

**\$6.2 Million Settlement in EEOC Complaint
Against Sears, Roebuck & Company
Re: Inflexible Leave Exhaustion Policy Violates ADA**
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On February 5, 2010, the EEOC issued a press release announcing the court approval of a \$6.2 million settlement of its lawsuit against Sears, Roebuck & Company on behalf of 235 employees. The lawsuit maintained that Sears had an inflexible workers' compensation leave exhaustion policy that terminated employees once they exhausted their workers' compensation [leave] entitlement rather than engaging in the interactive process to determine if a reasonable accommodation existed to help return them to work. The settlement is the largest ADA settlement in a single case in EEOC history. Each of the 235 employees will receive approximately \$26,300 in settlement funds.

This case is an important reminder to employers that when an employee is out on some form of statutory leave of absence (e.g. workers' compensation or FMLA), if the employee exhausts such leave and is still experiencing a medical condition that qualifies under the ADA (and/or a state disability law like California's Fair Employment and Housing Act), the employer must engage in the interactive process to determine if a reasonable accommodation (including a possible extension of the employee's leave) is available that can be provided to the employee without creating an undue hardship on the employer. Otherwise, strict application of leave policies that result in the termination of an employee who fails to return to work at the exhaustion of such leave (e.g. at the end of 12 weeks of FMLA leave) can expose the employer to significant liability.

The EEOC press release is available at: www.eeoc.gov/eeoc/newsroom/release.

Lizbeth "Beth" West is a shareholder in the Labor and Employment Law Section and Disputes, Trials & Appeals Section at Weintraub Genshlea Chediak. Beth's practice focuses on counseling employers in all areas of employment law, and defending employers in state and federal court, as well as before administrative agencies. She has extensive experience in defending wage and hour claims, and complex whistle-blowing and retaliation claims. She also provides training services on various employment issues, such as sexual harassment and violence in the workplace. If you have any questions about this Legal Alert or other employment law related questions, please feel free to contact Beth West at (916) 558-6082. For additional articles on employment law issues, please visit Weintraub's law blog at www.thelelawblog.com.