

# HR BRIEF

## EEOC's 2021 Report and 2023 Budget Justification Signal Potential Enforcement Increase

The Equal Employment Opportunity Commission (EEOC) recently [announced its 2021 performance report and presented its proposed budget for fiscal year 2023](#). Exploring these subjects can help employers gauge where the EEOC may soon be focusing its enforcement efforts.

### 2021 Review

In 2021, the EEOC resolved over 100 discrimination-related lawsuits and obtained over \$485 million in monetary benefits for more than 15,000 victims of employment discrimination, according to the agency's annual performance report.

The agency also conducted hundreds of educational outreach sessions and filled 450 open positions. Notably, the EEOC hired additional front-line staff, including intake staff, investigators, mediators and trial attorneys, after the agency's staffing levels in 2020 had dropped to the lowest level in four decades.

### 2023 Budget Justification

The 2023 budget requests \$464.65 million for the EEOC, representing about a 10% increase over the 2022 enacted level. According to the budget justification, the EEOC's 2023 priorities focus on three broad areas: racial justice and systemic discrimination on all protected bases, pay equity and the civil rights impact of the COVID-19 pandemic.

Additionally, the EEOC intends to continue rebuilding and strengthening the agency in 2023. The EEOC wants to continue to invest in hiring and training to empower its staff to advance the agency's mission and vigorously enforce the laws entrusted to the EEOC.

### What's Next?

These signs indicate that employers should be prepared for a potential uptick in investigations, mediations and lawsuits. As such, employers should review their workplace policies and procedures to ensure compliance with all applicable employment laws.

Contact us today to learn more about EEOC enforcement.

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## DOJ Issues Guidance on Opioid Addiction and the ADA

On April 5, 2022, the U.S. Department of Justice (DOJ) issued [guidance](#) on how the Americans with Disabilities Act (ADA) can protect individuals with opioid use disorder (OUD) and other drug addictions from discrimination.

### ADA Background

The ADA is a federal law that prohibits employers with 15 or more employees from discriminating against individuals based on disability.

## **Drug Addiction as a Disability Under the ADA**

The DOJ's guidance explains that individuals with OUD typically qualify for ADA protection because drug addiction is a physical or mental impairment that often substantially limits one or more major life activities. Individuals in recovery from drug addiction may also qualify for ADA protection if they would be limited in a major life activity without treatment or services to support recovery.

## **Exception for Current Illegal Use of Drugs**

The ADA's protections do not apply if an individual is engaged in the "current illegal use of drugs." This is generally defined as illegal use occurring recently enough to justify a reasonable belief that this use is current or that continued use is a real and ongoing problem. The definition does not include the use of a prescribed medication under the supervision of a licensed health care professional.

## **Workplace Policies**

The DOJ guidance clarifies that employers may implement reasonable policies or procedures, including drug testing, designed to ensure individuals are not engaging in current illegal drug use.

Preventing discrimination based on drug addiction is a key part of the DOJ's efforts to combat the opioid epidemic.

Reach out to Leavitt Group Northwest today for additional resources.

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