

EEOC has Attendance Point Systems in its Sights

Attendance point systems undoubtedly have appeal. These policies — often referred to as “no fault attendance policies” because they assign points to absences regardless of the cause — take the subjectivity out of attendance-related corrective action. However, to be legally compliant, an attendance point system must make allowances for legally protected absences.

You may be thinking — “how could this be discrimination? We’re treating disabled employees the same as all other employees.” Well, the ADA requires you to not only treat qualified individuals with disabilities the same as you would nondisabled employees, it also requires that you provide reasonable accommodations — modifications or adjustments to the way things usually are done that enable a qualified individual with a disability to enjoy an equal employment opportunity. Among the possible accommodations envisioned by the EEOC? Modifying or changing policies.

Not surprisingly, the EEOC now has employers with attendance point systems in its sights. In fact, the EEOC has brought legal action against a number of employers who maintain attendance point systems that fail to except out legally protected absences.

By way of example, last week, the EEOC [announced](#) a \$1.7 million settlement with Pactiv LLC, an Illinois-based employer. According to the EEOC, Pactiv maintained policies under which attendance points were issued for medical-related absences. In addition to paying \$1.7 million, Pactiv also agreed to revise and distribute a new attendance policy that will not assess points for disability-related absences. As noted by the EEOC District Director — “Employers need to get this message: Inflexible, strictly enforced leave policies can violate federal law. . . . As an employer, make sure you have exceptions for people with disabilities and assess each situation individually.”

The takeaways?

- Review your attendance policy to ensure it does not provide for the assignment of points (or corrective action) when an absence is legally protected. If it does, work with labor and employment counsel to revise your policy to bring it into compliance.
- Educate supervisors and others involved in the administration of your attendance policy.

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