



# ***Håfa Adai!***

**August 16, 2024**

**Annual SHRM Conference**



# Ensuring Fair Labor Practices: Strategies for Effective Enforcement and Compliance

Annual Guam SHRM Conference  
Outreach Presentation  
August 16, 2024

**Presented by:**  
Jeffrey J. Sablan  
FEPO Officer/FEPA Administrator  
Fair Employment Practice Division  
Guam Department of Labor

**Disclaimer:** This presentation is intended for educational outreach purposes only. The content of this presentation does not supersede any law or regulation and may not be used as a defense in any specific enforcement activity should any inconsistencies be found at a later time.



# ***DISCLAIMER***

*This guidance is for informational purposes only, does not establish substantive policy or rights, and does not constitute legal advice.*



# Decade of Impact: A 10-Year Review of EEOC Cases in Guam

- Verona Resort and Spa to Pay **\$16,000** to Settle EEOC Pregnancy and Disability Suit - *May 13, 2019*
- Guam Department of Education Voluntarily Settles EEOC Disability Charge for **\$80,000** - *September 27, 2016*
- Financial Institution to Pay **\$75,000** to Resolve Sexual Harassment Case with EEOC - *June 24, 2014*



# Agenda

- EEO/FEPD Partnership
- Investigative Tips – Employers
- Recognizing Limitations
- Seeking Legal Representation
- Addressing Limitations
- Case Studies - Guam
- 10 Year Data Review
- Engagement Activities
- Useful Links

AGENDA



# GDOL and U.S. EEOC “Relationship”

## Work-Sharing Agreement:

- ✓ U.S. EEOC and Government of Guam, *effective October 28, 2008*
- ✓ Designates GDOL as Fair Employment Practice Agency (FEPA) with U.S. EEOC
- ✓ U.S. EEOC and Guam FEPA investigate Employment Discrimination cases on the basis of **race, sex, religion, national origin, color, age, disability, retaliation, and pregnancy**



# Jurisdiction Over Employers

## Guam FEPA

- ❑ One(1) or more employees
- ❑ No jurisdiction over any U.S. State; to include Government of Guam and local federal agencies.
- ❑ Jurisdiction on Fair Chance Act and Pregnant Workers Act;  
(employers w/more than 15 employees.)



## U.S. EEOC

- ❑ Fifteen (15) or more employees
  - 20 - employees for ADEA;
  - 1 - employee for EPA
- ❑ May accept, investigate, and conciliate complaints, BUT NOT authorized to sue Public Entities in federal court except for age discrimination.



# Laws Enforced by U.S. EEOC

Statutes are:

- ❑ Equal Pay Act of 1963 (EPA)
- ❑ Title VII of the Civil Rights Act of 1964 (Title VII)
- ❑ Age Discrimination in Employment Act of 1967 (ADEA)
- ❑ Americans with Disabilities Act of 1990 (ADA)
  - ADA Amendments Act of 2008 (ADAAA)
- ❑ Genetic Information Non-Discrimination Act of 2008 (GINA)
- ❑ Pregnant Workers Fairness Act of 2022 (PWFA)



## Know Your Rights: Workplace Discrimination is Illegal

The U.S. Equal Employment Opportunity Commission (EEOC) enforces Federal laws that protect you from discrimination in employment. If you believe you've been discriminated against at work or in applying for a job, the EEOC may be able to help.

Who is Protected?	What Organizations are Covered?
<ul style="list-style-type: none"><li>• Employees (current and former), including managers and temporary employees</li><li>• Job applicants</li></ul>	<ul style="list-style-type: none"><li>• Most private employers</li><li>• State and local governments (as employers)</li><li>• Educational institutions (as employers)</li><li>• Unions</li><li>• Staffing agencies</li></ul>

