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Inflexible Medical Leave Policies May Violate the Americans with Disabilities Act

On August 27, 2009, the U.S. Equal Employment Opportunity Commission filed a putative class action against United Parcel Service, Inc. claiming the company's 12-month leave of absence policy violates the Americans with Disabilities Act of 1990 ("ADA").

Since 2002, UPS has had a policy that allows employees to take up to 12 months off for medical leave but, according to the EEOC, the policy does not adequately accommodate employees with disabilities and "instead provides for termination of their employment." The EEOC further claims UPS' practices deprive a class of disabled employees of equal employment opportunities and otherwise adversely affect their status as employees because of their disabilities.

The EEOC brought this case in response to a complaint filed by Trudi Momsen, a UPS employee suffering from multiple sclerosis. According to the EEOC, after Momsen began experiencing symptoms of the disease, she took a 12-month leave of absence. Although she returned to work on schedule, Momsen started suffering from the side effects of her medication a few weeks later. The EEOC alleges Momsen told the company she needed additional time off, but rather than extend her leave or find her another position in the company, UPS fired Momsen due to her disability, rather than accommodating her by extending her leave or by returning her to work in an available position which she could have performed. In this regard, the EEOC contends UPS' "inflexible" leave policy violates the ADA.

The EEOC has asked the court for permanent injunctions enjoining UPS from continuing its allegedly discriminatory practices and ordering the company to institute policies that provide equal employment opportunities. The EEOC is also demanding that UPS reimburse Momsen and a putative class of disabled individuals for "past and future pecuniary losses resulting from their unlawful termination," such as job search costs, and nonpecuniary losses arising from alleged "emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation" as well as back pay plus prejudgment interest for Momsen and the proposed class, as well as punitive damages, court costs and other affirmative relief. See U.S. Equal Employment Opportunity Commission v. United Parcel Service Inc., case number 1:09-cv-05291 in the U.S. District Court for the Northern District of Illinois.

In light of the EEOC's position towards the UPS 12-month leave of absence policy, employers should consider revising any leave of absence policy that provides a similar automatic "cut-off" as such policies may violate the ADA.