

# Quad A News



## If you plan to be in New Orleans for the NILG Conference this week...

Stop by and see us in the Exhibit Hall where we'll be promoting the 2012 NILG Conference. Plans have already begun for the event, which is taking place on the Big Island of Hawaii!

If you aren't joining us in New Orleans, we'll see you in September at our next member meeting.

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**August is our Summer Break**  
**Join us in September for**  
***"Best Practices: Communicating AAPs"***

## September Membership Meeting

**DATE:** September 20, 2011  
**TIME:** 8:30-10:00 a.m.  
**LOCATION:** To Be Announced

*Watch for details in our August newsletter*

## ***From the Desk of...*** **USDOL**



### **US Labor Department Restores & Updates Functional Affirmative Action Program Process**

The U.S. Department of Labor's Office of Federal Contract Compliance Programs has released a new directive to outline the process by which federal supply and service contractors can apply for Functional Affirmative Action Program agreements, which can be viewed at <http://www.dol.gov/ofccp/regs/compliance/directives/dir296.htm>.

"The FAAP is back and is better than before," said OFCCP Director Patricia A. Shi. "Over the past year, I have listened to comments from the contractor community and employee groups, and determined that this is a useful tool for ensuring that federal contractors and subcontractors meet their obligations to provide equal employment opportunity for everyone. I am pleased to share updated guidance that responds to the feedback we received while also renewing our commitment to ensuring discrimination-free workplaces."

Under Executive Order 11246, any company with 50 or more employees and a federal contract of \$50,000 or more is required to develop a written affirmative action program for each of its establishments. An AAP helps contractors identify and analyze potential disparities related to the employment of women and minorities. Where disparities exist, contractors can use AAPs to articulate specific procedures they will follow and good faith efforts they will make to provide equal employment opportunities. FAAP agreements allow large contractors the flexibility to create AAPs by functional or business units rather than by individual establishments. For example, a company could develop an affirmative action program for all sales associates across multiple offices in different states as opposed to creating one for each work site.

OFCCP reviewed its policies regarding the FAAP process and made significant changes, including the requirement of written approval by the OFCCP director before contractors can begin developing FAAPs, thereby eliminating the provision for automatic approval if OFCCP failed to act upon the request within 120 days; shorter terms for FAAP agreements which will now expire after three years, instead of five, at which point a renewal will have to

be approved; and the possibility of a compliance evaluation by OFCCP should contractors fail to submit the required annual updates to their FAAP agreements.

All contractors who currently have an approved FAAP agreement will be required to renew it in accordance with the new guidance. Contractors without these agreements should continue to maintain and develop establishment-based AAPs. Answers to frequently asked questions about the FAAP can be found at <http://www.dol.gov/ofccp/regs/compliance/faqs/faapfaqs.htm>.

In addition to Executive Order 11246, OFCCP's legal authority exists under Section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. As amended, these three laws hold those who do business with the federal government, both contractors and subcontractors, to the fair and reasonable standard that they not discriminate in employment on the basis of gender, race, color, religion, national origin, disability or status as a protected veteran. For more information, call OFCCP's toll-free helpline at 800-397-6251 or visit <http://www.dol.gov/ofccp/>.

### **ODEP's Martinez at Work to Improve Employment for the Blind**



Kathleen Martinez, Assistant Secretary for the Office of Disability Employment Policy (ODEP) spoke at the National Convention of the Federation of the Blind in Orlando, FL on July 8. Blind since birth, Ms. Martinez, was nominated by President Barack Obama to be the third Assistant Secretary for Disability Employment Policy and was confirmed by the U.S. Senate on June 25, 2009. As head of the U.S. Department of Labor's Office of Disability Employment Policy (ODEP), Ms. Martinez advises the Secretary of Labor and works with all DOL agencies to lead a comprehensive and coordinated national policy regarding the employment of people with disabilities. Read Ms. Martinez' full comments at:

[http://www.linkedin.com/news?viewArticle=&articleID=637709548&gid=2019694&type=member&item=62141462&articleURL=ht tp%3A%2F%2Fwww%2Edol%2Egov%2F\\_sec%2Fnewsletter%2F2011%2F201107143%2Ehtm&urlhash=BV6i&goback=%2Egde\\_2019694\\_member\\_62141462](http://www.linkedin.com/news?viewArticle=&articleID=637709548&gid=2019694&type=member&item=62141462&articleURL=ht tp%3A%2F%2Fwww%2Edol%2Egov%2F_sec%2Fnewsletter%2F2011%2F201107143%2Ehtm&urlhash=BV6i&goback=%2Egde_2019694_member_62141462)

## ***From the Desk of... USDOL***



### **Solis Prescribes Fixes for Youth, Veteran Unemployment**

In a conversation on July 12 with National Journal's Ronald Brownstein, Labor Secretary Hilda Solis offered some solutions for dealing with the impact of individuals remaining in the workforce longer and unemployment among recent college graduates and veterans.