What Types of Employment Discrimination are Illegal?	What Employment Practices can be Challenged as Discriminatory?
<p>Under the EEOC's laws, an employer may not discriminate against you, regardless of your immigration status, on the bases of:</p> <ul style="list-style-type: none"><li>• Race</li><li>• Color</li><li>• Religion</li><li>• National origin</li><li>• Sex (including pregnancy, childbirth, and related medical conditions, sexual orientation, or gender identity)</li><li>• Age (40 and older)</li><li>• Disability</li><li>• Genetic information (including employer requests for, or purchase, use, or disclosure of genetic tests, genetic services, or family medical history)</li><li>• Retaliation for filing a charge, reasonably opposing discrimination, or participating in a discrimination lawsuit, investigation, or proceeding</li><li>• Interference, coercion, or threats related to exercising rights regarding disability discrimination or pregnancy accommodation</li></ul>	<p>All aspects of employment, including:</p> <ul style="list-style-type: none"><li>• Discharge, firing, or lay-off</li><li>• Harassment (including unwelcome verbal or physical conduct)</li><li>• Hiring or promotion</li><li>• Assignment</li><li>• Pay (unequal wages or compensation)</li><li>• Failure to provide reasonable accommodation for a disability; pregnancy, childbirth, or related medical condition; or a sincerely-held religious belief, observance or practice</li><li>• Benefits</li><li>• Job training</li><li>• Classification</li><li>• Referral</li><li>• Obtaining or disclosing genetic information of employees</li><li>• Requesting or disclosing medical information of employees</li><li>• Conduct that might reasonably discourage someone from opposing discrimination, filing a charge, or participating in an investigation or proceeding</li><li>• Conduct that coerces, intimidates, threatens, or interferes with someone exercising their rights, or someone assisting or encouraging someone else to exercise rights, regarding disability discrimination (including accommodation) or pregnancy accommodation</li></ul>

### What can You Do if You Believe Discrimination has Occurred?

Contact the EEOC promptly if you suspect discrimination. Do not delay, because there are strict time limits for filing a charge of discrimination (180 or 300 days, depending on where you live/work). You can reach the EEOC in any of the following ways:

<b>Submit</b> an inquiry through the EEOC's public portal: <a href="https://publicportal.eeoc.gov/Portal/Login.aspx">https://publicportal.eeoc.gov/Portal/Login.aspx</a>	<b>Visit</b> an EEOC field office (information at <a href="http://www.eeoc.gov/field-offices">www.eeoc.gov/field-offices</a> )
<b>Call</b> 1-800-669-4000 (toll free) 1-800-669-6820 (TTY) 1-844-234-5122 (ASL video phone)	<b>E-Mail</b> <a href="mailto:info@eeoc.gov">info@eeoc.gov</a>

Additional information about the EEOC, including information about filing a charge of discrimination, is available at [www.eeoc.gov](http://www.eeoc.gov).





# Laws Enforced by FEPA Guam

## Statutes are:

- Ancestry
- Sexual Orientation
- Gender Identity / Gender Expression
- Fair Chances Hiring Process Act 2018  
P.L. 34-22, enacted July 2018
- Pregnant Workers Fairness Act 2023  
P.L. 36-118, enacted in November 2022
- 22 GCA Business Regulation CH. 3 Fair Labor Standards

*\* Article 3: Prohibit Age & Sex Discrimination in Employment Practices*

*\* Article 8: Pregnant Workers Fairness Act (Newest Law)*



# INVESTIGATING THE COMPLAINT



## Guam FEPA

- Investigates:
  - SOL is **0-90 days** from last act of discrimination or date of harm;
  - Dual filed with U.S. EEOC.

## U.S. EEOC

- Investigates:
  - SOL is **91-300 days** from last act of discrimination or date of harm.
  - SOL is **0-180 days** for Government of Guam and federal employees.

