An Interview with EEOC Director Tom Colclough

Massey and Colclough covered various topics during the interview, including the use of AI in hiring decisions and religious/mental health accommodations.

Colclough is responsible for ensuring the effective operations of field offices by providing operational oversight, monitoring and program implementations, and administrative services coordination. He also served as co-chair for the agency’s most recent Strategic Enforcement Plan (SEP), which will apply through 2026.

To begin, Massey asked Colclough to share his thoughts on the SEP, which is based on the three values of the EEOC. “One is the commitment to equal employment opportunities, accountability, and integrity. Anyone who interviews with me and doesn’t know those three is not getting the job,” laughed Colclough.

Other goals include preventing employee discrimination and employment discrimination, advancing equal opportunity through education/outreach, and striving for organizational excellence through the agency’s people, practices, and technology.

Artificial Intelligence

A recent development impacting many different areas of the law is artificial intelligence. The EEOC recently secured its first AI-related settlement in a charge against an Arizona-based company that used application review software that automatically rejected female applicants aged 55 or older and male applicants aged 60 or older.

Regarding the case, Massey asked if employers should avoid using AI for hiring practices. Exercising caution is prudent, advised Colclough: “With new software, make sure you talk to your attorney before it’s deployed. It’s also a good idea to have people walk you through it first to make sure the technology actually makes sense.”
Using AI to review applications can lead to a range of unintended consequences, explained Colclough.

The CROWN Act

Massey and Colclough also discussed the Crown Act. The CROWN Act, which stands for Creating a Respectful and Open World for Natural Hair, refers to race-based hair discrimination.

The CROWN Act has passed in the House and 18 states but has not passed the Senate as of yet. “One issue is people get tagged with having a disability,” noted Colclough. “For example, someone with alopecia may be targeted as someone with cancer. And significantly, I know a few people who were wearing wigs to work because they were afraid of what their co-workers would say.”

Religious Accommodations

An item of interest for HR practitioners and labor attorneys is a recent decision by the U.S. Supreme Court on religious accommodations. In Groff v. Dejoy, a mail carrier had objected to delivering on Sundays due to his religion.

The Postal Service attempted various accommodations, and some worked, but eventually, the carrier resigned because he was told he would have to work on Sundays in violation of his beliefs. He brought a lawsuit against the USPS that went to the Supreme Court, which changed the rules pertaining to religious accommodation from a ‘de minimis’ standard to undue hardship.

Now, instead of only having to show that accommodating a request would result in a minimum amount of inconvenience, an employer has to show that an accommodation would present an undue hardship.

“People are really going to be pushing the envelope with this,” said Colclough, referring to how it may be more difficult for employers to deny religious accommodation requests.

Accommodating Mental Health

Massey raised the issue of the interactive process associated with the Americans with Disabilities Act (ADA), as it is a common area of concern for attorneys and HR practitioners: “A question I get a lot is about leaves of absence under the ADA. What is a reasonable length of time? How long do I have to keep that person on the payroll? Can’t I just terminate them?”

Colclough: “I’m going to use the lawyer’s answer, which is it depends. It boils down to the essential functions of the individual’s job and what the employer wants that person to accomplish.”

Currently, the number one accommodation request, said Colclough, is working from home. In assessing whether requests are legitimate, employers should know most requests have basically already been approved.

“It is difficult to say an employee can’t perform the essential functions of the job from home because they’ve been doing it for two and a half years now,” said Colclough.

It’s important for employers to define essential job functions and review their policies. Many employer policies and job descriptions were written pre-Covid; the landscape has changed significantly since then.

“Have counsel review your policies and ensure they fit with the landscape in 2023,” advised Colclough.

Engaging in an interactive, respectful process and documenting that process is also essential, said Colclough.
He then shared an example of an employee who had asked to work 100 percent remotely, even though his duties included performing outreach.

“Employers should evaluate the essential job functions and determine whether an accommodation can be provided,” noted Colclough. “In this case, the individual’s request should have been refused based on the job being a public-facing position.”

**Job Descriptions**

A member of the audience asked if job descriptions are helpful with accommodations. “I’m a big fan of job descriptions because what should we expect an employee to be able to do? Everything that’s on the job description,” Colclough commented.

Otherwise, there is a problem. “My statistics shouldn’t be better than the person responsible for data analytics. But job descriptions are not everything, because different things occur,” said Colclough, adding the most important phrase on a job description is that the employee will be responsible for other duties as assigned because you never can fully define what the job duties will be.

Colclough encouraged the audience to let him know if a case is taking too long, or if there is a separate issue, by emailing askofp@eeoc.gov.

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