

# EEOC's Update for Greater Houston Industry Liaison Group



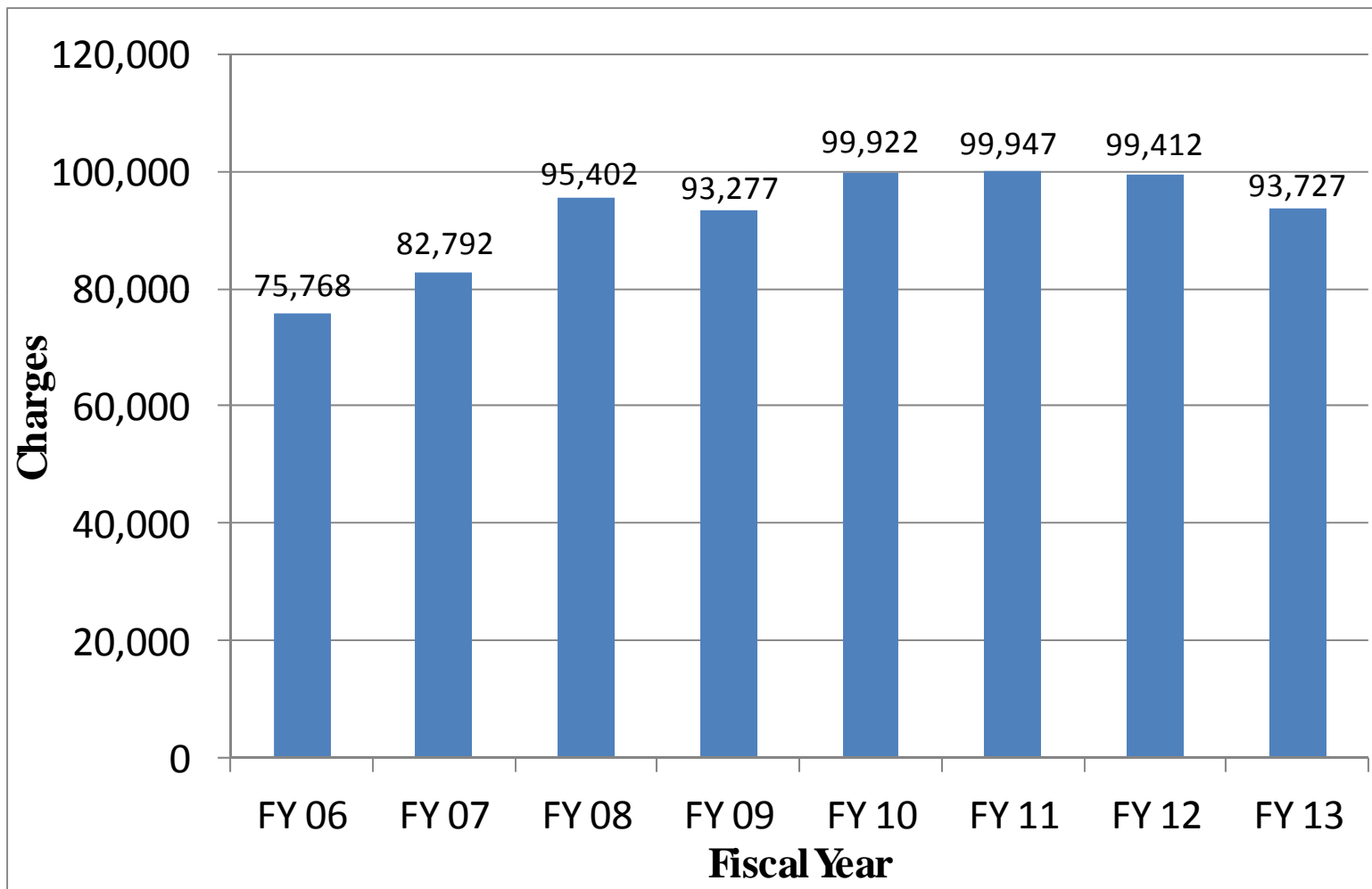
April 17, 2014

