

Blog Post

Thousands of COVID-Related EEOC Charges Filed; More to Come?

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Employers should be prepared: while COVID may feel like it's on the wane, COVID-related charges filed with the U.S. Equal Employment Opportunity Commission (EEOC) are on the rise. According to data published by *Bloomberg* from the EEOC, from April 2020 through December 2021 the EEOC received more than 6,000 discrimination charges relating to COVID, providing a glimpse into the future of COVID-related employment litigation. The majority of those charges claimed violations of the Americans with Disabilities Act (ADA), while others cited to Title VII of the 1964 Civil Rights Act and other anti-bias laws.

The EEOC also received more than 2,700 separate vaccine-related charges after the vaccine became widely available and vaccine mandates were introduced to workplaces across the country. Many EEOC charges related to vaccine mandates appear to cite violations of the ADA, however the majority of vaccine-related charges raised other statutes. The EEOC has not confirmed which other statutes were raised in vaccine-related charges, however it is likely that religious exemption requests under Title VII are included.

Since the start of the COVID-19 pandemic, the EEOC has brought at least three lawsuits related to disability bias and COVID.

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In its first disability accommodation lawsuit connected to the pandemic, the EEOC alleged that a health, safety, and environmental quality manager at a pharmaceuticals manufacturing facility in Georgia was fired after her employer denied her request to continue working from home because her heart condition heightened her COVID-19 risk. According to the complaint filed in September, other employees were allowed to continue working from home after the facility reopened, however the health and safety manager's request was denied and she was terminated.

Two more suits were filed against a pharmacy and a coffee house in Texas alleging that the employers discriminated against employees with disabilities that rendered them vulnerable to serious illness if they contracted COVID-19. The EEOC alleged that a pharmacy discriminated against a pharmacy technician with asthma who asked to wear a facemask at work as an accommodation of his disability to help protect him from the virus. The complaint alleges that the technician was harassed because of this accommodation request, taunted, and humiliated for questioning management's policy prohibiting masks, and sent home on at least two occasions after asking to wear a mask, all of which lead the technician to quit. In the second suit, the EEOC claimed that a Texas coffee shop violated the ADA when it denied two baristas with disabilities reasonable accommodations and terminated their employment. According to the complaint, rather than provide the disabled employees reasonable accommodations to minimize customer contact, the baristas were not allowed to return to work until a vaccine for COVID-19 was developed, even though they were ready and willing to work. Regardless of the outcome, the case serves as a reminder that wise employers should not refuse to allow employees to work based in the hopes of protecting employees from illness. Employers must first ascertain whether there is a direct threat to the employee or others. Only where an employee would pose a substantial risk of significant harm to his/ her own safety or the

safety of others *that cannot be significantly reduced or eliminated by reasonable accommodations should* an employer deny an employee with a disability the opportunity to work.

These cases will surely be ones to watch as employers prepare for more COVID-related charges to be filed with the EEOC, and lawsuits from employees in the future. Employers should keep up to date on the latest guidance from the EEOC and update policies and procedures for handling COVID-related illnesses and accommodation requests accordingly.

If you have any questions regarding the adoption and/or enforcement of COVID-19 safety measures, or your obligations under the law, contact your Akerman attorney.

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