

出國報告（出國類別：出席國際會議）

出席美國公平就業機會委員會(EEOC)
2019年公平就業法規檢視訓練會議
(EXCEL Training Conference)

服務機關：勞動部

姓名職稱：黃耀滄科長

派赴國家：美國

出國期間：108年7月29日至8月1日

報告日期：108年9月6日

摘要

為提升聯邦政府各機關單位、事業單位以及社會大眾對「公平就業機會(Equal Employment Opportunity, EEO)」之認知，以妥善預防就業歧視，美國公平就業機會委員會 (Equal Employment Opportunity Commission, EEOC) 設有「EEOC 訓練學院 (EEOC Training Institute)」，負責辦理各類 EEO 相關教育訓練及宣導活動。其中最重要之訓練會議即是每年舉辦之「公平就業法規檢視訓練會議」(Examining Conflicts in Employment Laws Training Conference，以下簡稱 EXCEL 訓練會議)，會議之參加對象包括美國聯邦機構及私部門中與 EEO 工作相關之官員(Equal Employment Officers)及專業人員，包括管理階層、調查人員、人力資源管理人員、律師、NGO 人員及替代性爭議解決辦法(Alternative Dispute Resolution)之執行人員。2019 年(第 22 屆)EXCEL 訓練會議於 7 月 29 日至 8 月 1 日假美國喬治亞州亞特蘭大市(Atlanta, GA)舉辦，為期 4 天，與會者透過檢視 EEO 重要法規及個案研討等方式，提升對於 EEO 相關規範之認識與瞭解，強化就業歧視申訴案件之調查、處理及個案認定等實務知能。

本年度參與訓練研討重點議題如下：

- 一、懷孕歧視
- 二、原始國籍歧視
- 三、職場性騷擾
- 四、調解制度

本報告提出建議如下：

- 一、客觀審認及調查懷孕歧視
- 二、參考禁止原始國籍歧視規範意旨及作法，加強保障勞工權益
- 三、研議性騷擾行為人之處理機制，強化勞工保障措施
- 四、加強辦理職場平權教育訓練，落實法令規定
- 五、利用多元宣導方式，提升各界平權意識

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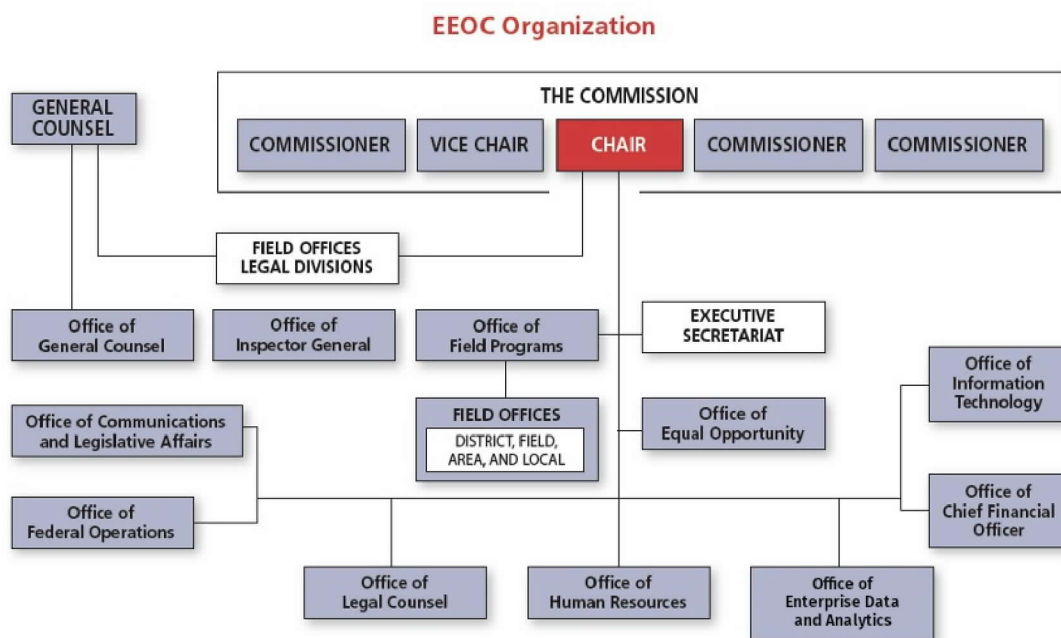
壹、出國目的

一、美國公平就業機會委員會簡介

美國公平就業機會委員會(Equal Employment Opportunity Commission, EEOC)係依據 1964 年民權法第 7 章 (Title VII of the Civil Rights Act of 1964) 設立之獨立聯邦執法機構，負責執行聯邦政府有關公平就業機會(Equal Employment Opportunity, EEO)之各項法律，目的在促進公平就業機會，防制就業歧視，禁止雇主因求職者或受僱者之種族、膚色、宗教、性別(包括懷孕、性別認同及性傾向)、國籍、原始國籍(National Origin)、年齡(40 歲以上)、身心障礙及基因資訊(Genetic Information)而予歧視或差別待遇。EEOC 於 1965 年開始運作，由 5 位總統提名並經參議院同意任命之委員組成，委員任期 5 年，同一政黨者至多 3 人，主席由總統提名並經參議院同意任命，並設置檢察長(Inspector General)一名，負責指揮檢察辦公室(Office of Inspector General)及各地區辦公室檢察人員辦理違反 EEO 法律之案件。EEOC 另設置法律總顧問一名，提供法律專業協助，並負責處理訴訟事宜。檢察長及法律總顧問亦由總統提名經參議院同意任命，任期為 4 年。

EEOC 之主要職責係執行聯邦政府之 EEO 相關法律，主要包括 1963 年同酬法(Equal Pay Act)、1964 年民權法第 7 章 (Title VII of the Civil Rights Act of 1964)、1972 年公平就業機會法(Equal Employment Opportunity Act)、1978 年懷孕歧視法(Pregnancy Discrimination Act)、1991 年民權法(Civil Rights Act of 1991)、1967 年就業年齡歧視法(Age Discrimination in Employment Act)、1973 年復健法(Rehabilitation Act)第 501 條及 505 條、1990 年美國身障人士法(Americans with Disabilities Act)第 1 章，以及 2008 年反基因資訊歧視法(Genetic Information Non-Discrimination Act)第 2 章。EEOC 並負責監督和協調所有聯邦政府的 EEO 規定、措施和政策，以及

決定是否提出訴訟。一般而言，EEOC 對申訴案件的救濟處理程序包括調解、和解、勸服、行政救濟及訴訟，其職責範圍包括促進公、私部門公平就業機會，公部門及私部門受僱者就業歧視之申訴案件分別由不同制度及程序處理。

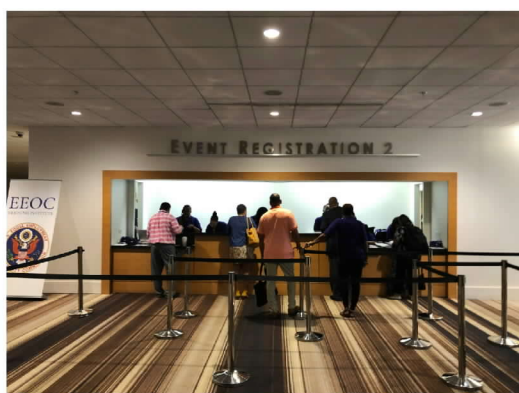


二、出國目的

我國促進公平就業、禁止就業歧視及職場性騷擾防治等事項主要由就業服務法、性別工作平等法及身心障礙者權益保障法規範。為保障國民就業機會平等，我國就業服務法第 5 條第 1 項明定雇主對求職人或所僱用員工，不得以種族、階級、語言、思想、宗教、黨派、籍貫、出生地、性別、性傾向、年齡、婚姻、容貌、五官、身心障礙、星座、血型或以往工會會員身分為由，予以歧視。另為保障性別工作權之平等，消除性別歧視，促進性別地位實質平等，我國性別工作平等法亦訂定性別歧視之禁止、性騷擾之防治及促進工作平等措施等專章規範相關事宜。此外，身心障礙者權益保障法第 16 條第 1 項明定，對身心障礙者接受教

育、應考、進用、就業、居住、遷徙、醫療等權益，不得有歧視對待。另為因應高齡化及少子化之社會趨勢，提升勞動力參與，我國刻正推動制定「中高齡者及高齡者就業法」，並於草案中納入禁止就業年齡歧視專章規範，以加強促進中高齡者及高齡者投入勞動市場，提升勞動參與率。

美國以英屬殖民地獨立建國，建國之初除了美國原住民外，所有美國人都是來自不同國家和種族之移民和移民的後代，自建國以來，合法移民一直是人口增長和文化變革的主要來源，故包含種族歧視等各項歧視議題一直為各界關注，公平就業的保障亦成為美國政府及民眾高度重視之政策。美國有關 EEO 之立法及制度，自 1965 年 EEOC 成立以來至今已超過 50 年，其所建構之歧視禁止規範、指導原則、申訴調查處理及救濟程序等公平就業制度建構亦屬完善，值得我國借鏡學習。為加強瞭解美國 EEO 相關法制、申訴處理程序、歧視案件認定實務及推動 EEO 之政策及措施，勞動部自 2016 年(第 19 屆)起派員參與 EXCEL 訓練會議，期能蒐集美國 EEO 相關最新法令及實務資訊，並透過參與會議，與美國公私部門專業人員交換經驗，建立友我人士聯絡管道，以利未來規劃及推動國際合作，促進我國相關勞動政策更具國際視野。



大會會議報到



協力廠商展示說明

貳、EXCEL 訓練會議議程

EEOC 每年舉辦之 EXCEL 訓練會議，是 EEOC 訓練學院最重要之訓練課程，主要參加對象包括美國聯邦機構及私部門中與 EEO 工作相關之官員(Equal Employment Officers)及專業人員，包括管理階層、調查人員、人力資源管理人員、律師、NGO 人員及替代性爭議解決辦法(Alternative Dispute Resolution)之執行人員。2019 年(第 22 屆) EXCEL 訓練會議於自 7 月 29 日至 8 月 1 日假美國喬治亞州亞特蘭大市(Atlanta, GA)舉辦，4 天訓練會議議程包含會前訓練課程、3 場全體會議及 72 單元之專題研討工作坊課程，涵蓋職場懷孕歧視、職場性騷擾、人口販運與 EEO 法規、原始國籍歧視、聽證程序及最新 EEO 法規及判決等多元議題。與會者透過檢視 EEO 重要法規及個案研討等方式，提升對於 EEO 相關規範之認識與瞭解，強化就業歧視申訴案件之調查、處理及個案認定等實務知能。

7 月 29 日為會前在職訓練課程，分為諮詢者在職訓練 (EEO Counselor Refresher Training)、調查者在職訓練 (EEO Investigator Refresher Training) 及替代性爭議解決辦法訓練(ADR Refresher Course)。報告人選擇參加調查者在職訓練課程，以瞭解及參考美國最新實務作法。本年調查者在職訓練課程以職場身心障礙歧視之認定及調查為範例，訓練內容包括：1.最新程序決定個案判決情形 2.最新具體決定個案判決情形 3.心理障礙之定義及歧視行為之判斷 4.心理障礙者之合理調整 5.發展及訂定歧視案件調查計畫 6.不同模式的證據 7.個案演練：發展訂定調查計畫及訪談問題 7.個案演練：進行有效的訪談。課程詳細說明最新判決情形及職場身心障礙歧視之定義、合理調整之內涵、進行個案調查之工具及技術、證人訪談技巧、培養調查人員之敏感度、各種取得具可信度證據之方法等。

自 7 月 30 日至 8 月 1 日共 3 日之專題研討會議，於每日上午 8 點 30 分至 10 點召開全體會議，邀請 EEO 相關領域之專家發表開幕主題演說，之後則有三個

