



# *Håfa Adai!*

**February 07, 2024**

**SHRM Breakfast Briefing**



# Preventing Workplace Harassment

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February 07, 2024

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**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.*



# Introduction

Harassment has a direct impact on all employees and businesses alike.

It comes in many different contexts and can target people from diverse backgrounds.



# Agenda

- Local and Federal Partnership
- Laws Enforced by EEOC & FEPO
- Filing a Complaint
- Common Pitfalls
- Best Practices and Pro-tips
- Real-World Case Studies
- Data Review

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 and retaliation**



# 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?

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

### 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 bases 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 Organizations are Covered?

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

### 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>

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

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

**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).



# What are the Protected Bases?

- Race
- Color
- National Origin
- Sex (includes Pregnancy)
- Religion
- Age (40 and over)
- Person with a disability
- Genetic Information
- Retaliation





# 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 2022**  
**P.L. 36-118, enacted in Nov. 09, 2022**

Other DOL Compliance Divisions:

- Wage & Hour Division  
(Wage Retaliation)
- Alien Labor & Processing Cert. Division  
(H2B Workers or Overseas Laborer)



# 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.



# 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.



# 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.

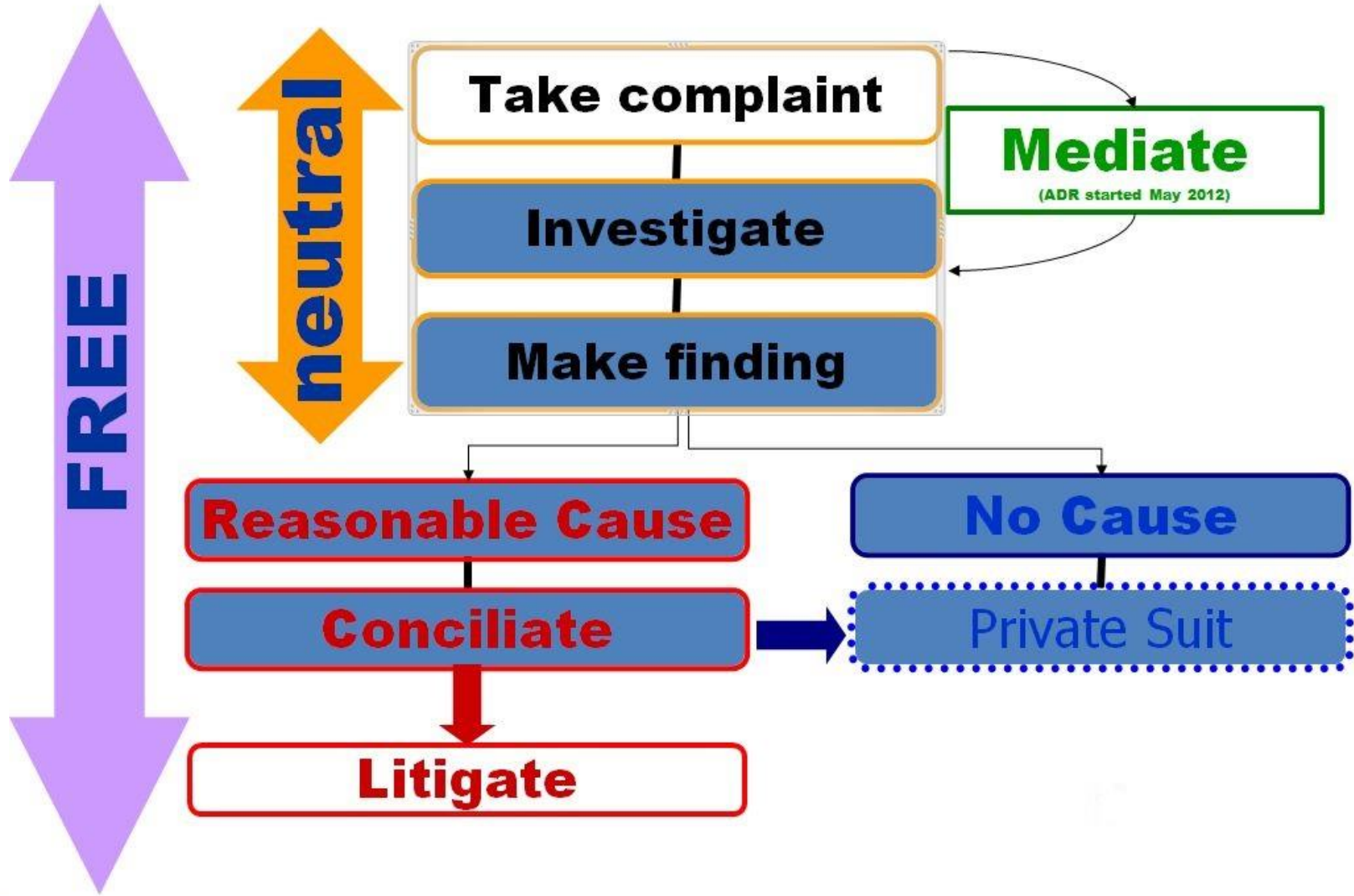
## U.S. EEOC

- ❑ 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.

