
HIGHLIGHTS OF EEOC ENFORCEMENT OF THE AMERICANS WITH DISABILITIES ACT

***A PRELIMINARY STATUS REPORT ***

July 26, 1992 through March 31, 2000

EEOC Headquarters, Washington, D.C., Office of Communications and Legislative Affairs, July 2000, www.eeoc.gov

INTRODUCTION

The 10th Anniversary of the Americans with Disabilities Act (ADA) presents the U.S. Equal Employment Opportunity Commission (EEOC) with the opportunity to assess its accomplishments and examine future challenges. This preliminary status report summarizes EEOC's enforcement of the law during the past decade.

EEOC is a bi-partisan federal agency which has enforcement authority for the employment provisions (Title I) of the ADA, among other major civil rights statutes. Title I prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, discharge, advancement, compensation, job training, and other terms and conditions of employment.

Since Title I went into effect on July 26, 1992, EEOC's enforcement efforts have prevented and remedied workplace bias against individuals with disabilities by resolving charges administratively (by voluntary settlements, mediation, and conciliation); litigating cases in the federal courts; developing comprehensive policy guidance on ADA legal and technical issues; and conducting vigorous public education and outreach to stakeholder groups, members of Congress, the news media, and the general public.

EEOC's combined efforts of administrative enforcement, litigation, policy development, technical assistance, outreach, education, and interagency coordination have sent a strong and unequivocal message to the employer community, labor organizations, civil rights advocacy groups, and the public at large that disability discrimination will not be tolerated in the workplace.

Since July 1992, when Title I became effective, through the first half of Fiscal Year (FY) 2000 (March 31, 2000), the Commission has obtained over \$300 million on behalf of more than 20,000 individuals through its overall enforcement efforts, including settlements, conciliations, mediation, and litigation. In addition, EEOC has obtained non-monetary benefits for over 10,000 individuals, including reasonable accommodation, policy changes, training and education, job referrals, union membership, and the posting of EEO notices at job sites.

EEOC, since the passage of the ADA in 1990, has worked cooperatively with all agencies responsible for enforcing the various provisions of the Act. The Commission's interagency coordination efforts center on memoranda of understanding and coordination guidance documents with the U.S. Department of Justice, U.S. Department of Labor, and other federal agencies with enforcement jurisdiction for the ADA. Greater coordination among federal agencies and departments increases the effectiveness of ADA enforcement and implementation. Therefore, EEOC will continue to examine new and creative ways to enhance coordination among federal agencies.

ADMINISTRATIVE ENFORCEMENT

Through its administrative enforcement activities, EEOC resolves many ADA cases prior to any litigation being filed. The Commission has strengthened methods for timely and effective enforcement of the ADA through the creation and implementation of strategic enforcement in charge processing and prioritization, as set forth in the agency's National Enforcement Plan (NEP) and Local Enforcement Plans (LEPs) -- implemented in 1996. In 1999, under the leadership of Chairwoman Ida L. Castro, the agency developed and implemented a Comprehensive Enforcement Program (CEP) to build on the success of the NEP and LEPs.

The CEP has ushered in a new and more integrated operational strategy in which investigative staff and attorneys interact in a collaborative and coordinated manner to enhance enforcement and litigation efforts. Such interagency coordination, coupled with EEOC's national mediation program, has led to more effective enforcement with better results in an expeditious fashion. For example, in FY1999 alone (which ended September 30, 1999), EEOC received 17,007 ADA charges, resolved 22,152 charges (new and old), and obtained approximately \$50 million in non-litigated monetary relief for charging parties.

Since FY 1993, the first full year of EEOC's enforcement of Title I, through the first half of FY 2000 (March 31, 2000), ADA charges filed with the agency have accounted for an average of 21.4% of the agency's caseload (approximately 125,000 ADA charges).