時段之專題工作坊，同一時段辦理 9 場次不同議題之課程，與會者可依個人需求自由選擇參加。

EEOC 主席 Janet Dhillon 於 7 月 30 日蒞會致詞，D 主席係美國總統 Donald J. Trump 於 2017 年 6 月 29 日提名擔任 EEOC 主席，經參議院於 2019 年 5 月 8 日通過任命案，並於 2019 年 5 月 15 日起擔任 EEOC 第 16 任主席，任期至 2022 年 7 月 1 日。D 主席在私部門法律相關領域擁有超過 25 年的專業資歷，曾擔任 Burlington Stores, JC Penny, US Airways 等著名美國企業之高階法務、管理及副董事長等重要職務。D 主席致詞時表示，EEOC 主要職責之一為調查並起訴就業歧視案件，調查過程必須公平並考量證據效力及對受害人的不利影響程度，EEOC 並提供勞雇雙方法規諮詢、技術協助、教育訓練等措施，積極協助解決爭議。EEOC 未來將致力推動落實聯邦政府 EEO 相關法規，持續關注及努力提升勞工權益保障，除感謝與會相關人員對於促進美國公平就業目標的努力及貢獻，並勉勵各界與會者善用 EEOC 教育訓練資源，加強精進專業能力。報告人於開幕典禮會後向 D 主席致意，會議期間並就我國就業平等法制規範、促進性平工作平等措施及司法院釋字第七四八號解釋施行法立法情形向多位 EEOC 官員及與會專家交流請益，並表達日後我國如有相關業務疑義，期望能推動與相關單位更多交流合作機會。



報告人與 EEOC 主席 Janet Dhillon 開幕大會後合影



EEOC 主席 Janet Dhillon 蒞會致詞



Dr. Bernice A. King 專題演講

參、會議研討重點

訓練會議除開放部分學員參加之會前訓練及開放所有學員參加之全體會議以外，課程主軸為各專題工作坊，全程共計 72 單元之專題，由與會者依個人需求選擇主題參加。報告人選擇參加之專題討論課程主要包括懷孕歧視、身心障礙歧視、原始國籍歧視、職場性騷擾、調解制度等議題，會議研討重點摘述如下：

一、懷孕歧視

美國 1964 年民權法第 7 章 (Title VII of the Civil Rights Act of 1964) 適用於僱用 15 人以上之雇主，包括聯邦政府、各州及地方政府等亦適用(目前除了僱用 20 人以上之雇主適用年齡歧視規定外，其餘 EEOC 主管之各項就業歧視法規均適用於僱用 15 人以上之雇主)。該法禁止雇主對求職者及受僱者，基於種族、膚色、原始國籍、性別或宗教等因素，在就業決定上予以歧視。懷孕歧視亦屬性別歧視之一環，因懷孕、生產或相關的健康狀況而歧視，構成非法的性別歧視，懷孕及相關狀況的女性應受到和具有同樣能力或侷限的其他求職者或受僱者同樣的待遇。美國另於 1978 年通過懷孕歧視法案(Pregnancy Discrimination Act, PDA)，修正民權法性別歧視規範，明文規定雇主不得因受僱者或求職者懷孕、生產或相關醫療狀態而予進用、薪資、福利、升遷、解僱等就業方面之差別待遇，實務上亦包括騷擾之禁止，EEOC 判斷懷孕歧視案件係依個案情形查調瞭解其事實，並考量各項因素及影響程度，客觀審認。

自 2013 年以來，美國各州及地方政府亦陸續通過保障懷孕勞工的法令，例如紐澤西州(New Jersey)、明尼蘇達州(Minnesota)、西維吉尼亞州(West Virginia)、德拉瓦州(Delaware)、伊莉諾州(Illinois)、內布拉斯加州(Nebraska)、北達科他州(North Dakota)、羅德島州(Rhode Island)、紐約州(New York)、猶他州(Utah)、科羅拉多州(Colorado)、內華達州(Nevada)、華盛頓州(Washington)、康乃迪克州(Connecticut)、佛蒙特州(Vermont)、麻薩諸塞州(Massachusetts)、南卡羅萊納州(South Carolina)、北卡羅萊納(North Carolina)、肯塔基州(Kentucky)、奧勒岡州(Oregon)、紐約市(New York City)、費城(Philadelphia)、哥倫比亞特區(District of Columbia)等。各州議會通過這些法律的原因，係認為立法保障懷孕勞工將有助於達成落實聯邦法律、減少工作場所歧視、支持孕婦健康、促進女性經濟安全、協助女性持續參

與工作、降低商業訴訟成本、減少公共資源支出等經濟、健康及商業目的。課程講師民間團體 A Better Balance 工作和家庭法律中心律師 Elizabeth Gedmark 表示，美國民間團體刻正積極倡議推動制定聯邦「懷孕勞工平權法」(The Federal Pregnant Workers Fairness Act, PWFA)，盼能透過制定聯邦法規，明確規定雇主應提供懷孕勞工所需之合理調整(Reasonable Accommodation)、經濟保障以及就業的權利。目前美國懷孕歧視相關措施概述如下：

(一)僱用

孕婦只要能夠行使其工作的主要職能，雇主即不得因勞工懷孕相關的健康狀況而拒絕僱用，亦不得因其對懷孕勞工的偏見或其他勞工、主管或客戶對懷孕勞工的偏見而拒絕僱用。

(二)假期

雇主不得僅憑與懷孕有關的情況作為判斷受僱者工作能力或是否提供假期的特別方法，但是可以使用任何用來測定所有受僱者工作能力或是否提供假期的方式判斷。例如雇主如在批准病假或支付病假工資福利之前要求所有受僱者提供醫生證明的話，也可以要求受懷孕影響的受僱者提供這種證明。

如果受僱者因懷孕暫時不能提供勞務，雇主必需與對待其他暫時不能提供勞務的受僱者一樣地對待，例如變換工作，安排其他工作，批准無工作能力的假期或無工資假期。

懷孕的受僱者只要有能力工作就必須被允許工作。如果受僱者因與懷孕有關的狀況工作缺勤但已恢復，其雇主不得要求受僱者繼續放假直到孩子出生。雇主不得規定受僱者在產後一段預定時限內不能返回工作。雇主必要像保留因病或無工作能力休假的受僱者職位一樣，以同樣長的時間保留因懷孕缺勤的受僱者的職位。

(三)合理調整

雇主除應同等對待懷孕或生產婦女與其他有同等工作能力之受僱者外，並應提供懷孕及生產婦女更有利的對待及合理調整（Reasonable Accommodation），調整項目包括但不限於工作內容、工作時間、工作地點、休息時間等，例如讓該等勞工換班時可坐著休息一段時間、較多的盥洗室使用時間、較長的飲食休息時間、可隨身攜帶水瓶、服裝規定的彈性空間、有限度的搬運工作、轉任較少使用體力的班別、職務或工作地點、較短的工作時間規劃等，並允許孕婦使用座椅、椅墊、踩腳凳等必要的輔助工具，以維持健康舒適及工作效率。雇主如無法提供懷孕或生產婦女「無差別待遇」，則可能違反 PDA。除非有正當理由，雇主不能要求懷孕或生產婦女承擔較其他非懷孕或生產之受僱者更多的責任或負擔，否則亦可能違反 PDA 規定。

(四)健康保險

雇主提供的任何健康保險，必須以其他健康狀況同樣的費用承保標準負擔與懷孕有關的健康狀況的費用。除非母親的生命有危險，否則不得要求健康保險負擔墮胎費用。無論保險金額屬於固定金額或是合理的百分比及按照通常費用，與懷孕有關的醫療費用應該嚴格按照其他醫療費用辦法核銷。保險公司支付的費用只能按照其他醫療費用的限定標準規定，不可以強加額外、提高或擴大的自付額標準。如果健康保險計劃不包括負擔保險生效前的健康情況衍生的醫療費用，則可以不支付投保前開始的懷孕的醫療費用。雇主必須比照針對女性受僱者配偶提供保險一樣，為男性受僱者配偶提供同樣標準的保險。

(五)補貼

與懷孕有關的補貼不能只限於已婚受僱者，在都是女性受僱者的工作團隊或群體裏，如果為其他醫療狀況提供福利，則對與懷孕有關的健康狀況也同樣應該

提供福利。如果雇主向休假的受僱者提供任何福利，雇主也必須向因為懷孕而休假的受僱者提供同樣的福利。因懷孕失去工作能力的受僱者在年資累計、假期累積、增加工資及暫時無工作能力的福利等各方面，必須受到同其他暫時喪失工作能力的受僱者一樣的待遇。



課程講師 Elizabeth Gedmark 授課情形



Dr. Doris Kearns Goodwin 專題演講

二、原始國籍歧視(National Origin Discrimination)

1964 年民權法第 7 章保護個人在就業方面不受族裔背景以及種族、膚色、宗教信仰和性別的歧視。因為雇員或求職者的族裔背景而加以歧視係屬違法，任何人都不應該因為出生地、祖先、文化或某一民族共有的語言特點而被拒絕就業機會，也不應該因為與某族裔群體的成員結婚或聯合、成為弘揚某一族裔之團體的成員或與該團體聯合、出席或參與和某一族裔團體具關係的學校、教會、寺廟或清真寺、擁有某一族裔的姓氏等原因而被拒絕公平就業機會。原始國籍歧視包括對員工或求職者因其來自特定國家或地區、或因其種族或腔調，或因其外型看似某特定種族(即使他們不是)而給予不公平的對待，也包括因其與特定國家的人結婚而受到不公平的對待，歧視態樣包括因出生地、種族、文化、語言、服裝或外國口音而予以詆毀種族、工作場所塗鴉、肢體暴力或其他令人不愉快行為。法律禁止在就業各層面對於原始國籍的歧視，包括僱用、解僱、薪資、工作分配、昇遷、資遣、訓練、福利和其他與就業有關事項。

(一)語言上的歧視行為

語言上的歧視包括口音歧視(Accent Discrimination)、語言流利要求(Fluency Requirement)及只說英語的規定(English-Only Rules)：

1.口音歧視(Accent Discrimination)

雇主因為勞工的口音或說話方式而不給予就業機會或給予不利對待時，必須證明具有合理的非歧視性的理由，例如該工作職務必須具備有效的英語口語溝通能力才能有效執行工作，且外國口音將嚴重妨礙其口語溝通能力而影響工作效率。EEOC 個案調查側重該受歧視當事人的資格條件以及其口音和說話方式是否對行使工作職責有不利影響。

2.語言流利要求(Fluency Requirements)

一般而言，如係為有效達成特定工作職務之必須，語言流利要求可能是合法的，惟如果採取要求受僱者或求職者英語流利的規定以致排斥某一族裔背景的人員，而且此規定並非與工作職能有關，則可能違反民權法第 7 章，雇主應避免廣泛地要求所有工作職務的語言流利程度。課程講師 EEOC 芝加哥辦事處教育主管 Maria Flores 舉例，餐廳收銀員的工作需要與客戶對話，一般均具有基本的英語對話能力，但可能缺乏一定程度的英文讀寫能力，雇主要求收銀員應徵者提出英文讀寫能力證明則可能違法。惟雇主如要求擔任餐廳管理工作職務者需具備一定程度之英文讀寫能力，此為工作上必須具備之職能，則可能屬合法要求。

3.只說英語的規定(English-Only Rules)

要求受僱者在工作中只能說英語的規定可能違反民權法第 7 章，除非雇主可以證明這是工作需要，例如雇主要求受僱者與只會說英語的客戶、同事或主管溝通時必須說英文、基於緊急情況時的安全考量而要求受僱者使用能與一般人溝通的語言或能夠證明使用共同語言可增加工作團隊效率等，則可能屬合法行為。如

果雇主確信只說英語對工作是至關重要的，則應該告訴受僱者什麼時候必須說英語，以及違反規定的後果。雇主如果沒有告訴受僱者這一規定，任何由於違反只說英語的規定而造成的不利受僱者就業的決定將被視為歧視的證據。因許多在美國工作者的母語非英語，EEOC 建議雇主如採用只說英文的規定前，應先考量是否有其他更合適的做法，不應假定所有工作者都會說英文，並鼓勵雇主僱用懂雙語的主管及人力資源人員，減少工作團隊的溝通障礙。

