"Automatic" Termination Policies after Medical Leaves of Absence Are Being Heavily Scrutinized by the EEOC

The U.S. Equal Employment Opportunity Commission (EEOC) continues to take a strong position against uncompromising leave of absence policies known as "automatic" or "no fault" termination procedures. Such policies have been popularized by employers attempting to prevent employees from returning to work after having exceeded the employer's designated maximum for a medical leave time period.

Contrary to the beliefs of many private employers, these "automatic" policies are considered illegal by the EEOC under the Americans with Disabilities Act (ADA) and its requirement that each extended medical leave request be individually evaluated.

The EEOC's attempts to regulate "no fault" policies include these recent developments:

- *EEOC v. United Parcel Service, Inc*., Civil Action No. 09-C-5291 (2009). On August 27, 2009, the EEOC sued UPS for violating the ADA by rejecting an extension of medical leave as a reasonable accommodation for its employees with disabilities. The facts included that a UPS administrative assistant took a 12-month leave of absence because of symptoms of multiple sclerosis. She returned to work for a few weeks, but quickly requested additional time-off to cope with her medication's side effects. UPS's leave of absence policy called for automatic termination should an employee require more than 12 months of medical leave.

  Accordingly, the company terminated the employee for exceeding said policy. An EEOC attorney stated in 2009: "One of the main goals of the ADA is to provide gainful employment to qualified individuals with disabilities. However, policies like this one at UPS, which set arbitrary deadlines for returning to work after medical treatment, unfairly keep disabled employees from working. Sometimes a simple conversation with the

employee about what might be needed to return to work is all that is necessary to keep valued employees in their jobs.” The case has not yet reached a settlement.

- *EEOC v. Sears Roebuck & Co*., N.D. Ill. No. 04 C 7282 (2004). On September 29, 2009, the EEOC and Sears entered into the largest ADA settlement agreement ever. Following a class action lawsuit originally filed in 2004, Sears agreed to pay $6.2 million to resolve the EEOC's claim that Sears maintained an inflexible leave policy that called for an employee's termination if the employee was unable to return to work after exhausting workers' compensation leave and failed to leave room for the possibility that extended leave or other forms of accommodation may be required as reasonable accommodation under the ADA.
- Also, in 2006, the EEOC and JP Morgan Chase & Co. entered into a $2.2 million settlement agreement, putting an end to an ADA claim brought by the EEOC. Chase’s policy at issue allowed employees who returned from medical leave within six months to return to their jobs. Yet, employees who required more than six (6) months of medical leave were not guaranteed to return to their actual previous position. If their position had been given to someone else, returning employees had 30 days to find another position at Chase or were subsequently terminated.

  The EEOC asserted that the ADA requires employers to individually determine whether additional leave or other forms of accommodation will aid employees in returning to work without placing an undue hardship on the company. The EEOC charged that Chase had violated the ADA by applying its “automatic” termination policy and not evaluating on a case-by-case basis if additional accommodation was feasible.

These recent events should educate employers in that a single agreement to reasonably accommodate is not sufficient on every occasion. When an employer approves a precise time for medical leave but the employee is eventually incapable of coming to work at the conclusion of said leave and instead requests extra leave, the employer must determine whether further leave would be a reasonable accommodation or result in undue hardship.

Deciding if a leave of absence would cause an undue hardship depends largely on the specific facts and should be evaluated in each unique case. An undue hardship for an employer does not result from any specific set amount of time for a leave of absence. Instead, there are multiple factors to be examined, including the nature of the position in question. Therefore, employers would be wise to review their practices and procedures involving medical leave and verify that such policies do not establish a fixed period of time with subsequent mandatory termination. Employers must also review their employee handbooks and personnel policies to confirm that there are no additional ADA violations.