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LEGISLATIVE AND ADMINISTRATIVE ACTIONS

EEOC Staff Cut to Lowest Level in 45 Years. The US Equal Employment Opportunity Commission (EEOC) has been underfunded and understaffed in comparison to the volume of cases it handles for a number of years. Now, the Department of Government Efficiency (DOGE) and further upcoming budget cuts will result in the laying off of approximately one third of its employees. This will reduce the agency to about 1,700 people. It has not been below 2,000 employees since 1980. The processing and frequent resolution of complaints by the EEOC, already fraught with delays, will become even more stretched. This is likely to result in many more cases simply proceeding into federal courts rather than waiting for possible resolution by the EEOC. For employers, this can be bad news as the EEOC process often screens out many cases, and its mediation efforts resolve other complaints more economically than the very expensive federal court litigation.

LITIGATION

U.S. Supreme Court

Court Clarifies the Standard for Proving Discrimination. In a *unanimous* decision, the U.S. Supreme Court ruled that the same standards of proof should be applied to all discrimination cases. A number of courts adopted an approach for "*reverse discrimination*" cases in which a member of a majority group had to meet a higher standard of proof in showing they suffered discrimination since such discrimination is untraditional in workplaces where they are in the majority of workers. In *Ames v. Ohio Dept. of Social Services,* the plaintiff, a heterosexual woman was passed over for promotion and a lesbian woman was hired to fill that

position and she was later demoted from her position as a program administrator and a gay man was hired as a program administrator. The lower court ruled that she had not met the higher burden of proof for a "reverse discrimination" case. On appeal, the Supreme Court held that Title VII prohibits discrimination based on sex, race, etc. It does not have any language that differentiates among genders, races, or ethnicities or applies any different standard of proof if one happens to be of a minority or majority group. Not all courts imposed a greater standard of proof in these cases. So, this ruling clarified the standard for all federal courts. Most state discrimination laws have not imposed such a differing standard of proof. (For more information, see U.S. Supreme Court Eases Standard for Plaintiffs to Prove "Reverse Discrimination" Claims).

Supreme Court Limits ADA Coverage. In *Stanley v. City of Sanford, Fla.*, the U.S. Supreme Court ruled that a former firefighter could not sue over a change of health insurance benefit coverage that occurred after she took disability retirement. Ms. Stanley left when the city provided retirees with continuing health insurance until age 65. Then the city changed its practice and decided to shorten the coverage period for disability retirees who had less than 25 years of service at termination. She sued under the ADA Title I Employment Discrimination provisions. In an eight-to-one majority decision, the Court ruled that Title I covers "*employment*" discrimination for a "*qualified individual who is employed or has applied for employment*." It held that Ms. Stanley was not covered because she was no longer employed or desired a job and had already retired before the benefit policy changed; the ADA does not cover *post*-employment acts. This case focuses on changes to disability retirement coverage or other policy changes occurring *after one leaves* employment. It did not limit retirees' ADA suits for decisions made *while* they were still employed and would affect them in retirement. Also, this ADA case does not affect other discrimination laws or what rights retirees may have under ERISA or state benefits or contract laws.

Other Discrimination Case

Age

This month's two age discrimination cases illustrate the concept of "pretext" in proving a case. Discrimination can be shown in different ways. One is direct evidence of management making prejudiced or discriminatory statements. Another is that the plaintiff can win the case without direct evidence of discriminatory intent, by showing "pretext." This means showing that the employer's stated reasons for an adverse decision do not hold up under examination. They fall apart or are shown to be without foundation or validity.

Common reasons for a court to find pretext are employer's shifting or changing reasons for its actions; absence of records to document and prove the reasons; apparently unfair or even impossible requirements for the employee to meet; suspicious timing of an adverse action.