(二)騷擾行為

因其族裔或原始國籍而擾騷受僱者或求職者亦違反民權法第 7 章，擾騷態樣包括以言語、笑話、塗鴉等方式貶低其原始國籍、腔調、種族、外觀及文化的言論。雖然法律沒有禁止單純開小玩笑、不友善的評論或是輕微的個別事件，但經常性地製造敵意或令人不愉快的工作境，或造成不利受害人的就業決定(例如解僱或降職)等騷擾行為仍然屬於違法。針對某人族裔背景的族裔性污辱謾罵或其他言語舉止如果形成恐嚇性、敵視或令人生厭的工作環境，不適當地防礙工作或影響個人的就業機會，即構成騷擾。雇主有責任保持工作地點沒有針對族裔背景的騷擾，採取適當的措施預防和改正違法的騷擾行為。對於代理人或擔任管理職的員工在工作中的騷擾行為，不論是否經雇主授權或禁止，雇主都可能負有責任。在某些情況下非員工對工作中受僱者的騷擾，雇主也可能負有責任。課程講師 EEOC 芝加哥辦事處教育主管 Maria Flores 舉例，一位來自西非甘比亞(Gambia) 的黑人穆斯林新移民，其工作場所主管經常性的以敵視語言(Offensive Comments) 評論該員工的原始國籍及宗教信仰，包括嘲笑其英語腔調、告訴該員工穆斯林能做的事情只有轟炸建築物和屠殺、應該回去非洲等不當言詞，EEOC 起訴雇主違反原始國籍及宗教騷擾規定，雇主最後以支付 7 萬 5 千美元結案。

(三)與公民身份及移民狀態有關的歧視行為

1986 年移民改革與控制法(The Immigration Reform and Control Act of 1986, IRCA)要求雇主證明所有 1986 年 11 月 6 日以後僱用的員工都有在美國合法工作的權利，同時禁止雇主基於個人的公民身份或移民身份狀態而於僱用、解僱、招募等方面之歧視，相關案件主要由美國司法部調查及處理。該法禁止基於出生國背景或國籍的歧視，雇主如針對某特定出生國背景的求職者或者看起來像是來自外國的求職者，要求其提供工作證明、其他求職者無需提供或不同之證明文件、特定的移民文件或給付一定的費用，即可能違反移民政策與控制法與民權法第 7 章。除非是基於法律(Law)、規則(Regulation)、行政命令(Executive Order)、政府契約(Government Contract)等規定，依法規或契約要求特定工作或就業機會僅限具美國公民身份者或具美國公民身份者有優先權，否則雇主可能違反該法律。如果要求或優先權是出於對特定出生國背景的人的歧視，雇主也可能違法，違法之雇主將被處以民事罰金(Civil Penalty)且應在美國司法部監督下訓練其員工有關規範。



National Origin Discrimination & Immigration: Related Unfair Employment Practices 課程講師Maria Flores(圖左)及 Jenna Grambor(圖右)授課情形

三、職場性騷擾

美國 1964 年制定民權法第 7 章 (Title VII of the Civil Rights Act of 1964) 時，「性別歧視」已列為就業歧視禁止項目之一，所稱「性別歧視」亦包括職場性騷擾之禁止。EEOC 於 1980 年代即認定職場性騷擾係違反人權法案第 7 章並頒布指導原則 (Guidelines)，該指導原則除定義職場性騷擾行為外，並提出職場性騷擾構成要件之判斷原則，依案件情形及發生背景等個案事實綜合判斷，EEOC 所訂指引及相關見解除為各 EEO 人員執行及推動各項就業平等業務之準則外，亦已為各級法院審判相關案件之重要依據。

(一)性騷擾的定義

性騷擾係違反 1964 年民權法第 7 章性別歧視規定，不受歡迎的性接近、性要求和其它與性有關的語言或行動，如順從或拒絕這種行為，將明顯地或暗示性地影響個人就業，不適當地干擾個人工作表現，或者造成恐嚇性、敵視性或令人生厭的工作環境時，則構成性騷擾。EEOC 由相關案件歸納出下列類型性騷擾：

1. 「性交易」類型的性騷擾：

包括把不受歡迎的性接近、性要求和其他與性有關的言語或行動，通過明示或暗喻的方式作為就業的條件，或把服從或拒絕這類行為作為決定個人就業的根據。其中不受歡迎的性接近係指性相關行為只在不受歡迎時才不合法，受到指控的行為必須是不受歡迎的，當事人並未要求或鼓勵這種行為，並且視其為不良或討厭的行為

2. 敵視環境類型的性騷擾：

不受歡迎的性接近、性要求和其他與性有關的言語或行動，其目的或結果不適當地干擾了他人工作，或造成恐嚇、敵視或令人生厭的工作環境。

3. 徇私獎賞型的性騷擾：

主管僅獎賞順從其性要求的受僱者，不順從主管性要求的受僱者則受到不平等對待，無法獲得獎賞或升遷的機會。

4.非單位內人員的性騷擾：

不只是上下屬或同事間會發生職場性騷擾，受僱者亦可能因執行職務受到服務單位以外之人的性騷擾，例如客戶、合作廠商或一般公眾。女性通常是這類事件的主要受害者，但也有可能發生在同性之間，此類性騷擾事件也被視為一種性別歧視。EEOC 講師 William Cash, Jr.以美國零售商 Big Box Store 個案為例：

(1)該公司員工 L 小姐負責客戶退貨服務工作，客戶 C 先生向公司辦理退貨時透過員工名牌知悉 L 小姐姓名，此後即在辦公室、倉庫間及停車場多次藉故攀談，並詢問許多與工作無關之私人問題，L 小姐均回復上班時間無法談無工作無關之事，惟騷擾仍不斷發生，C 先生一再詢問 L 小姐來自哪個國家、目前住在哪裏、生日及年齡、是否還有在其他地方工作、有沒有男朋友、是否有欣賞的男性同事、覺得什麼樣的男性最有吸引力、如果有男朋友的話假日會做什麼事情等，並稱讚 L 小姐漂亮、性感且身材好，主動提供電話號碼，且數次試圖進行肢體接觸，L 小姐感到非常害怕，不敢獨自前往停車場或單獨在辦公室及倉庫間。

(2) L 小姐 2 個月後向雇主反應受到客戶性騷擾，並要求公司提供較接近辦公室的停車位，公司主管表示將協助處理，但無法提供接近辦公室的停車位，之後 L 小姐由其父親接送上下班。公司主管約談 C 先生並請渠避免與 L 小姐見面及談話，但 C 先生表示美國是自由的國家，他有權去任何地方見任何人，拒絕公司主管的要求。L 小姐知悉公司無法處理後逕向警察局報案，當伊與主管在倉庫間工作時接獲警察局來電詢問案情，L 小姐掛斷電話後，主管即當面向 L 小姐咆哮大喊請她「對 C 先生友善點」(Be Friendly to Mr. C)。

(3) L 小姐申請獲得「禁止接觸命令」(No Contact Order)後，公司地區副總經理才正式致函C先生，表示公司已知悉L小姐向公司主管及警察局的申訴案件，正式要求 C 先生轉至其他分店採購，C 先生之後於其他分店遇見 L 小姐與伊父親，當場忿怒的對 L 小姐大聲吼叫，公司於接獲通報 2 天後終止 C 先生的客戶會員身份。之後 L 小姐開始請病假，最後因請無薪病假超過 12 個月遭到公司解僱。

(4)EEOC 代表 C 小姐向公司提起訴訟，認為公司創造和容忍由客戶造成的具性別敵意的工作環境、性別上的敵意評論、不受歡迎的接近、不受歡迎的碰觸及不受歡迎的跟蹤，同時指控公司惡意解僱 L 小姐，本案最後由 EEOC 獲得勝訴。

5. 言語的性騷擾：

言語亦可能構成性騷擾，EEOC 對整體情況進行評估，查明所述言語的性質、重復率、前後情況、意指對象等。相關因素可能包括：(1)所說言語是否為敵視性及貶低性；(2)被指控的騷擾者是否專門針對申訴者；(3)申訴者是否參與對話；(4)申訴者和被告騷擾者之間的關係。

除了美國國邦法規，各州或地方政府亦可訂定性騷擾相關規範，例如加州州法將性騷擾定義為不受歡迎的性挑逗或語言上、視覺上或肢體上具有性本質或其他基於性的行爲，性騷擾的態樣包括但不限於下列情形：1.要求性方面的好處或不受歡迎的性挑逗;2.提供工作上的利益，以換取性方面的好處;3.在提出性挑逗得到負面回應之後作出或遭到威嚇性報復;4.言語騷擾（例如：圖像評論、詆毀評論、性暗示或猥褻笑話或電話聯絡);5.肢體騷擾（例如：侵犯、妨礙或阻礙舉動、姿勢，或任何人身干擾影響正常工作或活動);6.視覺騷擾（例如：不懷好意的目光、詆毀性或與性有關的不雅電郵、海報、信件、詩詞、塗鴉、漫畫、

電腦螢幕保護或圖畫)。

在有關不受歡迎之行為的確認問題上，如果出現相互矛盾的證據，EEOC 審查全部記錄和整體情況，以具體案情為基礎考慮每一個案子。通過調查應該確定受害人關於性行為不受歡迎的說法是否前後一致。受害人可以是女性或男性，且未必一定是異性，亦未必一定是被騷擾的人，而可以是任何受到此非禮行為影響的人。騷擾人可以是女性或男性，可以是受害人的主管、雇主代理人、其他領域的主管、同事或非雇員。



Tricky HR Scenarios: Sex Discrimination 課程講師 William Cash, Jr., Cynthia Nance, 及 Daniel Herrington 授課情形

(二) 雇主責任判斷

雇主責任之判斷，則是根據性騷擾行為人是否屬被害人之主管(supervisors) 或雇主代理人(agents)、同事(co-workers or fellow employees)或非受僱者

(non-employees)等身分，而分訂不同之責任。行為人如為雇主本身、主管或具有雇主代理人身分時，則被指控之行為不論是否為雇主授權、明確禁止、實際知悉或推定應知悉此種行為之發生，均應由雇主負絕對之法律責任。至於同事間或非受僱者發生性騷擾行為時，雇主之法律責任則可能相對減輕。EEOC 在處理此類案件時，通常都會考慮雇主能夠掌握全局之程度，以及其所應負擔之其他法律責任等。前開指導原則除建立相關事件判斷原則，釐清雇主應負擔法律責任，並建議雇主採取性騷擾防治措施，EEOC 亦陸續發布相關政策指導原則(Policy Guidance and Enforcement Guidance)，以利雇主訂定內部相關政策及處理爭議案件。

是否構成「敵視環境(hostile environment)」亦為判斷雇主責任的要件之一，EEOC 判斷是否存在敵視環境時，主要考量以下因素，根據整體情況進行評估：(1)相關行為是言語或行動，或兩者均有；(2)此類行為的重復頻率；(3)行為是否有敵視性或明顯的令人生厭；(4)騷擾人是否為同事或主管；(5)是否有其他人參與，致使騷擾不斷出現；(6)騷擾對象是一人或是多人。如須確定敵視境，通常要顯示有重復性的非禮行為，但是單一的、非常嚴重的騷擾，也足以構成對違反民權法第 7 章。騷擾的情節越嚴重，則越不需要顯示有重復行為，身體騷擾尤其如此。EEOC 認為不被歡迎的故意觸摸申訴人的身體隱私部位或以觸努受害人，以致改變他/她的工作環境，則構成違反民權法第 7 章。

在性騷擾案件調查過程中，EEOC 之角色除了確定是否構成「敵意性工作環境」外，亦須確認雇主是否採取了立即有效之糾正補救措施。因此，調查之證據應包括：事件發生始末、不舒服感覺之確認、行為之嚴重性及發生頻率、雇主之預防及糾正補救措施為何、受僱者未能從中獲益之原因等。至於何謂立即有效之

糾正補救措施，應包括雇主應及時介入調查、避免類似行為再度發生、提供受害者適度的關懷、相關協助及工作調整、避免雙方報復等。

(三)預防性騷擾

1. 雇主預防性騷擾的措施

預防是杜絕工作環境中性騷擾最好的工具，EEOC 鼓勵雇主採取一切必要的措施預防性騷擾的發生。有效的預防計畫應該包括明確反對性騷擾的政策，明確和定期向受僱者說明，並且有效的執行。雇主應該對主管及非主管明確提出相關規定，嚴格禁止，並且說明對騷擾行為的懲罰。

2. 申訴程序

雇主應該有解決性騷擾申訴的程序，程序設置應該鼓勵性騷擾的受害人出面檢舉，不應該要求受害人先向有非禮行為者之主管表示不滿，雇主可以建立有效的申訴或投訴程序，當受僱者申訴時立即採取適當的行動，並應該盡可能做到保密，提供有效的解決措施，保護受害人和證人不受打擊報復。

