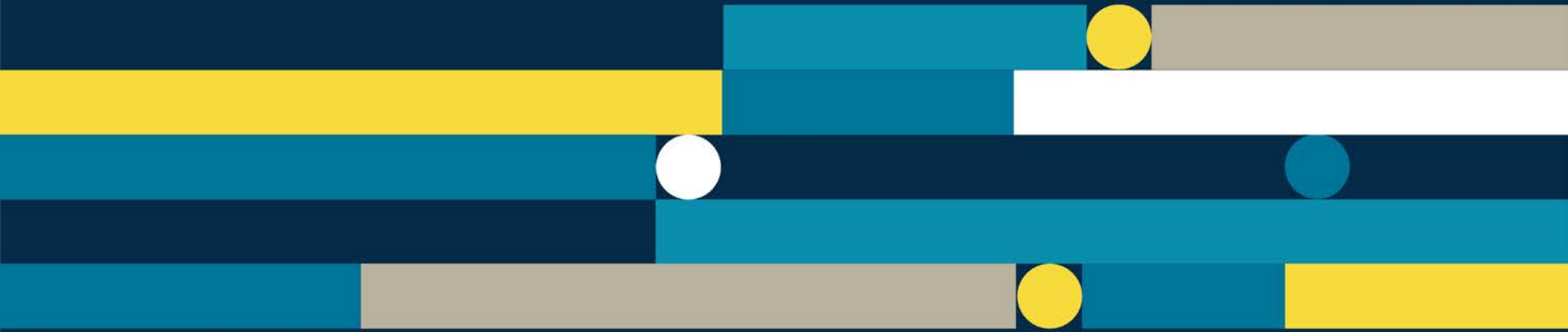


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GROUND.



A photograph showing a woman with long dark hair and glasses, wearing a green short-sleeved shirt, sitting and talking to a man whose back is to the camera. He is wearing a dark blue sweater over a light-colored collared shirt. They are in an indoor setting with wood-paneled walls.

Tools for businesses

<http://labor.idaho.gov/publications/GuidetoLawful.pdf>

A guide to lawful applications and interviews

Idaho Department of Labor
Idaho Human Rights Commission

State Fiscal Year 2017 – Total Charges Received Related to Hiring Practices

- 95 of 407 employment cases
- 23.34%

Legal Updates & EEOC Guidance: Failure to Hire

Cline v. BW XT Y-12, L.L.C., 521 F.3d 507 (6th Cir. 2008)

- Untimely filing – 2 years after application
- 500 applicants for 41 positions
- Only successful candidates notified
- “reasonable diligence doctrine”
- Plaintiff took no action to monitor application status for nearly 3 years

Legal Updates & EEOC Guidance: Failure to Hire

Villareal v. R.J. Reynolds Tobacco Co., 839 F.3d 958 (11th Cir. 2016), cert. denied, 2017 WL 478119 (U.S. June 26, 2017).

- Plaintiff not entitled to equitable tolling
- Admitted failure to take any action for two years after applying
- “We have no difficulty concluding, as a matter of law, that a plaintiff who does nothing for two years is not diligent.”

Legal Updates & EEOC Guidance: Failure to Hire

Moron-Barradas v. Department of Educ., 488 F.3d 472 (1st Cir. 2007).

- Disability Discrimination claim barred by litigation filed in Puerto Rico in which the court found the selected applicant more qualified than the plaintiff
- Plaintiff had presented no evidence that would allow her to proceed with a mixed-motive analysis (McDonnell Douglas)
- Plaintiff precluded from establishing a prima facie case

Legal Updates & EEOC Guidance: Failure to Hire

Kyles v. J.K. Guardian Sec. Servs., Inc., 222 F.3d 289 (7th Cir. 2000).

- Testers encountering race discrimination when applying for jobs have standing under Title VII to sue
- From the EEOC: “A tester has standing to sue even if she has not been harmed apart from the statutory violation. The court found that Title VII does not require that a job applicant have a bona fide interest in working for a particular employer in order to establish a prima facie case.”



Legal Updates & EEOC Guidance: Failure to Hire

Wilson v. Cook Cty., 742 F.3d 775 (7th Cir. 2014).

- Plaintiff was “duped” into believing a position was available, even though that was not the case
- Scam: non-hiring official and employee posted a false advertisement to convince plaintiff to perform sexual favors, quid pro quo
- Plaintiff learned from HR that no positions were available
- Court ruled that because Section 703(a)(1) of Title VII governs “unlawful employment practices,” there must be existing or prospective employment relationship
- Therefore, Plaintiff did not experience an adverse *employment* action



Legal Updates & EEOC Guidance: Failure to Hire

Amie v. El Paso Indep. Sch. Dist., 253 F. App'x 447 (5th Cir. 2007).