*\*Statute of Limitations (SOL)*

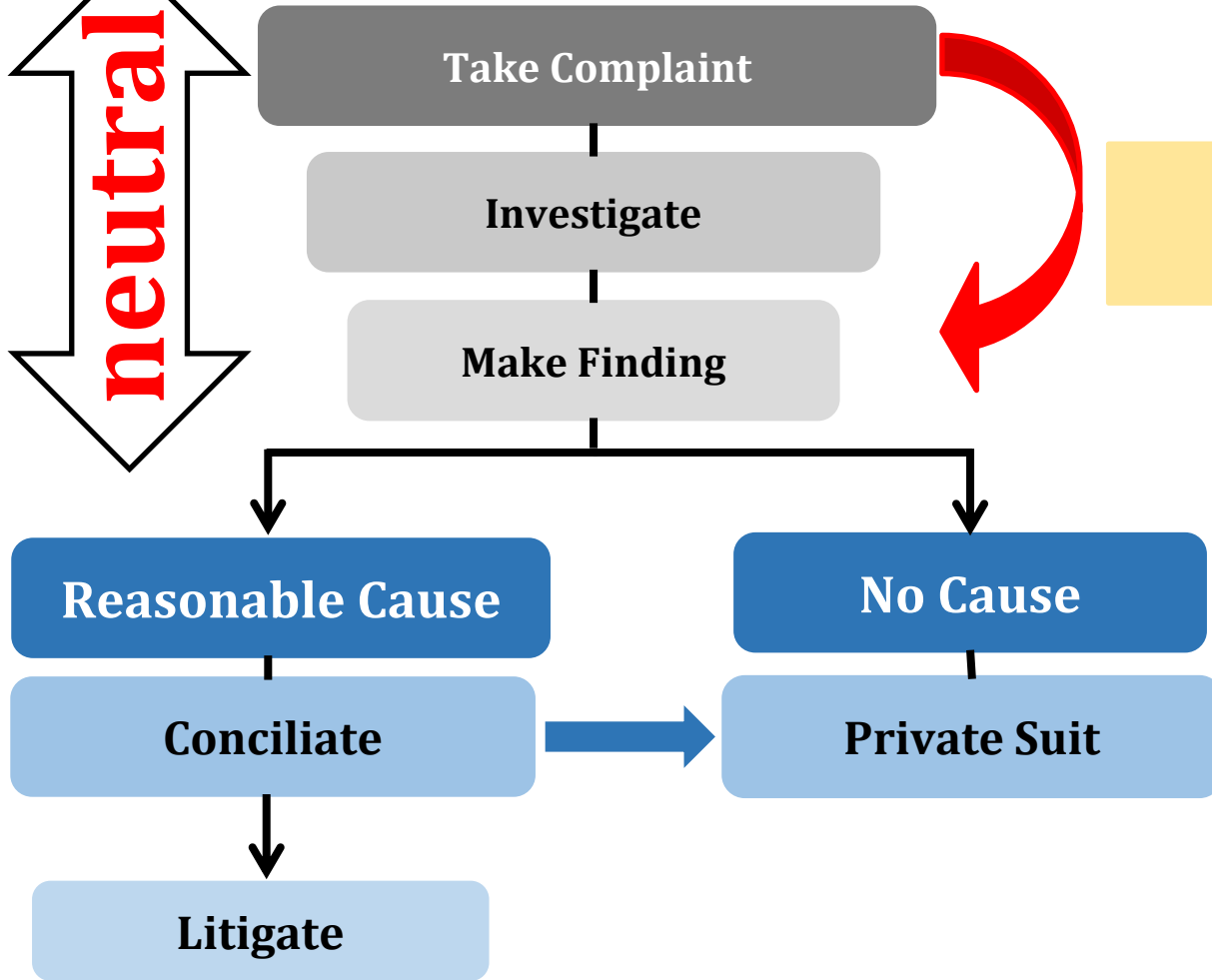
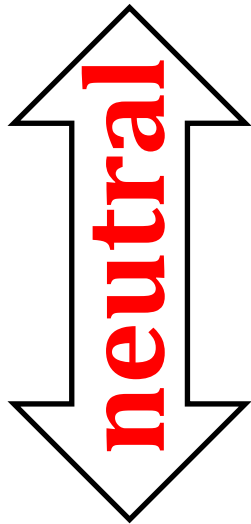


# Filing the Complaint

- ❑ THE EMPLOYMENT COMPLAINT IS **FILED AT BOTH** FEPA AND U.S. EEOC
- ❑ If dual-filed, who will investigate?
  - ✓ The agency that the administrative complaint is **filed with** will investigate the complaint.



# EEOC/FEPA'S PROCESS



# Compliance Essentials: Key Practices for Success

- Review Standard Operating Procedures (SOP), Rules and Regulations, Policies and Procedures, MOU's, Code of Conduct/Ethics
- Familiarize existing Executive Orders, Mandates, Public Laws, Guam Code Annotated (GCA), Guam Administrative Rules and Regs (GARR)
- Maintain Good Recordkeeping
  - Ensure documents are in order and filed properly
    - Ex. I-9 Forms, Medical Documents
- Mandated Postings for Covered Employers (15> Employees)
  - Ex. EEO Poster, FCHPA Poster, PWFA Poster (*Pending Approval*)
- Update Forms and Templates
  - Ex. Company Application Form, Job Advertisements



# Training Challenges: Recognizing Limitations

- Identify costs associated with training
- Set a Training Budget
- Outsourcing
  - 3<sup>rd</sup> Party Vendor (ex. HR Training Consultants, Employment Law Attorneys, Training Webinars, UOG's Global Learning and Engagement (GLE))
- Repercussions due to lack of Training
  - Potential Company Liability
  - Lack of Credibility
  - Inexperienced and Unfamiliar of the Process
    - Confidence Not Built
    - May Lead to Compliance Issues



# Seeking Employment Law Attorney



- Where to find the right attorney/representative
- Network with participating attorneys here at the SHRM Conference
- Navigate the Guam BAR website
- Research
  - Online Research
  - Word of Mouth
  - Referrals