3. 處理程序

如果雇主認定已經採取解決措施，EEOC 將進一步進行調查，確認措施是否及時、適當和有效。EEOC 於調查性騷擾申訴案件時，會參考相關資料及紀錄，包含性騷擾行為的發生、背景及申訴者所指稱之內容等，雇主應於員工申訴時，立即採取適當之行為。如果 EEOC 確定騷擾已經消除，受害人得到補償，預防措施亦已確立，EEOC 將因雇主已經及時採取解決措施而對此申訴案結案。

4 向 EEOC 申訴之時間限制

性騷擾受害人應直接告訴騷擾者其行為不受歡迎，必須停止。受害人告訴對方其行為不受歡迎，這非常重要，尤其是在被舉報的騷擾者可能有一些理由認為他的的性接近可能受到歡迎時更是如此。但是只要性騷擾受害人的行為表明不歡

迎騷擾者的行為，則不須要總是直接向騷擾者說明。受害人亦應利用現有的僱主申訴機制或投訴制度，如果這些辦法都無效，受害人則應該盡快向 EEOC 申訴。而性別歧視申訴必須在歧視發生的 180 天內向 EEOC 提出，如果在在的州或地方有執行同樣反歧視法律的公平就業機構，則可以在 300 天內向 EEOC 提出申訴，EEOC 建議在認為發生歧視後立即與 EEOC 聯繫。



EEO Landmines: High Risk Areas 課程講師 Debra Finney 及 Travis Nicholson 授課情形

四、調解制度

(一)私部門救濟程序

私部門就業歧視受害人向 EEOC 各地辦事處或地區辦公室提出申訴後，EEOC 將檢視申訴內容是否符合管轄法令、申訴時效及違法要件等，如判定申訴內容未違反相關法令，即不予受理。如發現違法可能，EEOC 將在 10 天內寄送受理申訴編號予申訴人及僱主，EEOC 將優先處理相關事實顯示可能已經發生的

重大歧視案件，如屬需要進一步確認相關事實的申訴案件，將再進一步進行調查，雇主應配合協助調查，提供相關資料、證詞或是同意調查人員進入相關設施。如果 EEOC 認為進一步調查也不可能證實有違反相關法令的情況，則可能隨時停止審理申訴案件。另在申訴方和雇主都同意的情形下，EEOC 亦可能要求或同意雙方選擇以調解(Mediation)的方式，自願性和解以解決爭議，而以調解替代調查的程序，更能快速處理爭議。如果經調解失敗，則 EEOC 將恢復審理申訴案件。另在申訴方和雇主都同意的情況下，EEOC 在調查過程中可以隨時終止並結案，若無先期和解則將繼續調查。

在經過適當調查後，EEOC 可能決定歧視已經發生或因為證據不足以證明歧視，則可能隨即結束審理申訴案件。EEOC 停止審理後，將發給申訴方「有訴訟權利通知(Notice of Right to Sue)」。如果裁定歧視，EEOC 將通過調解為申訴方尋求補償，如果補償內容調解不成功，EEOC 可能對雇主進行訴訟，如果申訴方不滿意 EEOC 的努力，亦可以在接到「有訴訟權利通知」後 90 天內對雇主提出訴訟。如果確定受到歧視，當事人有權獲得相關補償，例如安排在若未發生歧視原本可以安排的工作職位，以及僱用、晉升、恢復原職、補發薪資或其他經濟賠償，亦可能有權要求賠償歧視發生後的經濟損失、精神損失等補償。如果雇主惡意或肆無忌憚地無視勞工的權利，也可能處以懲罰性賠償。

(二)公部門救濟程序

EEOC 設有「聯邦事務辦公室(Office of Federal Operations)」負責聯邦政府 EEO 事務，每個聯邦機構亦設置 EEO 專責辦公室(EEO Office)辦理該機構 EEO 相關工作。聯邦機構之受僱者或求職者如發生就業歧視事件，應於發生日 45 天內與該機構的 EEO 辦公室聯繫，該機構 EEO 顧問(EEO Counselor)將提供相關諮詢意見，或提供 ADR 的選項(例如調解程序)。經由機構內 EEO 顧問的諮詢或 ADR 程序仍

未能解決爭議，即可於收到 EEO 顧問通知關於提出申訴事宜之日起 15 天內，向 EEOC 的「公平就業機會辦公室(Office of Equal Employment Opportunity)」提出對該機構的正式就業歧視申訴。EEOC 將於 180 天內完成調查工作，調查結束後將通知申訴者選擇由 EEOC 行政法官進行聽證會或針對是否違反法令作出決定。若最後 EEOC 行政法官做出之決定判定被申訴人未違反任何 EEO 法規，或申訴者不認同部分決定內容，申訴者可逕向聯邦地方法院提出上訴。若經 EEOC 行政法官判定違反 EEO 法規，被申訴機構於收到 EEOC 發出之解除或補償命令後，應於 40 天內通知(Final Order)申訴者該機構是否同意行政法官所作成之決定並執行相關措施。

(三)調解制度

調解制度是 EEOC 提供的代替傳統式調查或訴訟程序的替代性爭議解決方式。調解係屬非正式程序，在調解過程中，由中立的第三者協助對立雙方透過協商，自願達成對歧視申訴案件的解決方法。而是否採取調解方法，完全由提出申訴的一方和雇主自願作出決定，調解使雙方有機會討論申訴案件有關的疑問或澄清誤解，確認雙方根本的利益或關切事項，尋求共識領域，最終可將此類共識領域納入解決方法。調解人之功能並非決定申訴案件對錯或要求當事人雙方強制執行其決定，而係協助雙方當事人尋求皆能接受的解決方案並達成協議。調解程序應嚴格保密，在調解中透露的資訊不會向任何人，包括 EEOC 的其他工作人員。

調解的運作方式係先由 EEOC 的代表與提出申訴的一方及雇主聯繫，詢問其是否願意參加調解計劃，如雙方均表示同意參加，則由 EEOC 安排一名訓練有素且經驗豐富的調解人主持調解會議。參加 EEOC 的調解計劃無須律師或其他代表共同參與，但是任何一方均可決定委派此類代表參加，參加調解程序者必須有權解決爭議。如果調解不成功，則 EEOC 將持續針對申訴案件進行與任何其他申

訴一樣的調查。EEO Investigator Refresher 課程講師 Timothy Bladk 列舉指出參加調解的優點如下：

- 1.調解是一項高效的程序，省時省錢。成功的調解可避免曠日持久的調查，並能夠及時解決申訴案。大多數調解都在一次會議中完成，通常持續1到5個小時。
- 2.調解是公平的。調解人是中立的第三者，他們與結果並無利害關係。他們的功能是幫助雙方解決申訴案件。
- 3.調解程序是保密的。調解過程不予錄音或記錄。調解時記錄的筆記會被丟棄。
- 4.調解時達成的和解不等於雇主承認其違反了 EEOC 執行的任何法律。
- 5.調解避免了漫長和不必要的訴訟。



EEO Investigator Refresher 課程講師 EEOC 法律顧問 Timothy Bladk 與學員互動場景



報告人與課程講師 EEOC 法律顧問 Timothy Bladek 合影



報告人於會場留影

肆、心得及建議

美國之就業歧視禁止法制，立法形式包括聯邦立法及各州立法，EEOC 係獨立的聯邦執法機構，執行所有聯邦政府的 EEOC 相關法律，負責監督和協調所有聯邦政府的 EEO 規定、措施和政策，並調查受到種族、膚色、宗教、性別(包括懷孕、性別認同及性傾向)、國籍、原始國籍(National Origin)、年齡(40 歲以上)、身心障礙及基因資訊(Genetic Information)等歧視申訴案件，受害人之救濟程序包括調解、和解、勸服和行政救濟等，亦可向聯邦法院提起訴訟或由 EEOC 代為提出訴訟。EEOC 自成立以來即致力於消除就業歧視，除透過訂定各項 EEO 政策指導原則、相關法規參考手冊外，亦由 EEOC 訓練學院專責辦理相關執法人員訓練課程，推動多元化的政策宣導及各類教育訓練工作，提升相關人員專業知能，俾利推動落實法令規定。我國法制雖與美國制度不同，但美國積極推動就業平等、防制就業歧視相關實務作法，仍有許多值得我國參考借鏡之處。報告人就參與

EXCEL 訓練會議課程及與會交流情形，提出對我國推動就業平等法制及實務作法之建議如下：

一、客觀審認及調查懷孕歧視

我國性別工作平等法第 11 條規定：「雇主對受僱者之退休、資遣、離職及解僱，不得因性別或性傾向而有差別待遇。工作規則、勞動契約或團體協約，不得規定或事先約定受僱者有結婚、懷孕、分娩或育兒之情事時，應行離職或留職停薪；亦不得以其為解僱之理由。違反前二項規定者，其規定或約定無效；勞動契約之終止不生效力」。我國係參考歐美先進國家處理懷孕歧視之經驗及作法，將懷孕歧視視為「性別歧視」類型之一，倘雇主因受僱者懷孕而為退休、資遣、離職及解僱之差別待遇，即違反性別工作平等法第 11 條；雇主如於工作規則、勞動契約或團體協約規定或事先約定受僱者有結婚、懷孕、分娩或育兒之情事，應行離職或留職停薪或為解僱之理由時，亦違反該條規定。我國處理懷孕歧視時，係以探究雇主於知悉受僱者懷孕前後之差異性、雇主對於相似情形受僱者之處置方式等，以為認定懷孕歧視「差別待遇」之參據。美國實務上則從僱用、假期、合理調整、健康保險、補貼等各不同面向，依個案情形調查瞭解其事實，並考量各項因素及影響程度客觀審認，其調查方式及個案判斷內涵均值得我國參考學習。

二、參考禁止原始國籍歧視規範意旨及作法，加強保障勞工權益

美國原始國籍歧視定義包括對員工或求職者因其來自特定國家或地區、或因其種族或腔調，或因其外型看似某特定種族(即使不是)而給予不公平的對待，也包括因其與特定國家的人結婚而受到不公平的對待，歧視態樣包括因出生地、種族、文化、語言、服裝或外國口音而予以詆毀種族、工作場所塗鴉、肢體暴力或

其他令人不愉快行為，禁止在就業各層面對於原始國籍的歧視，包括僱用、解僱、薪資、工作分配、昇遷、資遣、訓練、福利和其他與就業有關事項。而我國就業服務法第 5 條第 1 項亦明定雇主對求職人或所僱用員工，不得以種族、階級、語言、思想、宗教、黨派、籍貫、出生地、性別、性傾向、年齡、婚姻、容貌、五官、身心障礙、星座、血型或以往工會會員身分為由，予以歧視，其禁止歧視之內容已包括原始國籍歧視之內涵，例如種族、言語、宗教、出生地等。美國所稱原始國籍歧視和種族、言語、宗教、出生地等歧視高度相關，惟其更著重於對非美國出生、祖先來自不同地區、非以英語為母語以及尚未取得公民身份之工作者進一步之保障，我國可參考相關作法加強對新住民或非本國籍勞工之保障。

三、研議性騷擾行為人之處理機制，強化勞工保障措施

我國性別工作平等法第 13 條第 1 項及第 2 項規定：「雇主應防治性騷擾行為之發生。其僱用受僱者 30 人以上者，應訂定性騷擾防治措施、申訴及懲戒辦法，並在工作場所公開揭示。雇主於知悉前條性騷擾之情形時，應採取立即有效之糾正及補救措施。」違反上開規定之雇主，依同法第 38 條之 1 規定，處新臺幣 10 萬元以上 50 萬元以下罰，並應公布其姓名或名稱、負責人姓名，並期令其改善；屆期未改善者，應按次處罰。

倘性騷擾行為符合性騷擾防治法第 25 條性騷擾罪、刑法第 315 條之 1 妨害秘密罪、刑法第 309 條公然侮辱罪、刑法第 310 條毀謗罪及刑法第 234 條公然猥褻罪或其他法令規定，受害人可向警察機關或有關單位報案，或至地檢署按鈴申告或遞狀提告。我國現行性別工作平等法係課雇主防治職場性騷擾之責任，規定雇主於知悉性騷擾之情形時，應採取立即有效之糾正及補救措施，惟該法並無明文規定性騷擾行為人之處罰標準或內容，性騷擾行為人之懲戒辦法亦由雇主訂定而非依法論處，即職場性騷擾行為如經調查屬實，雇主應視情節輕重，對行為人