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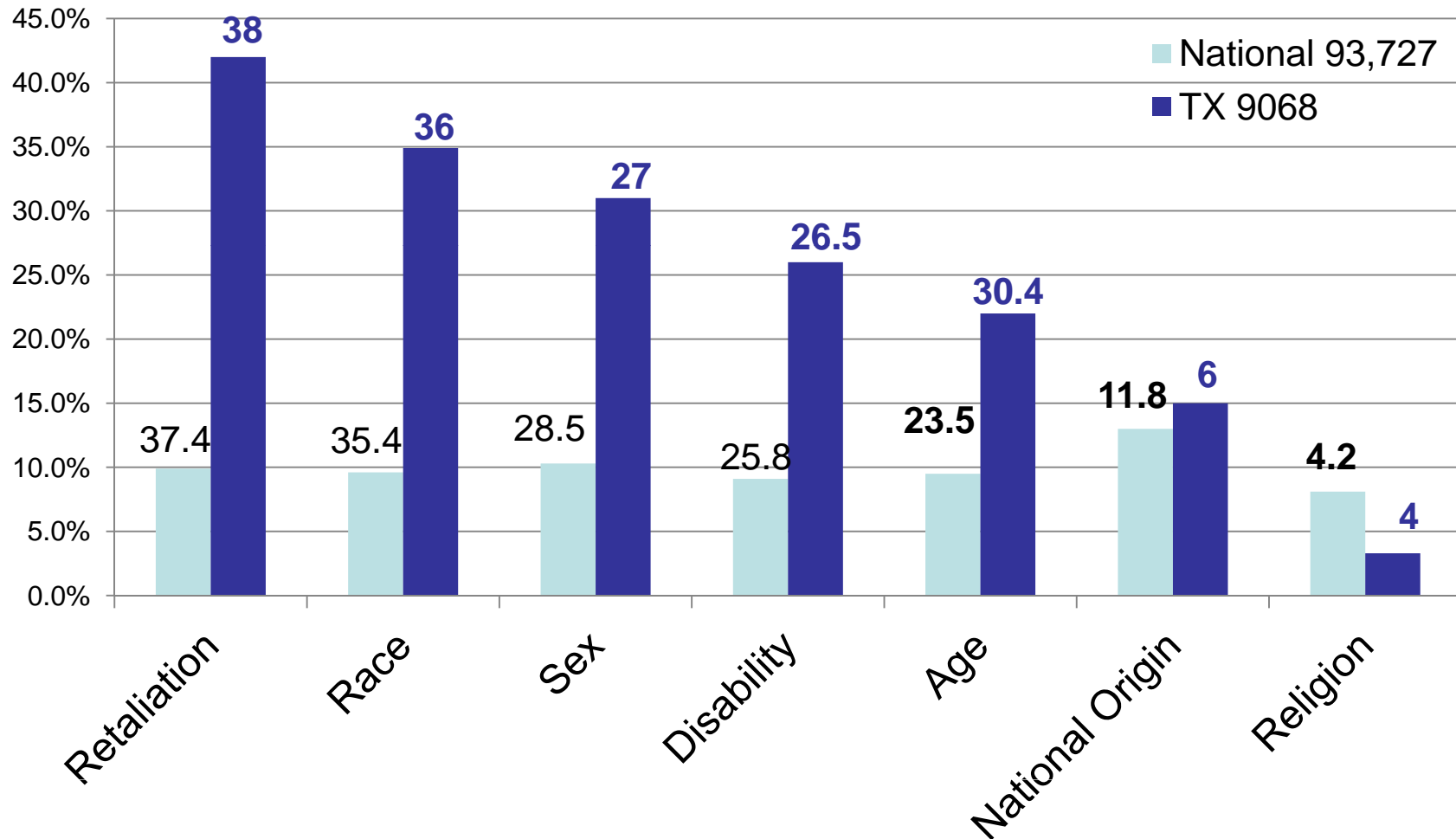
EEOC Houston District Office