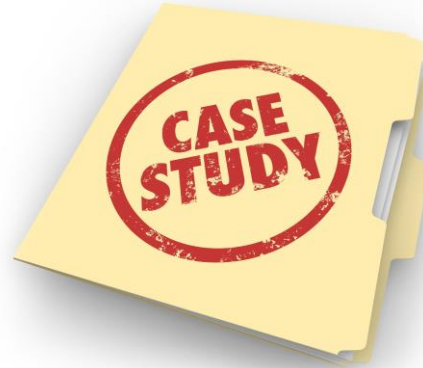
# Training Challenges: Addressing Limitations

- Prevent High Cost of Training
  - Train the Trainer
  - Experienced In-House Trainer
- Plan/Forecast Budget Proposal
- Seek Advice from an Employment Law Attorney
- Build HR/Employment Law Consultant Relationship
- Benefits for conducting training
  - Confidence in Management's Decision Making
  - Maintains a Workplace Based on Respect, Teamwork, and Mutual Understanding.





# Case Studies



# Case Study

**November 2022- Financial Institution** to pay **\$8,000** and provide various remedies to settle a **Pregnancy Discrimination** case filed with FEPA Guam. *In August 2022, Company declined a female employee's request for maternity leave and informed the employee to resign from her position.*

**Statute: Title VII**

**Base: Sex (Pregnancy)**

**Issue: Reasonable  
Accommodation**



The Charging Party alleged that she was subjected to discrimination due to her pregnancy. The Charging Party requested maternity leave and provided a letter from her doctor informing the company that the reasons were due to complications with her pregnancy. The Manager called the charging party to inform her that the request for maternity leave has been denied and that she should resign. On the following day, the manager followed up through email informing her that she still has not received a formal resignation.



# Case Study

**2022 – Condominium Complex** settles **Harassment & Discharge** case for **\$3,500** with the Charging Party. In November 2021, a female employee was subjected to harassment regarding her gender and was later discharged.

**Statute: Title VII**

**Base: Sex (Female)**

**Issue: Harassment, Discharge**



In November 2021, the former female employee alleged she was subjected to harassment and unfair treatment due to being the only female and LGBTQ employee within her department. Later she was discharged while attempting to take time off to attend her father's funeral which she felt it was unfair that the other male employees in her department were allowed to take time off.



# Case Study

**2018 – Mess Attendant (Janitorial):** Non-Profit Organization settles **Retaliation & Disability / Accommodation** case for **\$4,625** with the Charging Party. In March 2018, a female employee with a disability was subjected to sexual harassment by a male co-worker.

**Statute: Title VII & ADA**

**Base: Disability & Retaliation**

**Issue: Accommodation**



Female employee with a disability alleged she was sexually assaulted by a male co-worker. She was placed on leave pending the investigation after informing management. Later, her sexual harassment complaint was dismissed by her employer due to insufficient evidence. Additionally, she was not allowed back to work until she obtained a job coach from the Division of Vocational Rehabilitation – DISID. Lastly, her employment benefits were terminated while she was on leave.



# Case Study

**2017 – Furniture Store:** A female sales associate was **Sexually Harassed/Assaulted by the warehouse manager to which he groped her**. The sales associate filed a sexual assault complaint with local authorities which resulted in the warehouse manager being arrested.

**Statute: Title VII**

**Base: Sex (Female)**

**Issue: Sexual Harassment**



The female employee contacted FEPA office and filed a discrimination complaint against the company for failure to address the sexual harassment complaint made to the general manager. During the On-Site/Field Inspection, evidence indicated that the company did not have an interactive process when she made the harassment complaint to the manager. Furthermore, photos depicting females in bikinis were found within the warehouse area during the site visit.



# Case Study

**2017 – Private Golf Resort:** A female employee was provided guidance and assistance due to being subjected to Sexual Harassment by her immediate supervisor who secretly placed a video recorder underneath her desk during working hours.

**Statute: Title VII**

**Base: Sex (Female)**

**Issue: Sexual Harassment**



Female employee contacted FEPA office in regards to her privacy. Further probing revealed that when the employee noticed the camera under her desk she was shocked and upset. Employee was advised of her rights to file a complaint however, she was reluctant. Regardless, FEPA provided guidance on how to resolve the matter by assisting her on actions to be taken which resulted in the termination of her Supervisor.



