record of disability. Interestingly, we find some of the most egregious violations occurring at healthcare facilities. One example, is the case of EEOC v. Magnolia Health Corporation, a health care and assisted living company based in Visalia (Tulare County). In that case, the charging party alleged that he had applied for and was hired as a cook. He was qualified and had performed the job duties for several days without incident. The Charging Party was sent for a post-offer medical examination and following the exam his offer of employment was revoked. Although the Charging Party explained that he had no limitations and offered to provide a release from his personal physician, Magnolia refused and he was not permitted to return to work. EEOC further alleged that Magnolia required employees be completely free of medical restrictions to work as evidenced by others who were denied employment due to an actual or record of disability.

Following investigation and attempts to conciliate the matter, the case was filed in federal court and settled for \$325,000.00 and injunctive relief.

A company's inflexible leave policies and 100% healed/100% fit for duty policies undermine protections under the ADA. In EEOC v. Prestige Care, Inc./Prestige Senior Living, the Charging Party alleged he had applied for a cook position at one of the company's assisted living facilities in Visalia, Tulare County. He was sent for a medical assessment and was found to "meet modified job standards." As a result, Prestige Care, Inc./Prestige Senior Living refused to hire the charging party based on the recommended restrictions. Prestige Care, Inc. /Prestige Senior Living is yet another healthcare facility flouting the ADA's requirements. During the Commission's investigation, we learned that the company maintained a written policy requiring employees to be 100% healed at work. In other words, no reasonable accommodations were allowed for qualified individuals with a disability. All job duties had to be performed at 100% even when the job duty was a marginal function of the job. These stringent policies resulted in people being forced to resign, or they were fired, or they were ultimately not hired when they were deemed not 100% fit for duty. In addition, employees were fired for exceeding the companies' restrictive leave policy. The Commission filed suit and it is pending resolution in the U.S. District court for the Eastern District of CA, Fresno.

Tulare County isn't the only location where we are finding ADA violations. In Livingston, (Merced County), Sensient Natural Ingredients, LLC, employees who took extended leaves of absence for disability-related care, including surgeries and cancer treatments were discharged. In this case, the Charging Party was diagnosed with cancer and required time off for treatment. She took leave as an accommodation, but was subsequently warned that if she did not return, she would be terminated for having exceeded the company's leave policy. The Charging Party submitted the requested medical documentations releasing her to work; however, she was fired. In EEOC v. Sensient Dehydrated Flavors Co, Sensient Natural Ingredients, LLC et al., the EEOC charged that employees were either terminated for surpassing the company's restrictive leave policy or were required to return to work without accommodations or restrictions. Even when employees attempted to return to work without restrictions, Sensient refused to accept them back and fired them instead. This case was resolved through litigation and resulted in an \$800,000 settlement (which included \$200,000.00 for a contingent class fund) and injunctive relief.

Staffing agencies are also of concern to the Commission, and continue to be a focus in our strategic enforcement plan. During the intake process, individuals often describe retaliatory conduct occurring at staffing agencies. For example, the Commission settled through public conciliation a case against United Staffing Associates, a staffing agency located in Visalia, Tulare County. In this case, the employee alleged she had been placed by United Staffing at the same location for seasonal work for several years. At the end of the 2014 season, she filed a discrimination charge with the EEOC. After filing the charge, the charging party alleged that she was not recalled to work for that location by United Staffing at the start of the next season, nor did the staffing agency place her at any other location. The EEOC investigated the allegations and found reasonable cause to believe United Staffing was liable for discriminatory retaliation, in violation of Title VII of the Civil Rights Act of 1964. This case resulted in \$24,500.00 for the Charging Party, as well as reinstatement and injunctive relief.

In another instance of retaliation, an employee of Farmer's Insurance Exchange was terminated following testimony provided to the Commission. In EEOC v. Farmers Insurance Exchange, the Commission alleged that two Southeast Asian American employees of Hmong descent who worked at the Fresno Branch Claims Office were fired; however, other employees of a different race were not terminated for the same conduct. In addition, the company fired a Caucasian employee in retaliation for having testified before EEOC during its investigation. This case was resolved through litigation for \$225,000.00 and injunctive relief.

As you have heard today, the work of the Commission continues to be necessary to ensure that equal opportunity is provided to all. In addition to our enforcement and litigation work, the Commission, recognizes that education and outreach activities are an important aspect to achieving our mission. The Commission, is required to provide training and technical assistance for those with rights and responsibilities under employment anti discrimination laws. We seek to deter discrimination before it occurs by educating members of the general public, as well as the private and public business community.

It is important for members of the public to know the laws that exist to protect them and what they can do if a potential discrimination issue occurs while employers, unions and employment agencies need to know how to prevent discrimination, including how to address equal employment opportunity issues and how to ensure that their workplaces are free from discrimination. Given recent headlines related to sexual harassment and the challenges faced in our workplaces, the Commission recently launched a new training program focusing on harassment prevention and creating respectful workplaces. The training program is an outgrowth of the Report of the Commission's Co-Chairs (Acting Chair Victoria Lipnic and Commissioner Chair R. Feldblum) of the Select Task Force on the Study of Harassment in the Workplace. This training program focuses on respect, acceptable workplace conduct, and the types of behaviors that contribute to a respectful and inclusive, and therefore ultimately more profitable, workplace.

The EEOC Fresno Local Office will continue to vigorously enforce federal anti-discrimination laws on behalf of the American public and looks forward to continuing partnership with the Department of Fair Employment and Housing in these efforts. Thank you, again, for the opportunity to speak with you about this important issue.