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NEWS ALERT

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# Company May Violate ADA by Informing Employees about Details of EEOC Investigation

By Michael C. Harrington & Sarah Gruber | August 23, 2017

On August 22, 2017, a federal trial judge injected uncertainty into the ability of in-house counsel to communicate with company employees during an Equal Employment Opportunity Commission (EEOC) investigation. In EEOC v. Day & Zimmerman NPS, Inc. (D. Conn. Aug. 22, 2017), Judge Victor A. Bolden concluded that an employer could be liable for ADA retaliation by sending a letter to its employees informing them of the existence of an ADA claim by an employee and advising them about potential interviews by the EEOC.

By way of background, the employee involved had filed a charge with the EEOC, alleging that a company had violated the ADA by firing him from working at the Millstone nuclear power station after he provided a doctor's note indicating that he could not work around radiation. The EEOC soon commenced an investigation into the charge, requesting a list of roughly 150 employees who worked at Millstone during the time period at issue, including those individuals' names, job titles, dates of employment, home addresses, and telephone numbers.

The company's in-house counsel testified that, in managing EEOC investigations over the years, she had often been confronted with questions from employees after they have been contacted by the EEOC during an investigation, such as whether they were required to cooperate, whether any interview time would be compensable, and whether they would be retaliated against if they cooperated. In anticipation of such questions, and concerned about releasing employees' contact information without informing them, the company decided to send a letter informing these 150 employees of the EEOC's request for their contact information, the nature of the charge (including the employee's claim that he was medically prohibited from working near radiation), the potential for an EEOC investigator to contact them for information, and the availability of a company lawyer to be present during the interview.

As a result of this letter, the employee alleged that he suffered retaliation from members of his union, who approached him to ask about his medical condition, refused to put him on certain jobs, and fired him first from future jobs. The EEOC then brought suit against the company for sending the letter.

Employers and in-house counsel should be mindful of what information is disclosed to employees during an investigation.

In denying cross-motions for summary judgment and slating this case for trial, Judge Bolden ruled that a company could violate the ADA by sending a letter of this sort, because the letter could have constituted retaliation against the employee, and/or interference with an EEOC investigation by potentially coercing letter-recipients from participating in the investigation or exercising their own rights under the ADA. He rejected the company's argument—and that of the National Association of Manufacturers as *amicus curiae*—that liability in a case like this would chill the rights of an employer to communicate freely with its employees.

This case raises concerns for in-house counsel, who can be confronted with the prospect of proactively managing an EEOC investigation, or waiting for a barrage of questions from employees to arise. Because of this ruling, employers and in-house counsel should be mindful of what information is disclosed to employees during an investigation, and should inform outside counsel if there are any concerns about the contents of a letter like the one in this case.

*If you have any questions regarding the information included in this bulletin, please contact: Michael C. Harrington at 860.240.6049 or mharrington@murthalaw.com or Sarah Gruber at 860.240.6060 or sgruber@murthalaw.com*


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