



One Minute Memo®

EEOC Takes Aim At Company Policies Limiting The Duration of Medical Leaves

Recent actions by the U.S. Equal Employment Opportunity Commission (EEOC) have signaled its intent take a more aggressive approach in enforcing the Americans with Disabilities Act (ADA). One employment practice that the EEOC is specifically targeting involves company medical leave of absence policies that place limits on the amount of medical leave.

On September 29, 2009, the EEOC announced a \$6.2 million settlement in connection with class allegations surrounding a company's alleged inflexible leave limit policy. Over the past two months, the EEOC has also filed a number of pattern and practice lawsuits on behalf of employees of large employers alleging that the employers violated the ADA by rejecting extensions of medical leave as a reasonable accommodation for employees with disabilities. The EEOC asserts that any employer that maintains an inflexible maximum leave policy, which it will not extend or otherwise modify in order to accommodate individuals with disabilities, is unlawful.

Acting Chairman of the EEOC, Stuart J. Ishimaru, highlighted the administration's increased focus on ADA enforcement, noting that these cases "should send a wake-up call to corporate America that violating the American with Disabilities Act will result in vigorous enforcement by the EEOC." EEOC Regional Attorney John Hendrickson confirmed the EEOC's position that policies that "set arbitrary deadlines for returning to work after medical treatment unfairly keep disabled employees from working."

What Does This Mean for Employers?

In light of the EEOC's new enforcement initiatives, employers should review their medical leave of absence policies and processes to ensure that they build in appropriate flexibility to accommodate individuals with disabilities. This includes a process for engaging in a good faith interactive process with employees whose leave may be expiring regarding potential additional reasonable accommodations, which may include a reasonable extension of leave. This ADA policy and process review is critical in light of the Americans with Disabilities Amendments Act of 2008 (ADAAA), which greatly expands the universe of individuals who are protected under the ADA's definition of disability, and effectively shifts the litigation focus to reasonable accommodation and the interactive process. As such, employers should have a robust reasonable accommodation process in place, and ensure they are implementing and documenting the reasonable accommodation process.

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