

U.S. Equal Employment Opportunity Commission
Recommendations and Plan for Implementation
of the National HIV/AIDS Strategy

1. Background

The HIV/AIDS epidemic, which began in the United States in 1981, continues to devastate individuals and their families living in our country. Each year approximately 56,000 individuals in the United States will be infected by the HIV/AIDS virus. This epidemic has already taken the lives of nearly 600,000 individuals in the United States.

The President has directed Federal Agencies to renew their commitment to eliminating the epidemic. He has challenged federal agencies to work in new ways and across agency lines. He has specifically directed this agency, the Equal Employment Opportunity Commission (EEOC), to provide the Office of National AIDS Policy (ONAP) and the Office of Management and Budget (OMB) with:

- (1) recommendations for increasing employment opportunities for people living with HIV, and
- (2) a plan addressing employment related discrimination against people living with HIV, consistent with EEOC's statutory authority and applicable law.¹

We outline below EEOC's proposal for addressing employment discrimination directed against job applicants and workers with HIV/AIDS.

The Commission's proposal has two distinct components. First, EEOC would focus on educating both the employee and employer communities with regard to their rights and responsibilities. The EEOC will educate the employer community regarding their obligations not to discriminate against people with HIV/AIDS and other individuals with disabilities, and will educate job applicants and workers on their right to a discrimination-free workplace. Second, EEOC will refine and improve agency enforcement efforts against employers that discriminate against individuals with HIV/AIDS as well as other individuals with disabilities.

EEOC is the lead federal agency for enforcing the employment provisions of the Americans with Disabilities Act (ADA) as amended.² The ADA prohibits employers from discriminating against job applicants and workers based on their disabilities. Employers must evaluate workers based on their abilities and not their disabilities, whether real or perceived. In light of Congress's directives in the ADA Amendments Act of 2008 (ADAAA), individuals with HIV/AIDS will

¹ President's Memorandum to Federal Agencies (July 13, 2010), at <http://aids.gov/federal-resources/policies/national-hiv-aids-strategy/letter-agencies.html>.

² EEOC also enforces the Rehabilitation Act of 1973 which prohibits employment discrimination based on disability against job applicants and workers in the Federal Government. The requirements of the Rehabilitation Act are virtually identical to those of the ADA.

clearly meet the definition of an individual with a disability and therefore be entitled to the ADA's protection.

If an individual with HIV/AIDS believes he or she has been discriminated against because of his or her disability, the individual may file a charge of employment discrimination with the EEOC under the ADA. The EEOC has 53 offices located across the country to accept such charges.

Upon receipt of a charge (that is jurisdictionally valid), an EEOC investigator will investigate the charge to determine if there is reasonable cause to believe the charge is true. Such investigations include talking to witnesses and to the employer and requesting information from the employer. In FY 2010, the EEOC investigated and resolved nearly 105,000 charges.

If the EEOC investigation results in a finding that there has been a violation of the law, the EEOC is required by law to attempt to remedy the violation through conciliation. Congress has provided this opportunity for employers and other covered entities to remedy and redress acts of discrimination prior to being sued in court. If good faith conciliation efforts fail, however, the EEOC is authorized to sue employers or other covered entities in federal court. In FY 2010, the EEOC brought 250 cases in federal court.

The EEOC also has a robust alternative dispute resolution system. Individuals are offered the opportunity, through the EEOC, to mediate their case with an employer (or other covered entity). If both parties agree to mediation, this occurs prior to a full investigation. In FY 2010, the EEOC resolved 9,362 charges through mediation.

Finally, education and technical assistance are potent methods for addressing employment discrimination. An effective means of eliminating unlawful workplace discrimination is to prevent it from happening in the first place. In FY 2010 the EEOC reached over 250,000 employers and employees through approximately 4,000 events across the country

2. Recommendations and Action Plan

A. Ensure that combating discrimination against individuals with HIV/AIDS as well as other individuals with disabilities is an EEOC enforcement priority.

