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OFFICE OF THE ARIZONA ATTORNEY GENERAL  
CIVIL LITIGATION DIVISION  
DIVISION OF CIVIL RIGHTS SECTION

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December 30, 2020

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Office of the Governor  
1700 W. Washington  
Phoenix, AZ 85007

Senate President Karen Fann  
Arizona State Senate  
1700 W. Washington  
Phoenix, AZ 85007

House Speaker Rusty Bowers  
Arizona House of Representatives  
1700 W. Washington  
Phoenix, AZ 85007

**Re: Arizona Attorney General's Office, Civil Rights Division Report**

Pursuant to A.R.S. § 41-1402(B)(2), and on behalf of Attorney General Mark Brnovich and the Arizona Attorney General's Office Civil Rights Division ("ACRD"), this letter provides a report of the ACRD's activities and accomplishments throughout the past year. Also pursuant to the statute, the ACRD recommends certain legislative improvements or amendments to the Arizona Civil Rights Act ("ACRA").

The ACRA prohibits discrimination in employment, housing, public accommodations, and voting. The ACRD investigates, mediates, and litigates complaints alleging violations of ACRA and seeks to reduce discriminatory conduct through education, outreach, conflict resolution services, and mediation training programs. In fiscal year 2020, the ACRD investigated 1,483 discrimination complaints that included 2,270 discrimination charges alleging violations of ACRA (*see statistical breakdown below*). The ACRD resolved 106 discrimination cases through mediation, conciliation, or litigation settlements. As a result of these efforts, the ACRD obtained a total of \$1,020,628.46 in monetary relief for charging parties. The ACRD also obtained future monitoring and a wide variety of injunctive relief to prevent civil rights violations. In addition to its investigation, enforcement, and conflict resolution activities, the ACRD participated in or sponsored thirteen education and outreach events to inform the community about civil rights laws and the ACRD complaint and resolution process.

Cases litigated by the ACRD this past year include the following:

***State v. Obrigis, LLC, d/b/a O'Brien's Sports Bar*** – The ACRD alleged that O'Brien's Sports Bar violated the Arizona Americans with Disabilities Act ("AzDA") when it refused to serve Bill Larson, a person with a disability, and required him to leave the bar because he was accompanied by his service animal. Mr. Larson is a veteran of the Air Force Reserves. He has a brain injury, which causes him to experience transient ischemic attacks. His service animal, "Whopper," is trained to detect the onset of a transient ischemic attack and alert Mr. Larson so that he may take steps to ensure his safety and the safety of others. On January 16, 2018, Mr. Larson and Whopper visited O'Brien's Sports Bar. The ACRD alleged that the manager of the bar told Mr. Larson he was not allowed in the bar with Whopper. The ACRD further alleged that when Mr. Larson attempted to explain to the bar's owner and manager that Whopper was a service animal, he was forced to leave. The ACRD filed a lawsuit in Maricopa County Superior Court to enforce the AzDA. The State settled the lawsuit with a Consent Decree that included monetary damages of \$7,500 to Mr. Larson, a \$2,500 civil penalty to the State, and injunctive relief to prevent future civil rights violations.

***State v. Sunburst Farms Irrigation District*** – This is an employment case involving sex discrimination, it is alleged that the employer failed to prevent a sex-based hostile work environment. Because of the employee's sex, her coworker subjected her to unwelcome conduct of a sexually harassing nature. The female employee reported her co-worker's comments and behavior to the Board of Directors, but the Board failed to take remedial action to prevent the co-worker from engaging in the persistent sexual harassment. Without the ACRA, there would have been no government relief for the employee because federal law does not apply to employers with less than fifteen employees. The case is pending in Maricopa County Superior Court.

***State v. Big Tex Trailer World, Inc. d/b/a Big Tex Trailers*** – This employment case involved disability discrimination and the ACRD alleged that the employer denied an employee a reasonable accommodation necessary for his disability and discharged him because of his disability. The employee had hip replacement surgery that required medical leave and thereafter required the assistance of a cane for ambulation. After the surgery, the employee was advised not to fly due to risk of deep vein thrombosis and/or a pulmonary embolism. The ACRD alleged that the employer failed to accommodate the employee when it denied his requested reasonable accommodation to attend an in state training. Further, the ACRD alleged that the employer discriminated against the employee based on his disability when after receiving his request for reasonable accommodation it instructed the employee's manager to get a letter of resignation from the employee or terminate him. The State settled the lawsuit with a Consent Decree that included monetary damages to the employee and injunctive relief.

