Don't Forget About Potential Associational Claims

December 6, 2013 | | EEOC,Labor And Employment

Don't Forget

At this point, most employers (we hope) are well aware that the ADA prohibits discrimination against "qualified individuals with a disability." Nevertheless, many employers may not realize that the ADA also protects applicants and employees from discrimination based on their relationship or association with an individual who has a disabling condition. According to the EEOC, the purpose of the association provision of the ADA is to "prevent employers from taking adverse actions based on unfounded stereotypes and assumptions about individuals who associate with people who have disabilities." See EEOC Q&A About the Association Provision of the Americans with Disabilities Act available here.

Thus, for example, the EEOC takes the position that it is unlawful to fire an employee who interacts with people who are HIV-positive based on the assumption that the employee will contract the disease.

A recent California Court of Appeals decision provides a real world example of how this could play out. In *Rope v. Auto-Chlor System of Washington, Inc.*, plaintiff Scott Rope informed his employer, defendant Auto-Chlor, that he planned to donate a kidney to his physically disabled sister. Shortly thereafter, Auto-Chlor terminated Rope's employment. Rope subsequently brought a disability discrimination claim under California's Fair Employment Housing Act. In his Judicial Complaint, Rope alleged that Auto-Chlor discriminated against him based on his association with his physically disabled sister, and its perception that he was or would become physically disabled himself as a result of the kidney donation surgery and his anticipated need for postsurgical accommodations. Looking to the ADA for guidance, the Court ultimately held that Rope adequately asserted an associational discrimination claim under California law and ruled that his lawsuit could move forward (whether he will prevail remains to be seen).

What can we learn from cases like *Rope v. Auto-Chlor*? Even "routine" personnel decisions may land an employer in hot water – despite being directed toward an employee who appears to fall outside the scope of a protected category. Moreover, it is important to note associational claims are not limited to the ADA. Title VII, for example, contains a similar prohibition. See EEOC Facts About Race/Color Discrimination available here.

As such, well written and widely disseminated EEO policies, along with regular anti-discrimination/harassment training, are key to avoiding costly litigation down the line. Where an employer has knowledge of a potential associational claim, it needs to be extra vigilant in documenting its legitimate non-discriminatory business reason for the adverse employment action at issue.

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