

EEOC Guidance: Employer-Provided Leave And The ADA

Article By:

Margaret R. Kurlinski

This past May the ***Equal Employment Opportunity Commission (EEOC)*** published guidance on leave and the ***Americans with Disabilities Act (ADA)***. The guidance reiterated the EEOC's views on leave as a viable and reasonable accommodation under the ADA. While the guidance provides no "new" information regarding the EEOC's stance in this area, there are a number of important reminders including within the guidance which make the 7-page document a worthwhile read.

- Employee leave policies must be applied equally to employees with disabilities and those without disabilities. For example, an employer may not place additional paperwork obligations on employees utilizing sick leave if they are doing so as a result of a disability.
- The EEOC views *unpaid* leave as a reasonable accommodation in many circumstances. In particular, the EEOC believes that employers must (yes, they use the word must) provide a reasonable amount of leave in excess of all available paid leave or in circumstances where employees are not otherwise eligible for leave.

Example from Guidance: *An employer's leave policy does not cover employees until they have worked for six months. An employee who has worked for only three months requires four weeks of leave for treatment for a disability. Although the employee is ineligible for leave under the employer's leave policy, the employer must provide unpaid leave as a reasonable accommodation unless it can show that providing the unpaid leave would cause undue hardship.*

Example from Guidance: *An employer provides 10 days of paid annual leave and four days of paid sick leave each year to employees who have worked for the company fewer than three years. After three years, employees are eligible for 15 days of paid annual leave and eight days of paid sick leave. An employee who has worked for only two years has used his 10 days of paid annual leave and now requests six days of paid sick leave for treatment for his disability. Under its leave program, the employer must provide the employee with four days of paid sick leave but may refuse to provide paid leave for the two additional days of sick leave because the employee has not worked long enough to earn this benefit. However, the*

employer must provide two additional days of unpaid sick leave as a reasonable accommodation unless it can show that providing the two additional days would cause undue hardship.

- Similarly, employers must make exceptions to maximum leave policies.
- An employer that has granted leave with a fixed return date may not ask the employee to provide periodic updates, although it may reach out to an employee on extended leave to check on the employee's progress.

Example from Guidance: *An employee with a disability is granted three months of leave to recover from a surgery. After one month, the employer phones the employee and asks how the employee is doing and whether there is anything the employee needs from the employer to help the employee recover and return to work. That is an acceptable request for information. Additionally, a week prior to the end of the employee's leave, the employer again reaches out to the employee to ask whether the employee is able to return to work at the end of leave and if any additional accommodations are required. This is also an acceptable request for information.*

- An employer will violate the ADA if it requires an employee with a disability to have no medical restrictions — that is, be “100%” healed or recovered — if the employee can perform her job with or without reasonable accommodation.

Example from Guidance: *An employee with a disability requests and is granted two months of medical leave for her disability. Three days after returning to work she requests as reasonable accommodations for her disability an ergonomic chair, adjusted lighting in her office, and a part-time schedule for eight days. In response, the company requires the employee to continue on leave and informs her that she cannot return to work until she is able to work full-time with no restrictions or accommodations. The employer may not prohibit the employee from returning to work solely because she needs reasonable accommodations (though the employer may deny the requested accommodations if they cause an undue hardship). If the employee requires reasonable accommodations to enable her to perform the essential functions of her job and the accommodations requested (or effective alternatives) do not cause an undue hardship, the employer's requirement violates the ADA.*

- Employers should consider reassignment to a new job as a reasonable accommodation if the disability prevents the employee from performing one or more essential functions of the current job, even with a reasonable accommodation, or because any accommodation in the current job would result in undue hardship.

[Read the full document.](#)

Source URL: <https://natlawreview.com/article/eeoc-guidance-employer-provided-leave-and-ada>