Between FY 1993 and the close of FY 1999 (September 30, 1999), EEOC:

- Resolved nearly 130,000 ADA charges;
- Tripled the number of annual "merit resolutions" (resolutions of meritorious allegations with favorable outcomes to charging parties) in ADA cases, from 1,119 to 3,965 merit resolutions; and
- Tripled the amount of monetary benefits obtained annually for charging parties under the ADA, from \$15.9 million (12.6% of total agency monetary benefits) to \$50 million (23.7% of total agency monetary benefits).
- Between July 26, 1992, when Title I became effective, and March 31, 2000 (FY 2000, 2nd Quarter), EEOC:
- Recovered a total of \$282,025, 229 in monetary benefits for charging parties under the Act, including back pay, interest, and compensatory and punitive damages.
- Obtained monetary benefits for 20,622 individuals, an average of \$13,676 per person benefitted.
- Obtained non-monetary benefits for 10,706, in addition to persons receiving monetary benefits in ADA charges.

MEDIATION

On February 11, 1999, EEOC launched a groundbreaking mediation program at agency field offices nationwide. The national mediation program expanded on a successful mediation pilot program at several agency field offices in 1997 and 1998. Mediation, a key tool of the comprehensive enforcement strategy, is a form of alternative dispute resolution offered by EEOC early in the process to facilitate resolution without lengthy investigations or litigation. The decision to mediate is completely voluntary for the charging party and the employer, and the mediation process is strictly confidential at every stage. The program has won the endorsement of a broad range of agency stakeholders, including business and labor advocates, civil rights groups, and representatives of the employer and plaintiff bars.

Since EEOC started utilizing mediation on a pilot basis in 1997, about 2,000 ADA charges have been mediated with a resolution success rate of over 60%. In these mediated charges, approximately \$17.2 million in monetary benefits have been awarded to 1,530 persons -- an average monetary benefit of over \$11,000 per person -- during this same time period. In addition, 46% of mediated ADA charges included non-monetary relief, in the form of reasonable accommodation, reinstatement, policy changes, and training.

When mediated, the average charge processing time for ADA complaints is cut nearly in half (the time the charging party walked in EEOC's door to the time of resolution or impasse). While ADA charges took an average of 286 days to reach a determination in EEOC's administrative process in FY 1999, the processing time for mediated ADA charges to reach a final resolution of the matter was about 150 days or less.

In FY 1999, approximately 24% of the cases mediated in EEOC's overall ADR program involved the ADA. Of those mediations, 28% involved the issue of discharge, 22% involved the issue of reasonable accommodation, 10% involved the issue of terms and conditions of employment, 8% involved the issue of harassment, and 4% involved the issue of hiring. Following are highlights of recent cases successfully resolved by EEOC through mediation:

- A case involving 27 individuals who had complained that a pre-placement health screening questionnaire violated the ADA by requiring them to disclose medical conditions. In the settlement, the company agreed to stop using the questionnaire, offered the 27 individuals an opportunity to be reconsidered for employment under a modified application process, paid \$950,000 to the individuals, and augmented an internal training program to ensure compliance with the ADA.
- A case involving an individual who alleged that an employer fired him after learning he had cancer. As a result of the mediation, the charging party was reinstated to his former position with back pay. He also was given a reasonable accommodation of time off from work to attend any future chemotherapy treatments.
- A case involving a charging party who had a serious health condition of congestive heart failure and was on a medical leave of absence. She filed a charge alleging that her employer refused to let her come back to work because of a disability. The charging party, who no longer works for the employer, settled her charge with long term disability benefits and \$65,000.

LITIGATION

EEOC's efforts to achieve voluntary compliance with the laws it enforces are supported by the ability to litigate against employers who fail to voluntarily conciliate EEO violations against employees and applicants. The Commission's ADA litigation has been primarily directed at eliminating the barriers to employment for people

with disabilities, especially those that exist in the public consciousness. EEOC strategically and vigorously enforces all aspects of the ADA through its litigation program, which includes filing direct lawsuits and amicus "friend of the court" briefs. In addition, agency legal staff provide advice to district office administrative enforcement units responsible for investigating charges of discrimination.