# Charge Filings by Year

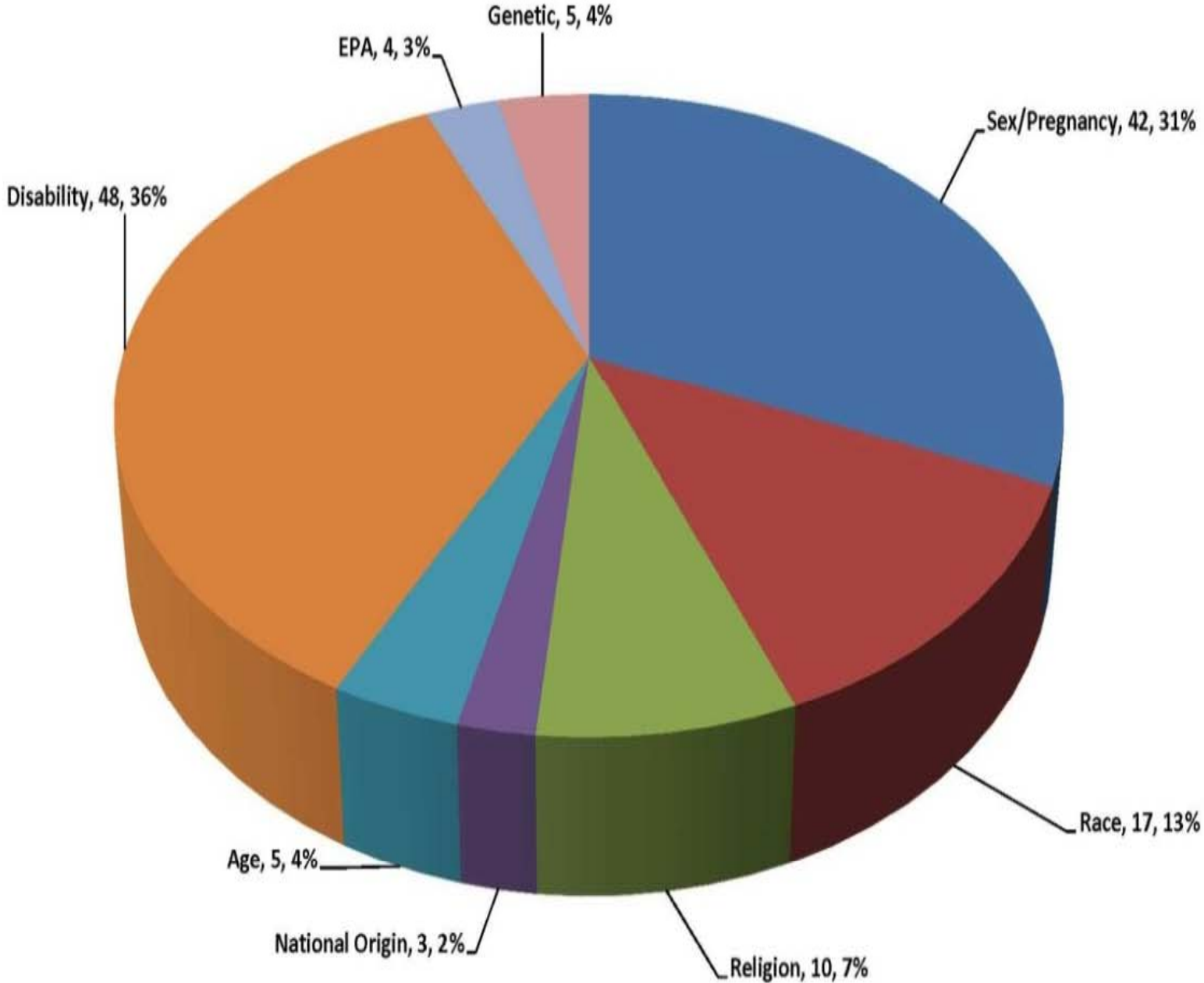


Source: [www.eeoc.gov](http://www.eeoc.gov)

