CLIENT ALERT: EEOC Settles Lawsuit Over Policy Requiring Termination After Expiration of Workers' Compensation Leave

In a stark reminder to employers to be wary of issues arising at the intersection of the Americans with Disabilities Act ("ADA") and worker's compensation policies, Sears, Roebuck and Co. ("Sears") recently entered into a record setting $6.2M consent decree resolving a class action lawsuit brought by the United States Equal Employment Opportunity Commission ("EEOC").

The EEOC filed suit in the Northern District of Illinois against Sears on behalf of employees who were out of work and receiving worker's compensation benefits, but were fired by Sears for failing to return to work after their injury leave expired. The EEOC contended that the employees could have returned to work with a reasonable accommodation. In some instances, the reasonable accommodation would have been a short extension of injury leave (presumably unpaid). The Sears policy, however, was inflexible and provided for no individualized inquiry or reasonable accommodation. Rather, employees were removed from the payroll if they were unable to return to work once their worker's compensation leave period expired.

The EEOC, in a press release announcing the consent decree stated,

> [T]his record settlement sends the strongest possible message that the EEOC will use its enforcement authority boldly to protect those rights and advance equal employment opportunities for individuals with disabilities…. The era of employers being able to inflexibly and universally apply a leave limits policy without seriously considering the reasonable accommodation requirements of the ADA are over. Just as it is a truism that never having to come to work is manifestly not a reasonable accommodation, it is also true that inflexible leave policies which ignore reasonable accommodations making it impossible to get employees back on the job cannot

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survive under federal law.

In light of the Sears consent decree, employers should ensure that they comply with their obligations to reasonably accommodate individuals with disabilities, especially in situations where the disability is related to a workplace injury. This includes making an individualized assessment on each person's ability to return to work after a workplace injury or other leave of absence, and not simply removing an individual from the payroll pursuant to an inflexible policy requiring termination after a pre-determined period of inactive employment.

Employers are encouraged to contact their MBJ attorney with questions about the intersection of medical leave law, worker's compensation law, and disability law.

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