

EEOC Sues Illinois Employer for Refusing to Provide Disabled Employee Additional Leave

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You have complied with the Family Medical Leave Act by allowing an employee with a serious medical condition 12 weeks of leave. You even provided a few additional weeks even though he has exhausted all available leave. When the employee asks for three more weeks, and you think to yourself “the company has met its legal obligations and can terminate, right?” Wrong—according to the EEOC.

Earlier this week, the EEOC commenced a federal lawsuit against Illinois Action for Children alleging the employer failed to provide the reasonable accommodation of additional leave. The complaint alleges the employee requested leave from June 2015 to November 2015 to seek treatment for breast cancer. The employer agreed to provide leave through September 30th, over 16 weeks of leave, but nothing more. Despite denying leave past September 30th, it waited to terminate until October 19th, effectively providing an additional 3 weeks of leave, well beyond the amount of leave employers are provided to give under the FMLA. Nevertheless, the EEOC alleges the employer’s refusal to provide leave through November violated the Americans with Disabilities Act.

This case exemplifies the EEOC’s intent to weed out what it deems inflexible leave policies that discriminate against individuals with disabilities as announced in its 2017 Strategic Plan. Employers should review their leave policies to ensure they do not call for automatic termination upon exhaustion of FMLA leave. It also serves as a reminder that medical leave is a reasonable accommodation, particularly when the leave requested is finite. (Courts in the 7th Circuit have consistently held indefinite leave is not a reasonable accommodation). Stay tuned to the Employment Law Observer for updates on this case.

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Topics

Disability And Medical Leave, ADA, FMLA, Americans With Disabilities Act, Family And Medical Leave Act