The Commission will reinforce with both field investigators and litigators the pressing need to effectively enforce the ADA, specifically including enforcement of the rights of people with HIV/AIDS. EEOC will also reinforce with staff the need to adhere to this enforcement priority when executing our coordination responsibilities pursuant to 29 C.F.R. Part 1640 with respect to complaints filed with other agencies under Section 504 of the Rehabilitation Act.

It is key that EEOC's approximately 750 investigators be well trained concerning the requirements of the ADA and understand how the ADA applies to people with HIV/AIDS. This includes ensuring that investigators understand the 2008 amendments to the ADA, which eliminates the difficulties that people with HIV/AIDS have experienced in demonstrating that they are protected by the ADA.

The Commission plans to provide training to its investigators close to the time that the agency's new regulations on the Americans with Disabilities Act Amendments Act (ADAAA) are issued. Training will reiterate that investigators are to prioritize ADA charges when the charging party has a terminal illness (such as instances of AIDS or aggressive cancers).

To ensure that the new requirements of the ADAAA are implemented correctly in the enforcement process, the Commission will develop and implement a plan to ensure that there is appropriate and aggressive coordination and accountability for charges involving HIV/AIDS and other disabilities during all phases of the investigatory process as well as litigation. The plan will ensure that the Commission can gather a comprehensive understanding of the barriers to full and equal employment for individuals with HIV/AIDS and other disabilities. Based on the information gathered, the Commission can appropriately assess which issues should be prioritized in order to maximize the effectiveness of its enforcement efforts. This will enable the Commission to carry out effectively the National HIV/AIDS Strategy Federal Implementation Plan and the President's Memorandum to Federal Agencies.

Effective litigation is also critical to enforcement of the rights of people with HIV/AIDS. The Office of General Counsel (OGC) is responsible for conducting the Commission's litigation under the ADA. This role will be particularly important for individuals with HIV/AIDS, who were too often unable to enforce their rights under the ADA based on court decisions finding that they were not covered by the law.

OGC will coordinate with enforcement to identify HIV/AIDS charges for possible litigation when conciliation efforts fail and seek amicus participation in private litigation addressing HIV/AIDS issues, where appropriate. OGC will compile a list of lawsuits that the office has undertaken to eliminate HIV/AIDS discrimination in the workplace. In addition, OGC will consult with external legal advocates for individuals with HIV/AIDS to obtain their input on common barriers to employment opportunities. OGC will also coordinate with the Office of Communications and Legislative Affairs to ensure expansive press coverage is provided on these cases as a way to educate the employer and employee communities.

B. Educate employers and employees on their respective obligations and rights regarding workplace discrimination and persons with HIV / AIDS.

The Commission will undertake a public education campaign to educate employers on their obligations and employees and job applicants with disabilities concerning their rights under the ADA. This education campaign will include, among other topics relevant to individuals with HIV/AIDS, an employer's duty to provide a reasonable accommodation to a worker with HIV/AIDS absent undue hardship. In addition, EEOC will improve the accessibility of this publicly available information.

- Webinars on employment of persons with HIV/AIDS.

The EEOC Training Institute will conduct webinars on employment of individuals with HIV/AIDS and other individuals with disabilities. Individuals may register on-line for webinars at www.eeotraining.eeoc.gov.

Webinars are delivered by noted EEOC experts from the major program offices including the Office of General Counsel, Legal Counsel, Office of Field Programs and Office of Federal Operations. Participants view a presentation and receive live audio transmitted through their computer. In addition, participants may type in questions during the course of the live webinar presentation. All of the Commission's webinars are closed-captioned and Section 508 compliant. Webinar events can be marketed through email using the Commission's database of 40,000 previous event attendees; through direct mail; on the EEOC Training Institute database; and, on EEOC's main website: www.eeoc.gov. As part of its efforts to conduct outreach to individuals with disabilities, the Commission will ensure that advance notice of webinars related to disability rights issues is widely distributed within the disability community, including to organizations serving and/or advocating for individuals with HIV/AIDS.

- Federal Sector Training Course

The EEOC Training Institute also has a variety of federal sector training courses which will be reviewed to determine the extent to which employment of persons with HIV/AIDS is already covered. Courses include EEO Counselor Training, EEO Investigator Training, MD-15, and Advanced Barrier Analysis. These courses will be updated as necessary to ensure employment of persons with HIV/AIDS, as well as other individuals with disabilities, is included.

