



EEOC Chair Speaks of Possible ADA Changes, Urges Employers to be Proactive with Potential Bias Situations

Addressing the 25th annual Industry Liaison Group national conference in New York, Equal Employment Opportunity Commission Chair Naomi Earp discussed possible changes to the ADA and implored employers to be “proactive” in addressing issues that could result in discrimination charges filed with the EEOC.

Earp noted in the August 23 speech that the current Congress is very unhappy with the Supreme Court’s handling of ADA cases. She explained that under current law impaired individuals must prove they are disabled and that “20 to 25 percent of cases” are dismissed because the charging party or plaintiff is unable to demonstrate a substantial limitation on a major life activity. Under the recently introduced ADA Restoration Act (25 HRR 823, 7/30/07), the Supreme Court’s last four or five decisions interpreting the ADA would be overturned, according to Earp. This would significantly increase the EEOC’s workload, and potentially, employers’ risk of liability because previously dismissed claims would now be litigated. According to Earp, the bill has support from both sides and “everyone believes some version will pass.”

In addition to commenting on potential ADA changes, Earp offered practical tips to avoid trouble with the EEOC. “Don’t discriminate with impunity and if you do, don’t tell us about it,” jibed Earp after relating the story of an employer that admitted to a preference of hiring Hispanics over African-American applicants in its position statement. She noted that this did not help the employer. Employers should also train managers and supervisors to remain “stoic” and not to take personally the charges of discrimination filed against. Earp acknowledged that retaliation claims are on the rise and the most difficult challenge might be for supervisors accused to bias to control their emotions and realize the complaints are part of a fairly common legal process.

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She further added that employers should familiarize themselves with EEOC processes before a charge is filed and employers should not disregard internal complaints of discrimination. Disregarding EEO complaints can become more serious problems if not addressed. Earp implored employers to act promptly, taking “every single charge seriously.” Earp also noted that employers may be able to negotiate with the EEOC while a charge was pending, but after a charge proceeds to the legal side, “our lawyers are warriors” and employers may have less room to negotiate.

This article is not intended as legal advice to a specific problem or issue. If you have a question about employment law, please contact the Powers & Frost attorney with whom you work or Andrea Johnson, Partner, Head of Employment and Commercial Litigation Section.

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