

EEOC Update



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Addressing Emerging and Developing Issues

ADA

- Coverage, reasonable accommodation, qualification standards, undue hardship, and direct threat
- Accommodating pregnancy-related limitations



Overview of Charge Activity, Litigation, & Settlements

Fiscal Year	# of Charges	% Increase/Decrease
2009	93,277	--
2010	99,922	+7.12%
2011	99,947	+0.03%
2012	99,412	-0.54%
2013	93,727	-5.72%
2014	88,778	-5.28%
2015	89,385	+1.01%

Challenging Discrimination in Federal Court

- In FY 2015, EEOC field legal units files **142 merits lawsuits**, including:
 - 100 individual suits
 - 26 non-systemic suits with multiple victims
 - 16 systemic suits
- Of these filings:
 - 83 contained Title VII claims
 - **53 contained ADA claims**
 - 14 contained ADEA claims
 - 7 contained EPA claims

Summary Judgment

- Courts have been critical of employers' failure to provide reasonable accommodation
- For example, in **EEOC v. St. Alexius Medical Center, 2014 U.S. Dist. LEXIS 142138** (N.D. Ill. Oct. 6, 2015), the court denied the employer's summary judgment motion, finding that a reasonable fact-finder could conclude that the plaintiff's disability could have been accommodated.

Challenging Discrimination in Federal Appellate Courts

- In **EEOC v. LHC, Inc.**, Fifth Circuit reversed the district court's grant of summary judgment on the Commission's claim that the **employer discharged a visiting nurse because she had an epileptic seizure**
- Court agreed with the EEOC that when determining the essential functions of a position, deference to an employer's position description should be overridden if the **evidence shows that the employer did not actually require employees in that position to perform the challenged function**

Monetary Benefits

- EEOC secured more than **\$525 million** for victims of discrimination in private, state and local government, and federal workplaces
- Of this amount, \$356.6 million was obtained through mediation, conciliation, and settlements and \$65.3 million was obtained through litigation

Systemic Investigations

- In FY 2015, EEOC field offices resolved **268 systemic investigations** and obtained **more than \$33.5 million** in remedies
 - In conciliation of a Commissioner's charge, EEOC obtained \$2.8 million in monetary relief plus the cost of the claims administrator after a finding that four of the assessments a national retailer used to hire applicants violated the ADA and Title VII
 - In another case, EEOC received \$1.7 million after finding that a packing company disciplined and discharged employees with disabilities for medical-related absence

Recent Lawsuits

- Filed a lawsuit against a chain of convenience stores for **refusing to accommodate pregnant women with disabilities**
- Sued an aircraft company for **rescinding** job offers to applicants based on generalized standards
- Filed a lawsuit against a hair salon for **failing to accommodate a stylist's claustrophobia**
- Sued a car dealership for rescinding a job offer of an applicant who was taking a prescription drug for a disability

Significant Settlements

- Reached an **\$8.6 million** settlement in a nationwide disability discrimination suit against Lowe's alleging a pattern and practice of failing to provide reasonable accommodation
- A Tucson company will pay **\$300,000** to settle a claim that it denied requests for unpaid leave beyond 12 weeks




Serving the Public Efficiently

Improving the Private Sector Charge System

- Took action to restructure the operations of the Information Intake Group, which handles more than 600,000 calls from the public each year
- Became one of three agencies (along with the Federal Communications Commission and Small Business Administration) **to answer and respond to calls using ASL through videophones**

Outreach

- In FY 2015, EEOC's outreach programs reached 336,855 people through participation in 3,700 no-cost educational, training, and outreach events
- Our national Training Institute trained more than 12,000 individuals at more than 140 events that focused on EEOC's Strategic Enforcement Plan (SEP) priorities



**Providing Clarity Through Regulations,
Enforcement Guidance, and
Resource Documents**

Regulatory Actions

- On Feb. 23, 2016, EEOC issued a Notice of Proposed Rulemaking (NPRM) on **affirmative actions for individuals with disabilities in the federal government**
- On May 17, 2016, EEOC issued two final rules – one under the ADA and the other under GINA – to provide **guidance on the extent to which employers may use incentives in wellness programs**

Subregulatory Guidance

- On Aug. 29, after public input, EEOC issued an **Enforcement Guidance on Retaliation and Related Issues**
- The guidance addresses retaliation under each of the statutes EEOC enforces, including Title VII, the ADEA, Title V of the ADA, Section 501 of the Rehab Act, Title II of GINA, and the EPA

Resource Documents

- On May 17, EEOC issued Q and A documents on both wellness program final rules and fact sheets on each rule for small businesses
- On May 9, the Commission issued a document on Employer-Provided Leave and the ADA
- In April, EEOC updated its Youth@Work website and published a fact sheet explaining the rights of workers with disabilities
- On Dec. 1, 2015, in support of the White House National HIV/AIDS Strategy, EEOC issued two documents to help employees with HIV understand their rights under the ADA and another to help doctors document their requests for reasonable accommodation

Anticipated Trends

- EEOC will continue to focus on **systemic investigations and related litigation**
- Employers will continue to face scrutiny based on policies and/or practices that are viewed as creating **hiring barriers** involving any protected status
- There will be a continued expansion of pregnancy discrimination claims
- The EEOC Will Continue to Take an Active Role in Attacking Harassment in the Workplace.

Helpful Links

- NPRM on Affirmative Action for Individuals With Disabilities in the Federal Government:
<https://www.eeoc.gov/laws/regulations/index.cfm>
- ADA Final Rule on Employer Wellness Programs:
<https://www.eeoc.gov/laws/regulations/index.cfm>
<https://www.eeoc.gov/laws/regulations/qanda-ada-wellness-final-rule.cfm>
- GINA Final Rule on Employer Wellness Programs:
<https://www.eeoc.gov/laws/regulations/index.cfm>
<https://www.eeoc.gov/laws/regulations/qanda-gina-wellness-final-rule.cfm>

Helpful Links cont'd.

- Issues Related to Leave and Disability:
<https://www.eeoc.gov/eeoc/publications/ada-leave.cfm>
- Helping Young Workers Understand Employment Discrimination/Youth@Work: <https://www.eeoc.gov/youth/>
- EEOC Fiscal Year 2015 Performance and Accountability Report (PAR):
<https://www.eeoc.gov/eeoc/plan/upload/2015par.pdf>

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