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BLOGS

The EEOC Crackdown: Part One Dont Be Inflexible

According to a [recent statement](#) by an attorney for the EEOC, [O]ne of the hottest areas of EEOC litigation right now involves the agency's efforts to root out inflexible leave policies. Although this statement is hardly news to anyone who closely follows EEOC enforcement efforts, it is a good reminder to employers that inflexible leave policies are an invitation to costly litigation. The type of inflexible leave policies the EEOC has challenged include no-fault attendance policies, policies that provide a maximum limit to the length of leave that may be available, and policies that require an employee to stay on leave until s/he can return to work with no restrictions.

EEOC Regional Attorney John Hendrickson made the statement above following a recent order by a federal judge approving a consent decree entered into between the EEOC and a Minnesota employer. In that case, the employer had a policy that required employees who took a medical leave of absence to return to work with no restrictions unless the injury or condition giving rise to the leave was related to an on-the-job injury. The EEOC alleged that this no restrictions policy violated the ADA because employers have a duty to explore whether a disabled employee with restrictions could return to work with or without a reasonable accommodation. After the EEOC charge was brought, the employer wisely dropped its no restrictions policy, and as part of the consent decree, the employer agreed to fully compensate two former employees who were terminated because they could not return to work without restrictions. While the total monetary value of this settlement was relatively low (\$30,912), in other cases, companies have paid significant amounts to settle EEOC claims related to inflexible leave policies. For example, in 2011, [Supervalu Inc. agreed to pay \\$3.2 million](#) to settle ADA claims related to its inflexible leave policies, and in 2009, [Sears Roebuck agreed to pay \\$6.2 million](#) to settle similar claims. Likewise, in 2011, [Verizon agreed to pay \\$20 million](#) to settle ADA claims related to its no-fault attendance policy.

While the issue of inflexible leave policies is not new, the EEOCs recent statement about its enforcement efforts in this area is a good reminder that this issue is not going away.