

## Rigid Leave Policies Draw EEOC Ire



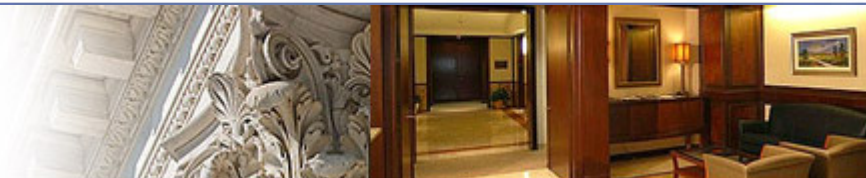
By [Fred Dawkins](#) and [Betsy Turner](#)

In early February, the Equal Employment Opportunity Commission (EEOC) finalized the largest single-lawsuit Americans with Disabilities Act (ADA) settlement in its history. Pursuant to that settlement, Sears will distribute \$6.2 million to resolve the ADA claims of 235 former employees. In the suit, the EEOC alleged that Sears maintained an inflexible workers' compensation leave exhaustion policy which violated the ADA. Under the Sears policy, an employee whose workers' compensation leave lasted more than one year was automatically terminated without any consideration of whether a reasonable accommodation (such as additional leave) might have allowed that employee to return to work. In addition to paying approximately \$26,300 to each of the former employees, Sears has to: (1) amend its workers' compensation leave policy; (2) provide written reports to the EEOC detailing its ADA compliance practices; (3) train employees on ADA issues; and (4) post a notice of the settlement at all Sears locations.

United Parcel Service (UPS) hopes to avoid a similar result in its EEOC "medical leave policy" case. Former UPS employee Trudi Momsen took a 12-month leave of absence when she began experiencing symptoms of what was later diagnosed as multiple sclerosis. Although Ms. Momsen returned to work briefly after the leave of absence, she needed additional time (beyond 12 months) to adapt to her medication's side-effects. Rather than provide her additional leave, UPS terminated her. The EEOC claims that UPS's rigid 12-month leave policy, as applied to Ms. Momsen and other disabled employees, violates the law. The case is pending.

The Sears and UPS cases illustrate that the EEOC, when it focuses on employer medical leave policies in connection with the reasonable accommodation requirements of the ADA, does not like leave policies that are inflexible. Perhaps, in the EEOC's view, this perceived inflexibility places those policies at odds with the highly collaborative interactive process contemplated under the recent amendments to the ADA (which changed the focus of law from whether the employee is disabled to whether the employer is complying with the law's requirements).

Companies that want to avoid the EEOC's focus should ensure that their ADA policies



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provide the flexibility to craft accommodations to fit a variety of scenarios. Just as importantly, companies should ensure that employees responsible for administering those ADA policies approach situations with a focus on engaging the interactive process rather than on applying the policy mandates as uncompromisingly as possible.

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