# REMEDIES / RELIEF

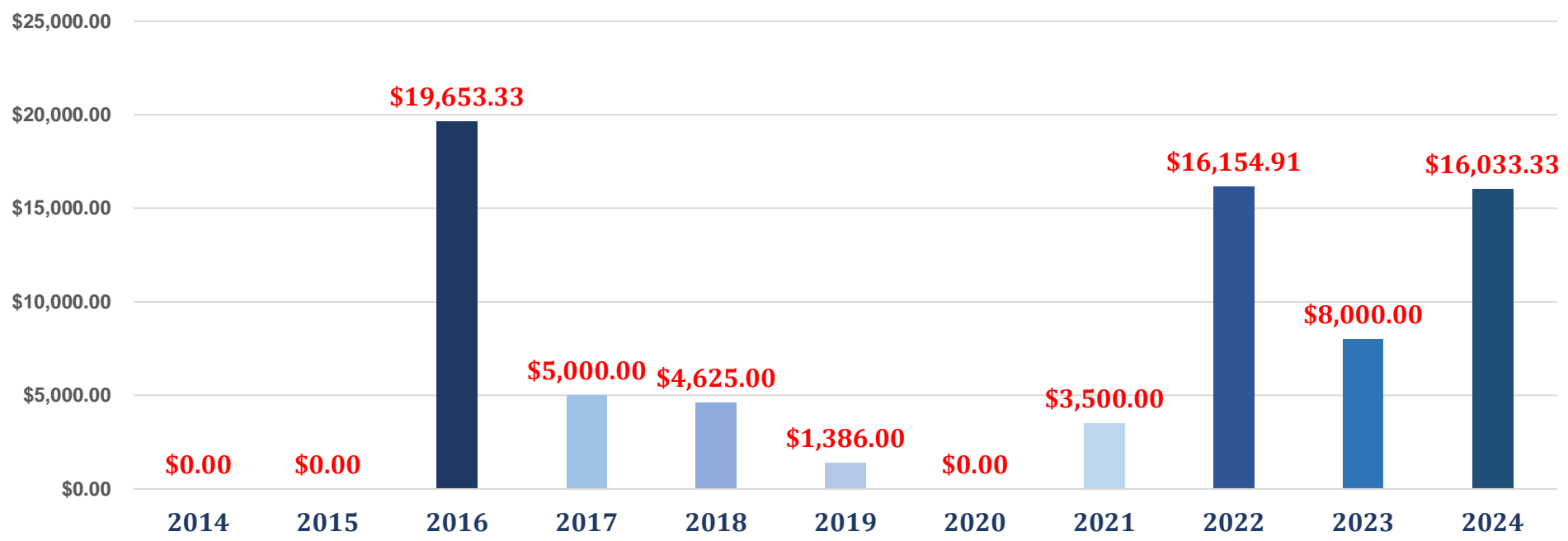
- **Monetary Relief**
- Compensatory Damages
- Punitive Damages
- Injunctive Relief
- Back Pay with Interest
- Reinstatement of Employment
- Job Reassignment
- Attorney Fees & Costs
- Simple Apology
- Rescindment of Termination
- Required Training for Employers



# Monetary Compensation

FY 2014 - 2024

Total Monetary Compensation: **\$74,352.57**



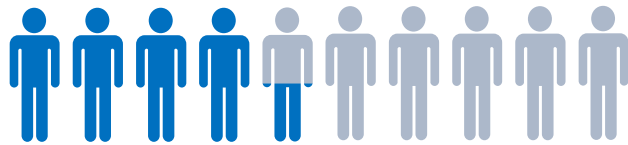
\*Monetary compensation may include back pay with interest, compensatory damages, and punitive damages\*





