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Discrimination claims under the ADA have been on the rise since the ADA Amendments Act of 2008. The Equal Employment Opportunity Commission (EEOC) recently obtained a \$3.2 million Consent Decree against an employer for alleged inflexible leave of absence and return to work policies that did not consider reasonable accommodations on a case-by-case basis. On January 3, 2011, Supervalu Inc., American Drug Stores LLC and Jewel Food Stores, Inc. (“Jewel-Osco”), a large supermarket and drug store retailer in the Chicago area, settled class-wide EEOC claims that it violated the Americans with Disabilities Act (ADA) because: (1) its leave policies prohibited employees from returning to work after a leave of absence unless they had no work restrictions; and (2) it automatically terminated employees who could not return from leave within a one-year period.

In addition to the settlement payment, going forward, Jewel-Osco must inform employees on leave that they need not be without restrictions in order to return to work and that they may be eligible for reasonable accommodations upon returning to work. The company must communicate to employees some of the types of accommodations that may be available if they are considering returning to work with medical restrictions, including light duty, reassignment to a vacant position, and even extended leave time. To find out more, see the EEOC press release by [clicking here](#).

This is not the first time the EEOC has attacked policies perceived to be inflexible and contrary to the ADA’s requirement of “reasonable accommodation.” The EEOC filed similar class action lawsuits against Sears and United Parcel Service (UPS) in Illinois for policies that provided for automatic termination of employment after twelve months of leave without considering reasonable accommodations, including extended leave, on a case-by-case basis. Sears agreed to a consent decree for \$6.2 million, the largest total payout for an EEOC ADA lawsuit, concerning its

workers’ compensation maximum leave policy. The UPS litigation remains ongoing.

Employers must tread carefully in adopting and implementing medical leave, return to work and reasonable accommodation policies. While unlimited leave time generally is not required by the ADA, leave of absence policies should not provide for automatic termination after a set period of time. Rather, employers must consider reasonable accommodations on an individualized basis. It is important to note that some states have laws regarding leave, including maximum leave periods, which may be utilized if done in conjunction with these ADA requirements. Further, employers must not have a blanket requirement that employees must be completely healed as a condition of returning to work in any position. Employees must be able to perform the essential functions of the job position, but due consideration and discussion should be given to all potential reasonable accommodations. Appropriate accommodations can include returning to work with restrictions, modified duties or schedule, or extended time off, among others. To be best prepared to handle accommodation requests, employers should regularly review and update their job descriptions, including the physical job requirements. Further, for each accommodation request, employers should consider and thoroughly discuss in a two-way dialogue the various potential accommodations at issue, as well as document those discussions and decisions.

## About the Authors:

Hanna Norvell is Board Certified in Labor and Employment law, she exclusively represents employers in matters related to compensation, wrongful termination, retaliation, harassment and discrimination (Title VII of the Civil Rights Act), wages and hours, disability accommodation (ADA), leaves of absence, Family and Medical Leave Act (FMLA), federal contractor obligations (OFCCP and other statutes), layoffs, unemployment compensation, workplace violence, employee privacy, internet/social media use, workplace investigations, drug testing, medical exams, employment handbooks and policies, and employee and management training.

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