To hear the full conversation, go to <http://www.nationaljournal.com/> and in the Search box enter: *Solis Prescribes Fixes for Youth, Veteran Unemployment*



### **OFCCP Proposes to Change the Scheduling Letter**

The OFCCP is requesting OMB approval to make changes to its current scheduling letter and itemized listing. The scheduling letter lists the 11 items needed to submit to OFCCP within 30 days. The current scheduling letter is set to expire on September 30, 2011. Links to the new documents as posted on [Regulations.gov](http://Regulations.gov):

[OFCCP Supporting Document](#)  
[New Compliance Check Letter](#)  
[New Compliance Review Letter](#)  
[New Itemized Listing](#)

OFCCP is proposing to add two new items to the scheduling letter. This includes the submittal of the last three years VETS-100 and/or VETS-100A report

as well as the contractors' leave policy.

In addition to the two new requests, OFCCP is proposing to make substantive changes to four other request items in the scheduling letter.

1. Changes to current Item 8 which requests a copy of the collective bargaining agreement (if applicable).
2. Changes the current language pertaining to the goal attainment report.
3. Changes the language to the current Item 10 requesting personnel activity data. The new request would REQUIRE contractors submit by Job Group AND Job Title. Furthermore, under the promotions and terminations data request contractors must develop constructed pools of who was actually considered for promotion or termination.
4. The final change is to the current Item 11 request for compensation. The new request asks for information to be submitted in the "disaggregate." Additionally, data is to be submitted as of February 1 (i.e., the data as it existed on the most recent February 1st date).

**Source: DCI Consulting Client Alert, David Cohen**



## **FARMERS**

### **Los Angeles-Based Farmers Insurance to Pay More Than \$1.5 Million in Back Wages to Nearly 3,500 Employees Following US DOL Investigation**

Los Angeles-based Farmers Insurance Inc. has agreed to pay \$1,520,705 in overtime back wages to 3,459 employees following an investigation by the U.S. Department of Labor's Wage and Hour Division that disclosed significant and systemic violations of the federal Fair Labor Standards Act's overtime and record-keeping provisions. Violations occurred at 11 customer service call centers located in Florida, Kansas, Michigan, Oklahoma, Oregon and Texas.

"Failing to properly compensate employees for pre- or post-shift work is a violation of federal law," said Secretary of Labor Hilda L. Solis. "The Labor Department is committed to ensuring that employers abide by the law so that workers are protected against exploitation, and law-abiding employers are not placed at a competitive disadvantage."

Through interviews with employees and a review of the company's timekeeping and payroll systems,



## ***From the Desk of...*** **USDOL**



investigators found that the company did not account for time employees spent performing pre-shift work activities. Employees routinely performed an average of 30 minutes of unrecorded and uncompensated work — such as turning on work stations, logging into the company phone system and initiating certain software applications necessary to begin their call center duties — per week.

Because employees' pre-shift work times were excluded from official time and payroll records, they were not paid for all hours and are owed compensation at time and one-half their regular rates for hours that exceeded 40 per week. Farmers Insurance has agreed to pay back wages, as well as to maintain future compliance with the FLSA by properly recording and compensating all hours worked by its employees.

The agreement affects call center employees who worked between Jan. 1, 2009, and May 10, 2010, at Farmers' HelpPoint facilities in Olathe, Kan.; Oklahoma City, Okla.; Lake Mary, Fla.; and Grand Rapids, Mich. It also affects workers employed at a former location in Overland Park, Kan., between Jan. 1, 2009, and Jan. 10, 2010. Additionally, it affects employees who worked between Jan. 1, 2009, and Feb. 1, 2010, at Farmers' ServicePoint and commercial facilities in Austin, Texas; a ServicePoint facility in Grand Rapids, Mich.; a ServicePoint facility in Olathe, Kan.; and ServicePoint and commercial facilities in Hillsboro, Ore.

