

SEARS, ROEBUCK TO PAY \$6.2 FOR DISABILITY DISCRIMINATION

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Federal Court Approves Largest Monetary Amount Ever in Single EEOC ADA Suit; Employees Allegedly Terminated Based on Inflexible Workers' Compensation Leave Exhaustion Policy

CHICAGO - The U.S. Equal Employment Opportunity Commission (EEOC) today announced the entry of a record-setting consent decree resolving a class lawsuit against Sears, Roebuck and Co. (Sears) under the Americans With Disabilities Act (ADA) for \$6.2 million and significant remedial relief.

The consent decree, approved this morning by Federal District Judge Wayne Andersen, represents the largest ADA settlement in a single lawsuit in EEOC history. The EEOC's suit alleged that Sears maintained an inflexible workers' compensation leave exhaustion policy and terminated employees instead of providing them with reasonable accommodations for their disabilities, in violation of the ADA.

"The facts of this case showed that, nearly twenty years after the enactment of the ADA, the rights of individuals with disabilities are still in jeopardy," said Commission Acting Chairman Stuart J. Ishimaru. "At the same time, this record settlement sends the strongest possible message that the EEOC will use its enforcement authority boldly to protect those rights and advance equal employment opportunities for individuals with disabilities."

EEOC Chicago District Director John Rowe, who supervised the agency's administrative investigation preceding the lawsuit, said that the case arose from a charge of discrimination filed with the EEOC by a former Sears service technician, John Bava. According to Rowe, Bava was injured on the job, took workers' compensation leave, and, although remaining disabled by the injuries, repeatedly attempted to return to work. Sears, Rowe said, "Could never see its way clear to provide Bava with a reasonable accommodation which would have put him back to work and, instead, fired him when his leave expired."

Regional Attorney John Hendrickson of the EEOC Chicago District Office said pre-trial discovery in the lawsuit revealed that hundreds of other employees who had taken workers' compensation leave were also terminated by Sears without seriously considering reasonable accommodations to return them to work while they were on leave, or seriously considering whether a brief extension of their leave would make their return possible.

"The era of employers being able to inflexibly and universally apply a leave limits policy without seriously considering the reasonable accommodation requirements of the ADA are over," Hendrickson said. "Just as it is a truism that never having to come to work is manifestly not a reasonable accommodation, it is also true that inflexible leave policies which ignore reasonable accommodations making it possible to get employees back on the job cannot survive under federal law. Today's consent decree is a bright line marker of that reality."

In addition to providing monetary relief, the three-year consent decree includes an injunction against violation of the ADA and retaliation. It requires, in addition, that Sears will amend its workers' compensation leave policy, provide written reports to the EEOC detailing its workers' compensation practices' compliance with the ADA, train its employees regarding the ADA, and post a notice of the decree at all Sears locations.

According to Greg Gochanour, EEOC supervisory trial attorney in Chicago, "This is not merely a garden variety so-called 'cost of litigation' settlement. We discovered well over a hundred former employees who wanted to return to work with an accommodation, but were terminated by Sears - and some of them found it out when their discount cards were rejected while shopping at Sears. We believe Sears' decision to accept this decree makes good sense."

The lawsuit, filed in November 2004, was assigned to Federal District Court Judge Wayne Andersen of the Northern District of Illinois and Magistrate Judge Susan Cox, and is captioned *EEOC v. Sears Roebuck & Co.*, N.D. Ill. No. 04 C 7282. Today's decree is dated September 29, 2009. The court will hold a final hearing, currently slated for approximately February 2010, at which time the court will make a final determination as to the fairness of the individual distributions from the \$6.2 million settlement fund.

The EEOC litigation team has included, in addition to Hendrickson and Gochanour, Chicago trial attorneys Aaron DeCamp, Ethan Cohen, Deborah Hamilton and Laurie Elkin.

The EEOC enforces federal laws prohibiting discrimination in employment. Further information about the Commission is available on its web site at www.eeoc.gov.