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RIGHTS AND RESPONSIBILITIES OF EMPLOYEES AND EMPLOYERS UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990

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ABSTRACT

The Americans with Disabilities Act of 1990 established a complex set of responsibilities and rights for both employees and employers. When cases are brought to court, the plaintiff, who invariably is the employee or would-be employee, has the primary responsibility or burden for proving the case, but a burden-shifting schema is applied by the courts. Employers and employees must work together in an interactive process in search of reasonable accommodations to the employees' disabilities. Employers have several rights that can be exercised in defending themselves against charges of discrimination, but to use these rights, employers carry the burden of proof. Although courts were generally consistent in applying responsibilities and rights in the cases under review, two areas of ambiguity were identified: "reasonable accommodation" and the connection between reasonable accommodation and undue hardship on the employer.

The Americans with Disabilities Act (ADA) of 1990 is one of the most important laws passed in recent times and is particularly important in the employment arena. As the law itself notes, "Some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older" [1]. The law applies to most employers—both private and public.

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The ADA creates rights and responsibilities for both employees or would-be employees on the one hand and employers on the other. These creations are relational, namely that rights and responsibilities exist within the workplace setting in relation to another party. The employer has rights and responsibilities with regard to people with disabilities, who themselves have rights and responsibilities in relation to the employer. A set of tensions exists between and among these rights. If an employer is perceived as not meeting its responsibilities vis-à-vis a disabled person, that person has rights under the law and those rights can be pursued in court. In addition, governmental bodies may act on behalf of disabled persons, with the U.S. Equal Employment Opportunity Commission (EEOC) dealing with private sector cases and the U.S. Department of Justice (DOJ) dealing with public sector cases.

This article examines how courts have interpreted the rights and responsibilities established by ADA. Major emphasis is given here to the burden of proof as an overall legal responsibility. The discussion then turns to responsibilities that employees have in notifying employers about the nature of disabilities and the dual relationships employers and employees have in finding "reasonable accommodations" to disabilities. The article concludes with a discussion of the rights employers have in dealing with workers who are protected by the ADA.

METHODOLOGY

A sample of federal court cases was drawn from 1994 and 1996. Initially, there was interest in noting any differences in cases between the two years, but such differences did not materialize. Cases were selected to reflect a range of situations, including diversity in the types of disabilities, the types of personnel actions, and the types of employers. Main emphasis was given to persons already employed rather than concerns about testing and interviewing potential employees or about employees who had retired because of their disabilities. The twenty court opinions that were selected for analysis used the words "right" or "responsibility" at least five times.

The analysis proceeded to consider how the courts used these words, and then was necessarily expanded to consider the words "duty" and "burden," since these were frequently used as synonyms for our key words. The word "duty" was used in two senses, first in terms of a legal duty under the law and second in terms of the duties or tasks of an employee's job. The latter was considered in terms of the law's requirement pertaining to "essential job functions." Since the purpose of this analysis was to identify how courts have dealt with the concepts of rights and responsibilities under the ADA, little concern was given to the actual outcomes of court cases. Indeed, the following discussion does not report how cases were decided.

OVERVIEW OF THE STATUTE

The law states that its chief purpose is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" (sec. 2). A second and equally important purpose but one not stated in the "findings and purposes" section of the law is to provide for integration of people with disabilities into the mainstream of society. In the employment setting, this means that individuals with disabilities are not to have jobs and work areas set aside for them but rather are to take their place beside other workers, performing generally the same tasks as other workers and in the same work environment.

The law has five main titles. Title I protects against employment discrimination in the private sector and is administered by EEOC. Title II protects against discrimination in the delivery of public or governmental services, including employment, and is administered by DOJ. These are the main concerns of this article in addition to one provision in the miscellaneous provisions of Title V. The latter prohibits "retaliation and coercion" against disabled persons for exercising their rights under the law. EEOC has issued extensive employment regulations for implementing the law, and DOJ has adopted those same guidelines [2]. The other two titles, Titles III and IV, cover public accommodations (hotels, restaurants, arenas, and the like) and telecommunications (devices for hearing-impaired and speech-impaired individuals and closed captioning on television).

