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Technical Update

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Update on ADA Cases; EEOC v. Interstate Distributor Co

In the EEOC v. Interstate Distributor Co. (D. Colo. 2012) the employer had a leave policy that automatically terminated employees after 12 weeks of leave. It also required a Return to Work statement with "no restrictions". Under the ADA, this combination of practices is a "definite no-no" according to legal experts and the EEOC. The employer agreed to a $4.85 million settlement one month after the EEOC filed a lawsuit in that case

However, an employer may require a fitness for duty exam under the ADA even though the FMLA does not provide for a second opinion when the employee presents his or her "Return to Work" certification from the doctor. The ADA Fitness for Duty exam has to be job-related, consistent with business necessity, and "at the employer's expense". White v. City of Los Angeles, 2014 Cal. APP. LEXIS 336 (Cal Ct. App. 2014).

Even if bolstered by such a medical opinion, the ADA may require the provision of additional leave as a "reasonable accommodation" for a disability.

First, the employer must use the "interactive process" to determine if a disability exists that prevents an employee from performing the essential duties of the job.

Regular or reliable attendance may be such an essential duty under some facts. See Baseen v. Professional Transportation, Inc. 714 F.3d 1034 (7th Cir. 2013).

Other essential duties must be able to be performed as well, but not being able to return to work for more than six months and requesting an extension of the leave beyond six months was "not reasonable" as an accommodation, in accordance with the employer's own policy. Hwang v. Kansas State University, 2014 U.S. App. LEXIS 9949 (10th Cir. 2014).

In general, inflexible leave policies that are used to discriminate will be looked on unfavorabley. Thus, some discretion should be kept in the policy wording of any leave policy, and some efforts made to apply them within the ADA's "reasonable accommodation" standard.

What This Means to Counties

Administrators should track the recovery progress of employees on medical leave, workers' comp leave, or FMLA and make sure that if medical reports suggest an "indefinite" amount of recovery time, they should be sure and request a Fitness for Duty medical report at the end of FMLA or other medical leave, and then document a full analysis under the ADA's "reasonable accommodation" rule. Two questions to ask are: (1) Is the employee permanently disabled, or "is there an estimated time by which the employee can return to work and perform essential functions and duties?"; and (2) Is the request for additional leave or recovery time or status "reasonable" under the ADA? The results should be documented, with consultation of outside experts included whenever possible.

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