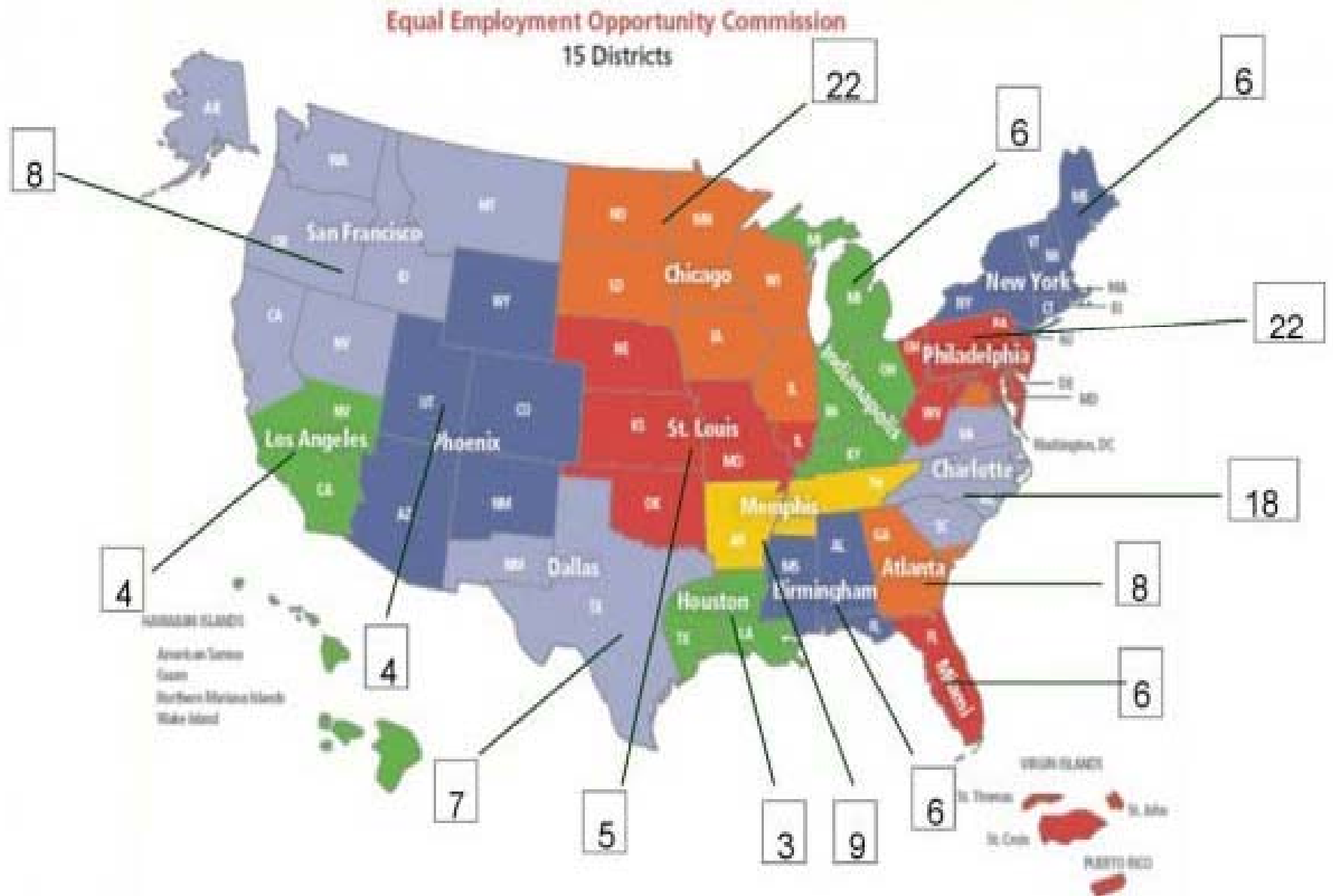
# FY2013 %Charge Filings / Texas



FY 2013 EEOC Cases Field By All Discrimination



# FY 2013 EEOC Case Filed by District





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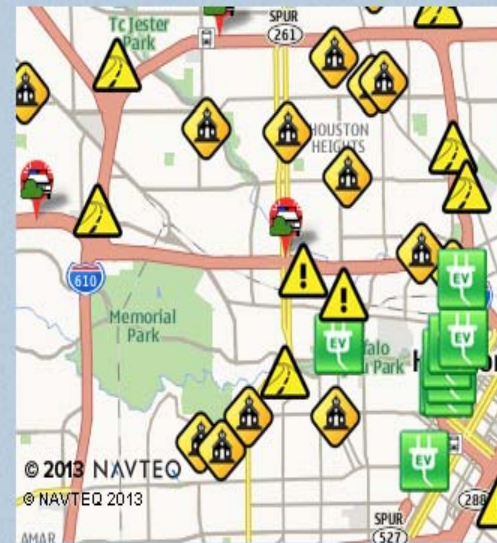
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Trapster® alerts you to police speed traps and other roadway hazards.

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|--|---|---|--|---|



### Usage Statistics

|                 |            |
|-----------------|------------|
| Total Users     | 19,179,231 |
| New Users Today | 5,242      |
| Traps Reported  | 6,622,181  |
| New Traps Today | 1,899      |

### In The News



"Think of it as a community based high-tech early warning system" [Continue](#)



"Essentially a cell-phone social network that allows motorists to hook up with one another" [Continue](#)

### How Does It Work?



Users submit speed traps, enforcement cameras, and road hazards, that then alert all Trapster users in the area. A high-tech version of flashing your headlights to alert drivers of potential road hazards.