為適當之懲戒或處理，惟雇主亦可能為職場性騷擾行為人，雇主如何訂定懲處雇主之辦法，實務上恐有疑義。

美國 EEO 相關法制亦課雇主防治職場性騷擾之責任，雇主應制定工作場所預防性騷擾政策(Sexual Harassment Policy)，當有員工進行內部申訴時，雇主應進行調查及確認是否有性騷擾的情形，如發現性騷擾確實存在，則應採取立即及有效的措施消除不受歡迎的行為，並依工作場所預防性騷擾政策或相關內部規定懲處職場性騷擾行為人，EEOC 判斷雇主是處理職場性騷擾情形否符合 EEO 法令係以其控制能力及所採取之措施而定，雇主如在受害人申訴前發現性騷擾情形，亦應主動進行處理，並有責任採取必要措施確保未來不會有更進一步的騷擾情形。惟美國 EEO 法令亦無規定對於職場性騷擾行為人之處罰標準，主要仍依雇主所訂相關規定辦理，如該性騷擾行為涉及其他民事、刑事或行政上之法律責任，則移由相關單位依法處理。我國可參考美國實務作法研議雇主為性騷擾行為人時之適當處理機制。

四、加強辦理職場平權教育訓練，落實法令規定

我國就業歧視申訴案件之受理及就業歧視成立與否，係由各地方勞工行政主管機關設置之就業歧視評議委員會或性別工作平等會依相關規定及個案事實認定，目前對於各項歧視之實質內涵定義及認定標準尚無建立通用準則，其法規適用、具體事證之查明及認定等處理過程可能面臨困難。為提升我國辦理職場平權業務人員之專業知能，勞動部每年皆與地方勞工行政主管機關合作辦理職場平權暨性騷擾防治研習會及自辦法令研討會，邀請各地區事業單位人力資源相關人員參與，另亦辦理職場平權暨性騷擾種子師資培訓研習，期透過法令之宣導及實務案例宣導及訓練，落實立法意旨，強化性別工作平等法及就業服務法就業歧視禁止之實務操作知能，促進無歧視之職場環境。

美國實務上許多就業歧視或騷擾事件受害者不會向 EEOC 提出申訴，甚或向同事、朋友、家人等揭露歧視或騷擾情形，故 EEOC 認為就業歧視及職場性騷擾防治之教育訓練為減少相關案件的重點工作之一，不斷的透過教育工作提升預防意識，與各界共同努力遏止就業歧視發生。雖然勞動部未設置如 EEOC 訓練學院之專責訓練機構，惟就訓練辦理方式，建議未來可參考美國作法，以工作坊方式辦理並著重於個案討論，除增進勞工行政人員對現行法規之基礎認識，亦可將個案研討模式納入課程規劃，討論各地方勞工行政主管機關實務上常見或重要爭議問題案例，使受訓人員得依需求選擇課程，並重點加強其所缺乏之專業知能，另可邀請專家學者就學術上相關議題之研究結果及建議進行分享交流，以確實提升整體專業知能。

五、利用多元宣導方式，提升各界平權意識

隨著職場性別平權意識逐漸提升，許多國家政府皆持續立法推動各項母性保護措施以促進職場平權，並且針對違法雇主訂有罰則，而如何杜絕或減少歧視之發生，涉及民眾價值觀念與平權意識之提昇，報告人參與訓練會議期間，EEOC 講師及與會人員即不斷強調，透過持續且多元的宣導方式，促進社會各界對於職場平權之正確認知，消除對於各種身份背景受僱者之偏見及刻板印象，提升各界平權意識，方有利促進公平就業的工作環境。EEOC 主要即透過辦理相關活動、會議、製作文宣手冊，並利用網路傳播等多元方式加強就業歧視法令宣導，落實法令推廣，使大眾週知。勞動部近年職場平權法令宣導之形式日漸多元，除每年與地方勞工行政主管機關共同辦理職場平權暨性騷擾防治研習活動，亦透過網路、臉書、電影、廣播、簡訊、宣導短片、平面媒體、電視廣告等多元宣導管道，加強各界對職場平權相關規範及措施之瞭解，以提昇社會大眾職場平權意識，未來亦應持續透過多元有效之宣導方式，提升民眾平權意識。



報告人與美國社會安全署(SSA)等美國聯邦機構 EEO 官員會後聯誼餐敘合影



報告人與 EEOC 官員 Michael Rojas 合影



報告人與美國社會安全署(SSA)EEO 官員 Jacqueline Johannes 合影

伍、附錄

美國公平就業機會委員會(EEOC) 2019 年公平就業法規檢視 訓練會議(EXCEL Training Conference) 議程

2019 EXCEL TRAINING CONFERENCE AGENDA (EXamining Conflicts in Employment Law)

The EXCEL Training Conference is where Equal Employment Opportunity (EEO), Human Resources (HR), and Alternative Dispute Resolution (ADR) practitioners from private and federal organizations gather for four days of outstanding education, training and professional development. There are three (3) plenary sessions and over seventy (70) open workshops that give participants the needed knowledge, and skills to enhance their performance, and meet the evolving demands of today's workplace.

The workshops are designated by attending audience to assist participants in selecting the most appropriate session. These designations are suggestions and participants are encouraged to explore the different open workshops. Participants are asked to select one open workshop from each of the sessions listed below. Plenary sessions occur on Tuesday, Wednesday and Thursday mornings.

SUNDAY, July 28, 2019 (Conference Registration Check In: 3:00PM - 7:00PM)

MONDAY, July 29, 2019 (Conference Registration Check In: 7:00AM - 5:00PM)

Pre-Conference Sessions:

EEO Counselor Refresher 8:00AM – 5:00PM

Claudine James and Marcus Artis

This course meets the annual eight-hour requirement for federal EEO counselors. Participants will receive instruction on recent developments in federal sector EEO and discuss how these changes affect the informal EEO complaint process. Participants will also practice their counseling and early resolution skills.

EEO Counselor Refresher 8:00AM – 5:00PM

Barbara Dougherty and Camella Woodham

This course meets the annual eight-hour requirement for federal EEO counselors. Participants will receive instruction on recent developments in federal sector EEO and discuss how these changes affect the informal EEO complaint process. Participants will

also practice their counseling and early resolution skills.

EEO Investigator Refresher 8:00AM – 5:00PM

Timothy Bladdek and Mark Ellison

This course meets the annual 8-hour requirement for federal EEO investigators. Participants will receive instruction on recent developments in federal sector EEO and discuss how these changes affect the formal EEO complaint process. Participants will also practice their investigation skills.

Litigating Before the EEOC and MSPB 8:00AM – 5:00PM

Diane Gross, William Macauley, Thomas Lanphear, Judge Silvia de la Cruz, Judge Sherry Linville, Judge Sharon Pomeranz

Get tips of what to do and what not to do in hearings before the EEOC and the MSPB. This session will cover discovery, summary judgment, mixed cases, mixed appeals, settlements and sanctions. 2

ADR Refresher Course 8:00AM – 5:00PM

Julie Procopiow Todd and Victor Voloshin

Modeled after EEOC's popular Counselor and Investigator Refresher courses, this course is geared toward the federal ADR community. Participants will receive instruction on recent developments in federal sector ADR, including relevant case updates, best practices, and new approaches to conflict management. Participants will also practice their conflict resolution skills. This course does **not** qualify as a basic mediation training.

Leading for Respect: How Supervisors and Managers Can Create Respectful Workplaces

8:30AM - 12:00PM

Carlisa Broadway

What's different? Rather than dwelling on legal standards and what NOT to do, this training will focus on WHAT TO DO – the words and actions that promote respect and fairness, and participants' responsibility for contributing to respect in the workplace. Supervisors practice skills in responding appropriately to employee complaints and discuss how they can create a sense of respect for their employees, focusing on the employee's perceptions of fairness and the supervisor's responsibility to respond with emotional intelligence. Finally, supervisors are taught simple but effective ways to coach employees whose behavior might be a problem – early intervention to nip problems in the bud before they rise to the level of illegal harassment. (Federal Managers and Supervisors)

Respect in the Workplace: Creating a Respectful Environment for all Employees

8:30AM - 12:00PM

Michael Rojas

What's different? Rather than dwelling on legal standards and what NOT to do, this

training will focus on WHAT TO DO – the words and actions that promote respect and fairness, and participants’ responsibility for contributing to respect in the workplace. Using case studies, trainees strategize about bystander intervention and ways to help others who may be behaving in ways that are disrespectful or who are being targeted by disrespect. Finally, they use a feedback model to practice both giving and getting feedback about behavior that is uncivil or disrespectful.

(Private Sector)

Respect in the Workplace: Creating a Respectful Environment for all Employees

1:30PM - 5:00PM

Carlisa Broadway

What’s different? Rather than dwelling on legal standards and what NOT to do, this training will focus on WHAT TO DO – the words and actions that promote respect and fairness, and participants’ responsibility for contributing to respect in the workplace. Using case studies, trainees strategize about bystander intervention and ways to help others who may be behaving in ways that are disrespectful or who are being targeted by disrespect. Finally, they use a feedback model to practice both giving and getting feedback about behavior that is uncivil or disrespectful.

(Federal)

Leading for Respect: How Supervisors and Managers can Create Respectful Workplaces

1:30PM - 5:00PM

Krista Watson

What’s different? Rather than dwelling on legal standards and what NOT to do, this training will focus on WHAT TO DO – the words and actions that promote respect and fairness, and participants’ responsibility for contributing to respect in the workplace. Supervisors practice skills in responding appropriately to employee complaints and discuss how they can create a sense of respect for their employees, focusing on the employee’s perceptions of fairness and the supervisor’s responsibility to respond with emotional intelligence. Finally, supervisors are taught simple but effective ways to coach employees whose behavior might be a problem – early intervention to nip problems in the bud before they rise to the level of illegal harassment. (Private Sector Supervisors and Managers)

TUESDAY, July 30, 2019

7:30AM – 8:30AM Continental Breakfast

8:30AM – 10:00AM PLENARY SESSIONS

9:00AM – 9:45AM *Dr. Doris Kearns Goodwin*

Public Speaker and Pulitzer Prize Winner

New York Times #1 Best Selling Author

9:50AM – 10:15AM *Ram (P G) Ramachandran, Program Director*

Accessibility Technology and Innovation, IBM

10:15AM - 10:30AM Mid-Morning Break

WORKSHOP SESSION I: 10:30AM – 12:00PM

A. Outsmarting Tricky Accommodation Issues

Christopher Kuczynski

This session will explore complex reasonable accommodation issues and provide both legal and practical approaches to resolving them using a series of real-life scenarios. Those attending should be familiar with the basics of reasonable accommodation law and policy. (Private/Federal)

B. Pregnancy Accommodation and the Changing Legal Landscape

Elizabeth Gedmark

An employee who is, was, or may become pregnant is protected from discrimination and harassment in the workplace. This presentation will examine recent trends and insights into pregnancy discrimination law. It will focus on three key areas: 1) how courts have been interpreting the Supreme Court's 2015 decision in *Young v. UPS* and the application of the Pregnancy Discrimination Act, 2) the growing number of states granting protections to pregnant workers, and 3) understanding new trends on the horizon regarding pregnancy discrimination law. (Private/Federal)

C. No Paper Resumes, Please: Age Discrimination in the IT Sector

John Wymer III

This panel will look at the special challenges that arise in the technology field for age-protected workers. The panel will focus on the assumptions and prejudices that inform hiring choices, difficulties in the IT sector with age discrimination claims, and how employers and employees can combat these stereotypes. (Private/Federal)

D. Operationalize Civility at your Organization

Stephen Paskoff, Esq.

The EEOC has recognized that to eliminate the bad behavior and incivility in a workplace, an organization must link daily behavior to mission effectiveness and organizational values. Accordingly, organizations looking to change behaviors should not only focus on stopping illegal behaviors but must also reduce inappropriate and unprofessional behaviors before they rise to the level of discrimination. In this interactive session, attendees will be provided with practical daily tips to create a civil workplace environment that won't cost anything. This workshop will also demonstrate how values, leadership, team responsibilities and specific actions build enduring and productive workplaces where individuals do their best work and achieve the best results.