Managers Decided Employee Had Failed the Improvement Standard Before Even Issuing the Performance Improvement Plan. In *Murphy v. Caterpillar* (7th Cir., 2025) the employer's evidence conflicted with the employer's stated justification for the adverse action. Mr. Murphy, a 59-year-old, had declined an early retirement offer made to all those over age 55. He continued to work, including receiving praise from the corporate office for heading a major engineering project. Later that year, two weeks after receiving an "Exceeds Expectations" and "Excellent" performance evaluation in all categories, he was suddenly presented with a Performance Improvement Plan for alleged poor work over the past several months and threatened with discharge if he did not meet the improvement standards. However, the deadline for meeting some of those goals *had already passed* and the supervisor had already signed the PIP as "unsuccessful." When Murphy objected, he was told no changes would be made to the PIP. He refused to agree to the PIP which led to the demand he resign or be fired. He resigned and filed an ADEA suit. The court found evidence of pretext in the company's claim of poor performance. The supervisor could produce no admissible evidence to support the poor performance conclusion. The PIP for the same timeframe as the excellent evaluation was suspect, and the impossibility of meeting improvement goals which were already past and had been predetermined as unsuccessful all combined to warrant a conclusion of a pretext for age discrimination.

Destruction of Records and Lack of Foundation. A 59-year-old Chili's restaurant manager with many years of experience, Mr. Kean, had the most profitable, highest-performing location in his region. However, he was called in and summarily fired for violating the "Chili's culture" and creating a toxic environment with his employees and customers. He was replaced by a 33-year-old with no management experience. Kean filed an age discrimination suit. In defense, the company claimed there had been complaints about him by staff and customers. *However*, the company had destroyed virtually all its documents related to his employment and reasons for termination. It had no records of any of the alleged complaints. Top management could not quite remember exactly why he was fired or what evidence they looked at prior to the decision and all related emails were missing. Among the few still-existing documents were two recent Employee Engagement Surveys in which store employees overwhelmingly rated Kean as excellent with very positive comments and there was low turnover. The company had no uniform document retention policy; although it did maintain records on

many other managers yet, apparently deleted all of Kean's records after it knew he was filing suit. The court found sufficient evidence of pretext to support the age discrimination charges. A lower court had found the company guilty of spoilation of evidence and issued sanctions including fees and costs against it. The 6th Circuit Court of Appeals found this insufficient for the egregiousness of the situation and remanded for the lower court to increase the sanctions to further penalize the company for its actions. *Kean v. Brinker International, Inc. d/b/a Chili's Grill & Bar; Chili's Inc*. (6th Cir., 2025).

Sex

WNBA Player Maintains Pregnancy Discrimination Suit Against Las Vegas Aces. A court ruled that WNBA basketball player Dearica Hamby's case could proceed to a jury trial. Early in the 2022 season, Hamby discovered she was pregnant and informed her team's General Manager. Then she alleged the team withdrew benefits and ordered her to vacate team-provided housing. Then the coach criticized her for not having taken precautions to avoid pregnancy, questioned whether she would be ready and able for the next season, and then traded her to the LA Sparks, a less successful team with lower endorsement income opportunities. Ms. Hamby filed a complaint with the WNBA, which investigated and penalized the Aces, voiding their first-round draft pick and suspending the coach for two games "*for violating the league's team respect in the workplace policy*." Hamby then sued the Aces and the WNBA for pregnancy discrimination under Title VII. The court dismissed the WNBA, finding it was not the employer. This is similar to other cases in which national brands are not held liable for acts of local franchises. The claim against the Aces was not barred by the league's Arbitration Agreement since pregnancy was not specifically covered in that agreement. The case against the team was allowed to continue. *Hamby v. Las Vegas Aces & WNBA* (D.C. NV, 2025). In a final irony, after the Aces opined that she would be unfit to play well after the pregnancy and delivery, Ms. Hamby went on to have her best season ever with the Sparks, averaging 17.3 points per game.

