

EEOC's Targeted Attack Of Inflexible Leave Policies Under The ADA

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Last November, I wrote a blog about a [pattern of ADA lawsuits filed by the EEOC](#) challenging what it sees as inflexible leave policies. Well, just like that song by a former famous pop singer – Oops, I did it again – or however it goes, we find another employer who has landed on the receiving end of an EEOC lawsuit for allegedly maintaining an inflexible leave policy. Whether it's a bit of irony or a purposeful attempt by the agency to raise its profile on ADA suits, this time the recipient of the [EEOC's lawsuit](#) is a disability support services company based in Arizona. While the name of the defendant may differ, the allegations from one lawsuit to the next differ very little. So, what keeps tripping up employers? It appears that some employers are still under the misconception that if you provide an employee with his or her full 12 weeks of FMLA leave and the employee is unable to return to work after those 12 weeks, then it's ok to terminate the employee. Let's be clear. That's not always the case.

While an employee who is unable to return to work at the end of 12 weeks may not have an FMLA claim against you, the assessment of that employee's continued employment does not end there. Indeed, the ADA is triggered at that point. So, if the employee asks for leave beyond 12 weeks, you must put on your ADA hat and begin the interactive process. Here are some questions to ask yourself:

- If it's additional leave, how much leave and what is the employee's doctor saying about when the employee will be able to return to work?
- Is the leave indefinite in nature or is there an expectation that the employee will be able to return to work after a defined period?

These are just a few questions you will need to ask yourself before anyone in your organization makes a decision about the employee's future employment. And, while you are at it, take a look at your organization's leave policies to ensure that you won't be the next one on the receiving end of an EEOC lawsuit.

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