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What Employers Must Know About The Americans With Disabilities Act

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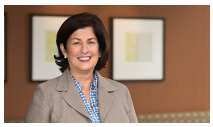

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A few weeks ago, we posted a blog concerning the aggressive, suit-filing tactics by the Equal Employment Opportunity Commission (EEOC) against employers and the expensive and public consent decrees that follow. One of the EEOC consent decrees discussed was with Rock Tenn, a paper and packaging manufacturer with a facility located in Battle Creek, Michigan. The consent decree required Rock Tenn to pay $187,000 in settlement of the EEOC lawsuit to provide training to its employees and submit to EEOC oversight of the manufacturer's human resources practices. So what caused the problem for Rock Tenn? Specifically, it failed to follow the Americans with Disabilities Act (ADA) that required Rock Tenn to provide qualified employees with an accommodation for a disability. In that case, Rock Tenn's worker was approved for short-term disability leave for open heart by-pass surgery through April 11. The worker had a speedy recovery and by March 11, received clearance to return to work on a part-time basis as of March 21. Rock Tenn terminated his employment on March 10. The case highlights a few things that employers *must* get right about the ADA: 1). Employers are required to accommodate qualified employees with a disability. 2). An employee almost always has a disability covered by the ADA if he has been approved for short-term disability pay. 3). What is required as a "reasonable accommodation" is defined by means of something called the *interactive process* that is specific to each disabled employee seeking an accommodation. Simply speaking, the "interactive process" is a conversation, or usually *several* conversations, between the employee and employer concerning the accommodation requested by the employee, what constitutes a reasonable accommodation and which of several possible accommodations an employer may provide. There are, of course, nuances to the interactive process, including consideration of what the employer has offered by way of accommodation to other employees in the past, what the employee's medical provider has to contribute to the discussion, etc., but the underlying goal of the interactive process is to arrive at a game plan that results in keeping or returning the employee back to the work of performing the essential functions of his or her job with the employer. Many employers have a dedicated specialist, whose job is solely to manage medical leaves, including the interactive process. The point here is that the employer may not simply impose what it believes is the appropriate accommodation for an employee, at least not without first engaging the employee in that conversation. 4). Leave time (paid or unpaid) is one such accommodation that is specifically recognized in the ADA regulations and by the courts. While most employers

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understand that the panoply of potential accommodations includes things such as changes to non-essential job duties, modifications to the work site, or more frequent or regular break times, many do not appreciate that *time off in order to rehabilitate or recuperate* may also be required as an accommodation under the ADA. Referring back to the second point above, the appropriate accommodation for an employee who has been approved for short-term disability is almost always leave time. And while indefinite leave time is *not* required under the ADA, employers who impose an artificial, blanket policy that limits leave time will find themselves sideways with the EEOC.