



At age 50, is there any indication the power and authority of the EEOC is diminishing? Hardly!

By Michael H. Weier ■ July 2, 2015

The United States Equal Employment Opportunity Commission (EEOC) turns 50 years old today. The federal agency recently announced settlement of *EEOC v. Baker Concrete Construction, Inc.*,¹ a case that reflects the interplay of federal (and reciprocal state) anti-discrimination laws and workers' compensation.

The EEOC is responsible for enforcing laws against discrimination in employment, including alleged violations of Title VII of the Civil Rights Act of 1964,² Americans with Disabilities Act of 1990³ (ADA), Americans with Disabilities Act Amendments Act of 2008⁴ (AD3A), Age Discrimination in Employment Act of 1967⁵ (ADEA), the Equal Pay Act of 1963,⁶ Title II of the Genetic Information Nondiscrimination Act of 2008⁷ (GINA) and Pregnancy Discrimination Act of 1978⁸ (PDA).

The EEOC has the power and authority to investigate and file lawsuits on behalf of workers against employers for alleged workplace discrimination. The Commission also mediates and settles thousands of discrimination complaints each year. Accordingly, at any point in time, the EEOC acts as investigator, enforcer, mediator and litigant; an unusual array of responsibilities, powers and privileges, indeed.

The EEOC frequently defers investigatory and regulatory action to state agencies with power and authority to enforce reciprocal state laws against discrimination in employment.⁹ Should the EEOC determine the correlative, parallel state agency fails to take necessary action or the particular issue(s) are particularly compelling or important from a national perspective, the EEOC exercises its federal anti-discrimination muscle.

EEOC v. Baker Concrete illustrates the half-century-old federal agency's active enforcement efforts. The EEOC announced Baker Concrete, a construction company located in Houston, Texas, agreed to pay \$58,000 and provide injunctive relief to resolve and settle a federal employment disability discrimination lawsuit.¹⁰

Maria Castillo, a nine-year employee of Baker Concrete who suffered from asthma, filed a complaint with the EEOC. Following unsuccessful conciliation—a process in which the EEOC mediates disputes – the EEOC filed a lawsuit in federal district court on behalf of Ms. Castillo.

In its lawsuit, the EEOC alleged that Baker Concrete denied Ms. Castillo

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reasonable accommodation and ultimately terminated her employment as the company's payroll manager due to her asthma disability. The company purportedly refused to allow Ms. Castillo to work from home following a disabling reaction to chemical dust in the workplace and denied her return to the workplace for fear she would have further breathing difficulties. The company allegedly then declared Ms. Castillo was unable to perform her job and terminated her employment. The EEOC maintained such actions constituted violations of Title I of the ADA and the amendments under AD3A.

A U.S. District Court Judge entered a Consent Decree that avoided a protracted trial and approved the terms of a settlement agreement on May 11, 2015. The Consent Decree provides that Baker Concrete will pay Ms. Castillo \$58,000 and institute EEOC-monitored training on employment discrimination law. The Decree also requires the company to implement an ADA policy that expressly permits telework as a reasonable accommodation in appropriate circumstances.

EEOC v. Baker Concrete is a painful reminder to the workers' compensation community: Federal (and state) employment discrimination laws may be implicated when a worker alleges an industrial injury or occupational disease. Moreover, the case reveals, middle-age notwithstanding, the EEOC remains an imposing force.

If an industrial injury or occupational disease arguably limits or otherwise prevents a worker from performing the essential functions of the job, the employer may be required to provide reasonable accommodation. Resolution of the workers' compensation claim does not necessarily extinguish the employer's statutory obligations under federal or state discrimination laws. ■

¹ C.A. 4:14-cv-02746 (S.D. Tex. 2014).

² 42 U.S.C. § 2000d, *et seq.*

³ 42 U.S.C. §§ 12111 – 12117.

⁴ Public Law No. 110 – 325.

⁵ Public Law No. 90 – 202.

⁶ 29 U.S.C. § 206(d); RCW Chapter 49.60.

⁷ Public Law No. 110 – 233.

⁸ 42 U.S.C. § 2000(e), *et seq.*

⁹ The Washington State Human Rights Commission enforces Washington State Law Against Discrimination, RCW Chapter 49.60, and the Civil Rights Division of the Oregon Bureau of Labor and Industries regulates Oregon's Law Against Discrimination in Employment, ORS Chapter 659A.

¹⁰EEOC Press Release (see website: <http://www.eeoc.gov/eeoc/newsroom/release/5-14-15.cfm>.)

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