

Disability Discrimination Complaints Are Rising: Is Your New York or New Jersey Business Prepared?

by Ramon Rivera on February 16, 2012

According to the Equal Employment Opportunity Commission, last year was a record year for workplace discrimination claims. Through its enforcement, mediation, and litigation efforts, the EEOC obtained a record \$455.6 million in relief, an increase of \$51 million over 2010 figures.

The EEOC's yearly reports are important because they reveal trends in the types of charges employees are filing as well as how they are being resolved by the EEOC. This year, the report highlights a growing area of concern for New Jersey and New York employers—disability discrimination lawsuits.

While race and sex discrimination allegations declined from the previous year, disability discrimination claims rose 2.3% to 25,742 and accounted for 25.8% of the total. In addition, the agency's enforcement of Americans with Disabilities Act (ADA) produced the highest increase in monetary relief among all of the statutes.

Specifically, the administrative relief obtained for disability discrimination charges increased by almost 35.9 percent to \$103.4 million compared to \$76.1 million in the previous fiscal year. The most commonly cited disabilities included back impairments, orthopedic impairments, depression, anxiety disorder, and diabetes.

Given the increase in disability claims, employers should be sure that all managers and supervisors have received adequate training regarding the ADA, particularly in light of recent amendments. For example, managers and supervisors should understand:

- Under the ADA, as amended, the definition of disability is quite broad. In addition, the regulations now identify specific types of impairments that should easily be concluded to be disabilities, including: deafness, blindness, intellectual disability (formerly known as mental retardation), partially or completely missing limbs, mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia
- The ADA also protects people from discrimination based on *their relationship with a person with a disability* (i.e. the employee's husband is disabled).
- The ADA prohibits discrimination when it comes to *any* aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

- The ADA requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer (“undue hardship”).
- Under the ADA, a reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

Given the rise in EEOC disability claims, we strongly suggest all New Jersey and New York employers review their ADA policies and procedures with an experienced employment attorney.