[View Demo](#)



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Spread the word:



# EEOC Strategic Enforcement Plan (SEP)

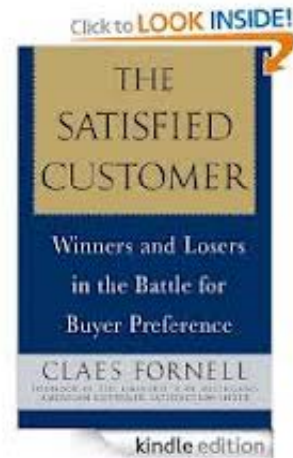
## Nationwide Priorities:

1. *Eliminating systemic barriers in recruitment and hiring.*
2. *Protecting Immigrant, migrant, and other vulnerable workers*
3. *Addressing Emerging Issues*
4. *Enforcing the Equal Pay Laws*
5. *Preserving Access to the Legal System*
6. *Combating Harassment*





# SEP I Eliminate barriers: recruitment & hiring



**JUNIOR MANAGER  
AND TRAINEE  
PROGRAMS**





# BACKGROUND SCREEN CASES

- **EEOC v. Pepsi**, (conciliation)
- **EEOC v. Kaplan** (N.D. Ohio filed Dec. 2010) (nationwide race case challenging disparate impact of credit checks) (*pending on appeal in 6<sup>th</sup> Cir.*)
- **EEOC v. Freeman** (D. Md. filed Oct. 2009) (nationwide race case challenging disparate impact of felony conviction screens) (*pending on appeal in 4<sup>th</sup> Cir.*)

## Other Cases to Watch:

- **EEOC v. BMW** (D.S.C. filed June 2013) (race case challenging disparate impact of criminal conviction policy applied to long-term employees of contractor) (*pending*)
- **EEOC v. Dollar General** (N.D. Ill. filed June 2013) (nationwide race case challenging disparate impact of criminal background check policy for all positions) (*pending*)

# EEOC: Arrest & Conviction Records

- A violation may occur when an ER treats criminal history information differently for different applicants or employees, based on their race or national origin
- An ER's neutral policy (excluding applicants based on certain criminal conduct) may disproportionately impact some individuals and may violate the law if not **job related and consistent with business necessity**

## Job Related and Consistently with Business Necessity

Two circumstances to meet “job relatedness and consistent with business necessity”

1. Validation (UGESP)
2. Targeted Screen & Individualized Assessment
  - a. The nature of the job held or sought;
  - b. The nature and gravity (seriousness) of the offense(s); and
  - c. The time that has passed since the conviction and/or the completion of the sentence.

# “Individualized Assessment”

Consider...

- Inaccuracy of criminal record
- Age at conviction
- Consistency, quality, and length of employment history before and after
- Rehabilitation efforts
- Employment/character references



# Arrest Records

- An employer may make an employment decision based on the conduct underlying the arrest if the conduct makes the individual unfit for the position in question.
- Arrest records should not be used as an absolute bar to employment.
- The conduct, not the arrest, is relevant for employment purposes.

“Do Not Apply  
with Any  
Misdemeanors/Felonies”

“No Arrests”

“No Felonies or  
Misdemeanors  
Allowed”

BLANKET  
BANS

“Clean Records”

“Spotless Criminal History”

“Must Not Have Any  
Convictions.  
PERIOD.”

“No  
Misdemeanors  
or Felonies”



BE MINDFUL ABOUT STEREOTYPES!

ONLY ONE OF THEM IS A CONVICTED FELON.





**Pepsi's Use of Criminal Background Checks Discriminated Based On Race**



***BMW Fired and Denied Hire to Class of Employees Who Worked Successfully for Years;***



***Dollar General Disproportionately Excluded African Americans From Hire***

# Credit History

Policies related to an applicant's credit history, also are subject to challenge under disparate impact analysis.