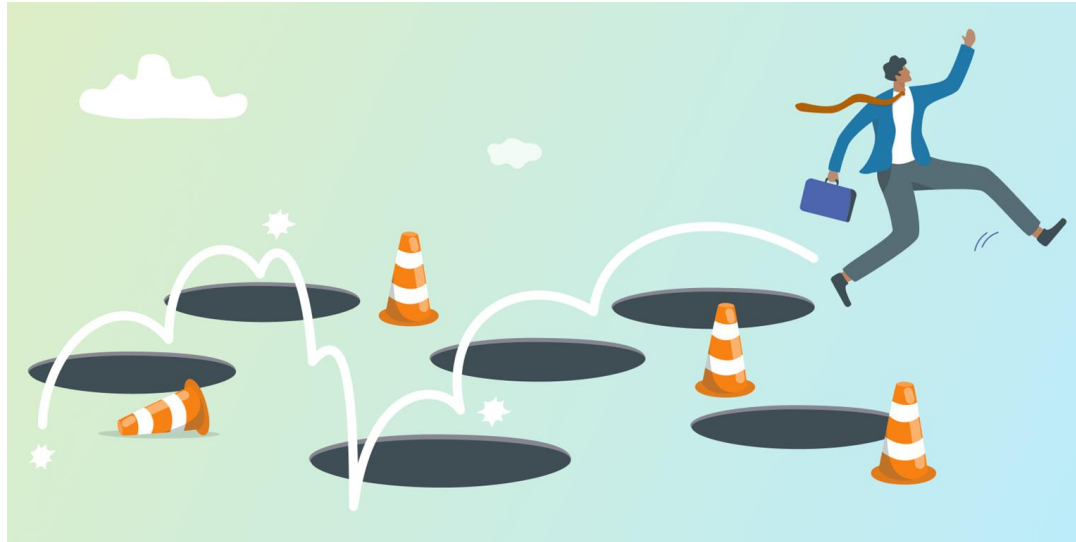
*\*Statute of Limitations (SOL)*



# EEOC/FEPA'S PROCESS



# Common Pitfalls



# Common Errors in the Workplace

## Examples:

- Compliance posters not posted or visible
- Failure to follow policies in place
  - Outdated policies not renewed or reviewed
- Failure to consult/report with HR or Management
  - Supervisor did not seek guidance before adverse action was determined affecting the employee's employment status
- Investigation conducted inadequately
  - Lack of documentation
  - Witness interviews not conducted
  - Credibility
  - Tangible Evidence
  - Insufficient Information



# Workplace Culture

- Ethnic Backgrounds
- Languages
- Religious Practices



## *English-Only Rules:*

- *Must be adopted for non-discriminatory reasons*
- *May be used if it is needed to promote the safe or efficient operation of the employer's business (business necessity)*





# Best Practices on Reducing and Addressing Workplace Harassment



# Report It!

SEE IT.  
HEAR IT.  
REPORT IT.

- ❑ Any employee believing they have been subjected to discrimination, workplace harassment or sexual harassment should report that behavior to their immediate supervisor, another member of management or the company's Human Resource section.
- ❑ A complaint may be made verbally or in writing.



# Investigations

- Take all harassment complaints seriously through immediate action
  - Timely manner
- Separate the victim and harasser during the investigation
- Conduct witness interviews to gather facts relating to the allegations of harassment
- Determine credibility
- Gather evidence
  - Statements
    - Victim, Harasser and Witness(es)
  - Record keeping
  - CCTV Footage/Pictures
  - Group Chats (i.e. Whatsapp, Facebook, Instagram postings)



# Investigations cont.

- Determine tangible and credible information
- Document all efforts of the investigation
- Determine an outcome based on the information/evidence collected
- Mediation between both parties, if necessary
- Investigation must be prompt, fair, and thorough



# Tips/Practical steps companies can take to avoid (or greatly reduce) harassment claims



# Appropriate Preventive Actions

- Stop harassment immediately
- Investigate
- Protect against retaliation
- Provide appropriate relief
- Educate and train employees



# Corrective Actions to Stop and Prevent Harassment

- Oral or written warning or reprimand
- Transfer or reassignment
- Demotion
- Suspension or discharge
- Training or counseling harasser
- Monitoring harasser



