

EEOC v. SunDance Rehab. Corp., No. 04-4178 (6th Cir.) (Final Brief as Appellee filed June 30, 2005)

*Background:* EEOC filed this case alleging that defendant violated the antiretaliation provisions of the EPA, Title VII, the ADEA, and the ADA by requiring employees fired in a reduction in force to waive their rights to file an EEOC charge and to participate in EEOC proceedings as a condition of receiving severance pay. The district court granted EEOC's motion for summary judgment on liability and defendant appealed.

*Argued:* (1) The district court correctly ruled that defendant violated the antiretaliation provisions of the EPA, Title VII, the ADEA, and the ADA by conditioning an employment benefit on relinquishing protected statutory rights. The purpose of the antiretaliation rules is to preserve unfettered access to statutory remedial mechanisms. Defendant's policy uses economic inducements and the threat of retribution to deter employees from filing EEOC charges or participating in EEOC investigations. (2) That defendant never had to offer severance pay in the first place is irrelevant, since the Supreme Court has held that once an employer chooses to bestow an employment benefit, it must do so in a nondiscriminatory manner. (3) The law does not necessarily require an employee to first have engaged in protected activity for an employer to violate the antiretaliation rules. The Supreme Court and the Sixth Circuit have recognized that employer policies can themselves be "facially discriminatory." Also, the Seventh Circuit has ruled that an employer's practice of conditioning grievance proceedings on an employee's willingness to forego filing an EEOC charge is per se retaliatory. This Seventh Circuit case is on all fours with the factual scenario presented here. (4) The "interference" provision in the ADA and ADEA texts on waivers explicitly proscribes employer conduct tending to threaten or interfere with an employee's prospective exercise of protected EEO rights. (5) The problematic portions of defendant's severance agreement violate public policy.