

# EEOC Guidance on Accommodating Employees with HIV/AIDS Provides Excellent Perspective for All Employers

## Labor & Employment Law Update

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On December 1, 2015, in conjunction with World AIDS Day, the EEOC issued two new guidance documents addressing the legal rights available to employees with HIV/AIDS under the Americans with Disabilities Act ("ADA").

While these documents specifically reference HIV and AIDS, the reality is that this new guidance has tremendous value to human resources professionals and other management decision-makers who may be faced with accommodation requests based on virtually any medical condition. Moreover, although the guidance is not specifically directed to employers, again the truth is that this guidance describes in great depth the basic considerations employers must make when evaluating issues that may involve ADA-protected rights.

First and foremost, the guidance makes clear that employers must base employment decisions, including decisions on hiring, termination, and whether to grant reasonable accommodations, on objective evidence, not medical myths or stereotypes. Employers simply are not permitted to speculate or guess on matters relating to how a medical condition affects an employee's job performance.

The guidance also provides excellent detail in terms of what information an employer can require from a health care provider in the context of an employee's reasonable accommodation request. Such information can include descriptions of how the employee's condition functionally limits his or her performance of job functions and major life activities, and how the condition makes a particular change at work or a certain accommodation medically necessary.

The bottom line is that the EEOC's new guidance provides a solid perspective on how an employer should respond to virtually any employee's exercise of ADA rights, regardless of the underlying medical condition. This guidance also gives clear insight into the approach the EEOC is likely to take when it receives a discrimination charge that alleges ADA violations. As such, employers should give

careful consideration to this guidance in advance of making any decision on an employee's request for an accommodation, and before taking any employment action that may relate to an employee's medical condition.

The documents discussed above are entitled "Living with HIV Infection: Your Legal Rights in the Workplace Under the ADA" and "Helping Patients with HIV Infection Who Need Accommodations at Work."

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