guidance or case law directly addressing whether or how Title VII might apply.''

However, an employer may face a disparate treatment claim under the Pregnancy Discrimination Act and/or Title VII if it denies a pregnant worker's request for exemption from mandatory vaccination requirements, but allows ''non-pregnant or male employees exclusion from the requirement on other grounds, such as having a medical condition that was a contra-indicator for the vaccination,'' she added. Still, ''the outcome of such a claim would obviously turn on the facts of the particular case.''

BY LYDELL C. BRIDGEFORD

The informal discussion letter is reproduced in the Manual at EEOM N:0547.

Administration

Ishimaru Leaves EEOC After Eight-Year Run

Stuart J. Ishimaru, leaving the Equal Employment Opportunity Commission after more than eight years as a commissioner and acting chairman, is proud of the agency's accomplishments but also is aware that EEOC faces ongoing challenges in enforcing the nation's anti-discrimination laws, he said in an April 27 interview with BNA.

Originally appointed by President George W. Bush in 2003, Ishimaru, a Democrat, said he arrived at EEOC with no preconceptions after almost 20 years of working on civil rights issues as a House committee staff member and at the Justice Department's Civil Rights Division and U.S. Commission on Civil Rights. He considered the EEOC post a promising chance to work on a bipartisan commission dealing with the issues in which he had a strong professional interest, Ishimaru recalled.

Almost a decade later, Ishimaru said he departs with enormous respect for current and former colleagues on the five-member commission and for EEOC's career staff in Washington, D.C., and more than 50 field offices. ''There are so many talented people working for the EEOC, who have given up countless opportunities to do something more lucrative,'' he said.

Ishimaru resigned effective April 29, leaving as EEOC's current members Chair Jacqueline Berrien and Commissioner Chai Feldblum, both Democrats, and Commissioners Constance Barker and Victoria Lipnic, both Republicans.

BY KEVIN P. MCGOWAN

Administration

House Committee Advances Funding Bill For EEOC, Blocks ADEA-Related Final Rule

The House Appropriations Committee April 26 approved, by voice vote, legislation that would fund the Equal Employment Opportunity Commission at $366.6 million for fiscal year 2013, as well as block funding for implementation of a new EEOC regulation involving the Age Discrimination in Employment Act.

As part of the Commerce, Justice, Science, and Related Agencies Appropriations Act (bill number not yet available), the EEOC funding level would be $6.56 million above the FY 2012 level and $7.1 million below the president's request. Also, the bill would include up to $29.5 million for EEOC payments to state and local enforcement agencies.

The committee approved, by voice vote, an amendment that would prohibit funding for EEOC to implement, administer, or enforce a final rule amending its existing ADEA regulations to conform with two U.S. Supreme Court decisions that recognized ADEA disparate impact claims and put the burden on employers to prove the act's ''reasonable factors other than age'' (RFOA) defense (77 Fed. Reg. 19,080; see *News and Developments* , 3/30/12, p. 23).

The legislation further recognizes EEOC efforts to reduce its backlog. Committee Chairman Harold Rogers (R-Ky.) said the House is scheduled to take up the bill on May 8. The Senate Appropriations Committee April 19 approved an FY 2013 funding level for EEOC at $373.7 million, which is $7.1 million above the House level and $13.5 million above the FY 2012 funding level.

BY DERRICK CAIN

Text of the amendment is available at http://op.bna.com/dlrcases.nsf/r?Open=dcan-8tqrnf.

Employment Practices

Officials Say Employers Need to Handle Reasonable Accommodation Requests Better

More employers may want to institute an organization-wide reasonable accommodation committee (RAC) and budget to ensure that their protocols on granting or denying accommodation requests under the Americans with Disabilities Act are consistent and that the funds to provide the accommodations are readily available, said an official of the Equal Employment Opportunity Commission during an April 18 public policy session at a corporate-sponsored conference on employment practices.

''It makes a lot of sense to have a RAC, but make sure it moves quickly on the requests. If the request has to go through a lot of hoops and channels, then you are going to have some problems down the road,'' said Corrado Gigante, director of the EEOC's Newark area office. RACs are basically employer-sponsored groups that oversee requests for reasonable accommodations. Committee members are typically other employees.

Employers with RACs will have to ensure that the request process is not viewed by workers as being an onus, Gigante said. Likewise, workers requesting reasonable accommodation through the committee should not perceive its actions as creating delays in the process.

Gigante and officials at the Department of Labor spoke during a panel at the Sixth Annual U.S. Disability Matters Awards Banquet and Conference in Newark, N.J. The event was hosted by Prudential Financial and sponsored by Springboard Consulting LLC, a firm focusing on disability issues in the workplace.

Interactive Process Still Matters. Gigante cited a case in which an employer with a RAC required a four-page affidavit for an accommodation request. The process also entailed six different steps before the committee granted a request. Almost four months passed before the worker heard anything about the request.