# 2014-2024 Gender Demographics

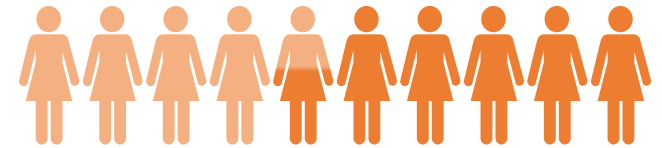
**MALE**



**45%**



**FEMALE**



**55%**

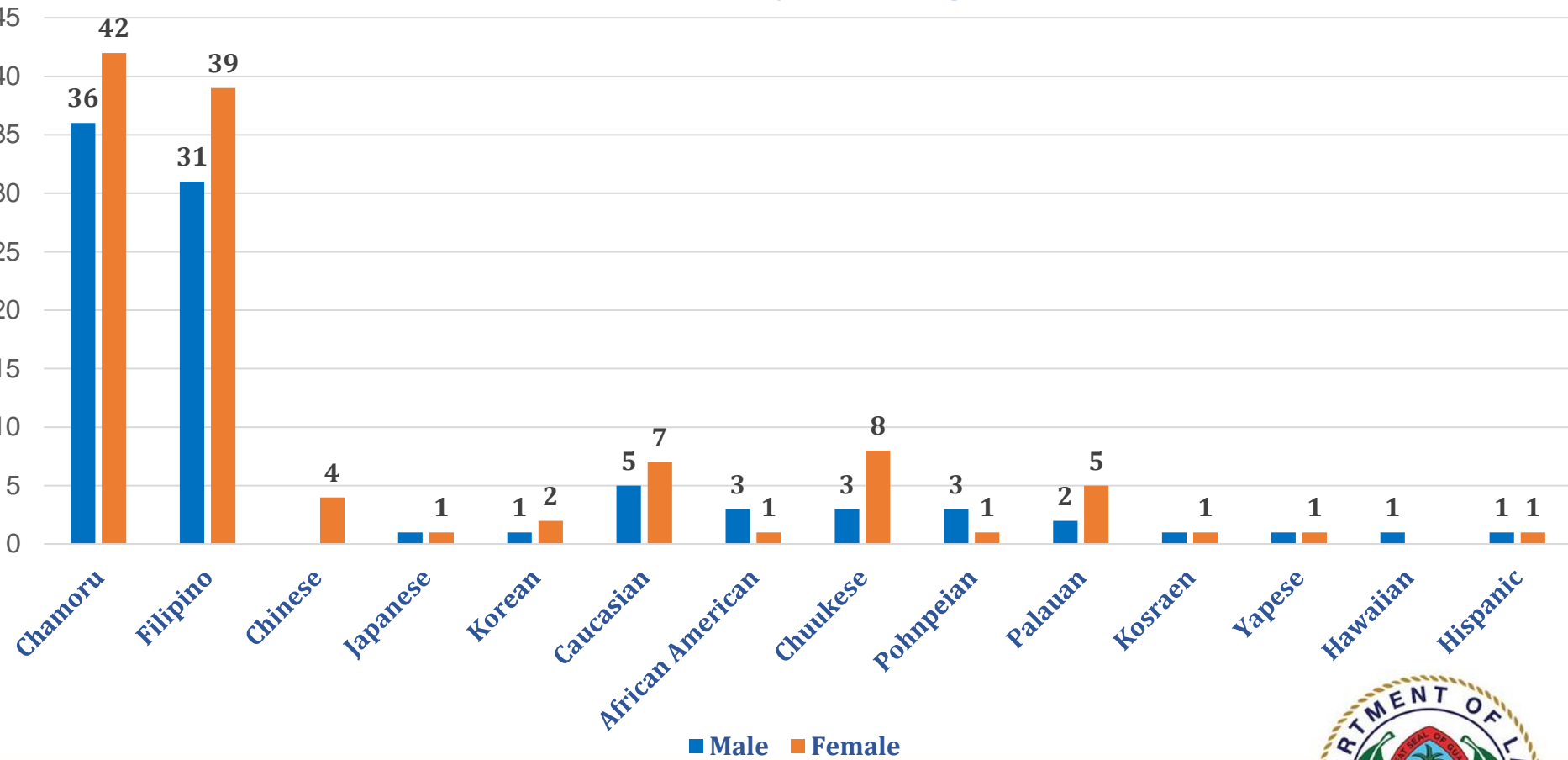


**Total Charges Filed - 202**



# 2014 - 2024

## Diversified Groups – Charges Filed



# Engagement Activities (2014-2024)

**Total Outreaches & Labor Clinics – 105**

## **Labor Clinics – 53/In house**

- General Provisions of EEO – 13
- Fair Chances Hiring Process Act - 25
- Harassment in the Workplace - 15



## **Outreaches – 52/ private sector**

- General Provisions of EEO - 23
- Fair Chances Hiring Process Act - 16
- Harassment in the Workplace - 13



# Mandated Compliance Posters



# MANDATORY POSTING



## Know Your Rights: Workplace Discrimination is Illegal

The U.S. Equal Employment Opportunity Commission [EEOC] enforces Federal laws that protect you from discrimination in employment. If you believe you've been discriminated against at work or in applying for a job, the EEOC may be able to help.

