

WALMART TO PAY \$275,000 FOR NOT ACCOMMODATING EMPLOYEE AFTER CANCER SURGERY



Popular retail store chain Walmart will be paying monetary compensation to settle a disability lawsuit. The settlement, filed by the U.S. Equal Employment Opportunity Commission (EEOC) on behalf of a former employee of the company, will also include nonmonetary relief. The EEOC filed the lawsuit back in October of 2010. In the suit, Walmart was charged with a failure to reasonably accommodate an employee who had cancer surgery, rendering the man with a weakness in his right shoulder. The employee had worked at the company's East Tennessee distribution center #6039 in Midway, TN, for 12 years. Following his surgery, he worked as a forklift driver. He submitted a request and asked that it not be a requirement for the man to cover a 20-minute break in the shipping department, as it would entail manual lifting. The request was denied, and the man's employment was subsequently terminated. The company claimed that the firing was due to the employee being unable to perform functions deemed essential for the job. The lawsuit, which was filed in the U.S. District Court for the Eastern District of Tennessee, Greenville Division also alleged retaliation, claiming that the man was fired for complaining of the company's refusal to accommodate his condition. Through its conciliation process, the EEOC initially tried reaching a pre-litigation settlement before filing suit. Any company that denies reasonable accommodation or retaliates against a disabled employee violates Title I of the Americans with Disabilities Act (ADA). This lawsuit was one of the first filed under the Americans with Disabilities Act Amendments Act (ADAAA), signed into law in September of 2008. The purpose of the amendment was to clarify the definition of the term, "disability," and to simplify the process of seeking protection under the ADA. According to the EEOC, the Act underlines that "the definition of disability should be construed in favor of broad coverage of individuals to



the maximum extent permitted by the terms of the ADA" and, for the most part, "not require extensive analysis." The settlement agreed upon by Walmart and the EEOC is an 18-month consent decree in which the company will be paying the former employee 275,000 dollars. The distribution center #6309 has also been enjoined (prohibited by law) from additional failures to provide reasonable accommodation, absent undue hardship, or follow procedures to properly handle such requests per the ADA and the ADAAA. The company will also provide anti-disability discrimination training to management staff, maintain records of accommodation requests and submit said records to the EEOC, and post a notice to employees concerning the lawsuit, with the inclusion of EEOC contact information. Walmart's accommodation policy, available for all employees, has likewise been amended to address the accommodation issues. In an EEOC press release, Faye A. Williams, regional attorney for the EEOC's Memphis District Office, said, "There is a solid body of federal law that clearly obligates employers to provide an employee with a reasonable accommodation unless it poses an undue hardship. The EEOC remains committed to vigorously enforcing the ADA and the ADAAA."