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The EEOC Sues Yet Another Employer For Allegedly Violating The ADA With Its Inflexible Leave Policy

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The EEOC's position is clear. The ADA requires employers to incorporate flexibility into their leave of absence policies or face the consequences. In late September, we were reminded of this yet again when the EEOC sued a Chicago-area manufacturer for capping the amount of leave provided to employees, without considering whether a reasonable accommodation may exist for each employee. In this latest suit against Doumak, Inc., the EEOC alleged that an employer and its employees' respective union had violated the ADA by placing a cap on the amount of leave available to employees ("a maximum of 12 weeks or 12 months of medical leave"). According to the EEOC, once employees reached this cap on leave Doumak automatically terminated them, instead of providing additional leave or other reasonable accommodations. In this case, the cap on leave was part of the collective bargaining agreements between Doumak and the employees' local union. On Nov. 4, Doumak and the local union settled the case by entering into a consent decree with the EEOC. As part of the consent decree, the employer agreed to pay $85,000 and negotiate with the union to amend the relevant portions of the CBAs at issue. This case is part of a trend of lawsuits initiated by the EEOC over the past several years. In 2012, the EEOC sued Interstate Distributor Company, alleging that the employer's leave policy provided for automatic termination after 12 weeks of leave and required employees to return to work with no restrictions. That case settled for $4.85 million. In 2011, the EEOC sued Supervalu/Jewel Osco, making similar claims that the employer's policy provided for automatic termination following a set amount of medical leave. That case settled for $3.2 million. The EEOC also settled a case against Denny's Inc., for $1.3 million, where the agency claimed that the employer's policy of providing a maximum of six months of leave violated the ADA. These are but a few examples of instances where the EEOC has challenged employer leave policies that did not provide the type of flexibility required under the ADA. Remember, the ADA requires an individualized assessment to determine whether a reasonable accommodation may exist for an employee with a disability. When an employer has an inflexible leave policy (e.g., one that provides for automatic termination after a set period of time), the employer does not fulfill its obligation to engage in this individualized assessment under the ADA. And, employers with large employee populations may be particularly vulnerable to litigation because of the large number of employees affected by such policies. But, whether you're big or small, the take away is the same – a one-size-fits-all leave of absence policy could land you in hot water. So ask yourself, does your leave policy provide for an individualized assessment under the ADA?

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