The FLSA requires that covered employees be paid for pre-shift and post-shift job duties, and for attending required meetings. Employees must be paid time and one-half their regular rates, including commissions, bonuses and incentive pay, for hours worked beyond 40 per week. Employers must pay at least the federal minimum wage of \$7.25 for all hours worked, and maintain accurate time and payroll records.

For more information about the FLSA, call the Wage and Hour Division's toll-free helpline at 866-4US-WAGE (487-9243) or its Los Angeles office at 213-894-6375. Information is also available on the Internet at <http://www.dol.gov/whd/>.



## **WHD Recovers More Than \$90,000 for Restaurant Employees**

Louisville Irish LLC, owner of Sully's Restaurant and Maker's Mark Restaurant and Saloon in Louisville, Ky., has agreed to pay \$90,840 in back wages to 53 employees following a Wage and Hour Division investigation that found the company failed to correctly pay tipped employees as required by the Fair Labor Standards Act. "The Labor Department has zero tolerance for non-compliance with the laws that protect these vulnerable workers, and is working to eliminate all such violations in Kentucky and throughout the country," said Karen Garnett, director of the WHD's Louisville District Office.

**Read the full news release at:** <http://www.dol.gov/whd/media/press/whdpressVB3.asp?pressdoc=Southeast/20110613.xml>



## **Pharmaceutical Giant AstraZeneca Agrees to Pay \$250,000 to Settle Sex Discrimination Lawsuit Brought by US Labor Department**

***124 current and former female employees will  
share in settlement involving equal pay***

AstraZeneca, one of the largest pharmaceutical companies in the world, will pay \$250,000 to 124 women who were subjected to pay discrimination while working at the corporation's Philadelphia Business Center in Wayne, Pa. The action resolves a lawsuit filed by the U.S. Department of Labor in May 2010 alleging that the company discriminated against female sales specialists by paying them salaries that were, on average, \$1,700 less than their male counterparts.

*For the full story, go to <http://www.dol.gov/opa/media/press/ofccp/OFCCP20110829.htm>*

## ***From the Desk of... USDOL***



### **Supreme Court Rules for Wal-Mart in Massive Job Discrimination Lawsuit**

The Supreme Court put the brakes on a massive job discrimination lawsuit against mega-retailer Wal-Mart Stores, Inc., saying sweeping class-action status that could potentially involve hundreds of thousands of current and former female workers was simply too large.

The ruling Monday was a big victory for the nation's largest private employer, and the business community at large.

The high-profile case – perhaps the most closely watched of the high court's term – is among the most important dealing with corporate versus worker rights that the justices have ever heard, and could eventually impact nearly every private employer, large and small.

#### **Toobin: Why justices shut down Wal-Mart case**

Gisel Ruiz, Executive Vice President for Wal-Mart U.S., said in a statement the company was "pleased" with the court's ruling.

"Walmart has had strong policies against discrimination for many years. The Court today unanimously rejected class certification and, as the majority made clear, the plaintiffs' claims were worlds away from showing a companywide discriminatory pay and promotion policy," the statement said. "By reversing the Ninth Circuit Court of Appeals decision, the majority effectively ends this class action lawsuit.

"Walmart has a long history of providing advancement opportunities for our female associates and will

continue its efforts to build a robust pipeline of future female leaders." *Source: CNN News*



### **Suit Filed Against Domino's Pizza to Enforce Re-Hire Order**

The Labor Department has filed a lawsuit in Connecticut seeking enforcement of an administrative law judge's order that Domino's Pizza LLC re-hire a truck driver who was fired for making a complaint that he was pressured to drive hours in excess of those allowed under U.S. Department of Transportation regulations. The judge found that Domino's had discharged the driver in violation of the employee protection provisions of the Surface Transportation Assistance Act, and ordered the company to reinstate him to his previous position and pay him back wages plus interest. DOL's Administrative Review Board affirmed the decision and order on Jan. 31. To date, Domino's has failed to comply.

