

## CUT AND PASTE POST FEBRUARY 2016

### EEOC Releases Guidance on Workplace Rights of HIV-Infected Individuals

On December 3, 2015, the Equal Employment Opportunity Commission (EEOC) released two documents explaining the workplace rights of individuals with HIV infection under the Americans with Disabilities Act (ADA), including the right to be free from employment discrimination and harassment, and the right to reasonable accommodations in the workplace.

In *Living with HIV Infection: Your Legal Rights in the Workplace Under the ADA* the EEOC explains the ADA's prohibition against workplace discrimination and harassment and the employer's obligation to explore reasonable accommodation when HIV affects an individual's ability to perform essential job functions. The EEOC discusses the individual's right to privacy, but clarifies that individuals need to discuss their condition with their employers as part of the reasonable accommodation process. See:

[http://www.eeoc.gov/eeoc/publications/hiv\\_individual.cfm](http://www.eeoc.gov/eeoc/publications/hiv_individual.cfm)

In *Helping Patients with HIV Infection Who Need Accommodation at Work* the EEOC explains to health care providers what the ADA is, what it does, the circumstances under which their patients might receive workplace accommodations, and what types of accommodations might be available for HIV-infected individuals. The EEOC lists common reasonable accommodations as:

- Altered break and work schedules.
- Changes in supervisory methods.
- Accommodations for visual impairments.
- Ergonomic office furniture.
- Unpaid time off.
- Permission to work from home.
- Reassignment to a vacant position if the individual can no longer do his or her job due to HIV.

The EEOC also points out that the employer is not required to remove the essential functions of the job for the HIV-infected individual, or let him or her do less work for the same amount of pay or do lower-quality work.

See: [http://www.eeoc.gov/eeoc/publications/hiv\\_doctors.cfm](http://www.eeoc.gov/eeoc/publications/hiv_doctors.cfm)

**Professional Pointer:** These documents may be useful guides for employers and physicians whose employees and patients are facing other job challenges that fall under protections of the Americans with Disabilities Act.

#### *Inside this Issue:*

- *EEOC Guidance on Workplace Rights of HIV-Infected Individuals.*
- *AG Opinion on Sick leave Accrual for Public Employees receiving Temporary Total Disability Benefits.*
- *2016's Biggest Employment Topics.*

## News Flash to Montana's Public Employers

### *Attorney General Decides Question of Accrual of Sick Leave During Period of Workers' Compensation –*

Montana Code Annotated 39-71-736(3) allows employees to augment workers' compensation temporary total disability (TTD) benefits with sick leave pursuant to a collective bargaining agreement.

The Butte-Silver Bow County Attorney asked Attorney General Tim Fox to decide how sick leave should be accrued for public employees who supplement their workers' compensation TTD benefits under 39-71-736(3). The issues included the employee's leave status and how to accrue paid leave if the employee is in a paid leave status. (Trust me, public employers in Montana understand this!)

On January 13, 2016, in AG Opinion 56-01, Attorney General Fox held that public employees who are supplementing workers compensation benefits with accrued sick leave pursuant to the terms of a collective bargaining agreement are in a leave-with-pay status for the sick leave hours converted to pay, and are entitled to **accrue vacation and sick leave credits on a prorated basis.**

*This Opinion applies to employees who work for a Montana state or local government.* Attorney General Opinions are treated as "the law" until a different law is passed, or until Court decision overturns the AG's Opinion. *Read the Opinion at* <https://media.dojmt.gov/wp-content/uploads/56-Op-Atty-Gen-No-12016.pdf>

## Biggest Employment Topics for 2016

According to the January 19, 2016 ThinkHR® Blog, the following graphic shows the 9 employment topics that HR professionals need to watch in 2016. According to the Blog, "ThinkHR Live Advisors selected these topics because they're driving the biggest changes in employment and labor laws in 2016 [and] employers are faced with navigating these intricate and sometimes confusing laws, which can be costly if not complied with correctly." **Are you ready for these challenges?**

