

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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