Title I protects a "qualified individual with a disability" and requires an employer to make "reasonable accommodation" for such an individual [3]. As a qualified individual, a person must be able to "perform the essential functions of the employment position." An employer is not required to accommodate a person with a disability if that would impose an "undue hardship."

In addition to rights and responsibilities established under the ADA, other laws may apply simultaneously to a situation. For example, the Rehabilitation Act of 1973 is closely linked with ADA [4]. In the case of public workers, civil service laws may apply. Also, collective bargaining laws and bargaining agreements may apply. Federal courts in hearing ADA cases are empowered to apply appropriate state laws in addition to federal laws.

THE SHIFTING BURDEN OF PROOF

Federal courts have applied to cases under the Americans with Disabilities Act the schema that the Supreme Court developed for Title VII employment discrimination cases under the Civil Rights Act of 1964 [5]. In *McDonnell Douglas Corporation v. Green*, the Supreme Court provided for the burden of proof to be shifted [6]. In step 1, the plaintiff in an employment discrimination case, as in any case, has the primary burden of proof and as such, is expected to present a prima facie case alleging discrimination. In step 2, the burden then

shifts to the employer, who has an opportunity to show that whatever unfavorable action was taken regarding the employee, such action was appropriate and was not based on discrimination. In step 3, the burden shifts back to the plaintiff, who is expected to show that the respondent's position is a pretext and that discrimination is the actual reason for the unfavorable action [7].

The burden-shifting approach is used when direct evidence does not exist that discrimination has occurred [8]. If direct evidence exists, then the burden-shifting approach is unnecessary. However, without such evidence, the burden shifting has the effect of forcing the employer to defend its actions by submitting relevant data and testimony to justify the unfavorable action.

The plaintiff, as specified in the *McDonnell Douglas* case, has the responsibility of meeting the four elements of a prima facie case. First, the case must show that the person is protected under the law, that is, is disabled. Second, the person is "otherwise qualified" for the job. Third, the person has experienced some adverse action, such as not being selected for a job, having one's job duties reduced, or being dismissed. Fourth, the apparent basis for the adverse action was the person's disability [9]. If the employee is unable to claim an adverse action has been taken, the prima facie case fails [10]. The prima facie case need not prove conclusively that the adverse action was the result of discrimination but only that the presented evidence seems to point in that direction. On the other hand, the prima facie case cannot simply make "unsupported allegations" or "broad, conclusory allegations attacking the motivations of defendants" [11].

In a retaliation case, the plaintiff also must file a prima facie case. Three elements are part of such a case: "(1) the plaintiff engaged in protected activity, (2) he was discharged after or contemporaneous with the activity; and (3) a causal link existed between the protected activity and the loss of the job" [9, at 1316]. These steps apply in a situation where a worker loses a job but other situations as well, such as any disciplinary or other adverse action being taken against someone in retaliation for exercising rights provided under the law.

PRETEXT AND MIXED MOTIVES THEORIES

In responding to an employer's contention that an adverse action was taken for justifiable reasons, the plaintiff can use either the pretext or mixed motives theory. The pretext theory suggests that the employer's position is nothing more than a smoke screen disguising the real basis for the action, namely the motive of discrimination against someone with a disability. "The quantum of evidence that a plaintiff need show is that the disability 'played a role in [defendant's] decision-making process and that it had a determinative effect on the outcome of that process . . . [I]t is not necessary for the plaintiff to prove that [the disability] was the sole cause of [defendant's] decision' " [9, at 1318]. In contrast, the plaintiff when using a mixed motive theory contends that several factors may have been part of the decision to take adverse action against the worker and that one of those

factors was the illegal factor of disability. The plaintiff using the mixed motive theory has a duty to show "direct evidence that an illegitimate criterion was a substantial factor in the decision" to take some adverse action against a worker [9, at 1317].