***State of Arizona v. Solterra of Arizona, LLC d/b/a Solterra La Cholla*** – In this employment case involving sex discrimination, ACRD alleges that the employer failed to prevent a sex-based hostile work environment and unlawfully retaliated against its employee for engaging in protected activity under the ACRA. Because of the employee's sex, her coworker subjected her to unwelcome physical conduct of a sexually harassing nature. Although the aggrieved party reported her co-worker's conduct to the executive director, the entity failed to take remedial action. It is further alleged that the employer terminated the aggrieved party soon after she reported her colleague's unwelcome and severe sexual conduct. This matter is currently pending in Maricopa County Superior Court.

*State of Arizona v. Shree Yogiji d/b/a the Tombstone Grand Hotel and Landmark Hospitality, LLC d/b/a Hampton Inn Sierra Vista* - In this employment case involving disability discrimination, it is alleged that the aggrieved party's supervisors engaged in unwelcome conduct and comments of a harassing nature which were sufficiently severe and pervasive to alter the terms and conditions of her employment. Specifically, it is alleged that because of her disabilities the aggrieved party's supervisors repeatedly referred to her in unwelcome and derogatory ways, openly chastised her in employee meetings and in front of guests, and engaged in unwelcome physical conduct. This matter is currently pending in Maricopa County Superior Court.

### **2021 Legislative Recommendations:**

The ACRD recommends the following legislative proposals be considered for introduction during the 2021 legislative session:

#### **Prohibiting Discrimination Based Upon Pregnancy**

The ACRA prohibits discrimination in employment because of "race, color, religion, sex, age or national origin or on the basis of disability." A.R.S. § 41-1463. Unlike Title VII, which states that the "[t]he terms 'because of sex' or 'on the basis of sex' include . . . because of or on the basis of pregnancy," 42 U.S.C. § 2000e(k), the ACRA does not expressly prohibit discrimination on the basis of a woman's pregnancy. Arizona has not amended the ACRA to clarify and codify case law that pregnancy discrimination is a form of sex discrimination. The Division recommends amending the ACRA to expressly prohibit employment discrimination based on pregnancy, childbirth, and related medical conditions including, but not limited to, breastfeeding and lactation. This language was included in H.B. 2642 during the 2020 legislative session.

#### **Retaliation Provision in Employment Discrimination**

The ACRA retaliation provision does not prohibit retaliatory discrimination against an *employee* for participating in protected activity. Accordingly, the statute provides that only members of labor organizations or applicants are protected from retaliation. This appears to be a clerical error. Arizona courts and the Arizona Attorney General interpret the provision to prohibit retaliation against employees. *See Najjar v. State*, 198 Ariz. 345 (Ct.App. 2000) and 1988 Ariz. Op. Atty. Gen. 139 (1988). An inclusion of "employee" into the prohibition on retaliation is a straightforward, necessary technical correction. See, A.R.S. §41-1464(A) and A.R.S. §41-1481(D). This language was included in H.B. 2642 during the 2020 legislative session.

#### **Retaliation against Victims of Sexual Harassment**

The Division recommends modifying the definition of employer in A.R.S. § 41-1461(6) to clarify that retaliation against employees who engage in protected activity is unlawful for all employers. Under A.R.S. § 41-1461(6), with regard to sexual harassment, an employer means a person who has one or more employees in the current or preceding calendar year. The Division recommends modification of A.R.S. § 41-1461(6) to expressly state that employer means any person who has one or more employees so that it is clear that employers are prohibited from sexually harassing employees and also from retaliating against them for complaining about the alleged sexual harassment.

#### **Right to Sue Notice**

The enforcement mechanism of the employment discrimination section, A.R.S. § 41-1481(D), requires clarity with regard to the ACRD's duty to send a notice after ninety days of a charge of discrimination being filed. If a charging party chooses to file a civil action after receiving the

ACRD's notice of right to sue, it is unclear whether the charging party must do so within ninety days of receiving the notice, or whether the charging party has up to one year to file a civil action within the statute of limitation provided in the same section. Removing the "within ninety days" language would clarify a charging party's ability to file a civil action within the one year deadline. Furthermore, this amendment would enable the ACRD to send the ninety day notice at the prescribed time, without shortening a charging party's window to file a civil action. This language was included in H.B. 2642 during the 2020 legislative session.

**AzDA Requirement to Sue**

The Arizonans with Disabilities Act ("AzDA") requires the Arizona Attorney General to file a lawsuit if, after finding reasonable cause that a violation of AzDA has occurred, there is no agreement on settlement. A.R.S. § 41-1492.09(A) states, in part, "If no conciliation agreement has been reached after thirty days, the attorney general **shall** file a civil action in an appropriate court" (emphasis added). This language affords the Attorney General no discretion as to whether to file a lawsuit if the case fails to conciliate within thirty days. The Division recommends changing the "shall" to "may" which mirrors the language in Title III of the Americans with Disabilities Act. This language was included in H.B. 2642 during the 2020 legislative session.

