



Milestones: 1998

- ▶ The Higher Education Amendments of 1998 are enacted amending the Age Discrimination in Employment Act to permit colleges and universities to offer special age-based retirement incentives for tenured faculty members at institutions of higher education; this amendment replaces the former temporary exemptions which permitted colleges and universities to mandatorily retire tenured faculty members at age 65 and later at age 70.
- ▶ The Supreme Court decides Bragdon v. Abbott, a Title III (public accommodations) Americans with Disabilities Act (ADA) case. The Court holds that an individual with asymptomatic HIV is an individual with a disability and therefore is protected by the ADA. Significantly, the Court finds that reproduction is a major life activity under the statute.
- ▶ The Supreme Court, in Fragher v. City of Boca Raton and Burlington Industries, Inc. v. Ellerth, spells out the circumstances in which employers will be held liable for acts of sexual harassment carried out by their supervisory personnel. The Court rules that employers are liable when the sexual harassment has culminated in a tangible employment action directed against the harassed employee (i.e., employee is terminated or demoted after rejecting a supervisor's sexual advance). The Court further rules that employers are permitted to establish an affirmative defense to the claim, if it can show no tangible action was taken against the harassed employee and two additional elements: (1) the employer had communicated and established an effective procedure for employees to seek redress from sexual harassment; and (2) the harassed employee failed to take advantage of this procedure. If an employer can show all of these elements, then it will not be held responsible for the sexual harassment by its supervisory personnel.
- ▶ A unanimous Supreme Court rules in Oncale v. Sundowner Offshore Services that sex discrimination consisting of same-sex sexual harassment is actionable under Title VII. The Court reiterates that the plaintiff must prove that there was discrimination because of sex and that the harassment was severe.
- ▶ In Wright v. Universal Maritime Service Corp., the Supreme Court revisits the issue of whether a collective bargaining agreement providing for the mandatory arbitration of discrimination claims can bar individual charging parties from pursuing their EEO claims in federal court. The Supreme Court decides that the collective bargaining agreement at issue did not contain a clear and unmistakable waiver and therefore the charging party could pursue his employment discrimination claim in court.
- ▶ EEOC resolves two sexual harassment suits involving large classes of female victims. In EEOC v. Mitsubishi Motor Manufacturing of America, the company agrees to pay \$34 million in monetary relief to a class of 300 to 400 female employees. EEOC's lawsuit had alleged that the company engaged in a pattern of sexual harassment and retaliated against female employees. In EEOC v. Astra USA, the agency alleged that Astra engaged in a continuous pattern of sexual harassment of its female employees. The company agreed to pay nearly \$10 million to 80 to 100 female victims.
- ▶ The Department of Interior funds EEOC federal civil rights enforcement in the Commonwealth

of Northern Mariana Islands (CNMI). The agency undertakes outreach efforts educating employers on their EEO responsibilities as well as educating workers on their rights. Individuals in the CNMI file 88 charges and EEOC Issues reasonable cause determinations in twenty five of these matters in the first year of operation.

▶ EEOC Vice Chairman Paul M. Igasaki becomes Acting Chairman by operation of Title VII. He is the first Asian American to serve in this capacity.

▶ President Bill Clinton nominates and the Senate confirms Ida L. Castro to be Chairwoman of EEOC. Castro is the first Hispanic American woman to chair the agency. Prior to being named Chairwoman, Castro is the Acting Director of the Women's Bureau at the Department of Labor.



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