

EEOC's \$20 Million Settlement with Verizon Puts Focus on "No Fault" Attendance and Leave Policies

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In a press release last month, the Equal Employment Opportunity Commission (EEOC) announced that Verizon Communications will pay \$20 million and take other remedial measures to settle a class action disability discrimination lawsuit that the EEOC filed against the company. The consent decree between Verizon and the EEOC for settlement of the lawsuit, which is pending judicial approval, is the largest disability discrimination settlement in a single lawsuit in EEOC history.

The EEOC's lawsuit claimed that Verizon unlawfully denied reasonable accommodations to hundreds of employees and disciplined or fired them pursuant to the company's "no fault" attendance policy. Under Verizon's "no fault" policy, if an employee accumulated a certain number of "chargeable absences," the company placed the employee in a disciplinary status that could eventually result in more serious discipline or termination. The EEOC contended that Verizon failed to provide reasonable accommodations for people with disabilities by refusing to make exceptions to its "no fault" attendance policy for employees whose "chargeable absences" were caused by their disabilities and, in some cases, disciplining or terminating these employees.

According to the EEOC's lawsuit, Verizon violated the Americans With Disabilities Act (ADA) because its "no fault" attendance policy was inflexible and made no provision for whether a reasonable accommodation of employees with disabilities, such as allowing an employee to take

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paid or unpaid leave, could be made without causing the company significant difficulty or expense. In addition to the \$20 million in monetary relief for affected employees, the EEOC's settlement with Verizon requires the company to revise its attendance policies to include reasonable accommodations for persons with disabilities, such as excusing certain absences, and provide periodic training on ADA requirements to employees responsible for administering Verizon's attendance policies.

In a recent [alert](#), we reported on a public hearing held by the EEOC to address the use of unpaid leave as a reasonable accommodation under the ADA, and two recent federal court cases illustrating the challenges to inflexible leave policies. Rigid "no fault" attendance policies will be subject to similar challenges, as demonstrated by the Verizon case. In the EEOC's press release for its settlement with Verizon, one of the agency's regional directors was quoted as saying, "This settlement demonstrates the need for employers to have attendance policies which take into account the need for paid or unpaid leave as a reasonable accommodation for employees with disabilities."

With the recent enactment of the Americans With Disabilities Amendments Act, it is easier for employees to qualify as disabled and even more important for employers to consider and explore reasonable accommodations. Employers should consult employment counsel to make sure a company's attendance and leave policies take into account whether an individual may qualify as disabled and need a reasonable accommodation, such as an excused absence or unpaid leave.

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