

FOIA MARKER

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Collection/Record Group: Clinton Presidential Records
Subgroup/Office of Origin: Counsel Office
Series/Staff Member: Marvin Krislov
Subseries:

OA/ID Number: 18948
FolderID:

Folder Title:
ADA [Americans with Disabilities Act] - Smoking

Stack:	Row:	Section:	Shelf:	Position:
S	113	3	1	2

OCLA fax

U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
OFFICE OF COMMUNICATIONS AND LEGISLATIVE AFFAIRS
1801 L STREET, N.W.
WASHINGTON, D. C. 20507
FAX: (202) 663-4912

DATE:

9-06-95

TIME:

1:15

TO:

Tracy Mitchell
(202)

FAX NUMBER:

456-1647

SENDER:

Robin Hope

SENDER'S TELEPHONE NUMBER:

(202) 663-4915

DOCUMENT:

Article on Smokers Special Rights

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER):

2

SPECIAL INSTRUCTIONS:

SMOKERS' Awarful Spectacles

Smokers of America, take heart. Your deliverance is at hand.

No longer can you be denied coveted employment opportunities. No longer can you be forced to loiter in alleyways in subzero temperatures to indulge your habit. No longer must you bear, without recourse, the indignities heaped upon you by condescending, nonsmoking co-workers.

How has this come to pass? Who are your saviors? Why, none other than President Clinton and Food and Drug Administration Commissioner David Kessler, who recently transformed you from a despised and oppressed rabble into the newest legally protected minority.

Permit me to explain. Clinton approved Kessler's finding that nicotine is an addictive drug. As a result, you are now federally recognized drug addicts.

No longer are you responsible adult citizens who have foolishly chosen to run the risk of disease and death in the long term for the immediate gratification afforded by smoking. You are now victims of a "psychological substance use disorder."

And this means that you are officially disabled and protected by the federal Americans with Disabilities Act, or ADA.

The ADA protects anyone who has or is regarded as having a physical or mental impairment that substantially limits a major life activity. This has been interpreted to include both drug addicts and alcoholics.

Before, when smoking was just a nasty habit, the act did not apply to you. But now that you are officially impaired, you are legally entitled to all the rights and privileges currently enjoyed by those undergoing 12-step programs.

Before, employers could ask you whether you smoked during an employment interview. They could refuse to hire you even though you were the best-qualified applicant in

Comment

By John Hasnas

order to save on their health-care costs. They could deny you a promotion you had earned simply because you were a smoker.

No longer. Now any of these actions would constitute blatant discrimination against the disabled.

I do not wish to overstate the case. Life is not a bed of roses. The ADA will not guarantee you the right to smoke on the job.

In fact, the act specifically states that it may not be interpreted "to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment" (language that would be unnecessary were smoking not within contemplation of the act).

However, it does guarantee that any employer who decides to restrict or prohibit your ability to smoke on the job cannot do so without "making reasonable accommodations" to your disability.

Although there is currently a great deal of legal uncertainty as to what counts as reasonable accommodation, you may feel confident that being driven outside into freezing cold, driving rain or tropical heat in order to deal with your handicap will not qualify.

You should also be aware that now that you are officially disabled, you are entitled to a workplace free of harassment based on your disability.

This means that your employer is legally obligated to ensure that your supervisors and co-workers do not engage in conduct that would create an intimidating, hostile or offensive working environment for you as a smoker.

A week ago, you had to put up with the superior attitude of your condescending nonsmoking co-workers. If they insisted on badger-

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Now, thanks to the president and the FDA commissioner, you can demand that your employer put a stop to such behavior and sue if he or she does not take "immediate and appropriate corrective action."

So do not be offended the next time Kessler refers to you as a drug addict. Do not rebel against

being characterized as one bereft of free will, mindlessly enslaved by tobacco and unable to decide for yourself what risks you wish to run.

Try to see his statement for what it is — an open invitation to the wonderful world of legally recognized victimhood with all the rights and benefits contained therein.

Accept the invitation. If you do, think you will find the workplace to be a more felicitous, accommodating and warmer place. Especially on those winter workdays when it is 10 below.

John Hasnas is an assistant professor at the Georgetown University School of Business.

4B Tuesday, August 29, 1995

San Antonio Express-News

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of The Hearst Corporation

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PLEASE TELEPHONE SENDER IF YOU DO NOT RECEIVE ALL DOCUMENTS.

ST. LUKE'S awarded special

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48 Tuesday, August 29, 1995

San Antonio Express-News



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SENT BY:

9- 5-95 :12:05PM :

EEOC-

94567028:# 1

OCLA fax

U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
OFFICE OF COMMUNICATIONS AND LEGISLATIVE AFFAIRS
1801 L STREET, N.W.
WASHINGTON, D. C. 20507
FAX: (202) 663-4912

DATE:

9/4/95

TIME:

TO:

Diana Fortuna, DPC

FAX NUMBER:

456-7431

SENDER: CLAIRE E. GONZALES, DIRECTOR

SENDER'S TELEPHONE NUMBER: (202) 663-4915

DOCUMENT:

ADA/Smoking Article

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER):

2

SPECIAL INSTRUCTIONS:

I found a much clearer copy.