**To read the full news release go to: <http://www.dol.gov/opa/media/press/sol/sol20110702.htm>**

### ***Why Join Quad A?***

**For over 35 years, Quad A has been providing its members with quality, up-to-date information through workshops, seminars and conferences. Participating in monthly meetings builds your network of professional contacts in the areas of HR, EEOC, AA, Compensation, and other areas of interest. Membership entitles you to exclusive benefits on our website, monthly newsletters, discounts on quarterly meetings, workshops, seminars, the Annual Conference (in April) and Compliance Conference (in the fall).**

**For more information and to join us, go to**

**[www.azquada.org](http://www.azquada.org)**

**REGISTER NOW** at  
[www.eetraining.eeoc.gov](http://www.eetraining.eeoc.gov)  
for a reduced price

**Friday,  
August 12,  
2011**

2011 SEMINAR LOCATION **DESERT  
WILLOW CONFERENCE CENTER**  
4340 EAST COTTON CENTER BLVD  
PHOENIX, AZ 85040  
(602) 431-0001  
[www.desertwillowconferencecenter.com](http://www.desertwillowconferencecenter.com)  
I-10—Turn South off 40th Street

**ENHANCE YOUR EEO KNOWLEDGE** at the **2011 EEOC Phoenix Technical Assistance Seminar**. This informative seminar, **sponsored by the Phoenix District EEOC OFFICE**, will be held at the Desert Willow Conference Center.



# EEOC Phoenix Seminar

U.S. Equal Employment Opportunity Commission

EEOC is now offering **WEBINARS**.  
Check them out at  
[www.eetraining.eeoc.gov](http://www.eetraining.eeoc.gov)

**TRAINING YOU CAN'T AFFORD TO MISS!**  
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[krista.watson@eeoc.gov](mailto:krista.watson@eeoc.gov)



**EEOC**  
Training Institute  
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This seminar has been approved for 7.75 (General) recertification credit hours toward PHR, SPHR and GPHR recertification through the HR Certification Institute.



## ***From the Desk of... EEOC***



### **Retaliation Remains Most Frequent Allegation Among Federal-Sector Discrimination Complaints**

Federal employees and applicants filed 17,583 complaints of employment discrimination during fiscal year 2010, a 3.75 percent increase over the previous year, according to the U. S. Equal Employment Opportunity Commission's (EEOC) Annual Report on the Federal Work Force Part I: EEO Complaints Processing for Fiscal Year 2010. The report assesses federal agencies' equal employment opportunity complaints program statistics. The full text of the report is available on the agency's web site at <http://www.eeoc.gov/federal/reports/fsp2010/index.cfm>.

As with private sector charges of discrimination, retaliation was the most common allegation of discrimination, and registered a 2.7 percent increase over the prior fiscal year. Age and race (African-American) discrimination were the next most frequently alleged bases and each registered 5.1 percent increases. Federal employees and applicants are also protected against employment discrimination on the bases of color, sex, national origin, religion, disability, equal pay and genetic information.

"The federal government should be a model workplace," said Dexter Brooks, director of the EEOC's Federal Sector Programs. "We are concerned that retaliation is the most common basis of discrimination alleged and we caution all federal agencies to make sure that reprisals do not become the usual response to complaints of discrimination."

Unlike in the private sector, where the EEOC investigates and processes charges of discrimination, federal agencies themselves are responsible for handling complaints of discrimination filed against them. The average processing time for conducting investigations dropped from 185 days in FY 2009 to 181 days in FY 2010; however, the average processing time for closing complaints increased from 344 days to 360 days. Of the 7,053 cases closed on the merits, 3.3 percent resulted in findings of unlawful discrimination. Additionally, the parties entered into settlements in 3,623 complaints or 21.2 percent of the total complaint closures.

Part II of the report, assessing equal employment opportunity throughout the federal work force, including trends in work force composition, will be published later this year.

## **Verizon to Pay \$20 Million to Settle Nationwide EEOC Disability Suit**



***Largest ADA Settlement in EEOC History for Hundreds of Employees Terminated or Disciplined Based on Rigid Attendance Policy***

Telecommunications giant Verizon Communications will pay \$20 million and provide significant equitable relief to resolve a nationwide class disability discrimination lawsuit filed by the EEOC. The suit, filed against 24 named subsidiaries of Verizon Communications, said the company unlawfully denied reasonable accommodations to hundreds of employees and disciplined and/or fired them pursuant to Verizon's "no fault" attendance plans.

