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EEOC CHARGES EMPLOYER WITH ALLEGEDLY USING ILLEGAL AND DISCRIMINATORY SEVERANCE AGREEMENTS

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Can a company require an employee who resigns to sign an agreement that conditions their receiving separation benefits on a promise to refrain from filing a complaint or grievance or to say negative things about the company? This question is one of the key topics in a recent lawsuit filed by the EEOC.

The EEOC is alleging that CollegeAmerica, a private college based in Salt Lake City, violated federal age discrimination laws by including unlawful provisions in a separation agreement with one of its former campus directors. In addition, the EEOC asserts that CollegeAmerica further violated federal law by retaliating against the campus director by suing her seven days after learning she filed a discrimination charge.

CollegeAmerica is an accredited, private college with six campuses in Colorado, Arizona and Wyoming offering degrees in business, information technology, health care and graphic arts.

According to the EEOC's lawsuit, Debbi D. Potts, the Campus Director of CollegeAmerica's Cheyenne, Wyo., campus, resigned in July 2012 and signed a separation agreement in September 2012 that conditioned the receipt of separation benefits on, among other things, her promise not to file any complaint or grievance with any government agency or to disparage CollegeAmerica. The provisions of the agreement were intended to prevent Ms. Potts from reporting any alleged employment discrimination to the EEOC or filing a discrimination charge.

Seven days after CollegeAmerica learned that Potts filed a charge against CollegeAmerica charging age discrimination and retaliation, the EEOC claims, the school sued Potts in Colorado state court for allegedly violating the severance agreement signed in September 2012. The EEOC asserts that the state court lawsuit was filed in retaliation for Potts filing her charge.

The EEOC also claims that provisions which similarly chill employees' rights to file charges and cooperate with the EEOC exist in CollegeAmerica's form separation and release agreements that are routinely used with its employees.

Such alleged conduct violates the Age Discrimination in Employment Act of 1967 (ADEA), which prohibits discrimination against workers age 40 and older. The EEOC filed suit after first attempting to reach a pre-litigation settlement through its conciliation process. The lawsuit, *EEOC v. CollegeAmerica Denver, Inc., n/k/a Center For Excellence in Higher Education, Inc., d/b/a CollegeAmerica*, Civil Action No. 14-cv-01232-LTB-MJW, filed in U.S. District Court for the District of Colorado, seeks to recover Potts's attorney's fees and costs incurred in defending the state court lawsuit. The EEOC also seeks

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injunctive relief, including invalidating Potts's separation agreement; reforming CollegeAmerica's form separation and release agreements to comply with the ADEA; anti-discrimination training; and policies and programs to stop any future violations of the ADEA.

Mary Jo O'Neill, Regional Attorney for the EEOC's Phoenix District Office stated that "Rights granted to employees under federal law, like the right to file charges of discrimination and participate in EEOC investigations into alleged discrimination in the workplace, cannot be given up in agreements between private parties. Otherwise, employers could easily do an end run around the law". According to O'Neill, "Employees would not be free to complain about discrimination, and the EEOC would never learn about violations of the law or have an opportunity to enforce it."

EEOC Denver Field Office Director Nancy Sienko said, "The EEOC's mission to eliminate and prevent all forms of employment discrimination, remains vital and necessary but we cannot fix what we don't know about. Employees must feel free to file charges without the risk of punishment."

Source: <http://www.eeoc.gov/eeoc/newsroom/release/5-5-14.cfm>

NATIONAL ASSOCIATION OF FEMALE EXECUTIVES ANNOUNCES TOP 50 COMPANIES FOR WOMEN IN 2014

The National Association for Female Executives (NAFE) has published its report on the Top 50 Companies for Executive Women in 2014. The report is designed to recognize American corporations that "have moved women into top executive positions and created a culture that identifies, promotes and nurtures successful women". http://www.wmmsurveys.com/NAFE_ExecutiveSummary_2014.pdf