Krislov

128

To: Chris Cenf
Marvin Krislov
Fr: Diana Fortuna
Here's the article
that EEOC mentioned
to me.
Diana

OKERS awarded special rights

Comment

By John Hasnas

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4B Tuesday, August 29, 1995

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SENT BY:

2014 12111

9-5-95 12:05PM

EEOC-

94567028: # 2

Leslie, here's the article we're getting ADA calls on. Please advise.

Thanks,
Brad

call Lenn

fax to

~~W~~riter Palmieri

~~SSOC ~~called~~ called~~
~~about status of~~
~~this request. Do~~
~~you know I~~
~~anything tell~~
~~can then?~~

~~fax: 456-1121~~

~~Adrian~~

~~Thanks~~

Done 9/6/95

③ copy sent
confirmation attached

OCLA fax

U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
OFFICE OF COMMUNICATIONS AND LEGISLATIVE AFFAIRS
1801 L STREET, N.W.
WASHINGTON, D. C. 20507
Fax: (202) 663-4912

DATE: 8/28/95

TIME:

TO: Marvin Krislov

FAX NUMBER: 456-1647

SENDER: CLAIRE E. GONZALES, DIRECTOR

SENDER'S TELEPHONE NUMBER: (202) 663-4915

DOCUMENT: Casellas letter to Panetta

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER):

3

SPECIAL INSTRUCTIONS:

Thanks for your help!
Claire



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

July 28, 1995

Office of
the Chairman

The Honorable Leon E. Panetta
Chief of Staff
The White House
Washington, D.C.

Dear Mr. ~~Panetta~~ ^{LEON}:

As we discussed during our May 19, 1995, meeting, the Equal Employment Opportunity Commission (EEOC) is planning a roundtable discussion focusing on diversity and equal employment opportunity issues as a part of our 30th Anniversary celebration. We believe the EEOC has an important role in facilitating a national discussion about the importance of diversity in the American workforce and the challenge of equal employment opportunity in the 21st century.

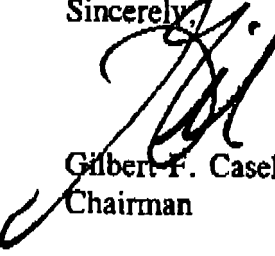
We would like to invite President Clinton to participate in the roundtable in whatever manner he desires. For example, he could give opening remarks, participate in the actual discussion, or give closing remarks. Two hours of the program will be devoted to a discussion among twelve to fifteen well-respected members of the civil rights, business, and legal communities. A moderator will guide the discussion of three basic questions -- what is diversity, why is it important to today's American workforce, and how can American society best meet the challenge of fully utilizing its increasingly diverse workforce in the 21st century. An EEOC reception for invited guests will follow the roundtable.

The EEOC believes that these issues are at the heart of America's current debate concerning affirmative action. A national dialogue designed to educate and inform the American populace will serve as a positive step toward dissolving the wedge of racial and ethnic anger that currently divides the country. We believe that this is an important event for the entire country and consistent with President Clinton's desire to engage the nation in a conversation about the importance of diversity as we move into the 21st century. To encourage the national dialogue, the audience will be comprised of invited guests from the communities served or affected by the EEOC, Members of Congress, and representatives from the administration. We further hope to secure televised coverage of the event by either C-Span or PBS to carry the roundtable discussion to an even broader public audience.

Currently, we are considering October 1995 for the roundtable and reception. As discussed, we would like to work with you to accommodate the President's schedule to insure his participation.

For more information or for further coordination on this matter, please have your staff contact Claire Gonzales, EEOC Director of Communications and Legislative Affairs, at 663-7199. Thank you for your assistance in this matter.

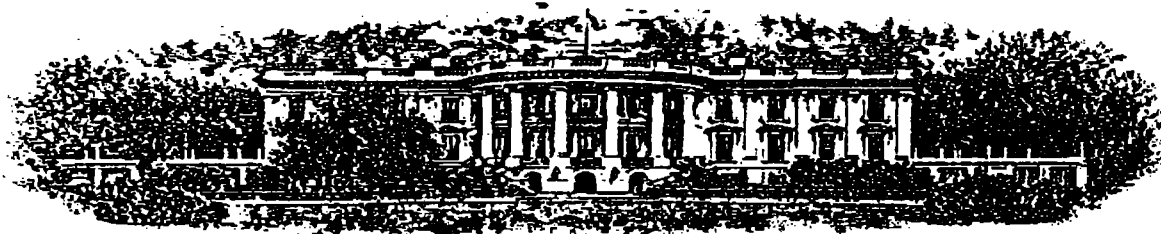
Sincerely,



Gilbert F. Casellas
Chairman

cc: Abner Mikva, Counsel to the President
George Stephanopoulos, Senior Advisor to the President
Alexis Herman, Director, Public Liaison
Kitty Higgins, Secretary to the Cabinet

