

DEVELOPMENTS IN DISCRIMINATION LAW 2018-2019



James H. Kizziar, Jr.
Partner
Bracewell LLP

BRACEWELL

1

ADMINISTRATIVE DEVELOPMENTS

BRACEWELL

2

EEOC LITIGATION AND SETTLEMENT TRENDS

- EEOC Litigation: ADA claims in 84 of 199 lawsuit filings
- Upsurge in EEOC lawsuits for employers' failure to reasonably accommodate disabled persons in the application process
- Trends in disability claims filed with EEOC
- Major EEOC settlements with employers:
 - Failure to accommodate pregnancy-related disabilities
 - Failure to consider or grant extensions of leave
 - Use of impermissible "100% healed" return to work policies

BRACEWELL

JUDICIAL DEVELOPMENTS ON DISABILITY ISSUES

BRACEWELL

SEVENTH CIRCUIT APPLIES MINISTERIAL EXCEPTION TO ADA CLAIMS

- Teacher at religious day school began experiencing memory problems
- Issues with student's parents led to termination
- Seventh Circuit applied the four factor *Hosanna-Tabor* ministerial exception test:
 - (1) Employee's formal title
 - (2) Substance reflected in the formal title
 - (3) Employee's use of the title
 - (4) "Important religious functions" performed by the employee
- Presence of two factors sufficient to dismiss disability claims

Grussgott v. Milwaukee Jewish Day Sch., Inc.
BRACEWELL

5

QUALIFIED INDIVIDUAL

- An individual with a disability is qualified if:
 - Meets prerequisites for position
 - Can perform the essential job functions, with or without reasonable accommodation
- Qualified analysis: at the time of the employment decision
- Qualification analysis cannot consider:
 - Whether individual may become unqualified in the future
 - Increased health insurance premiums or workers' compensation costs

BRACEWELL

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Developments in Discrimination Law 2018-2019

Also available as part of the eCourse

[2019 Labor and Employment Law eConference](#)

First appeared as part of the conference materials for the
26th Annual Labor and Employment Law Conference session
"Developments in Disability Law"