

EEOC: NRP discriminated against, harassed disabled workers



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On March 9, the Equal Employment Opportunity Commission (EEOC) issued a final decision in a class-action complaint finding that the Postal Service had violated the rights of more than 130,000 disabled postal employees via the National Reassessment Program (NRP). The sweeping decision involved 11 years of litigation, including multiple appeals by the Postal Service.

The EEOC found that those responsible for developing and implementing the NRP had engaged in practices that discriminated against and harassed

compensably injured employees. The class-action decision includes injured workers who were subjected to reassessment under the NRP between May 5, 2006, and July 1, 2011. However, the history of Postal Service plans to reduce the numbers of injured workers in limited-duty jobs pre-dates the NRP.

A part of the Postal Service's 2002 Transformation Plan was an "outplacement" strategy, initiated in New York, where the Postal Service withdrew limited-duty jobs from injured workers in the hope that OWCP would vocationally rehabilitate the injured workers into private-sector jobs, effectively removing the injured workers from Postal Service and OWCP rolls. The EEOC decision highlights evidence that OWCP notified the Postal Service in 2001 that an outplacement and NRP predecessor would result in a violation of the Rehabilitation Act and other statutes.

Undeterred, in 2005 the Postal Service instituted the NRP to "re-evaluate and re-assess letter carriers in rehabilitation and limited-duty assignments." Postal managers were instructed to review the medical records of injured workers and to request updated medical documentation. Form letters mandated by the NRP leadership team at postal headquarters explicitly called for employees to be warned that, if they did not submit updated medical information within two weeks of the request, their modified limited-duty and rehabilitation assignments might be withdrawn.

Federal law prohibits employers from making medical inquiries of an employee as to the nature or severity of the disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity. The EEOC decision found that reassessments violated the Rehabilitation Act and Americans with Disabilities Act (ADA) by subjecting employees assessed under the NRP to a disability-related medical inquiry that was neither job-related nor consistent with a business necessity.

The EEOC also found that the reassessment was in violation of the Rehabilitation Act by failing to maintain the confidentiality of the medical records of employees who were assessed under the NRP.

The final EEOC decision details the true nature of the NRP:

We disagree with the Administrative Judge in terms of how she characterized the purpose of the NRP as 'morphing' from legitimate to unlawful. This was not a situation in which the pur-

pose of the NRP started out as eliminating make-work and then 'devolved' into removing injured on duty employees. Rather, as noted above, ample evidence establishes that moving limited-duty and rehabilitation employees off the injured-on-duty rolls, regardless of whether they were qualified individuals with disabilities, was the primary motivation that drove the Health and Human Resource Manager and the Workers Compensation Office Director before the NRP was even contemplated.

Postal managers who implemented the NRP reviewed the CA-17s and other confidential medical information of thousands of potentially disabled employees, and decided to take accommodations away from limited-duty and rehabilitation employees without regard as to whether they were qualified individuals with disabilities as defined by the Rehabilitation Act and the ADA.

During the implementation of NRP, approximately 15,000 compensably injured employees received new assignments. An additional 10,000 compensably injured employees received determinations of total or partial no work available, while 34,000 other compensably injured employees separated, retired or resigned while the NRP was in effect.

The EEOC's most damaging findings outline a pattern of discrimination and harassment throughout the reassessment process "in a fashion that could only be described as cavalier."

The pattern of abuse and harassment went to the highest levels of the Postal Service. Postal emails released during the discovery process included an email exchange between the postal health and human resources manager and the postmaster general while the pilot versions of the NRP were being implemented. The HHR manager reported to the PMG that 338 employees had been outplaced and that they had exceeded the goal of outplacing 317 employees, to which the postmaster general replied, "338 it is and welcome to Walmart." (It should be noted that these events occurred before the current postmaster general took office.)

The abuse and harassment found at the district level was even more disturbing. In July of 2010, the NRP team leader of the Fort Worth District sent a congratulatory email to members of his team, in which he lauded them for reducing "our current NRP employees on rolls by 25%." The background music used with the message was the song "Cripple Creek."

This blatant harassment was not lost on the EEOC in 2015, when an administrative judge found that the NRP process discriminated against disabled workers. The Postal Service appealed the judge's ruling, sending the case before the full commission. When the full commission examined the evidence, they found the Postal Service's actions so egregious that they increased the size of the class to include all of the employees who had separated, retired or resigned during the NRP period. Former employees who can prove they were constructively removed through separation, resignation or retirement due to the NRP can file a claim for reinstatement, back pay and compensatory damages.

To fully understand what the commission found, you can read the EEOC decisions on the "Injured on the Job" page at nalc.org.