

## LEGAL ALERT

### Terminating an Employee for Failure to Return to Work at End of FMLA Leave May Violate ADA

The EEOC has determined to move forward with a lawsuit against an employer who terminated an employee after the employee completed a 16-week leave. The employee was unable to return to work at that point and the employer terminated the employee on that basis 3 weeks later.

The employee originally requested leave in order to undergo cancer treatments. The leave request was for leave from June 2015 to November 2015 (approximately 20-week leave). The employer granted the employee leave beyond the employee's FMLA entitlement (12 weeks) for an additional 4-week period, to total 16 weeks to run until September 30th. In its lawsuit, the EEOC contends that the employer discriminated against the employee based on her disability in violation of the Americans With Disabilities Act when the employer fired the employee who was on leave due to breast cancer treatment instead of considering and possibly granting the employee's request for a short period of additional leave for more treatment.

A more detailed summary of the EEOC Complaint is provided herein.

A copy of the complaint filed by the EEOC in this matter is available at:

[EEOC v. Illinois Action for Children, Case No. 17-cv-6224 \(N.D.Ill. 2017\)](#)

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## SUMMARY OF EEOC COMPLAINT

The EEOC has determined to move forward with a lawsuit against an employer who terminated an employee after the employee completed a 16-week leave. The employee originally requested a leave of approximately 20 weeks for chemotherapy treatments. The employer granted the employee 16 weeks, or 4 weeks beyond the employee's legal entitlement of 12 weeks under the FMLA. The employee was unable to return to work after the expiration of the 16-week employer-granted leave and the employer terminated the employee on that basis 3 weeks later.

The employee had worked for the employer for approximately 2 and a half years. The employee was diagnosed with cancer and originally requested leave in order to undergo cancer treatments recommended for her condition. The employee request was for leave from June 2015 to November 2015 (approximately a 20-week leave). The employer granted the employee leave beyond the employee's FMLA entitlement (12 weeks) for an additional 4-week period, to total 16 weeks to run until September 30th, but not the full leave period requested by the employee. Following her termination for failure to return to work after her 16-week leave expired, she filed an EEOC complaint. The EEOC found what it believes to be a violation of the ADA in the actions of the employer in this instance.

In its lawsuit, the EEOC contends that the employer discriminated against the employee based on her disability in violation of the Americans With Disabilities Act when the employer fired the employee who was on leave due to breast cancer treatment instead of granting the employee's request for a short period of additional leave for more treatment.



### SUMMARY OF EEOC COMPLAINT (CONT'D.)

The EEOC takes the position that employers cannot adopt or impose inflexible leave policies, but rather must consider on a case-by-case basis whether additional leave for some definite period following the expiration of FMLA would be a reasonable accommodation. A failure to engage in an interactive process with the employee who may need accommodation due to a disability to determine whether the employee's request for additional, limited leave (to complete cancer treatments) would be a reasonable accommodation, could be a violation of the ADA.

Employers can minimize the possibility of this type of claim by ensuring that leave policies do not provide for automatic termination of an employee once they use up their right(s) to any leave entitlement (e.g. sick leave, vacation, FMLA). Further, employers have a duty to consider and provide reasonable accommodation(s) that would allow a disabled employee to continue to perform the essential functions of their job. Employers should therefore consider leave requests due to an employee's disability, even those that may extend beyond paid sick leave and/or FMLA, on a case-by-case basis. The ADA requires the employer to engage in the interactive process with a disabled employee to determine what reasonable accommodations would allow the employee to perform the essential functions of their job.

For any questions or comments you might have regarding this newsletter, please feel free to contact:

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## SUMMARY OF EEOC COMPLAINT (CONT'D.)

EEOC guidance on this issue and prior judicial decisions conclude that under particular circumstances, a leave of absence can be a legally required reasonable accommodation under the ADA. Further, as to this particular circumstance (ongoing cancer treatments) the EEOC has previously concluded that an employer may be required to accommodate an employee's need for leave for chemotherapy treatment.

A copy of the complaint filed by the EEOC in this matter is available at:

*EEOC v. Illinois Action for Children, Case No. 17-cv-6224 (N.D.Ill. 2017)*