

Enough Is Enough: Court Oks "Inflexible" Six Months Of Leave

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Must an employer allow more than six months sick leave to an ill employee? In [Hwang v. Kansas State University](#), a federal appeals court answered with a clear, "No."

An assistant professor at Kansas State University was diagnosed with cancer and needed extended time off for treatment. The university granted the professor a six-month paid leave of absence, but it declined to extend her leave after a subsequent request for more time. The university cited its "inflexible" policy, which allowed no more than six months of sick leave. The professor could not otherwise perform her job and the university terminated her employment. In response to the termination, the professor filed a lawsuit contending that the university violated the Rehabilitation Act, which prohibits those who receive federal funding from discriminating on the basis of disability and was the precursor of (and bears a strong resemblance to) the Americans with Disabilities Act (ADA).

The court wrote, "Reasonable accommodations . . . are all about enabling employees to work, not to not work." The court agreed with the university that the purpose of the Rehabilitation Act is "to prevent employers from callously denying reasonable accommodations that permit otherwise qualified disabled persons to work — not to turn employers into safety net providers for those who cannot work."

Although this case is favorable to employers faced with the decision of providing extended leave to an employee, inflexible leave policies remain a target of the EEOC. Employers should work with counsel to carefully design leave policies that comply with federal and state laws, and certainly consult with counsel before terminating any employee with health issues. **Jackie Gessner is a summer associate with Barnes & Thornburg and a student at Robert H. McKinney School of Law: Indiana University.*

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