

EEOC finds fault with 'no fault' attendance policies

Verizon's recent \$20 million settlement of a class-action lawsuit—the largest disability settlement in EEOC history—is shining a spotlight on the legal risks of no-fault attendance policies.

The lawsuit, filed by the EEOC on behalf of disabled Verizon workers across the country, claimed the company violated the ADA by refusing to make exceptions to its no-fault attendance policy to accommodate employees with disabilities. Instead, the EEOC said, the company disciplined or terminated employees who needed such accommodations.

The settlement requires Verizon to pay about \$20 million to employees who missed work for reasons related to their disabilities.

No-fault policies typically count absences against workers regardless of the reason they missed work. Under the ADA, employees who need time off to deal with the effects of their disabilities may be entitled to leave as a reasonable accommodation. Employers may not count that time off against the employee when evaluating him or her for raises.

"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," said Spencer Lewis, director of the EEOC's Philadelphia office.

The bottom line: No-fault attendance policies contain many potential land mines for employers. In addition to ADA considerations, employers must ensure they do not penalize employees for taking legitimate leave under the FMLA.