



EEOC Releases 4 Warnings About Medical Leaves and the ADA

On June 8, 2011, the EEOC held a public hearing on leaves of absences as a reasonable accommodation under the Americans with Disabilities Act Amendment Act of 2008 (ADAAA). Employers looking for evidence as to how the ADAAA and the associated regulations can affect their business need not look any further. With the new provisions of the ADAAA expanding the ADA's coverage to a much a larger population of workers, the EEOC has seen a rise in claims. Two noteworthy multi-million dollar claims were filed against Sears, Roebuck & Co. and Supervalu, Inc. because of their inflexible leave policies. According to John Hendrickson, the EEOC's Regional Attorney for Chicago, employers can learn 4 key lessons from these cases:

1. *An "inflexible period" of leave will not satisfy ADA requirements.*

Employers should review and potentially revise their leave policies to be more flexible for those with conditions that would fall under the ADA. Practically speaking, employers should reconsider any policy provision that calls for automatic termination if the employee's leave of absence extends past the policy allowance.

2. *"Appropriate leave" requires an "individualized assessment" when the designated leave period expires if not before.*

An individualized assessment will look at two things, (1) whether the employee needs additional leave above and beyond the "official" company maximum leave period, and (2) whether or not the employee will be able to come back to work with a reasonable accommodation. Employers should be careful when considering what a "reasonable accommodation" is, as it is most likely more than one would assume. Thus, the days of requiring an employee to be 100% recovered before returning to work are over.

3. *You have to talk to the employee.*

From a good business and ethical standpoint, it's important to stay in touch with the employee while on leave, to make him or feel like they are still in the loop and shot that you care for the employee's well-being. In addition, courts often look at what is called the "interactive process" when determining possible ADA accommodations. What the interactive process all comes down to is talking with the employee about the condition and how he or she could potentially be accommodated. Failure to

engage in the interactive process could be a violation in itself. Talking to the employee and discussing options is crucial.

4. *Get used to being sued by the EEOC.*

If you have a 100% no restrictions requirement for return from a medical leave of absence; If you automatically terminate employees who reach their maximum leave of absence without making an assessment; If you don't engage in the interactive process, you can expect to find your company in the middle of a discrimination lawsuit.

What's the good news in all of this? ECRM can help you! For questions or concerns about the ADA or for a review of your current leave policies, please contact East Coast Risk Management at (724) 864-8745 and ask for Cara or Brian.

[Return to ECRM Newsletter](#)