"The defendants have a lesser burden under the pretext case analysis . . . than they would under a mixed-motives analysis" [12]. In the pretext situation, the employer need only rebuff the contention by pointing to a legitimate reason for acting against a worker. In the mixed-motive situation, the plaintiff in effect admits there may have been some factors that could justifiably lead to some degree of adverse action but that the illegal purpose of discrimination based on disability was an important consideration. In that situation, then, the employer has the difficult task of showing that the extent of adverse action was warranted and was not based on disability discrimination.

It is possible to use both the pretext and mixed motive theories in the same case. A plaintiff might use the pretext theory in alleging discrimination and the mixed motives theory in alleging retaliation [9].

DUTY OF MEETING FILING DEADLINE

The EEOC has adopted for Title I of ADA the procedures used for Title VII under the Civil Rights Act. A key element of these regulations is that the plaintiff has a duty to file charges "within three hundred days after the alleged unlawful employment practice occurred" (42 U.S.C. § 2000e-5(e)(1)). Simply the plaintiff failing to meet this deadline can lose a case. The actual deadline in a case can be at issue [13]. When does the 300 days begin in a situation where a worker is told it is "inevitable" s/he will be terminated and then some time later, perhaps weeks, is formally notified of his/her termination? Public workers, who file under Title II rather than Title I, face no such deadline [14].

SUMMARY JUDGMENT

A standard approach of an accused employer is to attack the plaintiff's prima facie case as being inadequate and then ask for summary judgment, that the case be dismissed. One line of attack is to contend that the ADA does not cover the person and therefore the first element of the prima facie case has not been met. We will return to this matter later in the discussion.

Where the employer moves for summary judgment, the plaintiff or in this situation the "nonmovant" must rebut by presenting evidence to the court. ". . . To survive a motion for summary judgment, the nonmoving party must come forward with specific evidence of *every* element material to that party's case so as to create a genuine issue for trial" [15]. The plaintiff in order to bring the case to trial must show there is disagreement over important facts in the case, which therefore make summary judgment inappropriate and require that the case go

forward. The disagreement must be over important facts in the case and not just immaterial ones [16].

RESPONSIBILITY OF EMPLOYEE TO DEMONSTRATE AND REPORT DISABILITY

As noted above, the law affords rights to people with disabilities and conversely imposes responsibilities on employers in how they treat such people. The law provides three alternative definitions of a disabled person: a person having "(a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment" (sec. 3). EEOC's regulations give examples of "major life activities" as including "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working" [17]. The second category, "a record of such an impairment," is important for people with a prior record that could become the basis of discrimination, such as someone who had cancer or a person who was erroneously classified as being learning-disabled. The third category covers such people as those with hypertension problems that are controlled through medication; the law prevents an employer from perceiving the person as being disabled and reassigning the person to less strenuous work. This third category also covers people with disfigurements, such as facial scarring, which may be perceived as a disability.

As would be expected, the courts have been confronted with a wide range of disabilities. One should keep in mind that the disability could have existed prior to a person being employed or occurred after being employed and that the disability could be short-term, long-term or somewhere in between [18]. The disability can be physical, such as involving spinal injuries [15], or mental, such as a worker being susceptible to mood swings and panic attacks [19]. While pregnancy itself need not be a disabling condition, a woman may be classified as disabled if she is unable to become pregnant naturally and must undergo medical treatment to become pregnant [13]. A person infected with Human Immunodeficiency Virus (HIV) is not disabled under the first definition of disability, if the virus has yet to affect a major life activity, but may be classified as disabled under the third definition, in that he is considered disabled [9]. Persons who are in therapy or have completed therapy for illegal use of drugs and alcohol dependence are protected. A person can qualify as disabled when showing he had become addicted to narcotic painkillers, prescribed for him due to his injuries, and had undergone treatment for the addiction [12]. Of course, employees may have multiple disabilities, both physical and mental, as in the case of an individual having osteoarthritis and depression [20], or of an individual having "intermittent depression, gastrointestinal disorder, nervous and physical exhaustion, respiratory insufficiency, and lower back pain" [14, at 7].