The consent decree settling the suit, which is pending judicial approval, represents the largest disability discrimination settlement in a single lawsuit in EEOC history. The EEOC charged that Verizon violated the Americans With Disabilities Act (ADA) by refusing to make exceptions to its "no fault" attendance plans to accommodate employees with disabilities. Under the challenged attendance plans, if an employee accumulated a designated number of "chargeable absences," Verizon placed the employee on a disciplinary step which could ultimately result in more serious disciplinary consequences, including termination.

The EEOC asserted that Verizon failed to provide reasonable accommodations for people with disabilities, such as making an exception to its attendance plans for individuals whose "chargeable absences" were caused by their disabilities. Instead, the EEOC said, the company disciplined or terminated employees who needed such accommodations.

*"This settlement demonstrates the need for employers to have attendance policies which take into account the need for paid or unpaid leave as a reasonable accommodation for employees with disabilities,"*

The ADA prohibits discrimination based on disability. The law also requires an employer to provide a reasonable accommodation, such as paid or unpaid leave, to an employee with a disability, unless doing so would cause significant difficulty or expense for the employer.

"Flexibility on leave can enable a worker with a disability to remain employed and productive -- a win

## From the Desk of... EEOC



for the worker, the employer and the economy," said EEOC Chair Jacqueline A. Berrien. "By contrast, an inflexible leave policy may deny workers with disabilities a reasonable accommodation to which they're entitled by law – with devastating effects." Chair Berrien presided over a Commission meeting earlier this month on leave as a reasonable accommodation.

"I am pleased the parties were able to resolve this historic case without resorting to prolonged and expensive litigation," said EEOC General Counsel P. David Lopez. "Hopefully this nationwide decree will further public awareness of the importance of engaging in an individualized interactive process to determine whether a disabled employee must be accommodated under the ADA."

"This settlement demonstrates the need for employers to have attendance policies which take into account the need for paid or unpaid leave as a reasonable accommodation for employees with disabilities," said Spencer H. Lewis, Jr., Director of the EEOC's Philadelphia District Office, which oversees Pennsylvania, Maryland, Delaware, West Virginia, and parts of New Jersey and Ohio.

In addition to the \$20 million in monetary relief, the three-year decree includes injunctions against engaging in any discrimination or retaliation based on disability, and requires the company to revise its attendance plans, policies and ADA policy to include reasonable accommodations for persons with disabili-

*"This settlement demonstrates the need for employers to have attendance policies which take into account the need for paid or unpaid leave as a reasonable accommodation for employees with disabilities."*

ties, including excusing certain absences. Verizon will provide mandatory periodic training on the ADA to employees primarily responsible for administering Verizon's attendance plans. The company will report to the EEOC about all employee complaints of disability discrimination relating to the attendance policy and about Verizon's compliance with the consent decree. The company also agreed to post a notice about the settlement. Finally, Verizon will appoint an internal consent decree monitor to ensure its compliance. The settlement applies to certain Verizon wireline operations nationwide which employ union-represented employees.

EEOC Regional Attorney Debra Lawrence said, "This consent decree is the result of productive and thoughtful negotiations with Verizon. We appreciate

Verizon working with the EEOC to reach a settlement. In addition to providing meaningful monetary relief for hundreds of former Verizon employees, the settlement contains important equitable relief, including company policy changes and training designed to provide people with disabilities equal opportunities in the workplace."

According to its website, [www.verizon.com](http://www.verizon.com), Verizon Communications Inc., headquartered in New York, is a global leader in delivering broadband and other wireless and wireline communications services to mass market, business, government and wholesale customers. Verizon has more than 196,000 employees and last year generated consolidated revenues of \$106.6 billion.

In fiscal year 2010, private sector workplace discrimination charge filings with the EEOC hit an unprecedented level of 99,922, which included a record-high number of disability charges (25,165) – an increase of 17.3 percent in disability charges over the prior fiscal year.



## Owner of Phoenix Subway Engaged in Intentional Pregnancy Discrimination, Court Rules in EEOC Suit

PHOENIX – In a legal victory for the EEOC, a federal judge ruled earlier this month that a Phoenix Subway fast-food restaurant violated federal law when it refused to hire a female job applicant because she was pregnant.