(Private/Federal)

E. Advanced Topics and Tips for Practitioners at Hearing

Stephanie Herrera, Julie Schmid, and Diane Gross

Experienced practitioners will benefit from discussions on the following topics: destruction of evidence issues, the role of the Agency representation including intrusion, involvement in the reasonable accommodation process and what is protected, working with pro se Complainants, what happens when there is no articulated explanation, the scope of equitable relief, attorney's fees petitions, hearing tips and more. (Federal)

F. What's New in the Federal Sector?

Dexter Brooks, Carlton Hadden, Barbara Dougherty, and Robbie Dix III

Each year brings changes and improvement to the federal sector, and 2019 was no exception. In this session, EEOC senior leaders and federal sector staff will summarize the latest developments and outline a roadmap for 2019 and beyond. Come prepared with questions and expect to leave this session with a greater practical knowledge of how these changes and plans may affect your agency, clients and day-to-day workplace responsibilities. (Federal)

G. EEO Pre-Complaint Counseling: How to Get the Most Out of the Limited Inquiry

Virginia Andreu and Camella Woodham

EEOC MD-110 requires EEO counselors to conduct a "limited inquiry" during the pre-complaint process. But exactly what should this inquiry include and how extensive should it be? Because MD-110 affords agencies wide discretion in determining how to comply, questions continually arise. Attend this session to share your agency's experience

and policies, learn from your colleagues, and walk away with a better understanding on how to conduct an adequate, efficient and effective limited inquiry. (Federal)

H. Federal Sector Portal: What's New in FedSEP?

Miwa Vickovic and Alma Anderson

Are you a FedSEP user? Learn about changes and enhancements to FedSEP, including the deployment of a complementary Complainant Portal. (Federal)

I. Hard to Accept? A Discussion on Acceptance and Dismissal Issues

Timothy Bladek, Marqui Willoughby and Ingrid Dietsch Field

Are EEOC dismissals still a mystery to you? Are you not quite sure when it's appropriate to use certain dismissal regulations? If so, the numbers show you are not alone; in 2019, 34% of procedural dismissals were remanded on appeal. To help demystify the decision-making process, this session will look at dismissal regulations under 29 CFR 1614.107, discuss real accept/dismiss scenarios, and explore the reasoning behind the Office of Federal Operation's decisions to remand or affirm. (Federal)

12:00PM - 1:30PM Lunch

WORKSHOP SESSION II: 1:30PM – 3:00PM

A. ADA Case Updates

Christopher Kuczynski

Disability discrimination cases can be complex. Employers must be aware of the latest updates in case law on disability discrimination and issues impacting this area of law. This session will provide you with an analysis of significant cases and implications for employers. (Private/Federal)

B. Managing Up: Part I

Mary Abbajay

Whether we like it or not, our bosses have enormous influence over our ability to succeed and advance in our organizations, our careers, and in our own leadership journey. Whether reporting to a supervisor, middle manager, VP, top executive, or board of directors, managing up is a skill that we all need. The first part of this two-part course will focus on establishing strong, productive working relationships with those above us. Participants also develop skills to manage personality differences that impact manager/staff relationships. (Private/Federal)

C. Social Media in the Workplace

Debra Finney and Krista Watson

With almost three billion active social media users in the world today, social media is in the workplace. For employers, many issues can arise from an employee's use of social media. Issues of free speech, religion, race, etc. can result in workplace conflicts and complaints of harassment and discrimination. Employers are also utilizing social media as a tool to gather information about job applicants and employees. Learn when this use can be off limits and create legal issues for the employer. This session will cover these topics, weigh the pros and cons of social media and discuss how to manage the risk of social media use in the workplace. (Private/Federal)

D. Beyond the “Checked Box”: Race Inclusivity from Theory to Practice

Trenton Norman and Rebecca Brown Adelman

This session will explore the topic of race in the workplace using the interactive “Empty Chair” method. Through a facilitated opportunity to engage with a real-life theatrical situation, participants will learn from one another, without shame or blame, on how to create an inclusive and productive work environment. (Private/Federal)

E. Unpacking Race and Gender Discrimination as an Organizational Ombudsman

Dr. Bina Patel

This presentation will address sensitive issues that a neutral third-party ombudsman handles in relation to race and gender discrimination. The presentation will provide insight into the issue as well as present case studies to illustrate the effectiveness of the ombudsman's role. (Private/Federal) 6

F. Hold Your Tongue: The First Amendment and Employee Speech

Joseph Kaplan

This session will examine public sector employee speech in the context of the First Amendment to the U.S. Constitution. Since *Pickering v. Board of Education*, the Supreme Court has made it clear that public sector employees do not relinquish their free speech rights merely because they accept public sector employment. Taking action against employees for protected speech can land managers in hot water. On the other hand, there are limits on these speech rights that could land employees in trouble. This session will examine the predominant cases on free speech, discuss the intersection of these cases with the Whistleblower Protection Act and the Hatch Act and discuss how these cases may impact federal employees' use of social media to express their views. (Federal)

G. FAD Writing: Part I

Marqui Willoughby and Joel Kravetz

This is Part 1 of a two-part class and will focus on the regulatory requirements for FADs, the structure of a model FAD, and a discussion on the theories of discrimination (i.e., disparate treatment, harassment, reasonable accommodation), while leaving time for questions and discussion on the most challenging issues for FAD writers. (Federal)

H. Establishing an Effective Federal Agency Anti-Harassment Program

Marcus Artis

EEOC requires federal agencies to have internal anti-harassment policies and procedures that operate separately from the administrative EEO complaint process, and the U.S. Supreme Court has established that these policies/procedures may provide the agency with an affirmative defense to harassment claims. So why do so many agencies still lack adequate anti-harassment programs? Join EEOC experts for a nuts-and-bolts discussion covering the business case for such programs and a comprehensive update on EEOC's efforts to address federal sector workplace harassment, including a discussion of recent reports, cases and other initiatives. (Federal)

I. Litigating Damages in the Federal Sector

Gary Gilbert, Judge Timothy Hagan and John F. Dymond, Esq.

Often the focus of litigation is on liability and little regard is paid to damages. But damages are the terrain on which many cases are fought, and the terrain on which they are settled or pushed to a hearing. This informative panel will go beyond the basics to consider problems that present themselves in difficult settlement or litigation scenarios including mitigation of back pay, bumping of innocent beneficiaries, front pay, preexisting conditions, interim relief, and more. (Federal)

3:00PM - 3:30PM Mid-Afternoon Break

WORKSHOP SESSION III: 3:30PM – 5:00PM

A. Inclusion Strategies for a Multi-Generational Workforce

April Simpkins

For the first time in history, up to five generations of Americans are working side by side. This session will focus on how to recognize and incorporate the values, perspectives and contributions of each generation in order to create an inclusive work culture. The session offers practical strategies that effectively can be implemented both immediately and as part of a long-term strategic plan. (Private/Federal)

B. Managing Up: Part II

Mary Abbajay

The second segment of this course will focus on proven strategies and techniques to increase cooperation and collaboration between those who have different power levels, perspectives, and personalities. Participants will receive tools on how to navigate “difficult” boss behaviors and adapt to different leadership styles while taking ownership for their own professional success. (Private/Federal)

C. Mental Health: Successful Methods in Job Accommodations

Beth Loy

Do you experience challenges accommodating employees with mental health impairments? From the hiring process to on-the-job accommodations – including topics such as disclosure, attendance and conduct – a Job Accommodation Network (JAN) expert will provide guidance and share solutions to challenging issues that can help your workplace maintain a more inclusive and productive environment. (Private/Federal)

D. Building a Workplace Culture of Respect and Inclusion

Cathy Ventrell-Monsees and Elizabeth Owens Bille

Creating and fostering a culture of respect and inclusion is fundamental to preventing harassment in the workplace. Recent research shows that many employers are updating their policies and training, but surveys of employees report minimal progress in changing cultures that have tolerated harassment. Building on the work of the EEOC’s Select Task Force on Harassment and the work of other leaders in harassment prevention, join a panel of experts who will present strategies to promote respect, encourage reporting, and ensure accountability to build a workplace culture where harassment is not tolerated. (Private/Federal)

E. When Does Pressure to Mediate or Settle Become Coercion?

Dr. Timothy Hedeem

Mediation is touted as an effective and efficient process for voluntary dispute resolution. This interactive session will address the standards and ethics of mediation practice and will seek to discern the limits of encouragement to mediate, to remain at the table, or to reach agreement. Whether you mediate, advocate, or refer parties to mediation, come share your insights and learn new ones. (Private/Federal)

F. Why We Found Discrimination

John Henderson and Frances del Toro

Two Chief Administrative Judges will give specifics of why discrimination was found in real cases, discussing the fact scenarios and the problematic issues in the cases. (Federal)

G. FAD Writing: Part II

Marqui Willoughby and Joel Kravetz

In this second part of instruction on FAD writing, the class collectively will draft a sample final agency decision using principles from Part 1 and case file materials developed for this course. During this workshop, instructors will also introduce a model FAD as a basis for discussion on best practices and strategies on writing FADs. (Federal)

H. When is a Contractor Not a Contractor? When *Ma* Says So!

Ingrid Dietsch Field

Do you or your agency struggle to process claims from contractors? Does EEOC surprise you with its contractor decisions? From a detailed discussion of the *Ma* case factors to EEOC's views on what constitutes a joint employer, this session will explore all things related to properly accepting or dismissing claims filed by those working under contractor status. By using numerous scenarios and tips on researching and processing from EEOC, this session will provide a new measure of clarity to your next contractor case. (Federal)

I. Navigating PIPs and Performance Cases

Julie Rook Gold and Alexis Tsotakos

This presentation will focus on the challenges presented by PIP cases, including the interplay with other issues such as reasonable accommodations. Participants will learn how to implement and/or investigate PIPs where an employee needs an accommodation, or it is a mixed case issue, and what documentation is necessary to uphold a PIP. (Federal)

5:30PM – 6:30PM 2019 EXCEL Training Conference

Reception

WEDNESDAY, July 31, 2019

7:00AM – 8:30AM Continental Breakfast

8:30AM – 10:15AM PLENARY SESSIONS

9:00AM – 9:45AM *Dr. Bernice A. King, Chief Executive Officer of the Martin Luther King, Jr. Center for Nonviolent Social Change*

9:50AM – 10:15AM *Dr. Morgan Walls-Dines, Assistant Director of the Reports & Evaluation Division, Office of Federal Operations, EEOC*

Dr. S. Christopher “Chris” Haffer, Chief Data Officer, Director of the Office of Enterprise Data and Analytics, EEOC

10:00AM - 10:30AM Mid-Morning Break

WORKSHOP SESSION IV: 10:30AM – 12:00PM

A. Making Best Use of the Respondent Portal

Martin Ebel

We'll examine what the private sector Portal does, what's new, and what's coming in the future, including closure documents. (Private)

B. How to Manage the Non-Responsive Witness

Camella Woodham and William Macauley

Challenging witnesses appear during all phases of the EEO process, from the initial intake interview through hearing. Of the many types of difficult witnesses – hostile, “forgetful,” aggressive, overly talkative, etc., – none is as frustrating and difficult to manage as the non-responsive witness. During this interactive session, participants will learn techniques to help maintain their professionalism, neutrality, humor and patience while securing the information necessary to ensure a complete interview, investigative record or hearing transcript. (Private/Federal)

C. Ethical Dilemmas for Mediators: What Would You Do?

Denise McKenney and Peter Swanson

Every mediator has a story about a time when... This workshop will give real life examples of ethical challenges that mediators have faced, and strategies for dealing with them. Audience examples will also be used to navigate these thorny situations. (Private/Federal)

D. Opioids and Discrimination

Antonette Sewell and Charlotte Lanvers

Individuals with substance abuse disorders, including opioid use disorder (OUD), may face potentially discriminatory barriers to employment. In this presentation, we will discuss employment protections for individuals with OUD under Title I of the Americans with Disabilities Act (ADA), including protections against disparate treatment and the right to reasonable accommodations. The presenters will highlight recent enforcement efforts by the EEOC and the Department of Justice. (Private/Federal)