Non-Employee, Non-Student Still Covered by Title IX – Zone of Interest. A private fencing coach alleged that she was sexually harassed by a University Assistant Coach. When she reported this to the university, she was then retaliated against by excluding her from university fencing events and harming her reputation with the university and the larger fencing community. She sued under Title IX which prohibits sex-based discrimination in education or educational programs receiving federal funds. The lower court dismissed the case because the coach was not a school employee, and she was not a student enrolled in the university or its athletic programs. The Court of Appeals, however, ruled that Title

IX has a Zone of Interest test. Though not an employee or student, the fencing coach had been excluded from university-hosted fencing events and retaliated against, which was "manifesting on campus." Thus, the sexual harassment and retaliation occurred within the university-hosted/funded context of the Zone of Interest and she could maintain the suit. *Oldham v. Penn State University* (3rd Cir., 2025).

Religion

First Amendment — Make Sure Policy Matches Practice Before Enforcing. Beards and air masks or gas masks have been the topic of many firefighter, police, and correctional officer cases. The courts have generally ruled the safety reasons for requiring officers to be clean-shaven for a tight mask fit overrules the employee's right to a beard. However, disability and religious cases require closer assessment. *Smith v. City of Atlantic City* (3rd Cir., 2025) involved a fire department rule that all Firefighters must be clean shaven for a safe air mask fit. Mr. Smith wore a beard for years and was categorized as a Firefighter, however he was in an administrative role. He was, of all things, the Air Mask Tech, making sure all others were clean-shaven and had a tight mask fit. He had not fought a fire for years. However, the Department suddenly decided to enforce the clean-shave rule on all those classified as Firefighter. Smith requested a religious exemption for his beard citing Holy Scripture, "*Beards emulate Jesus Christ and are symbols of man's natural role as head and leader.*" This request was dismissed by the fire department. There was no interactive process to discuss his request. Then, though he had not performed firefighting duties for over a decade, Smith was suddenly assigned to fire duty and ordered to shave his beard. This was the only time in 31 years an Air Mask Tech had been so assigned. Smith had not been required to certify for firefighting for years and was not really eligible to respond to a fire. The city cited a sudden, "pressing need" – *but* there were no fires the day Smith refused to shave and was suspended. He sued under Title VII and the Constitution's Free Exercise of Religion clause. The court ruled in his favor. The policy did give Fire Captains the discretion to grant a beard waiver in certain cases. The Department skipped this step and just denied the request. The long-established *practice* was that the policy did not apply to administrative personnel because they did not fight fires. The Department also ignored the interactive process assessment. There was every appearance the Department then made a special effort to "bend" its own practice just to "get" Smith and assign him to firefighting without any compelling justification. All of this effort to strictly enforce a policy went against its long-established practice. In order for a policy to overcome an employee's right to religious practice accommodation, the employer must show a Compelling Interest and the court will give strict scrutiny to the need

to apply the policy. The Department failed these tests; there was no compelling reason to strictly enforce the policy in this instance, especially in light of years of past practice.

Benefits

You Get What You Pay For. *Edwards v. Guardian Life* (5th Cir., 2025) involved a beauty salon owner. She had obtained a group life insurance coverage for the salon employees, including herself. Ms. Edwards developed cancer and could not keep up the business. The business eventually declined to just herself and then became inactive. The insurance policy provided that if the employee group was less than two, Guardian had the discretion to cancel the policy. Ms. Edwards continued to pay the insurance premium for some 26 months after she was the only employee and the business went inactive. She passed, and her husband, with the help of her local insurance agency, sought to collect the life insurance. However, Guardian denied the claim. It stated that she had been ineligible at the point the business had only one employee, herself. Therefore, the policy became void at that time. Ms. Edwards' beneficiaries sued under ERISA and state law. The court found that the policy did indeed give Guardian the ability to cancel the group plan because there was only one employee in the "group." However, it was a *discretionary* option. Guardian did not give notice of cancellation to Ms. Edwards or her agent at the time it became aware of the one-person status. It continued to accept premium payments for 26 months until Ms. Edwards passed away. Only then did it go back and cite the date for one person ineligibility. The court ruled that Guardian waived its *discretion* to cancel the plan by continuing to "pocket" Ms. Edwards' payments for over two more years. It could not now avoid its responsibility to make good on the policy. In its decision, the court stated, "*You get what you pay for*!"

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