Since the beginning of EEOC's enforcement of the ADA, the Commission has successfully resolved approximately 90% of all ADA suits filed in district court either by settlement, favorable court decision, or favorable jury verdict. District courts issued rulings unfavorable to EEOC in only 7% of ADA lawsuits, and another 1% of such lawsuits were dismissed voluntarily. On the district court level, EEOC has filed more than 350 substantive lawsuits to enforce the ADA. The Commission also has increased the percentage of its ADA class caseload from 8% of all ADA suits in FY 1996 to 22% in FY 1999. Overall, about 15% of the agency's ADA cases filed since 1992 sought relief on behalf of multiple workers.

On the appellate level, EEOC files amicus briefs in cases confronting fundamental issues on how the ADA should be applied, including the critical issue of who should be protected by the Act. EEOC has participated as amicus curiae in nearly 100 cases on issues arising from or connected to the ADA, the Rehabilitation Act, or state disability discrimination laws since the outset of the Act's enforcement. For example, the Commission has filed numerous briefs arguing that individuals who seek disability benefits are not estopped from claiming they are qualified individuals with disabilities within the meaning of the ADA. This position was ultimately ratified by the Supreme Court in *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795 (1999).

Employers often operate with misconceptions about individuals with disabilities, making superficial judgments based on myths, fears, and stereotypes. Following are highlights of agency litigation in these cases:

- In *EEOC & Charles Wessel v. AIC Security Investigations, Ltd, et. al.*, the first lawsuit filed by EEOC under the ADA, EEOC won a jury verdict finding the defendant had unlawfully fired its Executive Director due to the assumption that he could no longer perform his job because he had been diagnosed with terminal brain cancer. The former director was awarded \$222,000.
- In *EEOC v. Showbiz Pizza Time Inc., d/b/a Chuck E' Cheese*, EEOC claimed that a district manager fired a custodian with a developmental disability because the company did not employ "those type of people." A jury awarded the custodian back pay, \$70,000 in compensatory damages for emotional distress, and \$13 million in punitive damages (the punitive damages award was later reduced to \$230,000 because of the statutory cap on damages). The judge also ordered the company to give the custodian his job back.
- In *EEOC & John Doe v. Campbell University, Inc.*, the Commission successfully challenged the University's termination of a physical education instructor because he had AIDS. At the outset of the lawsuit, the court ordered the defendant to continue paying the instructor's health insurance benefits, pending trial. The University later agreed to provide the instructor with continued employment, salary and benefits, and with \$325,000 in monetary relief.
- In *EEOC v. Chomerics, Inc., et al.*, the Commission claimed that a chemical worker's coworkers and supervisor harassed and mocked him because of his disability (cerebral palsy). The company agreed to provide the worker with \$98,000 in back pay and compensatory damages.
- In *EEOC v. Wal-Mart Stores, Inc.*, a jury found the store's hiring official had illegally asked a job applicant about his disability (amputated arm) in a job interview and then refused to hire him. The applicant was awarded \$7,500 in compensatory damages and \$150,000 in punitive damages. The judge also ordered the company to stop questioning applicants about their disabilities.
- In *EEOC v. Southwestern Bell Telephone Co.*, EEOC alleged that the company refused to allow an air conditioning specialist to return to work following his treatment for depression. The company agreed to give the specialist his job back, restore his seniority rights and benefits, and pay him over \$24,000 in monetary relief. In addition, the company agreed to improve its assessment of each employee's ability to resume work after a medical leave of absence.

EEOC's ADA litigation also has focused on the bedrock premise that applicants and employees with disabilities must be judged on merit and their ability to do the job -- not based on stereotypes that assume inability to do a job. More often than not in these cases, people with disabilities can work productively with simple and inexpensive accommodations. Following are highlights of EEOC litigation in this area:

- In *EEOC v. The Kroger Company*, the Commission sought the removal of physical barriers that prevented a cashier with paraplegia from using the defendant's restroom or break room because they were located down a flight of stairs. After the cashier filed a discrimination charge with EEOC, the company built a restroom

and break room that was accessible to people who use wheelchairs. The defendant further agreed to provide the cashier with \$225,000 in compensatory and punitive damages.

