

ADA Title I Enforcement and People with HIV/AIDS

This Fact Sheet has been prepared by the ADA Title I Enforcement Project: Since 1995, Dr. Kathryn Moss and her colleagues have conducted research on the enforcement of the Americans with Disability Act's (ADA) employment discrimination provisions. With unique access to the information collected by the agency responsible for enforcement, the Equal Opportunity Employment Commission (EEOC), the ADA Title I Enforcement Project presents its findings to the disability community, policy makers, and others. Funding for the project has been provided by the National Institute on Disability and Rehabilitation Research and the National Institute for Mental Health.

How does the ADA protect workers who have HIV/AIDS?

Under Title I of the Americans with Disabilities Act (ADA), people who think they have been discriminated against by an employer because of their disability, may file an administrative *charge*. HIV/AIDS is one of many types of disabilities covered by the ADA. The charge may be filed at an Equal Employment Opportunity Commission (EEOC) office or a state or local Fair Employment Practice Agency (FEPA). It is also possible to sue in court, but only after filing an administrative charge and receiving what is known as a *right-to-sue* letter from the EEOC or a FEPA.

Additional information about the process of filing an ADA employment discrimination

charge can be found at our website or by contacting us. This fact sheet focuses on the administrative charge enforcement process. By early 2003, the analysis of the judicial enforcement process will be available.

How many people with HIV/AIDS have filed employment discrimination complaints?

During the period of June 26, 1992, when Title I went into effect, through September 30, 2000, a total of 254,130 administrative complaints of employment discrimination were filed. People with HIV/AIDS filed 3,746 complaints, or 1.5 percent of the total administrative complaints filed. The information in this fact sheet concerns the administrative complaints filed during the time period of 6/26/92 through 9/30/00.

How does one file a complaint?

While complaints can be filed by mail or telephone, filing in-person is highly recommended. When filing in-person, an investigator will conduct an interview called a *charge receipt* interview.

During the interview, which typically lasts between one and three hours, the investigator will try hard to help the individual filing the complaint present the best possible case. Filing by phone is the second best choice because an investigator will still conduct a charge-receipt interview. Filing by mail is the least satisfactory choice as it puts a great deal of emphasis on clear and persuasive writing and knowing what makes the best case.

For additional information on how to file a charge, please contact us to obtain the booklet, "Filing an ADA Employment Discrimination Charge: Making it work for you" (also available online at www.mentalhealth.org/publications/allpubs/SMA00-3471/default.asp, or visit our website and read Information Brief II, "In Search of a Solution to Disability-Based Employment Discrimination."

How long does the process take?

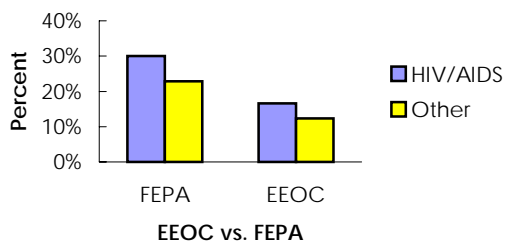
The average time it took people with HIV/AIDS to complete the employment discrimination process during the study period was 247 days.

What results came from the administrative complaints filed by people with HIV/AIDS?

People with HIV/AIDS had a higher rate of receiving a favorable complaint resolution than people with many other types of disabilities. Sixteen (16) percent of all resolved ADA administrative complaints resulted in some kind of benefit for complainants. In contrast, the benefit rate for people with HIV/AIDS was 20.5 percent.

There were differences in benefit rates for people with HIV/AIDS who filed their complaint at a FEPA compared with those who filed at the EEOC. Thirty (30) percent of the people with HIV/AIDS who filed at a FEPA received benefits. For those who filed with the EEOC, their rate of success in obtaining benefits was 17 percent.

Benefit Rate for HIV/AIDS by EEOC vs. FEPA

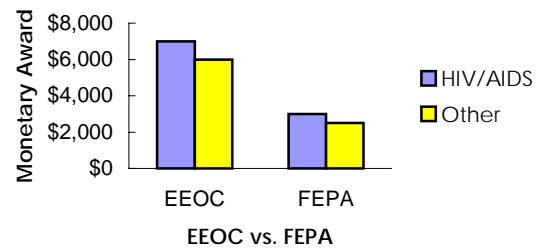


There are several types of benefits that people can receive from the administrative enforcement process. One type is monetary benefits. The median award for people with HIV/AIDS who received monetary benefits from their complaint was \$5,200. (That is, half of those receiving monetary benefits received less than \$5,200 and half received more.) For people with other disabilities, the median award was \$4,000.