According to the EEOC's suit (*EEOC v. High Speed Enterprise, Inc, dba Subway*, CV-08-01789-PHX-ROS), Belinda Murillo applied for a position at a Subway in Central Phoenix in May 2011. Later that month, when Murillo returned to check on the status of her application, the general manager told her, "You're pregnant. We can't hire you." The general manager admitted in sworn testimony that he had made that statement.

Pregnancy discrimination violates Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978. The EEOC filed suit against the Subway's owner, Phoenix-based High-speed, Inc., after first attempting to reach a pre-litigation settlement through its conciliation process.

Chief Judge Roslyn O. Silver for U.S. District Court for the District of Arizona agreed with the EEOC's position. According to Judge Silver's ruling, "A plaintiff may establish her case through direct or circumstantial evidence ... Direct evidence is evidence, which if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in



## From the Desk of... EEOC



the employer's actions ... [the EEOC] has provided direct evidence of discrimination."

The case will now go to a jury trial on damages. The EEOC is seeking back pay, compensatory damages, punitive damages and appropriate injunctive relief. "The court agreed with the EEOC, without the need to go to a jury trial, that Subway engaged in intentional sex and pregnancy discrimination," said Mary Jo O'Neill, regional attorney for the EEOC's Phoenix District Office. "The court found that the defendant failed to offer any legal explanation as to why Murillo's application was denied. Now we will pursue fair damages for this discrimination victim."

*"Pregnancy discrimination remains a persistent problem in the 21st century workplace."*

EEOC trial attorney Nancy Griffiths said, "We are pleased with the court's decision. Pregnancy discrimination remains a persistent problem in the 21st century workplace. Employers cannot refuse to hire women simply because they are pregnant, and women should never be forced to choose between motherhood and their livelihood, especially in these difficult economic times."

EEOC District Director Rayford Irvin added, "The EEOC would like to remind employers that pregnancy discrimination has been illegal for decades, and violations of the law will be met with rigorous enforcement by our agency."



### **Terminix and Servicemaster Settle EEOC Sexual Harassment Lawsuit for \$140,000**

PHOENIX – Major exterminating company Terminix and its parent company, ServiceMaster, will pay \$140,000 and furnish other relief to settle a sexual harassment lawsuit brought by the EEOC. The EEOC had charged that two female employees at a Terminix facility in Salt Lake City were repeatedly sexually har-

assed by a supervisor.

In its lawsuit, the EEOC charged that other supervisors were aware of the misconduct but failed to address it. The allegations included claims that the victims' supervisor suggested to the female employees that they not wear tops to work, wear nothing but Vaseline to work and should be strippers so they could give him a lap dance. The harasser's supervisor was also aware of the sexual harassment, the EEOC said, but failed to report or correct it.

The EEOC filed suit in U.S. District Court for the District of Utah after first attempting to reach a pre-litigation settlement through its conciliation process. "Employers have a responsibility to take appropriate action when they learn of sexual harassment in the workplace, to both remedy the harassment that already has occurred and to prevent future harassment," said EEOC Regional Attorney Mary O'Neill. "No employee should ever be subjected to this kind of abuse. Every employee should know that they do not have to put up with any type of discrimination – period – in order to work. I am pleased that this employer stepped up and settled this case early in the litigation process."

In addition to monetary relief, the 36-month consent decree settling the suit requires Terminix and ServiceMaster to review, revise, post and disseminate their anti-discrimination policies and procedures; and provide training on sexual harassment and retaliation to all employees and managers at the Terminix branch locations in Utah. The decree further requires Terminix to post a notice in the workplace explaining Title VII, employee rights and employer obligations under the statute, and to promptly and appropriately respond to all complaints of sex discrimination and/or retaliation.

*"When employers subject people to sexual harassment, they are violating federal law. The EEOC will continue to aggressively pursue employers who fail to prevent or promptly correct sexual harassment at their workplaces."*

EEOC Trial Attorney Richard Sexton, who handled the case, said, "Employers should be on notice that merely having anti-harassment policies is not sufficient to avoid Title VII liability. Employers must be committed to a workplace free of sexual harassment, which may be demonstrated by appropriate training, policies, and enforcement of those policies."

EEOC District Director Rayford Irvin added, "When employers subject people to sexual harassment, they are violating federal law. The EEOC will continue to aggressively pursue employers who fail to prevent or promptly correct sexual harassment at their workplaces."