- In *EEOC v. Bloomingdale's, Inc.*, the Commission challenged the defendant's refusal to allow an employee to sit on a stool 5 to 10 minutes per hour when she became fatigued by her systemic lupus. The defendant settled the suit by providing her with \$75,000 in monetary relief and by agreeing to train its managers on the requirements of the ADA.
- In *EEOC v. United Public Workers, AFSCME, Local 646*, the Commission sought the provision of sign language interpreters at union meetings for two union members who are deaf. The union agreed to provide interpreters for members who are deaf or hard of hearing and accommodations for its members who have other disabilities. The union also provided the two members with nearly \$50,000 in monetary relief.

POLICY GUIDANCE

In addition to enforcement and litigation, the development and issuance of policy guidance plays a central role in EEOC's efforts to promote understanding and voluntary compliance with the ADA. The courts also examine and often rely on Commission policy guidance in their interpretations of significant case law. Since the ADA was enacted in 1990, EEOC has issued numerous comprehensive policy guidances and technical assistance documents addressing many aspects of employment discrimination under the ADA. In 1991, for example, the EEOC issued both the Final Rule and Interpretive Appendix implementing the ADA. In 1992, EEOC issued the ADA Technical Assistance Manual. It swiftly became an indispensable guide for laypersons needing to know how the ADA affects the workplace.

Subsequent policy guidances and related documents have expanded on the basic framework set forth in the Final Rule. Following are examples of some of the most significant policy documents:

- Compliance Manual Section on the Definition of the Term "Disability" (1995): This document thoroughly and systematically sets out the manner in which EEOC investigators should approach the most fundamental issue in almost every ADA case - whether a charging party has a "disability" within the meaning of the Act.
- Preemployment Questions and Medical Examinations (1995): This guidance offers a common-sense approach in "plain English" to issues that are critical in ensuring that people with disabilities are not discriminated against in the hiring process.
- Effects of Representations in Applications for Disability Benefits on the Determination of Whether an Individual is a "Qualified Individual with a Disability" Under the ADA (1997): This guidance was instrumental in changing the course of judicial decision-making on an issue of paramount importance to many people with disabilities. In this guidance, the Commission said that the fact that someone claimed to be disabled for the purpose of receiving certain benefits should not automatically prevent him or her from maintaining an ADA suit against a particular employer.
- ADA and Psychiatric Disabilities (1997) : This guidance addresses challenging questions about disabilities that are frequently not understood by employers or the general public and does so in a manner that is accessible to the reader. Prior to issuance of the guidance, many people did not even know that the ADA protected individuals with psychiatric disabilities. The guidance was the catalyst for a constructive public discussion about psychiatric disabilities in the workplace.
- Reasonable Accommodation and Undue Hardship (1999): This guidance provides clear responses to some of the most commonly-asked questions about reasonable accommodation, and sets out several agency positions on novel or complex issues.
- Instructions to Field Offices on Analyzing ADA Charges After Supreme Court Decisions Interpreting "Disability" and "Qualified" (1999): Issued only one month after three Supreme Court decisions interpreting Title I of the ADA, this document provided EEOC investigators with critical guidance on evaluating ADA charges involving people who use medication or assistive devices to eliminate or reduce the effects of an impairment. The application of the Instructions has demonstrated in many instances that charging parties who use mitigating measures still have disabilities defined by the ADA.

OUTREACH AND TECHNICAL ASSISTANCE – EEOC's outreach program supplements its enforcement, litigation, and policy initiatives by providing the public with a broad range of education, technical assistance, and training on the ADA and other agency-enforced statutes. EEOC makes information available on its operations, programs, and activities through printed materials (available in different languages and alternate formats), its Internet web site, speeches and presentations, media relations, workshops and technical assistance programs, and by responding to public inquiries. Further information about the Commission is available on the agency's web site at www.eeoc.gov.