E. EEO Landmines: High Risk Areas

Debra Finney and Travis Nicholson

How does an employer navigate the high-risk EEO areas such as retaliation, religious

accommodation, disability accommodation, love in the office and more? This session will provide case examples, along with practical tips, to minimize the risks surrounding these workplace EEO landmines. (Private/Federal)

F. Emotional Intelligence: What is it and Why is it Important?

Dr. Kimberly Davis

Come learn what emotional intelligence is and how to use it to improve your leadership skills and boost your social skills. As work becomes more collaborative in nature, individual success is often dependent on one's ability to communicate and influence rather than on any particular technical skill. Current research shows that emotional intelligence is more important in workplace success than technical and hard skills. During this session, you'll learn how to improve your sensitivity to organizational cues and avoid behaviors that derail success in the workplace. (Private/Federal)

G. Ask the AJ

John Henderson, Frances del Toro, Alison Smith-Lynn, and Diane Gross

Do you have questions for our panel of veteran EEOC chief administrative judges? This is your opportunity to voice them. Come prepared for a lively, interactive session. Nothing is out of bounds except for discussions about specific cases. (Federal)

H. Navigating the Maze: Understanding Different Protections Under EEO and Civil Service Laws *Louis Lopez and Jo Linda Johnson*

Federal employees are protected from discrimination and retaliation under both EEO and civil service laws; many use both to seek redress. Federal agencies must cooperate in investigations conducted by EEO offices, and with the hearings process before the EEOC, if applicable, and with investigations conducted by the Office of Special Counsel, charged with investigating whistleblower violations. Employment law experts will help you better understand the overlapping, but distinct, rules and processes and more informed decisions about how to best resolve matters that cross the lines between EEO and the civil service laws. (Federal)

I. Selected EEO Complaint Processing Challenges

Joel Kravetz

EEO practitioners continually are pressed to not only meet regulatory requirements, but also to deal with the unique challenges posed by issues such as "spinoff complaints," mixed cases, legal sufficiency, and official time disputes. This session will identify a series of distinctive matters faced during both informal and formal complaint processing and provide guidance and best practices to address them in an efficient and assured

manner. (Federal)

12:00PM - 1:30PM Lunch

WORKSHOP SESSION V: 1:30PM – 3:00PM

A. Pride or Prejudice? Symbols and Workplace Discrimination

Carlisa Broadway and Thomas Colclough

Symbols - religious icons, ethnic totems, fraternal emblems, and team mascots - have long been used as a means of self-expression. But what happens when one person's symbol of pride is another person's symbol of bigoted expression, or when a symbol that reflects unity to one person reflects exclusion to another? Intentional or not, the display of symbols can engender controversy and hostility in the workplace. Join us to discuss how to navigate these issues, address employee concerns, and avoid creating inadvertent barriers to a work environment free from discrimination. (Private/Federal)

B. Legal Update 2019

Carol Miaskoff

EEO law is dynamic, multifaceted, and developing as the courts interpret and apply the law to a rapidly changing workplace. Employers must remain vigilant and aware of the significant EEO court cases decided this year. Hear from the EEOC about the latest cases, precedent-setting decisions, and their implications for employers. (Private/Federal)

C. Toxic Communication in Mediation

Denise McKenney and Peter Swanson

When people vent and become angry, throw insults, and engage in dysfunctional behavior, how do you handle it? This workshop provides tools and skills for managing your own internal reactions and neutralizing negative behaviors in others. (Private/Federal)

D. Creating a Culture of Workplace Accountability

Tucker Miller

Harassment and incivility are still prevalent in our workplaces, and reducing those behaviors is critical to creating a place where people can do their best work. How do you become a champion of civility in your agency? This interactive session will explore what incivility and harassment look like and illustrate the risks these and other issues present to safety, employee engagement, customers and mission effectiveness. Learn steps to create and maintain a workplace culture that actively demonstrates a commitment to civility and professional values, build an effective case for civility and leadership accountability to achieve positive results, and develop an action plan that can be implemented in your place

of employment. (Private/Federal)

E. Microaggressions in the Workplace

Dr. MarTeze Hammonds

What are microaggressions and how are they relevant to the workplace? This engaging and interactive session explores microaggressions in the workplace and educates the audience about the trends, issues and problems surrounding social justice topics. The presenter will use personal stories, research and humor to address difficult topics.

(Private/Federal)

F. How to Avoid Sanctions Before the EEOC

Deryn Sumner, Heidi Schandler, and Justin Evans

Starting with *Cox v. Social Security Administration* and *Royal v. Dept. of Veterans Affairs* in 2009, the EEOC has issued a series of decisions imposing or affirming the imposition of sanctions against agencies that fail to timely complete investigations, fail to produce complaint files to the EEOC, or conduct deficient EEO investigations. This session will address the recent sanction-related EEOC case law, including the latest decisions dealing with improper intrusion into EEO investigations, and will examine how agencies can avoid sanctions. (Federal)

G. Ask OFO

Carlton Hadden, Dexter Brooks, and Robbie Dix III

This forum is a perennial favorite! Avail yourself of this no-holds-barred opportunity to speak your mind to a panel of Office of Federal Operations senior staff about any aspect of Appellate Review, Compliance and Control, and Federal Sector Programs. Bring any and all questions and suggestions and be prepared for a lively session! (Federal)

H. Properly Framing Harassment Claims

Virginia Andreu

A recent review of the Office of Federal Operation's appellate reversals shows that agencies often fail to distinguish between a complainant's factual allegations in support of her legal claim and the legal claim itself. Harassment/hostile work environment claims are particularly susceptible to such fragmentation, because agencies will dismiss each factual allegation separately, reasoning that the incident was insignificant and could not have affected complainant's work environment. In this session, participants will learn how to properly frame a hostile work environment case. (Federal)

I. EEOC – Leading the Way in Preventing Workplace Harassment

William Cash, Jr.

Increased awareness about workplace harassment has led to a historic increase in EEOC enforcement efforts, including filing an increased number of lawsuits and recovering a record amount of relief for victims of harassment working for private companies; state and local governments; and the federal government. This program will highlight the EEOC's role as an enforcer, educator and expert on the prevention of harassment. We will discuss examples of EEOC cases and best practices to prevent and stop workplace harassment. (Private/Federal)

3:00PM - 3:30PM Mid-Afternoon Break

WORKSHOP SESSION VI: 3:30PM – 5:00PM

A. EEO-1 Filing: What You Need to Know

Benita Marsh

This session covers everything you need to know about EEO-1 filing to ensure compliance including: guidance for filers, the difference between single vs. multi-establishment companies, how corporate changes may affect the company's EEO-1 report filing, i.e., acquisitions, mergers, spinoffs, new contact notification, methods of filing, establishment reports, where to get technical assistance, the due date for EEO-1 reports, and more. (Private)

B. Trauma-Informed Interviewing

Janet Cook-Canary

This cutting-edge session focuses on understanding trauma and how to interview persons who have been subjected to trauma. Participants will learn about the impact of trauma on the human brain, will be introduced to the concept of the "cognitive interview," and will learn how it can be used in EEO harassment cases. Participants will leave this session with a better understanding of trauma and new and useful techniques to conduct interviews on sensitive topics and difficult issues. Although this session is geared toward harassment investigations, the information and techniques should prove useful to counselors, investigators and anyone else who interviews witnesses in EEO matters. (Private/Federal)

C. Professionalism and Ethics in the Workplace: Times are Changing

Judge Jason T. Harper, Robin Frazer Clark, V. Carl Brown and D. Barret Broussard

Lawyers are expected to maintain strict ethical standards – for the protection of colleagues, clients, the court, and anyone even tangentially affected by a case. Due to their role in society and close involvement in the administration of law, lawyers are

subject to special standards, regulation, and liability. This session is two hours and is designed to meet qualifications for Ethics CLE credit. (Private/Federal)

D. Histories; Mysteries; Fun Facts; Little Known Nuggets; Politics; and Important Cases in EEO Laws

Debra Finney and Krista Watson

EEO professionals can benefit by understanding some of the basic history behind the federal anti-discrimination laws. We know what was going on in our country when these laws were passed, but how much do we know about how these laws were passed? What deals were made? Did they barely pass, or did they pass overwhelmingly? This class will take an unedited look back at some of the most important cases and the lowlights and highlights on our road to workplace equality. Take this opportunity to recognize and remember the struggle of civil rights in the workplace. (Private/Federal)

E. Ombuds Practice in Federal Agencies

Dr. Timothy Hedeem

Ombuds programs are an expanding approach to ADR in federal agencies. Do you know what a federal agency ombudsman does? This session will trace the origin of ombuds practice from their creation by the Swedish parliament to contemporary federal ombuds offices. Learn about the important work of ombuds offices and how they relate to workplace discrimination and other mission critical matters. (Federal)

F. I'd Like to Call My First Witness: A Practitioner's Guide to Litigating Before the EEOC

James Eisenmann, Dr. Timothy Hagan and Sophia Haynes

This session will focus on the nuts and bolts of presenting your case at an EEOC hearing. The panel will include seasoned complainant and agency practitioners who will share their experience on how to prepare for a hearing and what regulations, practices, and procedures to be aware of before the first witness is called. An EEOC Administrative Judge will add insight and perspective on the hearing process. Topics will include: prehearing submissions, how to prepare for and take an effective direct and cross examination, when and when not to use witnesses, how to introduce exhibits into the record, how to prepare for closing statements, and how to anticipate the issues that can arise from a finding of liability. (Federal)

G. We Are Concerned for Your Safety: How to Address Fear of Violence in the Workplace

Stephanie Herrera and Zachary Wright

With fear and speculation running rampant in the workplace after recent mass tragedies, this workshop will discuss concrete ways to ensure employee safety and address potential misconduct and mental health issues. This panel also will focus on the recent case law (EEOC and MSPB) involving fitness for duty examinations, medical inquiries, and disciplinary actions involving safety concerns or fear of violence in the workplace where a direct threat defense has been asserted. Various hypotheticals will be presented to address when it is appropriate for an agency to request that an employee submit to a fitness for duty examination, when an agency can request medical records (and who can view those records), and how best to evaluate and quickly respond to threatening comments or actions in the workplace. (Federal)

H. Behind the Scenes with OFO's Reports and Evaluations Division's Data Team

Dr. Morgan Walls-Dines and Karen Brummond

The EEOC's Office of Federal Operation's Reports and Evaluations Division (RED) is best known for producing the Annual Report on the Federal Workforce, collecting Form 462 data, and conducting program evaluations, but did you know that RED has a data team that conducts original research? Get a behind the scenes look at research the RED Data Team has conducted on the gendered nature of work-life programs and how crime prevention methods can be applied to harassment in the workplace. (Federal)

I. Section 501: Designing an Effective Reasonable Accommodation Program

Amupa Iyer

EEOC's updated regulations on the federal government's obligation to engage in affirmative action for people with disabilities went into effect in January 2019. The Section 501 regulation requires federal agencies to have written reasonable accommodation (RA) procedures that meet certain minimum requirements. In this workshop, you will learn how to design an effective RA program and how to avoid some common pitfalls in the RA process. Learn new strategies and tips that will help ensure the success of your agency's RA program. (Federal)

THURSDAY, August 1, 2019

7:00AM – 8:30AM Continental Breakfast

8:30AM – 10:30AM PLENARY SESSIONS

9:00AM – 10:00AM *Paula Neuman Gris*

Speaker for the William Breman Jewish Heritage & Holocaust Museum and an Interviewer of the The Legacy Project

10:30AM - 10:45AM Mid-Morning Break

WORKSHOP SESSION VII: 10:45AM – 12:15PM

A. Reprisal: Know It! Avoid it!

Joseph Kaplan

This session will focus on the elements of a reprisal case, identify types of “protected activity,” examine burdens of proof and provide practical advice on how to avoid being named in an EEO reprisal complaint. (Private/Federal)

B. Legal Update 2019

Carol Miaskoff

EEO law is dynamic, multifaceted, and developing as the courts interpret and apply the law to a rapidly changing workplace. Employers must remain vigilant and aware of the significant EEO court cases decided this year. Hear from the EEOC about the latest cases, precedent-setting decisions, and their implications for employers. (Private/Federal)

C. ADR Options for the Early Resolution of EEO Claims

A. Lee Parks, Jr., Halima Horton White, and Justin Evans

This interactive workshop, which includes complainant’s counsel, defense counsel and an administrative judge, will focus on how early mediation of harassment, hostile work environment and retaliation claims can benefit public and private complainants and employers. (Private/Federal)