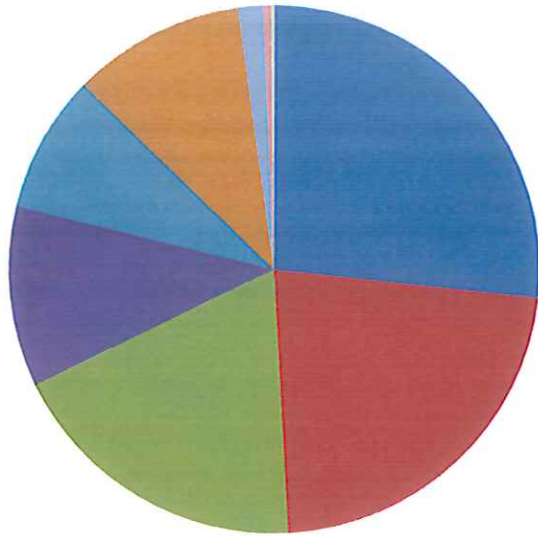
Sincerely,



Rebekah Browder  
Section Chief Counsel  
Arizona Civil Rights Division

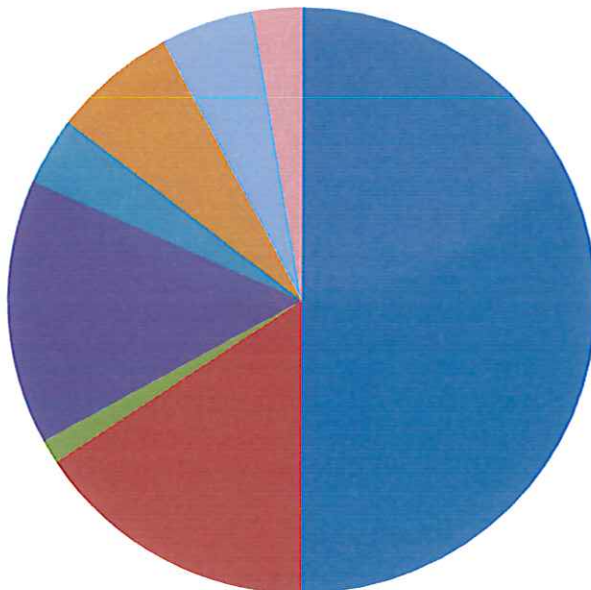
Enclosures

## FY20 ALLEGATIONS OF DISCRIMINATION IN EMPLOYMENT



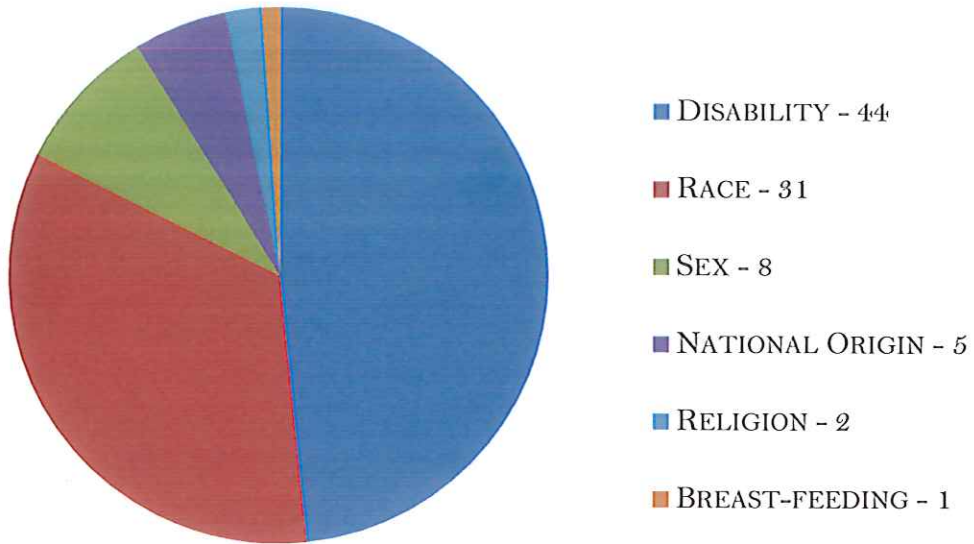
- RETALIATION - 503
- DISABILITY - 423
- SEX - 351
- AGE (OVER 40) - 209
- NATIONAL ORIGIN - 159
- RACE - 198
- RELIGION - 29
- COLOR - 9
- EQUAL PAY ACT - 4

## FY20 ALLEGATIONS OF DISCRIMINATION IN HOUSING



- DISABILITY - 147
- RACE - 46
- COLOR - 4
- RETALIATION - 43
- SEX - 11
- NATIONAL ORIGIN - 20
- FAMILIAL STATUS - 15
- RELIGION - 8

**FY20 ALLEGATIONS OF DISCRIMINATION BY A PUBLIC ACCOMMODATION**



**FY20 ALLEGATIONS OF DISCRIMINATION IN VOTING**

