



NEWSLETTER

Boston Area Office

Connecticut Massachusetts Maine New Hampshire Rhode Island Vermont



Mr. Sanders, a native Alabamian, grew up in an era when the line between slavery and freedom for Southern Blacks was unquestionably blurred and arguably nonexistent. Jim Crow ruled the land. Black females raised white babies, cooked their parent's food and even shared their sleeping quarters but had no right that could not be taken away with a mere utterance. Black men could be brutalized, even killed, if an unseen line was crossed or for no reason at all. The rules of strict segregation governed the first 18 years of Mr. Sander's life as it was lawful to discriminate against Blacks in all aspects of daily life.

Following high school he migrated to Boston. He was subsequently drafted by the Army and eventually sent to Vietnam. Following his separation from the Army he entered Boston College. After graduating he learned, quite by accident of the Massachusetts Commission Against Discrimination (MCAD) and the existence of laws designed to prevent the types of indignities he had experienced and witnessed as a young man. He knew immediately that this was the type of work he wanted to do in life. The Vietnam Veterans Readjustment Act provided the initial opportunity as it opened the door to a temporary Investigator position at the MCAD, which subsequently became a permanent, full-time position. He remained at MCAD for twelve years. He moved to the Equal Employment Opportunity Commission (EEOC) as a Supervisory Investigator in 1984 and became the Director of its Boston Area Office in 1993. The Boston Area Office is one of 50 Commission offices and has responsibility for receiving and investigating charges of employment discrimination originating in the six New England States. It is located in the John F. Kennedy Federal Building, Room 475, Government Center, Boston, MA 02203-0506. Toll-Free Number: 800-669-4000

Update your EEO Poster at www.eeoc.gov
and get your Free copy today!

Reinvigorating Fact Finding Conference (FFC)

By: Benjamin Nidus, EEOC, Sr. Investigator

EEOC investigators have authority under federal statutes to require persons to attend what is known as a FFC. This means the investigator can require individuals from both sides of the claim to appear, produce evidence, and testify. The purpose of a FFC is to expedite the handling of charges by clarifying what issues are in dispute and what evidence and information is further needed in order to reach a determination on a charge. During a FFC, both sides will have the opportunity to present their version of events uninterrupted. Attorneys may be present, but cross-examination by attorneys will not be permitted nor will the use of recording devices. The investigator, or either party, may suggest the possibility of a settlement. Settlement agreements will be drafted by the investigator and signed by all parties including the EEOC Director for approval. A separate general release between the parties can be also made.

Per Se Violation & GINA (Genetic Information Non-Discrimination Act)

By: Kenneth An, EEOC, Enforcement Supervisor

Do you know the intentional acquisition of genetic information from an employee is a per se violation? If the genetic information was acquired unintentionally, employers have one of six defenses available: 1) inadvertent request for medication information; 2) offer of health or genetic services such as a wellness program; 3) FMLA request to care for family member with serious health condition; 4) commercial and publicly available documents; 5) genetic monitoring of effects of toxic substances in the workplace; or, 6) DNA testing for law enforcement or human remains identification purposes if used for quality control purposes.

EEOC will not offer Mediation on charges filed under GINA in 2010.

A View From Middle Earth

The Value of Self Determination

By Elizabeth Marcus, EEOC, Mediator

Mediation allows for self determination. This ability for parties to resolve a matter on their own terms sets mediation aside from other forums. The EEOC, a judge or a jury may not be able to identify party interests as readily as the parties themselves. This leads to many creative outcomes. I have seen retirement parties, professional development opportunities, training to management on a particular disability and substantive employment references to name a few. These are options typically not available in other forums.

Fast mediation statistic: **70%** of all cases mediated resolved!

EEOC Technical Assistance Program Seminar on Disability

Monday, June 21, 2010
UMass Boston Campus Center
100 Morrissey Blvd.
Boston, MA

To Register: WWW.EEOC.Gov
For more information,
Contact Bryan White
@ 212-336-3670



EEOC Outreach in Connecticut: (Right to Left) Ken An, Enforcement Supervisor; Alvin Marin, ISA; Carmen Martinez, Director of ASPIRA; and, Elizabeth Marcus, Mediator.

Boston Legal Unit Settles Age Discrimination Cases

By Mark Penzel, EEOC, Trial Attorney

In 2009, Boston's Legal Unit settled two age discrimination cases. Qualex, Inc., a wholly owned subsidiary of Eastman Kodak, paid \$272,000 to settle a case the Commission filed in May 2008 in federal court in Connecticut. The Commission alleged that Rochester, N.Y.-based Qualex, a photo processing company and a subsidiary of Eastman Kodak, subjected workers aged 40 and older to age discrimination through an inequitable reduction in force (RIF) at its facility in East Hartford, Conn. (since closed) in Violation of the Age Discrimination in Employment Act (ADEA). The average age of those who lost their jobs from the RIF was over 50 and far exceeded the average age of employees retained following the action.

The settlement with Qualex provided \$272,000 to four employees affected by the RIF. Teresa Cristelli, who filed the initial charge with the EEOC, received \$200,000, and three other former employees identified by the EEOC received payments ranging from \$12,000 to \$30,000. In addition to the monetary payments, the consent decree resolving the litigation (Civil Action No. 3:08-CV-823 [MRK]) enjoined Qualex from violating the Older Workers Benefit Protection Act when it seeks waivers and releases in exchange for severance payments; mandated training of management on ADEA requirements; required the issuance of a new anti-discrimination policy and the posting of a notice regarding the settlement; and allowed the EEOC to monitor future severance agreements during RIFs.

In the second lawsuit, Freudenberg-NOK General Partnership, an Auto parts manufacturer based in Michigan with substantial operations in New Hampshire, paid \$80,000 and furnished other relief to settle a case filed by the Commission in federal district court in New Hampshire. The Commission had charged Freudenberg with refusing to hire a man because of his age for a controller position at its Bristol N.H., facility. The Commission had alleged that Timothy Poh applied for and was interviewed for the controller position at Freudenberg's Bristol, NH facility in the fall of 2006. After Poh followed up several times, Freudenberg called him on January 3, 2007 to tell him that although he was well qualified, it was looking for someone "not quite so old with as much experience." Freudenberg offered the position to two younger applicants and eventually hired a younger, less qualified person for the position.

In addition to the monetary payment to Poh, the consent decree resolving the litigation Civil Action No. 1:07-cv-00406-JD) enjoined Freudenberg from discriminating on the basis of age and from violation the Older Workers Benefit Protection Act when it seeks to have employees waive or release rights under the ADEA; mandated training of management on the requirements of the ADEA; and required the issuance of a new anti-discrimination policy and the posting of a notice regarding the settlement.



- EEOC Acting Chairman Stuart Ishimaru Testifies before Senate in support of Paycheck Fairness Act.
- There is no requirement that you file with a State agency before filing with the EEOC.
- EEOC says farewell to friend and colleague Arnold Lizana, EEOC Trial Attorney.
- The percentage of sexual harassment claims filed by men has doubled from 8 percent to 16 percent from 1990 to 2009.