- EEOC Seminars for Private Sector Employers and State and Local Employers

The EEOC Training Institute sponsors one- and two-day EEO Seminars (commonly called TAPs, Technical Assistance Programs) across the country each year. These seminars are designed to help employers understand, prevent and correct discrimination in the workplace. The Commission highlights the latest EEO topics and provides expert presentations on EEOC policies and procedures at these technical assistance seminars, held in major cities throughout the country. The Commission will ensure that employment of persons with HIV/AIDS, as well as other individuals with disabilities, is a topic at these seminars.

- EXCEL Conference

The Examining Conflicts in Employment Laws (EXCEL) Conference is the premier Federal training conference for EEO managers, supervisors, practitioners, HR professionals, attorneys and ADR specialists. The conference is sponsored by EEOC. The Commission will ensure that employment of persons with HIV/AIDS, as well as other individuals with disabilities, is a topic at this annual event.

- Partner with organizations that provide education, services and/or advocacy for persons with HIV/AIDS.

The Agency's 25 field outreach program coordinators will enhance their partnerships with organizations that educate and provide services to persons with HIV/AIDS to ensure that these organizations know about the prohibitions against employment discrimination. These organizations will refer persons with HIV/AIDS to EEOC, when such individuals believe they

have been discriminated against in the workplace because they have HIV/AIDS. Specifically, the program coordinators will work with the protection and advocacy systems for individuals with disabilities in each state to identify, plan and implement training activities, and with disability rights organizations and organizations serving and/or advocating for individuals with HIV/AIDS to ensure that trainings concerning the employment rights of individuals with disabilities, including HIV/AIDS, are conducted across the country.

- Develop Public Service Announcements on employing individuals with HIV/AIDS as well as other individuals with disabilities.

The EEOC will develop public service announcements, possibly featuring prominent individuals, to educate the public that it is unlawful to refuse to hire individuals or to fire workers because they have HIV/AIDS, as well as other individuals with disabilities.

- Develop Fact Sheet on employment discrimination and persons with HIV/AIDS.

To improve the accessibility of publicly available information and materials on workplace discrimination and persons with HIV/AIDS the agency will develop a Fact Sheet addressing employment discrimination and persons with HIV/AIDS. The agency will disseminate the Fact Sheet at events targeting organizations that provide education and services to persons with HIV/AIDS; disseminate it electronically to disability rights organizations and organizations serving and/or advocating for individuals with HIV/AIDS; and post it on www.eeoc.gov on www.AIDS.gov and on appropriate social media sites.

C. Partnerships with other organizations

EEOC partners with 94 State and Local Fair Employment Practice Agencies (FEPAs) and 64 Tribal Employment Rights Organizations (TEROs) as well as other Federal agencies.

- EEOC will invite staff, primarily investigators from state and local FEP As and from TEROs to attend EEOC enforcement training on HIV/AIDS issues.
- EEOC will partner with FEPAs and TEROs to provide education and technical assistance programs to employers so that they understand and can meet their responsibilities to individuals with HIV/AIDS.
- EEOC will conduct with FEPAs and TEROs outreach programs on employment discrimination to HIV/AIDS organizations. These community groups can then refer individuals with employment problems to EEOC.
- EEOC will explore with sister agencies including the Departments of Labor and the Department of Justice possible joint enforcement efforts to eliminate employment discrimination directed against people with HIV/AIDS.

- EEOC's Office of Federal Operations will meet with the leadership of the Office of Personnel Management to determine what steps the federal government can implement to increase employment opportunities in the federal government for people living with HIV/AIDS.
- EEOC will coordinate with disability rights organizations, including organizations serving and/or advocating for individuals with HIV/AIDS, to disseminate information about the employment rights of individuals with disabilities and about how to file a charge of discrimination with the EEOC, and to conduct trainings around the country on these topics. EEOC will also invite representatives of these organizations to provide feedback concerning priority issues for EEOC to address.