



Ka-ching! EEOC raking it in on ADA cases

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The Americans with Disabilities Act Amendments Act broadened the scope of what constitutes a disability. As a result, employers are now engaging in the interactive process with employees and facing the question of what is and what is not a reasonable accommodation. The EEOC has indicated in writings and in talks that it intends to focus on disability discrimination, and recent activity by the EEOC confirms its renewed focus on the ADA.



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In 2010, the EEOC issued 1,186 Reasonable Cause Findings in ADA charges, up from 962 in 2009, and collected \$76.1 million in ADA settlements.



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The EEOC's aggressive approach has continued this summer, with the filing of lawsuits alleging disability discrimination and substantial settlements in some cases.

*In a settlement that is reportedly the highest ever collected by the EEOC, Verizon (the telephone company, not the wireless company) agreed to pay \$20 million to settle a lawsuit alleging that it and its subsidiaries had enforced its "no-fault" attendance policy where its reasonable accommodation obligations might have required a more flexible approach.

*A Pepsi bottling company has agreed to pay \$120,000 and implement preventive measures to settle a disability lawsuit filed by the EEOC in federal court for the Northern District of California. The EEOC alleged that the company had refused an employee's request for a medical leave to accommodate an alleged disability.

*Target has agreed to pay \$160,000 to settle an EEOC lawsuit alleging that the discount chain had refused to accommodate a cart attendant with cerebral palsy.

*Denny's has agreed to a \$1.3 million settlement in an EEOC lawsuit alleging that the restaurant chain refused to accommodate the leg amputation of a restaurant manager as well as 33 other employees with disabilities.

No doubt spurred on by these settlements, the EEOC is filing lawsuits fast and furious against employers:

* J.A. Thomas & Associates has been sued in federal court in the Eastern District of Michigan.

The EEOC complaint alleges that a double amputee was forced to resign when her job moved to Georgia. The EEOC alleged that the employee could not relocate because of her disability but said that she could perform her job at home and asked to be allowed to work from home. The company allegedly refused the request, but after it was unable to fill the job for six months, made it a telecommuting position and hired another person for the job.

*Non-profit Area Four Senior Citizens Planning Council has been sued in federal court in South Dakota after the organization allegedly fired an employee instead of allowing her to return to work after surgery for colon cancer. The EEOC alleges that the employee could have performed the essential functions of her job but was discharged because of symptoms that could have resulted from her chemotherapy.

*JES Personnel Consultants, Inc. d/b/a Genie Temporary Service, was sued in federal court in the Northern District of Illinois for allegedly refusing to allow an employee to return to work because of his epilepsy.

*Johns Hopkins Home Care Group was sued in federal court in Maryland for allegedly firing an employee because of her disability and because she challenged the company's failure to accommodate her need to return to work with limited restrictions after being diagnosed with breast cancer.

As these filings and settlements show, retail employers need to make sure they are up to speed on the ADA and its requirements, particularly non-discrimination, reasonable accommodation, and the interactive process.

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A L Much
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