Since many disabilities are not visible, the employer cannot be expected to know about a worker's conditions that may affect job performance. To clarify this situation, the Civil Rights Act of 1991 amended the Americans with Disabilities Act by stipulating that the individual must inform the employer that an accommodation is needed. Indeed, it would defy logic to suggest that one's disability resulted in an adverse action, when the employer did not know of the disability [7, at 1409]. In the words of the Seventh Circuit, "An employee has the initial duty to inform the employer of a disability before ADA liability may be triggered for failure to provide accommodations—duty dictated by common sense lest a disabled employee keep his disability a secret and sue later for failure to accommodate" [20, at 1134].

DUAL RIGHTS AND RESPONSIBILITIES REGARDING REASONABLE ACCOMMODATIONS

The employer and employee need to work together in determining what constitutes reasonable accommodation for the employee. This is a two-way, interactive process and not simply one in which the employee makes demands and the employer accepts or rejects the demands. Both sides have responsibilities in the situation.

The initial responsibility of the employee in this situation, after having informed the employer of the disability, is to suggest possible means of accommodation [7]. A worker may need a device to assist in hearing, a desk suitable for someone in a wheelchair, or a temperature-controlled environment due to being heat intolerant from medication [21]. A person suffering from a lung condition cannot simply demand clean air but must provide medical evidence that particular chemicals in the work environment need to be removed or that the worker needs to be protected from exposure to those chemicals. ". . . An employer does not have the responsibility to go in search of information, such as medical advice, that is uniquely in the hands of the employee . . ." [22].

The Americans with Disabilities Act and EEOC's regulations that enforce the act explain what is meant by "reasonable accommodation." The three types of accommodation are 1) actions that facilitate equal treatment of people with disabilities in the process of applying for jobs, 2) actions that allow people to perform the essential functions of their jobs, and 3) actions that provide for equal benefits and privileges of employment. Facilities in general need to be made accessible to people with physical disabilities, and then modifications may be necessary in individual jobs or the immediate areas in which jobs are performed. The employer may be obligated to reassign duties to a worker, but the reassignment needs to be appropriate for the qualifications of the worker.

Emphasis is on restructuring a job and not transferring a worker to another job. Indeed, transfer is seen as a last resort. If transfer is a routine option for

reasonable accommodation, "there will be certain positions which disabled individuals may forever be barred from holding" [23].

An important difference in reasonable accommodation exists between the situation in which people apply for a position and one in which someone is already in a position. In the latter situation, a disabled worker is protected under ADA only if s/he is otherwise qualified and therefore reasonable accommodation need only occur when the worker meets that test. In the application process, however, the assumption must be made that an applicant is qualified and, as a consequence, reasonable accommodations must be made so that the person may proceed through the application process. "An employer is under a duty reasonably to accommodate applicants even before they are determined to be otherwise qualified for the position in question" [24].

The courts are in agreement that an employer is not responsible for creating a job for a disabled person as a matter of reasonable accommodation.". . . An employer has no duty whatsoever to create a new job out of whole cloth, or to create a vacancy by transferring another employee out of his job" [22, at 1525].

If a case proceeds to court, the employee and employer will have dual responsibilities regarding reasonable accommodations. As one district court has stated the matter, ". . . It is the defendants' burden of proof to show that no reasonable accommodation exists . . ." [24]. At the same time, "the plaintiff bears the ultimate burden of proof on the issue of reasonableness of an accommodation" [23, at 733]. These dual responsibilities create an area of ambiguity as to who carries the main burden regarding "reasonableness."