- African American applicant for head coaching position, varsity high school team
- Plaintiff argued that he was the most qualified due to experience
- Equating experience with qualifications was unpersuasive; multiple factors such as education, type, nature, and context of experience were considered



Legal Updates & EEOC Guidance: Failure to Hire

Szewczyk v. City of New York, 15-CV-918 (MKB), 2016 WL 3920216 (E.D.N.Y. July 14, 2016).

- National origin, other bases for failure to hire
- Polish national origin; allegations of discrimination by Russian hiring manager
- Less-qualified applicant selected who was Russian
- “Blue eyes” contention – court held that “The court stated that the decision-maker’s reference to the plaintiff’s blue eyes, together with references to the plaintiff’s being from Poland, were sufficient to support the allegation that another candidate was selected because of his national origin.”



Legal Updates & EEOC Guidance: Failure to Hire

Ferdinand-Davenport v. Children's Guild, 742 F. Supp. 2d 772 (D. Md. 2010).

- Clinical social worker – issues of sex and pregnancy discrimination
- Position eliminated due to low student enrollment; Plaintiff not selected for another position
- Employer made the process difficult for Plaintiff, did not return calls, other impediments
- Court denied employer's motion to dismiss, stated employer had made the process "so onerous for a candidate within a protected class that she [lacked] the opportunity to apply to an open position at all."

Leading Through Change – IHRC Updates & Key Trends

	FY 2014	FY2015	FY2016	FY2017
Total Administrative Cases Filed	435	443	403	485
Issues most frequently raised				
Discharge (actual or constructive)	64%	71%	70%	73%
Sexual harassment	15%	17%	13%	12%
Harassment/Intimidation	31%	26%	29%	38%
Failure to accommodate a disability	17%	24%	18%	23%
Terms & conditions of employment	17%	13%	17%	26%



Leading Through Change – IHRC Updates & Key Trends

Intakes	FY2014	FY2015	FY2016	FY2017
Total number of IHRC contacts	2,188	1,886	1,761	2,031
Average per month	182	157	147	169
Total number of charges drafted	471	397	383	599
Average per month charges drafted	39.2	33	32	50
Percentage of drafts per month	21.5%	21%	21.7%	29.4%



Case Resolutions	FY2014	FY2015	FY2016	FY2017
Total Administrative Cases Resolved	460	494	463	418
No probable cause findings	74.8%	72.3%	75.2%	71.3%
Mediations, settlements, successful conciliations	17%	15.2%	15.8%	22%
Conciliation failures	.4%	1.4%	2.1%	1.4%
Non-jurisdictional; Notice of Right to Sue without findings; other	7.8%	11.1%	6.9%	5.3%



Leading Through Change – IHRC Updates & Key Trends

			<u>Employment</u>	<u>Public Accom.</u>	<u>Housing</u>	<u>Education</u>
Total Claims Filed	FY 2017	485	465 (96%)	8 (1.6%)	10 (2%)	2 (.04%)
	FY2016	403	376 (93.3%)	19 (4.7%)	6 (1.5%)	2 (.5%)
	FY2015	443	414 (93%)	14 (3%)	13 (3%)	2 (.5%)
	FY2014	435	407 (93.6%)	20 (4.6%)	7 (1.6%)	1 (.2%)



Leading Through Change – IHRC Updates & Key Trends

Disability	FY2017	241 (50%)	Harassment 62 (26%)	Failure to Hire 20 (8%)	Discharge 158 (66%)	Accommodation 111 (46%)	
	FY2016	171 (42%)	41 (24%)	11 (6%)	135 (79%)	73 (43%)	
	FY2015	187 (42%)		6 (3%)	161 (86%)	96 (51%)	
	FY2014	185 (42%)			130 (70%)	73 (39%)	
Sex	FY2017	171 (36%)	Female 107 (63%)	Pregnancy 21 (12%)	Male 35 (20%)	Sexual Orientation 6 (4%)	Gender Identity 2 (1%)
	FY2016	139 (35%)	96 (69%)	15 (11%)	23 (17%)	2 (1%)	3 (2%)
	FY2015	146 (33%)	90 (62%)	26 (18%)	24 (16%)	4 (2%)	2 (1%)
	FY2014	156 (35%)	100 (64%)	14 (9%)	35 (22%)	5 (3%)	2 (1%)
Retaliation (all bases)	FY2017	166 (34%)					
	FY2016	107 (27%)					
	FY2015	135 (30%)					
	FY2014	126 (29%)					



Age (40+)	FY2017	102 (21%)
	FY2016	69 (17%)
	FY2015	74 (17%)
	FY2014	78 (18%)
National Origin	FY2017	50 (10%)
	FY2016	38 (9%)
	FY2015	46 (10%)
	FY2014	47 (11%)
Race	FY 2017	43 (9%)
	FY2016	24 (6%)
	FY2015	33 (7%)
	FY2014	22 (5%)
Religion	FY 2017	32 (7%)
	FY2016	25 (6%)
	FY2015	17 (4%)
	FY2014	19 (4%)



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*Idaho Human Rights
Commission*