



EEOC Issues New Medical Leave Guidance

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EEOC Issues New Medical Leave Guidance

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Medical leaves of absence remain among the thorniest issues facing employers. A number of factors, not the least of which is the size of an organization, may mean that an employer must simultaneously comply with leave-related obligations under the ***Family and Medical Leave Act (FMLA)***, the ***Americans with Disabilities Act (ADA)***, state workers' compensation laws, and other federal, state, and local regulations.

For example, the FMLA may require an employer with 50 or more employees to grant an employee with a serious health condition up to 12 weeks of leave. At the same time, the ADA requires an employer with 15 or more employees to provide accommodations (which may include leave) to employees with disabilities, unless the employer can show that to do so would cause the employer undue hardship. Such accommodation may be required under state law regardless of the number of employees employed by the employer. And if an employee's medical condition is the result of a workplace injury, then the employer may have additional leave obligations under state workers' compensation laws.

To reduce confusion and help employers navigate these overlapping requirements, the ***Equal Employment Opportunity Commission (EEOC)*** has issued new guidance regarding the rights of employees who seek leave as an accommodation under the ADA. Although not charting new legal territory, the guidance reiterates the EEOC's longstanding position that an employer must provide unpaid leave to a disabled employee, even if doing so falls outside of the employer's existing leave policies (e.g., FMLA leave, personal leave, and non-FMLA medical leave), as long as doing so

does not create an undue hardship for the employer. This obligation exists even where the employee is not eligible for or already has exhausted leave provided under these policies.

Counteracting Leave-Related Misconceptions

The need for this guidance springs from a common misconception among employers: many believe that they are not required to provide leave beyond the 12 weeks required under the FMLA. And some employers that do permit leave beyond 12 weeks have implemented caps on leave that require automatic termination for employees who exceeded a specified duration of leave (e.g., six months of leave).

The EEOC's guidance makes clear the agency's position that leave may be a required accommodation under the ADA and that employers may need to make exceptions to policies — including maximum leave policies and “no fault” attendance policies (which set a limit on the number of absences allowed) — unless doing so will cause undue hardship.

Guidance + Best Practices

The EEOC's guidance reiterates other longstanding best practices for handling employee leave requests. These include:

- Refraining from using form letters instructing employees that they will face termination if they do not return to work by a specified date.
- Avoiding policies that allow employees to return to work only if they are medically cleared without any restrictions.
- Evaluating leave requests on an individualized, case-by-case basis for each employee in his/her specific circumstances, rather than applying blanket policies and rules.

- Considering whether an employee on leave is qualified for another vacant position if the employer determines that it can no longer hold open the employee's current position.

As we have addressed before, navigating the intricacies of the FMLA, the ADA, workers' compensation laws, and other medical leave-related issues in the workplace can be tricky. Although the EEOC's latest guidance does not create new legal ground, it does emphasize that employers who fail to properly handle employee leaves of absence may face significant legal challenges. The risk of employee disputes continues to increase. According to recent reports, 2015 saw the highest number of disability discrimination charges filed with the EEOC, many involving situations of denied leave requests.

As always, an employer's best bet is to avoid acting rashly when evaluating leave requests. Proceeding cautiously and with the guidance of experienced legal counsel, employers can find practical solutions under even the most challenging circumstances.