The Civil Rights Act of 1991 amended the ADA to require that an employer ". . . demonstrate good faith efforts, in consultation with the person with the disability. . . ." [25]. This, however, is not a one-way street, since the employee also is expected to act in good faith, even though there is no such stipulation in the law. Although "neither the ADA nor the regulations assign responsibility for when the interactive process fails," the employee clearly has responsibility for being involved [20, at 1135]. The employer cannot be held liable for failing to provide reasonable accommodation when the employee has caused the breakdown in the interactive process [20, at 1137].

EMPLOYER DEFENSE: THE EMPLOYEE IS NOT PROTECTED

While a plaintiff has responsibility for showing that s/he is a qualified individual with a disability, the employer can attack this very point in the prima facie case. The contention is that the person is not disabled, is excessively disabled, or is not otherwise qualified for the job, with or without reasonable accommodation. In any given case, a person's medical condition can be challenged, such as whether a person is plagued by migraine headaches, what is their frequency, and how they may affect one's ability to perform on the job [26].

If a worker claims total disability, then coverage under the Americans with Disabilities Act is denied. The nature of total disability is that a person is unable to work and therefore by definition cannot be qualified for a job [27].

As the law indicates, being qualified for a job means being able to perform the job's "essential functions," and this can be the basis of an employer's defense. The concept of "business necessity" is used in Title I, suggesting that an employer needs certain tasks to be performed and is unable to operate without having those tasks performed. "Business necessity" is a key concept developed in an early Supreme Court case, *Griggs v. Duke Power Company* (1971) [28]. The ADA states that consideration is to be given to an employer's indication of what are the essential functions of a job, but the employer's position is not necessarily determinative. A plaintiff may successfully challenge what an employer considers essential to a job. The test that a court uses is whether a suggested function is "the reason the position exists" [29]. A person who cannot lift then would not be qualified for a job that involves lifting as a key element [15]. Clearly, the burden of proof in this situation rests with the employer, who must show that a particular task or set of tasks is fundamental to a job and is not simply an artificial "necessity" used to discriminate against someone with a disability.

EMPLOYER DEFENSE: UNREASONABLE ACCOMMODATION AND UNDUE HARDSHIP

Integrally linked with one another are the concepts of unreasonable accommodation and undue hardship. Reasonable accommodation, as discussed above, entails modifying the work situation and/or the job itself to the needs of a worker with a disability, but the worker is expected to meet the essential functions of the job. "The ADA . . . does not require defendant to eliminate an essential function of the . . . position to accommodate plaintiff" [29, at 1583]. Indeed, reasonable accommodation is intended to assist the worker in performing the essential functions.

For the EEOC and many courts, *un*reasonable accommodation is a synonym for undue hardship. The regulations state, "It is unlawful for a covered entity not to make reasonable accommodation . . . unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business" [30]. "A number of courts treat 'reasonable accommodation' and 'undue hardship' as flip sides of the same coin" [23, at 733].

An alternative view taken by some courts is that an accommodation could be reasonable but nevertheless impose an undue hardship on an employer. "For these courts, the question of reasonableness of the accommodation itself and its financial and administrative burdens on the employer are separate considerations" [23, at 734].

Regardless of which view is taken, the courts are in agreement that responsibility rests with any employer to supply evidence that an undue hardship would

be imposed in accommodating someone with a disability. This duty might be met by presenting evidence on the financial costs that would be incurred in making the accommodation. An employer would have responsibility for proving that the purchase of a text telephone or TTY system for a hearing-impaired worker would be prohibitively expensive [23, at 742].

Other types of costs may be identified by employers, such as not being able to rely on an employee coming to work. Courts are willing to grant that an employer needs to have a reliable workforce and not have workers frequently absent due to a disability, but the importance of regular attendance is specific to a job. A worker who periodically is unable to come to work because of migraine headaches may or may not present work scheduling problems for an employer [26, at 507]. Undue hardship must be determined in terms of a particular employer, a particular job, a particular employee, and at a particular point in time [23, at 737].

