

## **The ABCs of Interference under the Americans with Disabilities Act**

By Lisa B. Golan, Attorney at Law

The EEOC recently issued new guidance on retaliation in violation of federal discrimination statutes. See [EEOC Release Dated 8-29-16](#). It includes a revision of the [EEOC Compliance Manual Chapter on Retaliation](#), a [Small Business Fact Sheet](#) and [Questions and Answers on Retaliation and Related Issues](#).

As with other discrimination statutes, it is a violation of the Americans with Disabilities Act for an employer to retaliate against an employee for raising ADA rights. A lesser known provision of the ADA provides in addition that:

“It shall be unlawful to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or ...having aided or encouraged any other individual in the exercise or enjoyment, of any right granted or protected by [the ADA].” [42 U.S.C. §12203\(b\)](#).

The new Compliance Manual chapter provides several concrete examples of what may constitute “interference” in violation of the ADA. They include:

- coercing an individual to relinquish or forgo an accommodation to which he or she is otherwise entitled;
- intimidating an applicant from requesting accommodation for the application process by indicating that such a request will result in the applicant not being hired;
- threatening an employee with loss of employment or other adverse treatment if he does not "voluntarily" submit to a medical examination or inquiry that is otherwise prohibited under the statute;
- issuing a policy or requirement that purports to limit an employee's rights to invoke ADA protections (e.g., a fixed leave policy that states "no exceptions will be made for any reason");
- interfering with a former employee's right to file an ADA lawsuit against the former employer by stating that a negative job reference will be given to prospective employers if the suit is filed; and
- subjecting an employee to unwarranted discipline, demotion, or other adverse treatment because he assisted a coworker in requesting reasonable accommodation.

Per the EEOC such conduct violates the ADA if it is reasonably likely to interfere with the exercise or enjoyment of ADA rights, whether or not the employee goes on to assert such rights. Small businesses are advised to provide supervisors and managers with education and training regarding such illegal retaliation or interference.