Women who work for these companies have significant influence with respect to making decisions that affect their company's future and its bottom line. NAFE specifically looks for evaluates whether women lead businesses, set policy and have profit-and-loss responsibility. In addition, they track what companies are doing to help advance women and whether these activities actually impact the career development of their female employees. To be eligible for to participate in NAFE's review, a company must meet the following criteria:

- Must have a minimum of TWO (2) women on the Board of Directors.
- Must be a public or private for-profit company (not-for-profit companies can apply for the NAFE Top 10 Nonprofits list, but must meet all other criteria).
- Must have a minimum of 1000 employees.
- The following organizations are NOT eligible to apply: Divisions of companies and companies in the business of providing work life services or consulting (e.g. child care or flexibility), or consulting and government agencies (taxation and revenue departments, motor vehicle bureaus, military, legislatures, executive branches, judiciaries, prosecutorial offices, etc.)

Key findings from the report include:

- The 2014 NAFE Top 50 Companies for Executive Women continue to increase the numbers of women in their top ranks, and have made positive program and policy changes
- Twenty-eight percent of executive officers at the NAFE Top 50 are women, up from 25 percent last year and 22 percent in 2012

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POTPOURRI

■ President Appoints Jenny R Yang as EEOC Vice Chair

The U.S. Equal Employment Opportunity Commission (EEOC) has a new Vice Chairperson. President Barack Obama has appointed Commissioner Jenny R. Yang to serve as Vice Chair of the EEOC until July 1, 2017. Ms. Yang's appointment was unanimously confirmed by the U.S. Senate on April 25, 2013.

In response to her appointment, Ms. Yang said, "Over the course of my career and particularly during my time at the Commission, I have seen how vital the work of the EEOC is to the enforcement of our civil rights laws. I am honored to serve as Vice Chair of the Commission to continue to work with the Chair, my fellow Commissioners, and the dedicated staff to advance the EEOC's critical mission to ensure equal opportunity in our nation's workplaces."

*Source: <http://www.eeoc.gov/eeoc/newsroom/release/4-28-14.cfm>

■ PJP Health to pay \$300,000 to settle EEOC age discrimination and retaliation lawsuit.

PJP Health, Inc., a Long Island sales insurance company, has agreed to pay \$300,000 to three former employees in order to settle a lawsuit for age-based harassment, discrimination and retaliation as a result of a lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC). Charges included the assertion that the company's management made discriminatory age-related comments and refused to promote one of the claimants based on her age. The agency also said that the employer terminated two employees based on their age and fired a third claimant within three days after an internal meeting with her about her discrimination complaint. Discrimination against those 40 and older and retaliation for opposing or reporting it violate the *Age Discrimination in Employment Act (ADEA)*.

*Source: <http://www.eeoc.gov/eeoc/newsroom/release/5-1-14.cfm>

*If the link won't work, copy and paste the address into your browser.

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NATIONAL ASSOCIATION OF FEMALE EXECUTIVES ANNOUNCES TOP 50 COMPANIES FOR WOMEN IN 2014 *(Continued)*

- Women represent 35 percent of the top tenth of earners at the NAFE Top 50 Companies, and a full two thirds at the NAFE Top 10 Nonprofit Companies.
- Female participation in advancement programs increased significantly at the NAFE Top 50 this year, with almost a third (32 percent) of women using management/leadership training and mentoring programs, and 64 percent of women participating in career counseling.
- Ninety-six percent of the NAFE Top 50 Companies now offer job rotation programs, compared with 80 percent last year; 60 percent support sponsorship programs, up from just 42 percent in 2013.

NAFE specifically singled out IBM (which has earned a place on every NAFE Top Companies list since the initiative's founding in 1998) and Aetna (which is celebrating its 15th year as a winner). The following is a list of the "Top 10" scorers on NAFE's assessment:

AstraZeneca	KPMG
Ernst & Young, LLP	Marriott International
General Mills	Proctor & Gamble
Grant Thornton	State Farm
IBM	Verizon Communications

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