

## Court Issues Reminder That "100% Healed" Requirements Violate ADA

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Practice Area: Labor and Employment

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On February 11, 2014, an Illinois Federal District Court issued a decision reminding employers that "100% healed" return-to-work requirements violate the Americans with Disabilities Act ("ADA"). In *EEOC v. United Parcel Service, Inc.*, the U.S. Equal Opportunity Commission ("EEOC") filed a lawsuit alleging that United Parcel Service's ("UPS") "100% healed" requirement violated the ADA. UPS moved to dismiss the complaint, claiming that the EEOC could not state a claim that there was a violation of the ADA. The Court denied UPS's motion and permitted the EEOC lawsuit to proceed.

UPS maintained a leave policy requiring employees to be "administratively separated from employment" after 12 months of leave. In 2007, an employee returned from a 12-month medical leave. After returning, the employee requested certain accommodations, including a hand cart. UPS refused to provide any accommodation. Shortly thereafter, the employee injured herself and needed additional medical leave. Instead of granting leave, UPS terminated the employee under its 12-month leave policy.

The EEOC alleged that UPS's 12-month leave policy acted as a "100% healed" requirement because it functioned as a "qualification standard" under the ADA. UPS argued that the ability to regularly attend work was an essential job function and not an impermissible "qualification standard" and, therefore, not in violation of the ADA.

Although the Court conceded that regular job attendance is an essential job requirement, the court found that the lawsuit was not based on attendance requirements, but rather on the "100% healed" requirement that an employee must satisfy before returning to work. As a prerequisite to returning to work, the 12-month policy was a "qualification standard" and not an essential job function subject to accommodation. A "qualification standard" is "the personal and professional attributes, including the skill, experience, educational, physical, medical, safety and other requirements established by a covered entity as requirements an individual must meet in order to be eligible for the position held or desired."

The court relied on the Seventh Circuit's previous determination that a "100% healed" policy is *per se* impermissible because it "prevents individualized assessments" and "necessarily operates to exclude disabled people that are qualified to work." A "100% healed" requirement limits the ability of qualified individuals with a disability to return to work. Thus, a "100% healed" acts as a prohibited "qualification standard" because it removes the opportunity for the employee to pursue reasonable accommodation, in violation of the ADA. Accordingly, the court denied UPS's motion to dismiss and permitted the EEOC's lawsuit to proceed.

Although this case does not provide a definitive answer to the EEOC's lawsuit, it does provide a strong reminder to employers that "100% healed" policies violate the ADA. Employers should review their return to work policies to ensure that they do not contain "100% healed" requirements. When dealing with leave issues, employers also should remember to enter into the interactive process when necessary and balance obligations under federal, state and local disability and leave requirements, in addition to those created by contract or agreement.

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