### Who is Protected?

- Employees (current and former), including managers and temporary employees
- Job applicants
- Union members and applicants for membership in a union

### What Organizations are Covered?

- Most private employers
- State and local governments (as employers)
- Educational institutions (as employers)
- Unions
- Staffing agencies

### What Types of Employment Discrimination are Illegal?

Under the EEOC's laws, an employer may not discriminate against you, regardless of your immigration status, on the basis of:

- Race
- Color
- Religion
- National origin
- Sex (including pregnancy, childbirth, and related medical conditions, sexual orientation, or gender identity)
- Age (40 and older)
- Disability
- Genetic information (including employer requests for, or purchase, use, or disclosure of genetic tests, genetic services, or family medical history)
- Retaliation for filing a charge, reasonably opposing discrimination, or participating in a discrimination lawsuit, investigation, or proceeding
- Interference, coercion, or threats related to exercising rights regarding disability discrimination or pregnancy accommodation

### What Employment Practices can be Challenged as Discriminatory?

All aspects of employment, including:

- Discharge, firing, or lay-off
- Harassment (including unwelcome verbal or physical conduct)
- Hiring or promotion
- Assignment
- Pay (unequal wages or compensation)
- Failure to provide reasonable accommodation for a disability; pregnancy, childbirth, or related medical condition; or a sincerely-held religious belief, observance or practice
- Benefits
- Job training
- Classification
- Referral
- Obtaining or disclosing genetic information of employees
- Requesting or disclosing medical information of employees
- Conduct that might reasonably discourage someone from opposing discrimination, filing a charge, or participating in an investigation or proceeding
- Conduct that coerces, intimidates, threatens, or interferes with someone exercising their rights, or someone assisting or encouraging someone else to exercise rights, regarding disability discrimination (including accommodation) or pregnancy accommodation

### What can you Do if you Believe Discrimination has Occurred?

Contact the EEOC promptly if you suspect discrimination. Do not delay, because there are strict time limits for filing a charge of discrimination (180 or 300 days, depending on where you live/work). You can reach the EEOC in any of the following ways:

Submit an inquiry through the EEOC's public portal:  
<https://publicportal.eeoc.gov/Portal/Login.aspx>

Visit an EEOC field office (information at [www.eeoc.gov/field-office](http://www.eeoc.gov/field-office))

Call 1-800-669-4000 (toll free)  
1-800-669-6820 (TTY)  
1-844-234-5122 (ASL video phone)

E-Mail [info@eeoc.gov](mailto:info@eeoc.gov)

Additional information about the EEOC, including information about filing a charge of discrimination, is available at [www.eeoc.gov](http://www.eeoc.gov).



## Fair Chances Hiring Process Act 22 GCA Ch. 6 (P.L. 34-22)

### TO JOB APPLICANTS AND EMPLOYEES

Employers with more than 15 employees are **REQUIRED** to post an FCHPA notice in a conspicuous location.

#### THE LAW

The Fair Chances Hiring Process Act requires employers to follow strict rules regarding the use of arrest and conviction records in hiring and employment decisions.

#### COVERAGE

The law covers job applicants and employees who would be or are performing work in Guam, and applies to employers who **employ more than 15 employees**.

#### EXEMPTION

FCHPA **Shall not apply: 1) where any federal or local law or regulation requires the consideration of an applicant's criminal history for the purpose of employment; 2) to any position designated by the employer as part of a federal or local government position or obligation that is designed to encourage the employment of those with criminal histories; or 3) to any position which requires that employee to work in close proximity of or provides programs, services, or direct care to minors.**

#### EMPLOYERS:

**Shall not** request that a **police clearance or court clearance** be provided as part of an application for employment unless they have first made a conditional offer of employment.

**Shall not** make any inquiry about, or require the disclosure of, an applicant's arrest record or criminal case which resulted in a dismissal, expungement, sealing, or non-conviction.

**Shall not** make reference to any requirement for Police and/or Court Clearance in a job advertisement, job posting, interview, or by any other means, prior to extending a conditional offer of employment.

After a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant based on a **legitimate business reason**.

If an applicant's conditional offer is terminated or an adverse action is taken against an applicant as a result of a pending criminal case or criminal history, an applicant may request that the employer provide **within 30 days:**

- 1) Copies of all records used in considering the applicant or employee, including criminal records, and
- 2) A written Statement of Denial which:
  - a. Articulates a legitimate business reason for withdrawal of conditional job offer;
  - b. Specifically demonstrates consideration of mandated factors;
  - c. Advises the applicant of their right to file an administrative complaint with Guam Department of Labor.
- 3) Failure to provide a written Statement of Denial upon request shall create a rebuttable presumption that no legitimate reason exists for denying the applicant's employment or taking an adverse action against an employee on the basis of a criminal history.