EMPLOYER DEFENSE: OTHER CONSIDERATIONS

Besides the defenses discussed so far, at least two others exist. One defense, which was not found in the cases analyzed, is that an employer is not required to make any adjustments for a worker who poses a "direct threat," meaning "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation" [17].

The other defense and one that was found in the sample of cases is that an action perceived as adverse to a worker with a disability can be justified if the action is part of a broader set of decisions made by an employer. If a company decides to close one of its facilities and in turn eliminates a job held by a worker covered under ADA, the worker lacks any special rights in comparison with other laid-off workers [10, at 466]. In other words, economic or business decisions that negatively impact workers with disabilities are permitted under the law; employers are not required to grant special concessions for ADA-protected workers.

SUMMARY AND CONCLUSION

In analyzing the rights and responsibilities of employees and employers under the ADA, we found a heavy emphasis on the burden of proof. The *McDonnell Douglas* burden-shifting approach was consistently applied, in which the plaintiff has the burden of presenting a prima facie case, the defendant employer rebuts, and the plaintiff then contends that the rebuttal is a smoke screen for hiding discrimination. This burden shifting occurs for both discrimination charges and for charges that the employer retaliated against the employee for exercising his or her rights.

In rebuttal to the employer's response, claiming that discrimination did not occur, the employee may use the pretext or mixed motives theory, and these can be used simultaneously in a case, one being used for the discrimination charge and one for the charge of retaliation. In the mixed-motives situation, the plaintiff admits that several factors may have led to an unfavorable personnel decision but the illegal one of his/her disability was one of the motives. The employer, then, has the difficult task of rebutting.

Employees have responsibility for demonstrating their disabilities and reporting them to their employers. When cases go to court, employees have responsibility for documenting that they are disabled and that they notified their employers of this fact. An employer cannot be expected to know of employees' disabilities and the extent of those disabilities, especially since many disabilities are not visible.

Dual rights and responsibilities exist in identifying a reasonable accommodation for a worker's disability. The worker must suggest how a disability can be accommodated, and the employer must consider the feasibility of each suggestion. The employer is obligated to make "good faith efforts" in accommodating the worker.

The employer's defenses are varied. The employer can attack the prima facie case by contending that the employee is not covered under the law. The claim can be made that the employee is either not disabled or is totally disabled. Particularly important here is the claim that the plaintiff is unable to perform the essential functions of the job. The other main defenses are that there is no reasonable accommodation that can be made for a worker and that the level of accommodation that would be necessary would impose undue hardship on the employer.

The cases analyzed here were generally consistent in identifying the rights and responsibilities of employers and employees. As with any court case, these cases made it clear that the plaintiff bears the overall burden of proof. The plaintiff must present a prima facie case and has other responsibilities, such as notifying an employer of a disability and suggesting possible accommodations. In contrast, the employer has responsibility for proving any defenses it wishes to use. If the employer claims that a worker is unable to meet the essential functions of a job, the employer must submit documentation to this effect. If the employer claims that undue hardship would occur in accommodating a worker with a disability, the employer must supply evidence to convince a court of such.

Two areas were found to be somewhat ambiguous, with the first being that of "reasonable accommodation." While the courts agree that an "interactive process" must occur between employer and employee in considering possible accommodations to the employee's disability, both sides seem to have responsibilities when the matter comes to court. In other words, it is unclear whether the employer or the employee has the burden of proof when the two sides have not been able to negotiate a reasonable accommodation.

The second area of ambiguity is that of the linkage between reasonable accommodation and undue hardship. Some courts treat these concepts as the "flip sides of the same coin" [23] while others do not. Some hold that a reasonable accommodation, by definition, would not impose an undue hardship on an employer. Other courts have held that an employer has a right to contend that even though a reasonable accommodation exists, the accommodation is such that it would impose an undue hardship on the employer.