D. Tricky HR Scenarios: Sex Discrimination

William Cash, Jr., Cynthia Nance, and Daniel Herrington

Most of what you hear in the media these days about sex discrimination is claims of sexual harassment. However, the law forbids discrimination based on sex in all aspects of employment. This session will explore several scenarios from the perspectives of employees, employers and the EEOC to address sex discrimination issues such as unequal pay, denial of advancement or promotion, job segregation and pregnancy discrimination. (Private/Federal)

E. What You Don’t Know Can Hurt You and Others: Implicit Bias in the Workplace

Maria Flores and Mary Tiernan

This session will begin with demonstrations and a discussion of judgment, perception, and memory examples that illustrate that we do not have complete control over our minds. An overview of research relating to implicit bias and the impact that this bias can have on the workplace will be presented. Participants will be provided with practical tips to

minimize and manage the impact of implicit bias in the workplace. (Private/Federal)

F. How to Develop an Adequate Report of Investigation

Frances del Toro and Virginia Andreu

EEOC regulations require federal agencies investigating EEO complaints to develop an impartial and appropriate factual record that will allow the fact finder to make findings and draw conclusions as to whether discrimination occurred. This workshop will provide guidance and promising practices on how to conduct a thorough investigation, gather relevant evidence, and develop an adequate report of investigation. An EEOC Chief Administrative Judge and Office of Federal Operations attorney will help participants understand the importance of an adequate investigation at the different stages of the complaint process. (Federal)

G. Special Challenges with EEO Complaints Involving Security Clearances

Rita Sampson, John Fellin, Tsedey Berhamu, and John Henderson

Litigating EEO complaints with agencies in the intelligence community is a tricky business. How does the complainant get the documents to make their case when those documents are classified? Can the complainant share those documents with their legal representative who do not have a security clearance? Does the EEOC Administrative Judge who hears the case need to have a security clearance? These issues multiply when one factors in contractors and the expanding use of the “gig” economy. This experienced panel will discuss the special problems surrounding the intelligence community and EEO complaints, addressing the *Ma* case factors and recent decisions that impact EEOC processes unique to intelligence agencies. (Federal)

H. Mock Hearing

Alison Smith-Lynn, James Eisenmann, and Kevin Crayon III

Have you ever wondered what it’s like to attend an EEOC hearing? Come observe for yourself! In this session, an experienced EEOC Administrative Judge will preside over a mock hearing conducted by agency and complainant’s counsel. This session is for those who have never attended a hearing or have very limited knowledge of what a hearing is like. Whatever your involvement in the EEO process – counselor, investigator, complainant, manager, mediator or agency representative – this session is for you! (Federal)

I. Form 462: The Numbers Count!

Dr. Mxolisi Siwatu and Karen Brummond

Federal agencies are required to submit Form 462 complaints reports to the EEOC by

October 31st of each year. This session, aimed at experienced and new Form 462 preparers, will provide useful tips on how to complete an accurate Form 462, how to overcome common challenges, and how to submit the form in FedSEP. (Federal)

12:15 PM - 1:30 PM Lunch

WORKSHOP SESSION VIII: 1:30 PM – 3:00 PM

A. Medical Marijuana: What's the Buzz?

Eric Meyer

The majority of states have now legalized medical marijuana. Yet, under federal law, marijuana remains an illegal Schedule 1 substance, and enforcement appears to be more of a priority than in the past. Employers face a unique management challenge. What does legalized marijuana mean for the workplace? How does it impact hiring and employee drug testing? Is it legal for employees to use marijuana at work? Should marijuana be considered a workplace accommodation to help an employee stay at work or return to work? This session will give you the answers to these questions and provide helpful tips on what you need to know about marijuana and its impact on employees, workplace policies and disability-accommodation laws. (Private)

B. National Origin Discrimination & Immigration: Related Unfair Employment Practices

Maria Flores and Jenna Grambort

What do you know about national origin discrimination? Did you know that it includes issues such as properly completing the Form I-9/E-Verify, document abuse in verifying employment eligibility, requiring English language fluency, and backlash discrimination? Agency insiders will cover your national origin and citizenship status obligations under the laws enforced by the EEOC and the Department of Justice's Immigrant and Employee Rights Section. The panel will identify risk areas, provide concrete best practices, and share free resources available to you and your organization. (Private)

C. Tricky HR Scenarios: Selection Techniques

William Cash, Jr., Cynthia Nance, and Daniel Herrington

How do you pick the best applicant without getting yourself and your company in hot water? This session presents scenarios from the perspectives of employers, employees and the EEOC addressing hiring issues for the 21st century workplace. The presenters will tackle selection methods, different types of applicant testing regimens, applying qualification standards, and other techniques used in the hiring process. (Private)

D. Taking Diversity and Inclusion to the Next Level!

Chandra Davis and Nzinga Shaw

Attend this session for an interactive panel presentation and discussion on developing a diverse and inclusive culture, along with meaningful metrics you can use to demonstrate progress. Learn how to leverage diversity, an organization's most valuable asset, and take inclusion to the next level by looking at ways to engage all members of your organization. Gain valuable insight regarding metrics used to demonstrate diversity and inclusion progress, and learn how to show year-after-year improvement. Don't miss this opportunity hear about innovative ideas, best practices, and new trends that help you take your organization to the next level of diversity and inclusion! (Private/Federal)

E. Integrated Conflict Management: Connecting Expertise to Employee Voice

Dawn Bedlivy, Esq. and Marcella Deberry

This presentation will introduce integrated management conflict systems and describe how the system can transform an employer's complaint processes by opening multiple avenues for employee voice, connecting that voice to agency expertise in conflict management, and greatly expanding the range of possible responses by the organization. This presentation will address the cost of conflict in organizations, explore how a combination of formal and informal processes can work together to produce better outcomes for the organization and its employees, and discuss how integrating the anti-harassment program as part of an integrated conflict management system allows for closure and reconnection. (Private/Federal)

F. Initial Status Conferences: Do They Really Matter?

William Maccauley, Alison Smith-Lynn, and Julie Schmid

Whether you are a complainant, complainant's attorney or agency representative, come learn how to get the most out of the initial status conference. In this session, you will learn from experienced EEOC Administrative Judges what to expect during the conference and some practical tips on how to best prepare for one. (Federal)

G. Navigating Medical Restrictions to Get Employees Back to Work

Zachary Wright and John Henderson

Accommodating a federal employee's injury or disability can take many forms, and it is important to consider the practical problems faced by managers and other personnel assisting those employees. With protections under the ADA, FMLA, and OWCP, the range of accommodation possibilities may be difficult to navigate. The panel will offer practical strategies to address issues early on and how managers, human resources staff, and agency attorneys can prevent EEO problems from arising. (Federal)

H. It's a Mixed-Up World: Understanding Mixed Cases

Stephanie Herrera, Joseph Kaplan, and Heidi Schandler

Back by popular demand! Are you mixed up about what to do with a mixed case? This session will shed light on what a mixed case is, how to determine whether to file the case with the EEOC or the MSPB, the difference between an appeal and a complaint, considerations in deciding one forum over another, and more. Join this session to gain a better understanding of the rules, policies, and case authorities governing these cases, including an employee's burden of proof, agency affirmative defenses, and forum shopping. (Federal)

I. Federal Sector Case Updates: Part I

Elyssa Santos-Abrams

You've been busy over the last year, and so has the EEOC. Join Office of Federal Operations senior attorney and perennial audience favorite Elyssa Santos-Abrams for a lively and engaging discussion of the latest developments in EEOC case law, including emerging issues in the federal sector. This session will feature a different selection of cases from those discussed in Federal Sector Case Updates: Part II (Thursday at 3:30). (Federal)

3:00 PM - 3:30 PM Mid-Afternoon Break

WORKSHOP SESSION IX: 3:30 PM – 5:00 PM

A. Primer for Dealing with the EEOC: An Employer's Perspective

Barry Hartstein

In this fast-paced session, attendees will gain insight on EEOC investigations, including a review of EEOC priorities, systemic investigations and subpoena enforcement actions from the perspective of an employer attorney. Participants will explore key EEOC statistics, including litigation and settlements during FY 2019. Finally, substantive issues from an employer's perspective will be addressed including: EEOC challenges involving hiring barriers, harassment litigation, compliance issues under the ADA, pay equity, and emerging issues based on the ADEA. (Private)

B. Human Trafficking and EEO Law

Darrell Graham

Human trafficking is not solely about sex. Anti-discrimination laws enforced by the EEOC, particularly those prohibiting discrimination on the bases of national origin, race, and sex, including sexual harassment, are vital to combating labor trafficking. In this session, learn about labor trafficking, the EEOC's efforts to combat it, and what you can do to avoid it. (Private)

C. ABC's of Disability Accommodation

Anupa Iyer

Are you an EEO professional but unsure of how the reasonable accommodation (RA) process is supposed to work? Fear not! This session, in straightforward fashion, will provide key definitions and answers on who is an individual with a disability, what it takes to be qualified, how the interactive process should work after a request for a RA, and the undue hardship and direct threat defenses. Come with questions, and work through specific real-world RA scenarios that will get you up to speed on disability accommodations. (Private/Federal)

D. Preparing Witnesses for Deposition and Hearing

Nicole Diaz, Esq. and Diane Gross

Come learn effective ways of acclimating a person to the foreign environment of being a witness. This session will provide practical tips for complainants, their representatives, and agency representatives to prepare witnesses to testify at a deposition and hearing, including preparing the witness to respond to anticipated questions and documents, addressing objections during the deposition, and other general guidance. (Private/Federal)

E. Diving into Social Science and EEO

Dr. Morgan Walls-Dines and Karen Brummond

Social sciences provide a myriad of resources to help prevent discrimination and promote diversity and inclusion. In this session, social scientists from EEOC's Office of Federal Operations will review recent research on what works to prevent and remedy discrimination in the workplace. (Federal)

F. Class for Special Emphasis Program Managers

Earl Banks and Terrian Hicks

Special Emphasis Programs (SEP) are an essential part of any federal agency's equal employment opportunity program. Special Emphasis Program Manager (SEPM) positions were created to assist agencies in ensuring that EEO is present in all aspects of employment. This session is designed to provide an understanding of the legal and policy framework that supports implementation of SEPs, define the role of the SEPM, and provide basic instruction on barrier analysis. (Federal)

G. MD-715: Barrier Analysis

Lori Grant

This presentation will cover the fundamentals of barrier analysis. Topics will include

identification, root cause analysis, development of solutions to address barriers, and how to assess whether the solution successfully reduced or eliminated the targeted barrier. Special emphasis will be given to barrier analysis under the Rehabilitation Act, particularly affirmative action requirements. Each topic will feature a hypothetical exercise using typical problems encountered by agency personnel who conduct barrier analysis under MD-715. (Federal)

H. Collected Strategies: A Framework for Federal Disability Inclusion

Derek Shields and Robert Silverstein

The Employer Assistance and Resource Network (EARN) in partnership with the Equal Opportunity Workgroup, developed a framework to help agencies create strong and effective affirmative action plans to promote disability inclusion. During this session, attendees will learn about Section 501 legal/regulatory requirements related to agency affirmative action plans and best practices for disability inclusion. Participants will explore how disability inclusion extends beyond recruitment and hiring to include the entire federal employment lifecycle. (Federal)

I. Federal Sector Case Updates: Part II

Elyssa Santos-Abrams

This session will feature a different selection of cases from those included in Federal Sector Case Updates: Part I (Thursday at 1:30). EEOC attorney Elyssa Santos-Abrams will engage and entertain you with a detailed presentation of the latest developments in EEOC case law that highlights emerging issues in the federal sector. (Federal)

Specialty Track (Closed Session)

MD-715: Barrier Analysis

July 30 - August 1, 2019

10:30AM – 5:00PM

Crystal Grant and Ingrid Smith

This session includes all aspects of the barrier analysis process including: legal and public policy foundations, analysis and interpretation of workforce statistics found in MD-715 data tables, trigger identification, barrier analysis investigation, organizing findings and preparing action plans designed to eliminate barriers, and follow-up on MD-715 reports from previous reporting cycles. The session will present hands-on simulations of actual situations typically encountered in preparing MD-715 reports. (Federal)