# Pro-Tips

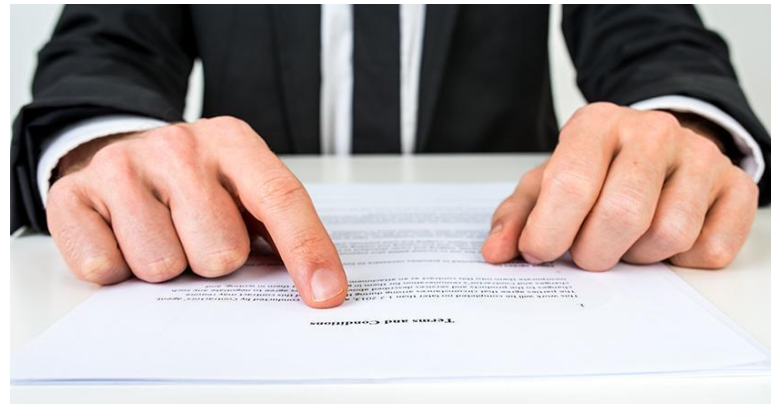
- Inform employees that harassment is prohibited.
- Identify who should be contacted to discuss harassment questions or concerns.
- Assure employees that they will not be retaliated against for asking questions or sharing their concerns.
- Ensure that managers understand their responsibility to stop, address and prevent harassment.
- Always be prepared for any On-site Visit or Field Inspections.
- Conduct Trainings
  - On-boarding, Quarterly, Semi-Annual, Annual





# Policies and Procedures

- Review all internal policies, regulations, SOPs to ensure compliance with any new laws both federal and local.

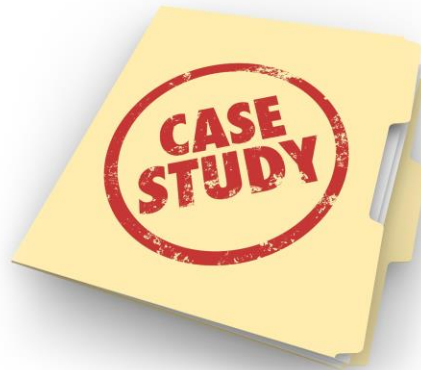


# What is Workplace Harassment?

Harassment at Work  
+ Protected Bases  
= Workplace Harassment



# Real-World Insights



# Case Study

2017 – FEPA Guam provided guidance and assistance to an employee who was subjected to Sexual Harassment from her superior by secretly placing a video recorder underneath her desk during work hours.

**Statute: Title VII**

**Base: Sex (Female)**

**Issue: Sexual Harassment**



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 termination - Supervisor.



# Case Study

**2017** – A sales associate was Sexually Harassed/Assaulted by the warehouse manager to which he groped her. The sales associated 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, it was revealed 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

*May 2019 - EEOC Sues Verona Resort & Spa for **Pregnancy and Disability Discrimination** for **\$16,000**. In July, 2017, Company failed to accommodate and fired pregnant employee with disabilities because of pregnancy related conditions.*

**Statute: Title VII & ADA**

**Base: Sex (Pregnancy) & Disability**

**Issue: Reasonable Accommodation & Discharge**



The company refused to allow an employee with gestational diabetes to be allowed to wear open-toed shoes and be able to sit while fulfilling her duties as front desk agent. Verona failed to provide a reasonable accommodation, and then fired her after she made the request claiming her pregnancy impacted her ability to perform the job.



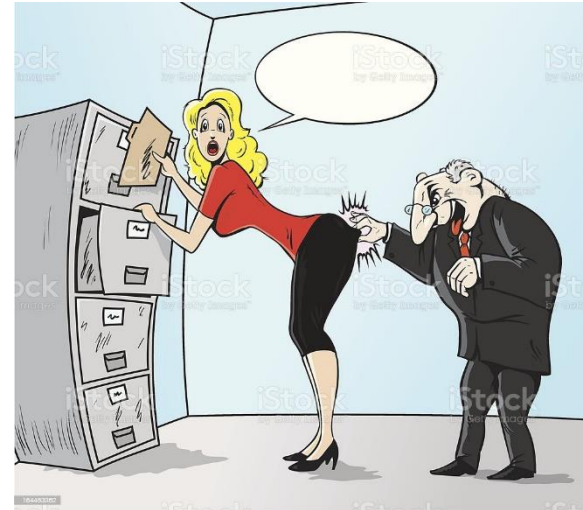
# Case Study

*April 2021 – Local BBQ Restaurant to pay \$3,500 to settle Sexual Harassment Case with FEPA Guam. In March 2021, a female employee stated during her short employment (March 2021 – April 2021) she was subjected to sexual harassment 15 times which caused her to resign.*

**Statute: Title VII**

**Base: Sex (Female)**

**Issue: Sexual Harassment & Constructive Discharge**



The Charging Party alleged that the restaurant's owner subjected her to inappropriate touching and comments. Due to the harasser being the owner, she felt she had no other option but to resign. The owner did admit to the touching but his reason for touching the Charging Party was for her safety within the restaurant. However, respondent did not want to dispute this matter any further and wished to move forward with closing this case.