According to company information, Terminix International Company is a leading provider of termite and

## ***From the Desk of... EEOC***



pest control services in the United States, serving both residential and commercial customers. Terminix has a worldwide network of locations, including 864 service centers throughout the United States and in 14 countries around the world. Terminix is a wholly owned subsidiary of ServiceMaster, which is based in Memphis, Tenn., and a part of the ServiceMaster Quality Service Network.

### **Court Finds for EEOC in Religious Discrimination Suit Against Abercrombie & Fitch**



***Judge Finds Retailer Refused to Hire Teen Muslim Applicant Because of Head Scarf***

A federal court has agreed with the U.S. Equal Employment Opportunity Commission (EEOC) that national clothing retail giant Abercrombie & Fitch, doing business as Abercrombie Kids, committed religious discrimination against a 17-year-old Muslim girl. The EEOC had charged that Abercrombie Kids failed to hire Samantha Elauf for a sales position because she wore a hijab, or head scarf, in observance of her sincerely held religious beliefs.

U.S. District Court Judge Gregory Frizzell granted summary judgment to the EEOC after finding that Abercrombie and Fitch failed to produce sufficient evidence to dispute the EEOC's claims (*EEOC v. Abercrombie & Fitch Stores, Inc.*, Case No. 09-CV-602-GKF-FHM). Damages will be determined by a jury at a later date.

The court found that Abercrombie Kids refused to hire Elauf in June 2008 for a position at its store in Woodland Hills Mall in Tulsa, Okla., because she was wearing the hijab when she was interviewed and this violated the company's "look policy." The "look policy" prohibited the wearing of any head coverings. Abercrombie claimed that allowing Elauf to wear a hijab would cause an undue burden on the conduct of its business.

The court, noting that Abercrombie and Fitch had allowed numerous exceptions to its "look policy," including eight or nine head scarf exceptions, found Abercrombie had "completely failed to consider the impact, if any, of those exceptions" and that its evidence was thus too speculative.

***"In this case, the Court's ruling makes clear an employer's 'corporate image' policy does not relieve an employer of the obligation to provide a reasonable religious accommodation."***

Title VII of the Civil Rights Act of 1964, as amended, protects workers from discrimination based upon religion. This includes disparate treatment, harassment and segregation of employees based on religion. Title VII requires employers to provide reasonable accommodations for the religious practices of its applicants and employees when to do so would not be an undue hardship.

"The EEOC is committed to enforcing the prohibition of all forms of religious discrimination," said P. David Lopez, EEOC General Counsel. "In this case, the Court's ruling makes clear an employer's 'corporate image' policy does not relieve an employer of the obligation to provide a reasonable religious accommodation."

Barbara A. Seely, regional attorney of the EEOC's St. Louis District Office, which is responsible for the agency's litigation in Oklahoma, said, "Samantha is a typical American teenager who has a sincere religious belief that she must wear a head scarf. Employers need to understand their obligation to balance employees' needs and rights to practice their religion with the conduct of their business. Where there is a minimal impact on the business, those religious needs must be accommodated."

Jeff A. Lee, one of the EEOC trial attorneys representing the EEOC, said, "The court has sent a clear message to employers: that the denial of a request for a reasonable accommodation of an employee's or applicant's religious beliefs must be based on demonstrated facts, not guesswork or speculation."

*The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its web site at [www.eeoc.gov](http://www.eeoc.gov).*

# 2011 Membership Application

Thank you for your continuing interest in and support of the Arizona Affirmative Action Association (Quad A). Our members include professionals in the fields of human resource management, equal employment opportunity, affirmative action, workplace diversity and other related fields. For over 35 years, Quad A has been providing its members with quality, up-to-date information through workshops, seminars and conferences. Your membership entitles you to a monthly newsletter, quarterly meetings/workshops, seminars, the Annual Conference (in April) and Compliance Conference (in the fall). Most activities are included in your membership; others are offered at a substantial discount. At only \$75 per year (Jan-Dec), membership in Quad A is a true value for the money. *(Individual memberships only; no organizational memberships at this time.)*

Goals of the Arizona Affirmative Action Association are to:

- Promote equal employment opportunity, diversity and affirmative action in the workplace.
- Promote awareness and recognition in the workplace and the community of the benefits of taking affirmative action to provide equal employment opportunities
- Share and disseminate up-to-date information on EEO, AA and diversity issues, legislation, judicial decisions, best practices and trends.
- Provide an opportunity for professionals interested in EEO, AA and diversity issues to network and communicate.

