

## Don't Get Caught in an EEOC Discrimination Nightmare

By Richard Koreto

The Equal Employment Opportunity Commission—the EEOC—oversees a range of federal employment rules and enforces anti-discrimination statutes in businesses with 15 or more employees. Recently, we sat down with **Paula Lopez, Esq.**, a partner at **Allyn & Fortuna LLP**, to learn about the major discrimination issues employers may face, how to avoid problems even an inadvertent violation of the rules can cause, and what workers' rights are.

Federal laws cover discrimination based on, among



others, race, sex, national origin, and religion. "Religious discrimination is an especially big issue right now, in the post-9/11 world," said **Lopez**.

"You must make reasonable accommodations in grooming and garb, such as headwear, to avoid inadvertent discrimination." For example, an employer cannot tell a worker to remove a head scarf worn for religious reasons.

The key word here, though, is "reasonable," said **Lopez**. If the worker is handling heavy machinery where loose clothing could prove a serious hazard, that is a reason not to make an accommodation.

"Reasonable" is also a key word for disability discrimination. Employers must make reasonable accommodations, if there is no undue hardship. "The employer and employee need to work together to find alternatives.

There has to be some back-and-forth here," said **Lopez**. For example, if an employee needs a parking space close to the entrance, the employer should provide one. Can an employee do the job if materials in a warehouse are put closer to his or her workspace?

Then do it.

Age is another important the dividing line for age discrimination. Companies may not take age into

account in hiring, firing, or promoting. Information about an employee's family situation or possible future medical condition is also off the table.

However, although it may be kind to do so, employers do not have to make any adjustments for an employee's pregnancy, although **Lopez** said some states and cities have rules requiring accommodations. On the other hand, if an employee develops a medical condition related to pregnancy, like gestational diabetes, the employer does have to make allowances.

### How Complaints Proceed

Employees who feel they've been discriminated against can file a charge with the EEOC. They have 180 days to do so, or 300 if a state agency also prohibits discrimination on the same basis. The EEOC will give notice to the employer and try to work out the problem with mediation.

If that doesn't work, they EEOC may proceed with a more formal investigation, including interviews with other employees and subpoenas. The EEOC can bring an action or give an employee the right to sue in federal court. Employees should not waste time by going directly to federal court—they have to proceed through the EEOC.

### What should an employer do?

"Get a lawyer the minute things happen," said **Lopez**. Companies can do themselves a world of damage by not getting effective counsel the moment an employee brings at action.

However, they can help prevent these problems from cropping up by creating and distributing a written anti-discrimination policy, continued **Lopez**. There should be procedures in place and every problem or complaint should have a paper trail. "Document any anti-discrimination training and institute a complaint process."