DEVELOPMENTS IN DISCRIMINATION LAW 2018-2019



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ADMINISTRATIVE DEVELOPMENTS

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EEOC LITIGATION AND SETTLEMENT TRENDS

- EEOC Litigation: ADA claims in 84 of 199 lawsuit filings
- Upsurge in EEOC lawsuits for employers' failure to reasonably accommodate disabled persons in the application process
- Trends in disability claims filed with EEOC
- Major EEOC settlements with employers:
  - Failure to accommodate pregnancy-related disabilities
  - Failure to consider or grant extensions of leave
  - Use of impermissible "100% healed" return to work policies

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JUDICIAL DEVELOPMENTS ON DISABILITY ISSUES

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SEVENTH CIRCUIT APPLIES MINISTERIAL EXCEPTION TO ADA CLAIMS

- Teacher at religious day school began experiencing memory problems
- Issues with student's parents led to termination
- Seventh Circuit applied the four factor *Hosanna-Tabor* ministerial exception test:
  - (1) Employee's formal title
  - (2) Substance reflected in the formal title
  - (3) Employee's use of the title
  - (4) "Important religious functions" performed by the employee
- Presence of two factors sufficient to dismiss disability claims

Grussgott v. Milwaukee Jewish Day Sch., Inc.

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QUALIFIED INDIVIDUAL

- An individual with a disability is qualified if:
  - Meets prerequisites for position
  - Can perform the essential job functions, with or without reasonable accommodation
- Qualified analysis: at the time of the employment decision
- Qualification analysis cannot consider:
  - Whether individual may become unqualified in the future
  - Increased health insurance premiums or workers' compensation costs

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"Developments in Disability Law"