

EEOC Issues Guidance on Rights of Applicants and Employees Infected with HIV

Article By:

Philip B. Phillips

In a recent press release announcing new guidance for applicants and employees infected with HIV, the **Equal Employment Opportunity Commission (EEOC)** noted that in 2014 alone, it resolved over 200 charges of discrimination based on HIV status, and recovered over \$825,000 for job applicants and employees with HIV allegedly denied employment and reasonable accommodation as required under the **Americans With Disabilities Act (ADA)**. The EEOC issued [two publications](#) on December 1, 2015, explaining the rights of individuals with HIV infection: That they be free from employment discrimination and harassment, and that they have reasonable accommodations at work.

The first publication, "[Living with HIV Infection: Your Legal Rights in the Workplace Under the ADA](#)," explains to applicants and employees that they: (1) have workplace privacy rights; (2) are protected from discrimination and harassment because of their condition; and (3) may be entitled to reasonable accommodations. Regarding privacy rights, the EEOC explains the situations when employers are generally allowed to ask medical questions (e.g., when the employee asks for a reasonable accommodation), but states that employers must keep the information confidential, including from coworkers.

With respect to reasonable accommodations, the EEOC publication gives examples of accommodations, which may allow an employee with HIV infection to perform the essential functions of the job, such as more frequent breaks to rest or use the restroom, modified work schedule or unpaid time off to accommodate medical appointments or recuperation, and/or permission to work from home. The EEOC notes that "[b]ecause an employer does not have to excuse poor performance, even if it was caused by a medical condition or the side effects of medication, it may be better to ask for an accommodation before any problems occur or become worse."

The EEOC publication advises that harassment is not allowed under the ADA, and that employers are not allowed to discriminate against an employee simply because the employee has HIV infection through actions such as termination, rejection for a job or promotion, or forcing an employee to leave. The EEOC emphasizes (with lots of underlining) that employers "cannot rely on myths or stereotypes about HIV infection when deciding what you can safely or effectively do. Before an employer can reject you based on your condition, it must have objective evidence that you are unable to perform your job duties, or that you would create a significant safety risk, even with a reasonable

accommodation.”

The second publication, “[Helping Patients with HIV Infection Who Need Accommodations at Work](#)”, explains to doctors that patients with HIV infection may be entitled to reasonable accommodations at work. It also provides examples of possible reasonable accommodations, such as those stated above, and how doctors can assist patients in the accommodation process.

Employers should be aware that the EEOC has long considered HIV infection to be a disability protected by the ADA. Employers should go through the same analysis and interactive process as with any disability covered by the ADA or applicable state disability law to determine whether any reasonable accommodation can be made.

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