

# EEOC Issues Guidance Directed Specifically to HIV Positive Employees and Their Physicians

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On December 1, 2015, in conjunction with World AIDS Day, the EEOC issued two documents addressing the legal rights available to employees with HIV/AIDS under the Americans with Disabilities Act ("ADA").

**Living With HIV Infection: Your Legal Rights in the Workplace Under the ADA** explains that applicants and employees are protected from employment discrimination and harassment based on HIV infection, and that individuals with HIV infection have a right to reasonable accommodations at work. The guidance provides tremendous value to human resource professionals and other management decision-makers who may be faced with accommodation requests as it clearly explains how the EEOC believes the process of requesting a reasonable accommodation should go. The document assures employees that in most situations the employee can keep her condition private. It also provides several examples of reasonable accommodations (e.g. altered break and work schedule, changes in supervisory methods, unpaid time off, permission to work from home, etc.). It advises employees "[b]ecause an employer does not have to excuse poor job performance, even if it was caused by a medical condition . . . it may be better to ask for an accommodation before any problems occur or become worse." Businesses should heed the EEOC's underlined warning that employers must base employment decisions (hiring, termination, reasonable accommodation) on objective evidence, not medical myths or stereotypes.

**Helping Patients With HIV Infection Who Need Accommodations at Work** explains to doctors that patients with HIV infection may be able to get reasonable accommodations that help them to stay productive and employed, and provides them with instructions on how to support requests for accommodations with medical documentation. It also answers questions about the types of accommodations that may be available. It further advises doctors that if their patient does not want to disclose their specific diagnosis, the doctor can describe the condition as an "immune disorder."

Takeaway:

- Review the EEOC's new guidance [here](#)
- The EEOC is paying greater attention to protecting employees with HIV. In 2014, the EEOC resolved almost 200 charges of discrimination based on HIV status, obtaining over \$825,000.00 for job applicants and employees with HIV who were unlawfully denied employment and reasonable accommodations.

- Do not rely on medical myths or stereotypes about HIV when making hiring decisions or engaging in the reasonable accommodation process.
- If you have specific questions about accommodating employees who are HIV positive, contact a labor and employment attorney.