*Quad A is a nonprofit 501(c)3 organization (TIN 86-0966437).*

***Membership applications/renewals can be made  
online at [www.azquada.org](http://www.azquada.org).***

*If paying by check, please return this renewal form along with a check or credit card for \$75 made payable to Arizona Affirmative Action Association to our office at P.O. Box 1848, Phoenix, AZ 85001.*

## MEMBERSHIP APPLICATION/RENEWAL

Member Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail (for member communications only): \_\_\_\_\_



**Arizona Affirmative  
Action Association  
(aka) "Quad A"**

**P. O. Box 1848  
Phoenix, AZ 85001  
Phone: 555-555-5555  
E-fax: 602-321-6016  
E-mail: azquada@aol.com**

**We're on the Web!**  
**azquada.org**

**Board Members & Officers**

**John Garza, President**  
*JAG Specialties, LLC*  
(602) 300-2023

**Maria Sandoval, PHR, Vice President**  
*MAS Specialists, LLC*  
623-451-6389

**Rebecca Rand, SPHR, Recording Secretary**

*American Express*  
(602) 537-2960

**Gail Painter, PHR**  
*Apollo Group*  
602-557-7586

**Marian Enriquez, CCEP, MHCS, PHR**  
*The Sundt Companies, Inc.*  
(480) 293-3108

**Neil Bourque, SPHR**  
*Childhelp*  
480-922-8212 x426

**George Thorne**  
*Jobing.com*  
(602) 914-7507

**Lisa Barnum**  
*Boeing Company*  
480-648-7944

**Evelyn Miller**  
*Raytheon*  
520-794-9997

**Charlene Valestin, SPHR**  
*Zions Bancorporation*  
(928) 899-4199

**Lida Daniel**  
*Blood Systems*  
(602) 414-3517

**Thomas D. Arn, Esq**  
*Quad A Legal Counsel*  
*Ogletree, Deakins*  
602-778-3702

**Flossie Christensen, Chair**  
*Las Vegas SNILG Chapter*  
*Bank of Nevada*  
(702) 248-4200

**Quad A Administrator**  
**Chris Weakland, SPHR**

*Legacy Partners Consulting & Coaching, LLC*  
(602) 377-0404

**Membership meetings are the 3<sup>rd</sup> Tuesday  
of every month from 8:30-10:00 a.m.**

# 2011 Calendar of Events

DATE	TOPIC	HOST & LOCATION
Jan 18, 8:30-10:00	2011 Forecast & Trends in Employment	Blood Systems 4405 E. Cotton Center Suite 120 Phoenix
Feb 15, 8:30-10:00	Compliant & Effective Job Descriptions & Postings	Sundt Construction 2641 S. 40th St. Phoenix
Mar 15, 8:30-10:00	Can Your Organization Make the Grade? Passing the OFCCP/EEOC Tests	Blood Systems 4405 E. Cotton Center Suite 120 Phoenix
Apr 19, 8:00-4:00 Cost: Members \$100 Nonmembers \$150	36th Annual Conference	Desert Willow Conference Center 4340 E Cotton Center #100 Phoenix
May 17, 8:30-10:00	Medical Marijuana in the Workforce	American Express 18850 N. 56 <sup>th</sup> Street, Phoenix
June 21, 8:30-10:00	Disabled/Vets Outreach -- Good Faith is Not Enough	Sundt (Los Alamos Rm) 2620 S. 55 <sup>th</sup> Street Tempe
July 25-29	Annual National ILG Conference	New Orleans
AUGUST	MID-SUMMER BREAK	MID-SUMMER BREAK
Sept 20, 8:30-10:00	Best Practices: Communicating AAPs	To Be Announced
Oct 16, 8:30-10:00	Best Practices: Diversity – Not Why But How	Sundt (Los Alamos Rm) 2620 S. 55 <sup>th</sup> Street Tempe
Nov 15, 8:30-10:00 COST: Members \$100 Nonmembers \$150	14th Annual Compliance Conference	Desert Willow Conference Center 4340 E Cotton Center #100 Phoenix
Dec 6, 8:30-11:30 COST: Members FREE Nonmembers \$75	Annual Members Only Holiday Roundtable	To Be Announced