The analysis here underscores the simple fact that rights and responsibilities are not absolutes that exist in a vacuum but rather are relational. One has rights and responsibilities not by themselves but only in relation to someone else. Under the Americans with Disabilities Act, the key set of relationships is between employer and employee.

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ENDNOTES

1. Americans with Disabilities Act, P.L. 101-336, 104 Stat. 327 (1990), sec. 2.
2. U.S. Equal Employment Opportunity Commission, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR § 1630.1 (1991); U.S. Department of Justice, Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 CFR § 35.101 (1991).
3. P. S. Greenlaw and J. P. Kohl, Title I of the Americans with Disabilities Act: The Anatomy of a Law, *Public Personnel Management, 25*, pp. 323-332 (1996).
4. Rehabilitation Act, P.L. 93-112, 87 Stat. 355 (1973); M. C. Weber, Disability Discrimination by State and Local Government: The Relationships between Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act, *William and Mary Law Review, 36*, pp. 1089-1133 (1995).
5. Civil Rights Act, P.L. 88-352, 78 Stat. 241 (1964).
6. *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973).
7. *Muller v. Hotsy Corporation*, 917 F.Supp. 1389, 1408 (N.D.Iowa 1996).
8. *Burns v. City of Columbus*, 1966 U.S. App. LEXIS 19789 (6th Cir. 1996).

9. *Doe v. Kohn Nast and Graf, P. C.*, 862 F.Supp. 1310 (E.D.Pa. 1994).
10. *Malek v. Martin Marietta Corporation*, 859 F.Supp. 458 (D.Kan. 1994).
11. *Smith v. Upson County, Ga.*, 859 F.Supp. 1504, 1515 (M.D.Ga. 1994).
12. *Keller v. Fresno City College*, 1996 U.S. App. LEXIS 4961, 5 (9th Cir. 1996).
13. *Pacourek v. Inland Steel Company*, 858 F.Supp. 1393 (N.D.Ill. 1994).
14. *Wagner v. Texas A&M University*, 1996 U.S. Dist. LEXIS 13400 (S.D.Tex. 1996).
15. *McCullough v. Atlanta Beverage Company*, 929 F.Supp. 1489, 1495 (N.D.Ga. 1996).
16. *Pryner v. Tractor Supply Company, Inc.*, 927 F.Supp. 1140, 1143 (S.D.Ind. 1996).
17. EEOC, 29 CFR § 1630.2.
18. *U.S. v. City and County of Denver*, 927 F.Supp. 1396 (D.Colo. 1996).
19. *Johnston v. Morrison, Inc.*, 849 F.Supp. 777 (N.D.Ala 1994).
20. *Beck v. University of Wisconsin Board of Regents*, 75 F.3d 1130 (7th Cir. 1996).
21. *Fehr v. McLean Packaging Corporation*, 860 F.Supp. 198 (E.D.Pa. 1994).
22. *McAlpin v. National Semiconductor Corporation*, 921 F.Supp. 1518, 1525 (N.D.Tex. 1996).
23. *Bryant v. Better Business Bureau of Greater Maryland*, 923 F.Supp. 720 (D.Md. 1996).
24. *Ethridge v. State of Alabama*, 860 F.Supp. 808 (M.D.Ala. 1994).
25. Civil Rights Act, P.L. 102-166, 105 Stat. 1071 (1991), sec. 102.
26. *Dutton v. Johnson County Board of County Commissioners*, 859 F.Supp. 498 (D.Kan. 1994).
27. *McNemar v. Disney Store, Inc.*, 91 F.3d 610 (3rdCir. 1996).
28. *Griggs v. Duke Power Company*, 401 U.S. 424 (1971).
29. *Larkins v. CIBA Vision Corporation*, 856 F.Supp. 1572 (N.D.Ga. 1994).
30. EEOC, 29 CFR § 1630.9.

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