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EEOC CHALLENGES RETURN-TO-WORK POLICIES UNDER THE AMERICANS WITH DISABILITIES ACT

ANOTHER REASON TO REVIEW YOUR MEDICAL LEAVE OF ABSENCE POLICIES AND PRACTICES

The U.S. Equal Employment Opportunity Commission (“EEOC”) has long maintained that inflexible leave of absence policies violate the Americans with Disabilities Act (“ADA”). One national employer (an airline and one of its regional carriers) recently entered into a 35-page consent decree with the EEOC under which the airline must pay up to \$9.8 million in stock to settle a claim that it engaged in a “pattern or practice” of denying employee requests for accommodation where the employees had restrictions but were otherwise prepared to return to work after a medical leave of absence. The consent decree has now been approved by the court and resolves more than a dozen pending EEOC charges against the principal employer.

As many human resource professionals know, an ADA-covered employer must provide a qualified individual who has a disability with reasonable accommodation, unless such accommodation would impose undue hardship on the employer. Although leaves of absence are one form of reasonable accommodation, the EEOC and courts have made clear that an employer cannot simply keep an employee off work until he or she is fully healed.

In *EEOC v. Am. Airlines, Inc.*, D. Ariz., No. 17-cv-04059, the agency claimed that the two airlines refused to accommodate disabled employees by requiring employees to have no restrictions before returning to work from a medical leave of absence. In this particular case, the EEOC alleged, the airlines either continued employees’ existing leaves of absence or fired them after they were unable to return to work. This lawsuit is one of a number of EEOC lawsuits filed this year in which the agency challenged inflexible return-to-work rules.

The consent decree requires American Airlines to pay nearly \$10 million in stock (the actual amount depends on a trading price), which will be placed in a settlement fund for payment to affected current and former employees. The decree also imposes a number of significant policy and practice obligations on the organizations. Under the consent decree, for example, the employers must:

- Identify “ADA Coordinators” whose job is to assist HR and management in ADA matters, assist in development of job descriptions that remove “marginal” duties from the listing of essential job functions and assist in creation, revision and implementation of ADA-compliant procedures;
- Provide one-hour computer-based training to employees on the ADA;
- Provide four-hour live training to ADA Coordinators and human resources employees who are involved in the disability accommodation process; and
- Consider reassignment for disabled employees and provide assistance to those employees seeking such reassignments.

PRACTICAL TAKEAWAYS

This consent decree represents yet another strike by the EEOC against employers who impose “no restrictions” rules on employees returning to work from medical leaves of absence. Remember that, even if your policy is not the same as the airline policy once was, rogue managers and other leaders may be putting your organization at risk. As a human resources professional, you should advise your leaders and business partners of this continuing development, review your policies and practices relating to returns to work after medical leaves of absence and train your managers on the ADA and the costs of non-compliance.

Health care human resources professionals whose organizations have taken over operations of other facilities should take special note of this case for another reason. In health care, mergers and acquisitions have been routine in recent years. This particular lawsuit resulted from a legacy policy that one employer assumed after it merged with another organization in 2013. As is frequently the case, it did not matter to the EEOC that the company already changed its policy by the time the agency demanded changes.

If you have questions about this case, the accommodation of disabled employees or the ADA in general, please contact **Jon Rabin** at jrabin@hallrender.com or (248) 457-7835 or your regular Hall Render attorney.