

You May Want To Leave Your Leave Policy Behind

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Employers understandably want their employees to miss as little work as possible. This goal may be reflected in their leave of absence policies, which encourage a return to work as soon as they can. While this is not a problematic goal, policies that are overly harsh or inflexible in granting accommodations for disabled workers may result in costly and embarrassing lawsuits.

The EEOC recently filed suit against Children's Hospital and Research Center in Oakland, California because it refused an employee's request for additional medical leave and terminated her employment. The employee had cancer and had taken six months of medical leave for a double mastectomy, reconstruction surgery, and removal of her fallopian tubes, ovaries, and uterus. However, the hospital rejected the employee's request for two additional months of leave and required her to return to work or face termination because it did not believe her doctor's certification that she would be ready to come back to work in two months.

The EEOC sued the hospital, claiming it did not provide the employee an adequate accommodation or even engage in the interactive process with her, even though doing so would not have resulted in an undue hardship. According to EEOC San Francisco Regional Attorney William R. Tamayo, "firing employees with disabilities just because they may need more medical leave than dictated by company policy violates federal law. The law requires employers to engage in an interactive process to determine what accommodations would be reasonable under the circumstances. The EEOC's investigation showed that Children's Hospital failed to do that; now it must face the consequences."

Make sure your leave of absence policy takes into account that employees with disabilities may require an exception to your standard policies as an accommodation. For example, employers should avoid policies with a rigid cutoff of medical leave time at six months or one year (or at least should make clear that exceptions may be made for the disabled), as the EEOC has determined that such policies, without some flexibility, do not accommodate disabled employees who may need a little more leave. Remember to be flexible and to work with disabled employees to accommodate their needs where reasonable. It isn't just the right thing to do to take care of your employees. It's also what will keep your company out of court.

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