If you need more information or wish to report an employer that you believe has violated this law, please contact the GDOL FEPD Office at (671)300-4544/4612 or (671)475-7037



Guam Department of Labor  
414 West Soledad Ave.  
Suite 400, GCIC Building  
Hagatna, GU 96910



Fair Employment Practice Division  
Phone: (671)300-4544 or 475-7037  
Email: [dol.fepa@dol.guam.gov](mailto:dol.fepa@dol.guam.gov)  
Website: [dol.guam.gov](http://dol.guam.gov) or [dol.guam.gov/compliance/fepd/](http://dol.guam.gov/compliance/fepd/)



FEPD rev. 01.04.23

This compliance poster is mandated by rules and regulations and is **subject to change or interpretation**. Please consult with our website or FEPD staff for specifics regarding this poster.

## PREGNANT WORKERS FAIRNESS ACT

22 GCA Ch. 3 Article 8 (P.L. 36-118)

Employers with more than 15 employees are **REQUIRED** to post an PWFA notice in a conspicuous location.

### THE LAW AND COVERAGE

**Be Ready!** P.L. 36-118, The Pregnant Workers Fairness Act has been passed into law. Therefore, the law requires employers to eliminate discrimination and promote woman's health and economic security by ensuring workplace accommodations for workers whose ability to perform the functions of a job are limited by Pregnancy or Childbirth.

The law covers the following:

- (1) Any person who directly employs fifteen (15) or more persons to perform services for a wage or salary; or
- (2) The government of Guam, and any governmental entity, department, agency, commission, instrumentality, or public corporation, but excluding the United States Government.

### EMPLOYERS

#### It's unlawful:

- for any employer to refuse to make reasonable accommodations to the known limitations related to the pregnancy or childbirth of an employee, unless the employer can demonstrate the accommodation would impose undue hardship;
- to require an employee affected by pregnancy or childbirth to accept an accommodation other than a reasonable accommodation;
- to deny employment opportunities to an individual if such denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy or childbirth;
- to require an employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided to known limitations related to the pregnancy or childbirth of the employee;
- to take adverse action in terms, conditions, or privileges of employment against an employee on account of the employee requesting or using a reasonable accommodation to the known limitations related to the pregnancy or childbirth of the employee.

### REASONABLE ACCOMMODATIONS

The adjustments, modifications, or changes made in an environment, policies, practices, or procedures to ensure that individuals with disabilities can fully participate in programs, services, or activities. To enable an individual with a disability to participate in the application process or to perform essential job functions. These accommodations are intended to provide equal opportunities, access, and full inclusion within the workplace.

### PENALTIES

Under P.L. 36-118, The Department is authorized to issue the following penalties for the violation of this Act: (1) Up to One Thousand Dollars (\$1,000.00) for the first offense; and (2) Up to Two Thousand Dollars (\$2,000.00) but not less than One Thousand Dollars (\$1,000.00) for subsequent offenses.

If you need more information or wish to report an employer that you believe has violated this law, please contact the GDOL FEPD Office at (671)300-4544/4612 or (671)475-7037



Guam Department of Labor  
414 West Soledad Ave.  
Suite 400, GCIC Building  
Hagatna, GU 96910



Fair Employment Practice Division  
Phone: (671)300-4544 or 475-7037  
Email: [dol.fepa@dol.guam.gov](mailto:dol.fepa@dol.guam.gov)  
Website: [dol.guam.gov](http://dol.guam.gov) or [dol.guam.gov/compliance/fepd/](http://dol.guam.gov/compliance/fepd/)

FEPD rev. 02.15.24

This compliance poster is mandated by rules and regulations and is **subject to change or interpretation**. Please consult with our website or FEPD staff for specifics regarding this poster.



# **Pregnant Workers Fairness Act (PWFA) P.L. 36-118**



# Pregnant Workers Fairness Act (PWFA)

**FEPD has developed Drafts to Prepare for Enforcement:**

- ❑ Compliance Poster
- ❑ \*Guam Administrative Rules & Regulations (GARR)

***\*Note: The PWFA is in effect November 2023, what is pending Administrative Adjudication Act (AAA) process\****



# Useful Links

Fair Employment Practice Division (FEPD)

- <https://dol.guam.gov/compliance/fepd>



U.S. Equal Employment Opportunity Commission

- <https://www.eeoc.gov/>



Job Accommodation Network (JAN)

- <https://askjan.org/about-us/index.cfm>



Bureau of Women's Affairs

- <https://bwa.guam.gov/>





# Thank you!



# Contact information

## Fair Employment Practice Division



414 West Soledad Avenue  
Suite 400, GCIC Building  
Hagåtña, Guam 96910



(671) 300-4544/4612  
or 475-7037



(671) 475-6811



[dol.guam.gov](http://dol.guam.gov)

<http://dol.guam.gov/compliance/fepd/>