# ADAAA and Veterans

- Employing Veterans with Disabilities

Traumatic Brain injuries (TBI) and  
Post-Traumatic stress disorder (PTSD)

# ADA REASONABLE ACCOMMODATION CASES

- ***EEOC v. United*, 693 F.3d 760 (7<sup>th</sup> Cir. 2012)** (effectively en banc; reversed prior 7<sup>th</sup> Circuit precedent and held that “best qualified” policies do not trump the ADA’s reassignment-as-reasonable-accommodation obligation) (*cert. denied May 2013*)

- 

## Other Noteworthy Cases:

- ***EEOC v. Interstate Distributor*** (D. Colo. filed Sept. 2012) (ADA challenge to leave and return-to-work policy) (settled in Nov. 2012 for almost \$5,000,000)
- ***EEOC v. UPS***, (court denied motion to dismiss finding that 100% return-to-work policy could be job qualification under the ADA)
- ***EEOC v. Creative Networks***, 912 F. Supp. 2d 828 (D. Ariz. 2012) (rigid policy of denying deaf and hearing-impaired)

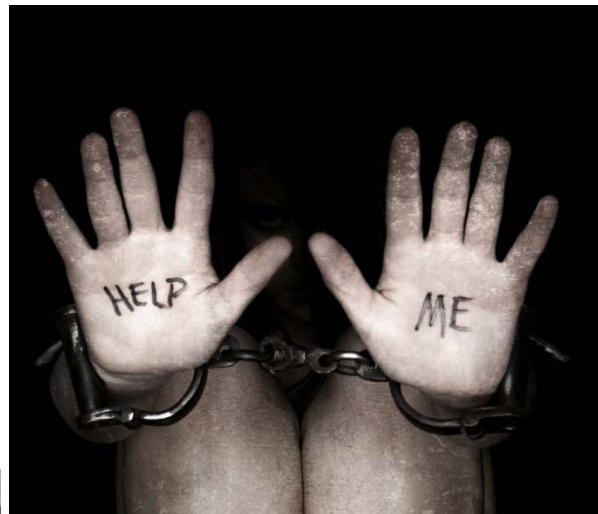
## A Case to Watch:

- ***EEOC v. Ford*** (E.D. Mich. filed Aug. 2011) (telework as a reasonable accommodation) (*pending on appeal in 6<sup>th</sup> Cir.*)

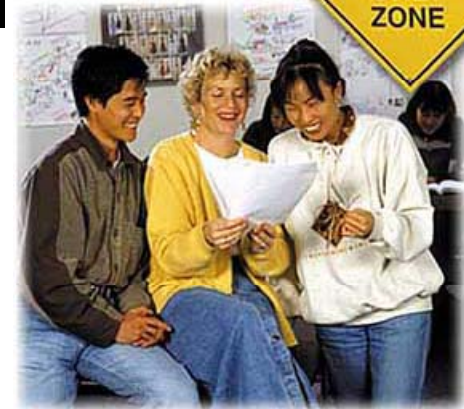
## SEP II Protecting Immigrant, migrant and other vulnerable workers



PHOTO: THINKSTOCK



**English Only  
Please!**





## SEP III Address Emerging Issues

- Issue 1- ADAAA
- Issue 2- LGBT
- Issue 3 – Pregnancy



# ADAAA Issues

- Coverage
- Reasonable Accommodation
- Qualification Standards
- Undue Hardship
- Direct Threat
- Accommodating Pregnancy-related limitations under the ADAAA



# ADAAA and Hiring Issues

## High School Diploma Requirement

“...may be required to permit someone, who claims to have a disability that prevented him/her from getting a H.S. diploma, to *show by other means that he/she is qualified for the job.*”

# “No Fault” Leave Policies?

Noteworthy Cases:

*EEOC v. Dillards.*,

*EEOC v. Benedictine Health  
Center at Innsbruck,*

*EEOC v. Interstate Distributor Co.*

# Employees with Disabilities Need Not Compete for Reassignment



“Employers should reassign the individual to an equivalent position, in terms of pay, status, etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time.”

Interpretative Guidance 29 CFR  
§1630.2(o)

EEOC v. United Airlines, 2012 WL 718503 (7th Cir. Mar. 7, 2012)



# PREGNANCY

- [W]omen affected by pregnancy, childbirth, or related medical conditions *shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work....*  
42 U.S.C. § 2000e(k).



*Young v. United Parcel Service,*  
2013 WL 93132 (4th Cir. Jan. 9, 2013)



# RECOMMENDATIONS

- Review leave policies
- Individualized assessment
- Reasonable accommodation policy

# Sex discrimination against Lesbian, Gay, Bisexual and Transgender Persons (LGBT)

- EEOC and courts recognize gender discrimination as a form of sex discrimination
- Recent decisions have upheld claims of sex discrimination by LGBT individuals under Title VII's prohibition against sex discrimination
- Supreme Court ruled in Price Waterhouse v. Hopkins that discrimination resulting from stereotypical notions about appropriate gender norms is discrimination
- Gender stereotyping is discrimination "because of sex"
- No dismissal of LGBT charges due to lack of jurisdiction

## ***SEP IV Enforcing Equal Pay Act***

The next  
Equal Pay Day  
is April 8, 2015.