''That is not engaging in the interactive process,'' he said. ''We would argue that such a process is a formula for more complaints and charges down the road.''

The evolution of RACs has led to concerns about whether employers are conducting individualized assessments under the ADA, Gigante said. There still needs to be an interactive process between the employee and supervisor or manager, he added. ''You start to kick the request up the line, which has its value. However, as you start to kick it up the line, there is a question of timeliness and whether the employer is dragging the process out.''

The law does not specify that the employer must respond to a reasonable accommodation request within a specific timeframe, such as 30 days, Gigante noted. There is a reasonableness standard, however, that applies to the interactive process.

''If you drag the process out for three to five months and the person is not getting their accommodation, then you are going to see a charge. RAC is a good concept, but make sure it's a streamline concept,'' he said.

Gigante pointed out that the ADA Amendments Act shifted the focus from an examination of a condition's coverage to the employer's delivery of reasonable accommodation. Too often, an employer will tell the employee that it needs more medical information or, in cases of leave as an accommodation, require a specific return-to-work date, even when the employee's doctor is unable to provide such a date.

Ensuring the Money Is Available. One benefit to the employer of establishing RACs and similar entities is that the committee has access to a centralized, dedicated pool of funds to pay for accommodations, said Gigante. He cited a case involving charges in which individuals were denied accommodations that carried financial costs because the employer asserted it didn't have enough money in the end-year budget to provide for the accommodation.

Kathy Martinez, the assistant secretary of labor for the Office of Disability Employment Policy, noted that ''centralized accommodation funds take the pressure off everybody's budgets.'' In addition, more companies are adopting reasonable accommodation processes in which the requester's manager is not part of the discussion, Martinez explained. The manager may be biased with regard to the financial costs associated with the accommodation.

BY LYDELL C. BRIDGEFORD

Litigation

Race Discrimination

EEOC Sues Florida Firefighters Union For Allegedly Aiding Bias in Promotions

The union representing Jacksonville, Fla., firefighters violated Title VII of the 1964 Civil Rights Act by advocating, bargaining for, and agreeing to a system for promotions that discriminates against black firefighters seeking advancement, the Equal Employment Opportunity Commission alleged in a lawsuit filed April 30 (*EEOC v. Jacksonville Ass'n of Firefighters,* M.D. Fla., No. 3:12-cv-491-3-34, *complaint filed* 4/30/12).

In a complaint filed in the U.S. District Court for the Middle District of Florida, EEOC said Jacksonville's written examinations for promotion to four ranks—engineer, lieutenant, captain, and fire chief—have a disparate impact on black candidates and cannot be justified as job-related and consistent with business necessity.

Complaint Alleges Intentional Bias. The union has engaged in intentional race discrimination by bargaining for and perpetuating a promotional process that it knows has a disproportionate adverse impact on black firefighters, EEOC alleged.

Statistics show that in each of the relevant four job categories for which promotional exams are administered, black test-takers fare far worse than white test-takers and are promoted far less often than white candidates, EEOC said.

Even though the union has known since at least 2004 the city's promotional process has a disparate impact on black candidates, ''the union has not advocated or negotiated in favor of changes to the promotional process through the collective bargaining process,'' EEOC said. ''Rather, the union has advocated for and negotiated in favor of the discriminatory promotional process each time a collective bargaining agreement was negotiated between 2004 and the present.''

The union local May 1 was unavailable to comment on EEOC's suit.

BY KEVIN P. MCGOWAN

Text of EEOC's complaint is available at http://op.bna.com/dlrcases.nsf/r?Open=kmgn-8tvp7n.

Disability Discrimination

EEOC Not Barred by Rules on Attorney Ethics From Contacting Employer's Ex-HR Managers

The Equal Employment Opportunity Commission is not barred by rules governing the professional conduct of lawyers from contacting former human resources managers regarding the target of an agency charge investigation, the U.S. District Court for the Northern District of Illinois ruled April 16 (*EEOC v. University of Chicago Med. Ctr.,* N.D. Ill., No. 11 C 6379, 4/16/12).

Judge Virginia M. Kendall ruled that EEOC was entitled to enforcement of an administrative subpoena it served on the University of Chicago Medical Center after the employer refused to disclose to the commission certain information, including contact information for former HR managers Susan Slaviero and Cynthia St. Aubin. EEOC sought the information in connection with charges it is investigating that UCMC violated the Americans with Disabilities Act. Slaviero and St. Aubin were managers in the medical center's HR department during part of the time under investigation.

The court rejected the medical center's effort to resist the subpoena on the grounds that EEOC is barred by rules of legal ethics from contacting Slaviero and St. Aubin without attorneys for UCMC being present. The medical center's contention that Slaviero and St. Aubin possess privileged attorney-client information did not change that outcome, it found.

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