

Beware of Inflexible Leave of Absence Policies



There are no clear cut rules as to how far employers are expected to go to accommodate employees who are unable to work. The EEOC acknowledges that indefinite unpaid leave is not a reasonable accommodation. However, the EEOC has taken the position that an employer must provide additional leave at the end of the FMLA period as a reasonable accommodation unless (1) there is another effective accommodation that would allow the disabled employee to return to work and perform the essential functions of the employee's position, or (2) granting additional unpaid leave would create an undue hardship for the employer.


In order to avoid violating the ADA, employers should consider taking these actions:

- Review your medical leave of absence policies and practices to ensure they do not call for a maximum period of leave followed by automatic termination or other adverse action. Policies should provide that the length of medical leave and other requests for accommodation are determined on an individual basis.
- If you are covered by the Family and Medical Leave Act (FMLA) review your FMLA policy to make sure the policy does not call for automatic termination if an employee is unable to return to work when FMLA leave is exhausted.
- Examine your HR policies to make sure they do not require an employee to be fully recovered with no restrictions to return from a leave and continue working as this requirement violates the ADA.
- Notify an employee that he or she is approaching the end of the leave period and invite the employee to engage in the interactive process to discuss whether reasonable accommodations are available to assist the employee to return. Document every communication with the employee during the interactive process, including every offer of a reasonable accommodation and every response from the employee.
- Make sure any HR representative who handles employees returning from leaves and requests for accommodation has been adequately trained in the legal requirements to do so.
- Do not decide to terminate an employee unless you have a documented record of attempting to engage the employee in an interactive process to explore reasonable accommodations and all reasonable efforts to assist the employee in returning to work have been exhausted.

The Equal Employment Opportunity Commission (EEOC) is taking a hard line against "no fault" or "automatic" termination policies—inflexible leave of absence policies that call for automatic termination of employment when an employee cannot return to work when the employer's "maximum" medical leave period expires. The EEOC has filed lawsuits against employers claiming these policies violate the Americans with Disabilities Act (ADA) requirement that employers reasonably accommodate leave requests on a case-by-case basis.

The ADA requires an employer to engage in an interactive process with an employee seeking reasonable accommodation. According to the EEOC, an inflexible leave policy or one that calls for the employee's termination at the end of a specified period may prevent the interactive process from occurring or prevent it from having a chance to be effective. The length of a leave cannot be determined by policy, but must be determined on an individual basis since it is a form of reasonable accommodation.

MRA's HR Hotline can help you!

 866-HR-Hotline | 866.474.6854

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 mranet.org/24-7/hr-hotline

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