There are some important differences in benefits based on where the complaint was

filed (EEOC vs. FEPA). The median award for people with HIV/AIDS was \$7,000 for the EEOC cases and \$3,000 for FEPA cases. In the EEOC cases, people with HIV/AIDS received \$1,000 more than people with other disabilities. In the FEPA cases, people with HIV/AIDS received only \$500 more than people with other types of disabilities.

Monetary Award for HIV/AIDS by EEOC vs. FEPA



While monetary awards are important, being rehired into a job or obtaining the position originally applied for can be of far greater benefit. However, few people received this type of benefit. Only 41 people with HIV/AIDS (or 1 percent of people whose cases were closed) were reinstated in a previous job or newly hired as a result of their EEOC or FEPA complaint. People with other types of disabilities had similarly low rates of being rehired or obtaining the position originally applied for.

What factors can increase the likelihood of receiving a benefit?

The most important way to improve the likelihood of a beneficial outcome is to present as strong a case as possible at the time the complaint is first filed. This is particularly important when filing at the EEOC.

Under the EEOC's charge handling procedures, each complaint filed with the EEOC is given a priority ranking that will determine how much investigative attention the case receives. The basis for the ranking is the information complainants provide during the charge receipt interview and the extent to which they present a convincing case. **A** cases are given the highest priority,

with **B** cases in the middle, and **C** cases given the lowest priority.

In our study, people with HIV/AIDS were clearly affected by the categorization their complaint received. Twenty-one (21) percent of category **A** cases involving people with HIV/AIDS resulted in a beneficial outcome for complainants, while 15 percent of category **B** cases and only 1.4 percent of category **C** cases resulted in a beneficial outcome. Also, in **A** cases, people with HIV/AIDS received a median award of \$8,050 while in **B** cases they received a median award of \$5,000, and in **C** cases people received a median award of \$5,500.

At the EEOC, mediation can also increase one's chances of receiving a beneficial outcome from filing a complaint, especially for people whose cases were categorized as **B**. The EEOC offers mediation as an alternative dispute resolution process for some of the complaints it receives. Thirty-two (32) percent of complaints filed by people with HIV/AIDS were referred to mediation. When the option of mediation is offered, both parties must agree to participate. Eighty-four (84) percent of people with HIV/AIDS who were offered mediation agreed to participate, while only 42 percent of the employers were willing to engage in the mediation process. Even when both parties agree to participate, mediation is not always scheduled. Thus, only 26% of referred charges involving people with HIV/AIDS actually resulted in mediation.

For charges that involved complainants with HIV/AIDS who participated in mediation, 67% percent resulted in beneficial

outcomes. For charges involving people with HIV/AIDS that were resolved using the EEOC's regular administrative charge process, 17% resulted in beneficial outcomes.

People whose charges are resolved favorably by mediation tend to receive less money than people whose charges are resolved by the regular charge process. The median award for people with HIV/AIDS whose charges were resolved by mediation was \$5,000. The median award for people with HIV/AIDS whose charges were resolved by the regular charge process was \$7,000.

A third factor affecting the likelihood of a beneficial outcome is where the complaint is investigated. During the period of this study, the typical award at the EEOC was higher than at the FEPAs. Unfortunately, most people don't have a choice of where to file their complaint. This is because most locations have only one office where people can file. Some urban areas do have both EEOC offices and FEPAs, which gives people a choice of where to file. While EEOC awards are, on average, higher than those at FEPAs, benefit rates vary from one EEOC office to another and one FEPA to another.

What about cases not resolved by the EEOC or FEPA?

People whose charges are not resolved through the charge process can file lawsuits in court. We are now conducting a study of what happens to cases that go to court. While we do not yet have complete data, it appears that most people who could file a lawsuit do not do so.

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For additional information, including the results of the ADA judicial study (available in early 2003), visit the project's website at www.ADAenforcementproject.unc.edu, call 919-966-4071, or write Dr. Moss at Cecil G. Sheps Center for Health Services Research, University of North Carolina, 101 Conner Drive, Suite 302, CB# 3886, Chapel Hill, North Carolina 27599-3886.