*This date symbolizes  
how far into 2015  
women must work  
to earn what men earned  
in 2014.*





# Examples of Discriminatory Practices Affecting Compensation

- Paying employees less or giving them lesser benefits on a prohibited basis
- Steering or classifying employees or applicants into lower paid positions – e.g., by refusing to place people into higher compensated positions – on a prohibited basis;
- Discriminatorily denying networking, mentoring, or training opportunities that facilitate promotion or assignment to higher paid positions;
- Paying part-time employees less on an hourly basis than their full time counterparts, which could disproportionately impact people on statutorily prohibited bases.

# JPMorgan Chase Will Pay \$1,450,000 to Resolve EEOC Class Sex Discrimination Lawsuit



Female Mortgage Bankers in Columbus, Ohio Subjected to Sex-Based Harassment And Denied Lucrative Sales Opportunities



# Presrite Corp Settle EEOC Class Action Lawsuit

*Manufacturing Company Refused to Hire Females*

# Proactive Recommendations

- Review and update employment policies and handbooks – including RA and leave policies
- Training on EEO laws and company policies
- Evaluate pay/check the numbers
- Ensure there are demonstrable business reasons for any disparities in compensation.
- Review and document employment and disciplinary actions to ensure that decisions are not discriminatory
- Handle discrimination and harassment complaints promptly and thoroughly
- Don't allow **retaliation!**

## SEP V *Preserving access to the legal system*



# Preservation of Access to the Legal System

***EEOC v. Cognis*, 2012 WL 1893725 (N.D. Ill. 2012)** (summary judgment for EEOC granted in part, denied in part, involving a last chance agreement prohibiting the filing of an EEOC charge)

## Other Significant Cases:

- Obtained preliminary injunction prohibiting retaliation in two cases: ***EEOC v. Evans Fruit*, 2010 WL 2594960 (E.D. Wash. 2010)** and ***EEOC v. Pitre Buick* (D.N.M. 2012)**

## Other Cases to Watch:

- ***EEOC v. CVS*, (N.D. Ill)(2014)**(challenge to severance agreement under Section 707(a), which prohibits a pattern or practice interfering with rights protected under Title VII)

EEOC Sues CVS to  
Preserve Employee  
Access to the Legal  
System





## SEP VI Prevent HARASSMENT through systemic enforcement and targeted outreach



May 2013

## Jury Awards \$240 Million for Long-Term Abuse of Workers with Intellectual Disabilities



***Historic Verdict Against Henry's Turkey Service for Men Subjected to Verbal and Physical Harassment, Housed in Substandard Facilities, Denied Medical Care***

# Examples of Discriminatory Practices Affecting Compensation

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# Notable Harassment Suits

FY 2013 EEOC v Hill County Farms, DBA Henry's Turkey Service  
\$240 Million Jury Award ( later reduced to 1.6 Million

FY2013 Orange Township will pay \$875,000 to resolve a sexual-harassment lawsuit that a former firefighter won earlier this year.

FY2013 U-Haul to Pay \$750,000 to Settle EEOC Racial Harassment & Retaliation Suit



FY2013 DOJ reached an agreement on the settlement of United States v. Reading Parking Authority which was filed on June 27, 2013. The settlement includes monetary relief to the charging party as well as monetary relief to four similarly-situated individuals. The settlement also includes injunctive relief including the development of new policies and a three year consent period to ensure the new policies are followed.



**Reading Parking Authority**  
Park Smart, Park Legal, Everyday





# Technical Assistance Program Seminars

- 
- [www.eeotraining.eeoc.gov](http://www.eeotraining.eeoc.gov)
  - Dallas August 7<sup>th</sup> 2014
  - Excel San Diego Aug 11- 14
  - Houston August 18<sup>th</sup> 2014
  - San Antonio Sept 15, 2014

# Take Advantage of EEOC's Resources

- [www.eeoc.gov](http://www.eeoc.gov)
- Publications
- Free Outreach Programs
- Fee Based Training
- Contact [joe.bontke@eeoc.gov](mailto:joe.bontke@eeoc.gov)

**1-800-669-4000**

**1-800-669-6820 (TTY)**



# Any Questions, Comments, Concerns or Complaints

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