The White House



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: August 28, 95 9/6/95 3:30p
 TO: Jennifer Palmieri
 FACSIMILE NUMBER: 6-442 67929
 TELEPHONE NUMBER: Torrey Hills Bldg.
 FROM: 456-67903
 TELEPHONE NUMBER: 4
 PAGES (WITH COVER): 4
 COMMENTS: EEOC called about status
of this request. Do you know?
Anything I can tell them?
Thanks

PLEASE DELIVER AS SOON AS POSSIBLE

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4

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NO	REMOTE STATION I. D.	START TIME	DURATION	#PAGES	COMMENT
1	202 456 6797	8-28-95 5:49PM	2'28"	4	

TOTAL 0:02'28" 4

XEROX TELECOPIER 7020

The White House



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: 9/6/95
 TO: 101-101-101
 FACSIMILE NUMBER: 101-101-101
 TELEPHONE NUMBER: 101-101-101
 FROM: 101-101-101
 TELEPHONE NUMBER: 101-101-101
 PAGES (WITH COVER): 4
 COMMENTS: See cover sheet about status of this request. Do you have anything to add to this?

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NO	REMOTE STATION I. D.	START TIME	DURATION	#PAGES	COMMENT
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TOTAL 0:02'25" 4

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** COUNT **
 # 4

*** SEND ***

NO	REMOTE STATION I. D.	START TIME	DURATION	#PAGES	COMMENT
1	67929	9- 6-95 3:45PM	2'19"	4	

TOTAL 0:02'19" 4

XEROX TELECOPIER 7020

Send Copy ^{red dot} OK
all to Diane
Fortuna from Mike
ROBOJ 249A
FYI - from EPOC Done
For their internal 9/11
Use --
do not distribute.
Thanks

Talking Points on Smoking as a Disability

The current debate over whether nicotine found in cigarettes and other tobacco products is an addictive drug has led to speculation about whether smokers, like alcoholics and former drug addicts, may be covered by the ADA. The following information has been prepared in consultation with the Office of Legal Counsel for responding to questions about this issue:

Q: Has EEOC seen many cases concerning smoking?

A: No. Although it is possible that complaints have been filed alleging smoking as a disability, we are not aware of any specific complaints in this area. The Commission has not filed any lawsuits alleging that smoking is a disability, and has taken no public position on issues concerning smoking as a disability.

Q: What is EEOC's position on whether smoking is an ADA-covered disability?

A: Under the ADA, a disability is a physical or mental impairment that substantially limits a major life activity (or a record of such an impairment, or being regarded as having such an impairment). Smoking itself is certainly not a disability, because many people who smoke do not even have a physical or mental impairment.

If some people who smoke are found to be "addicted" to nicotine, it is possible that this addiction could be an impairment. However, such an individual still would be required to show that s/he is substantially limited in a major life activity to be entitled to ADA protection.

It is important to remember, however, that neither Congress nor EEOC has taken a position on whether nicotine addiction may be covered under the ADA.

Q: If the federal government concludes that nicotine is addictive, would smoking then be considered a disability covered by the ADA?

A: Not necessarily. EEOC would determine whether a particular charging party has a physical or mental impairment that substantially limits a major life activity. A conclusion that nicotine can be addictive is irrelevant to determining whether a particular charging party is addicted to nicotine. Even if the charging party is addicted, EEOC would then determine whether the individual's addiction substantially limits a major life activity.

Q: If smoking is not a disability, does that mean that conditions that result from smoking are not disabilities?

A: Again, whether someone has a disability turns on whether s/he has a physical or mental impairment that substantially limits a major life activity, has a record of such an impairment, or is regarded as having such an impairment. It is irrelevant that someone got a particular condition through a voluntary activity, such as smoking.

Therefore, impairments like emphysema or lung cancer may be disabilities if they substantially limit an individual's major life activities.

Q: Can an employer prohibit smoking in the workplace without violating the ADA?

A: Yes. Section 501(b) of the ADA states: "Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by title I"

Q: If certain "nicotine addicts" are covered under the ADA, what does an employer have to do for them?

A: If an individual with nicotine addiction were covered under the ADA, an employer might -- in certain cases -- be required to provide reasonable accommodation that would not impose an undue hardship. However, an employer would not have to provide time off so that the individual could smoke. This is because the ADA does not require an employer to provide an accommodation that "enables" the individual's addiction. For example, although an alcoholic is entitled to reasonable accommodation so s/he can attend AA meetings, s/he is not entitled to a flexible schedule to accommodate weekend "binges."

Q: Can someone file a charge with EEOC claiming discrimination under the ADA based on smoking as a disability?

A: Anyone may file a charge with EEOC. EEOC will determine whether we have jurisdiction in the case, and if so, whether the charge has merit.

STROKE'S Awarded Special Rights

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