

PUBLICATION

Accommodating Employees Returning from Medical Leave

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A recent Equal Employment Opportunity Commission (“EEOC”) settlement provides a valuable lesson in the Americans with Disabilities Act’s (“ADA’s”) accommodation requirements, or at least the EEOC’s perception of those requirements. On January 5, 2011, the EEOC announced a \$3.2 million settlement of an ADA class action lawsuit against drug store chain Jewel Osco. The suit alleged that the company’s policies ran afoul of the ADA by requiring employees returning from short term disability leave to be fully released to return to work without any medical restrictions. The suit also challenged the company’s policy which only allowed employees to perform light duty work if their medical restrictions were due to a work related injury.

There are legal flaws in the EEOC’s theory of the case because the EEOC challenged the policies themselves, without any allegation that the employees who were terminated pursuant to the policies had actually requested accommodation. It is the employee’s burden to request accommodation under the ADA, and therefore, it is difficult to see how a failure to accommodate claim could be premised on the policies alone. Nonetheless, the EEOC took the position that the policies were *per se* unlawful under the ADA and launched a wide ranging class action lawsuit against the company.

While the merits of the EEOC’s position are debatable, the lesson for employers is not. Unless you want a costly legal battle with the well-funded government agency charged with enforcing the ADA, you should consider incorporating an accommodation analysis into your return to work policies for employees returning from **all** types of medical leave (FMLA, work comp, short term disability, and medical leave of absence). Clearly, not all employees on medical leave will have disabilities that entitle them to accommodation. However, unless you make it clear to employees that you are willing to engage in the accommodation analysis, you may be the EEOC’s next target.