

## Man, My Cell Bill Is Going Up Again!

7. July 2011 By Steve Palazzolo

What on earth does that headline have to do with employment law? That's what you are thinking, isn't it? Sure it is. Give me a second, I'll tell you.

We talk a fair amount on this blog about the Americans with Disabilities Act (ADA) and reasonable accommodations. Apart from it being one of the most difficult federal statutes for employers to work with, I happen to have a bit of a special interest in the topic. So, when something about the ADA crosses my desk I tend to stop what I am doing and at least glance at it. So today when I got a Tweet (yes, you can find me on Twitter at @ZoEmploymentLaw), I stopped and I read it. (By the way, a shout out to the [Ohio Employer's Law Blog](#) for the nice post on this issue).

Here is the headline on the Equal Employment Opportunity Commission's (EEOC's) press release: [Verizon to Pay \\$20 Million to Settle Nationwide EEOC Disability Suit](#).

Sort of catches your attention, doesn't it? So, what happened? According to the EEOC, Verizon maintained a "no fault attendance" program. Under that program, "if an employee accumulated a designated number of 'chargeable absences,' Verizon placed the employee on a disciplinary step which could ultimately result in more serious disciplinary consequences, including termination." The EEOC took the position that Verizon failed to provide reasonable accommodations for people with disabilities which should have included making exceptions to this no-fault attendance plan for individuals whose "chargeable absences" were caused by their disabilities.

According to the EEOC press release: "In addition to the \$20 million in monetary relief, the three-year decree includes injunctions against engaging in any discrimination or retaliation based on disability, and requires the company to revise its attendance plans, policies and ADA policy to include reasonable accommodations for persons with disabilities, including excusing certain absences. Verizon will provide mandatory periodic training on the ADA to employees primarily responsible for administering Verizon's attendance plans. The company will report to the EEOC about all employee complaints of disability discrimination relating to the attendance policy and about Verizon's compliance with the consent decree. The company also agreed to post a notice about the settlement. Finally, Verizon will appoint an internal consent decree monitor to ensure its compliance. The settlement applies to certain Verizon wireline operations nationwide which employ union-represented employees."

These allegations and this settlement highlight an important difference in the ADA that we all know about but don't talk about very often. Unlike say, Title VII, which requires that all employee's are treated equally, the ADA actually requires employers to treat persons with disabilities different than they may treat non-disabled employees. In short, employers must provide reasonable accommodations for qualified individuals with disabilities. Now a lot of my colleagues and I have always taken the position that regular attendance is an

essential job function and so under the ADA employer's were not required to "reallocate" as it were attendance as an accommodation. Given this settlement I'm not quite so sure about that anymore. Granted this is just a settlement, not a judgment of a court, so it is not the law. But it sure gives us notice of how the EEOC feels about these issues. In short, if you have an employee with a known disability, you might want to pause and think about it before you fire the employee under your no fault attendance policy.

You can see the entire press release [here](#). You can get help with your ADA questions and concerns [here](#).