# Case Study

**2022** – Private Company 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 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 the others in her department were allowed to take time off.





# Case Study

2023 – Class Action Charge filed with FEPA Guam against private employer for **Sexual Harassment, Harassment, Retaliation, and Discharge**

**Statute: Title VII**

**Bases: Sex (Female), Retaliation**

**Issues: Sexual Harassment, Harassment  
Discharge & Constructive Discharge**



In February 2023, 3 Female employees individually filed charges against their employer. The charges were consolidated into a Class Action Charge which alleged that the Female employees were subjected to Sexual Harassment and Harassment by their coworker and the owner of the company. The employees attempted the internal process to address the sexual harassment and harassment to HR and lastly the owner. Furthermore, 2 of the employees were discharged after their complaint, while the final resigned due to the hostile work environment.



# Data Review

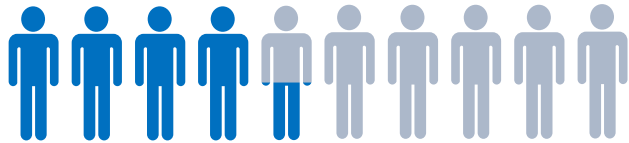


# 2019-2023

## Gender Demographics

Total - 121

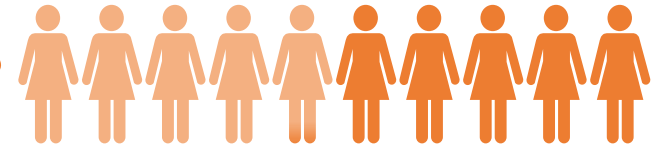
MALE



**46%**



FEMALE



**54%**





# 2019 - 2023

Diversified Groups – Charges Filed

## MALE

### Pacific Islander

- Chamorro – 40%
- Chuukese – 3%
- Pohnpeian – 3%
- Palauan – 2%
- Hawaiian – 2%

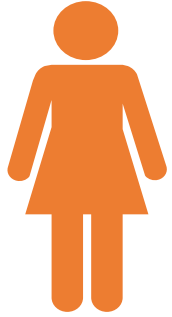
### Asian

- Filipino – 42%

### Other

- Caucasian – 4%
- African American – 2%
- Hispanic – 2%





# 2019 - 2023

Diversified Groups – Charges Filed

## FEMALE

### Asian

- Filipino – 29%
- Chinese – 3%
- Japanese – 2%
- Korean – 2%

### Other

- Caucasian – 6%
- African American – 2%

### Pacific Islander

- Chamorro – 38%
- Chuukese – 11%
- Palauan – 5%
- Pohnpeian – 2%
- Kosraen – 2%
- Yapese – 2%



# 2019 - 2023

# MALE



## Bases of Charges filed - 92

- National Origin - 22%
- Age - 12%
- Retaliation - 21%
- Sex - 7%
- Disability - 20%
- Religion - 1%
- Race - 18%

*\*Some cases contain more than one substantive bases*



2019 - 2023

# FEMALE



## Bases of Charges filed - 86

- Sex - 30%
- National Origin - 20%
- Retaliation - 17%
- Race - 13%
- Disability - 10%
- Age - 7%
- Religion - 1%
- Color - 1%

*\*Some cases contain more than one substantive bases*



# 2019 - 2023

## Main types of Charges filed - 59

**MALE**



- Discharge – 61.0%
- Reasonable Accommodation – 15.2%
- Harassment – 11.8%
- Lay Off – 3.4%
- Hiring – 3.4%
- Suspension – 3.4%
- Terms and Conditions – 1.7%

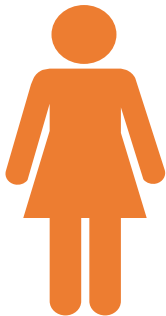




# 2019 – 2023

## Main types of Charges filed - 70

# FEMALE



- Discharge – 47%
- Harassment – 26%
- Reasonable Accommodation – 10%
- Constructive Discharge – 5%
- Sexual Harassment – 3%
- Demotion – 3%
- Maternity – 1%
- Hiring – 1%
- Terms and Conditions – 1%
- Benefits – 1%
- Promotion – 1%
- Qualifications – 1%



# Thank you!



# Contact information

## Fair Employment Practice Agency



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/>

