

The U.S. Equal Employment Opportunity Commission

FOR IMMEDIATE RELEASE
August 2, 2005

CONTACT: Aaron DeCamp
EEOC Trial Attorney
(312) 353-7582
TTY (312) 353-2421

Gregory Gochanour
EEOC Supervisory Trial Attorney
(312) 886-9124

John C. Hendrickson
EEOC Regional Attorney
(312) 353-8551

FEDERAL COURT SAYS EEOC DISABILITY BIAS LAWSUIT AGAINST SEARS ROEBUCK TO PROCEED

Discovery Allowed On Class Claim That Inflexible Leave Policy Failed To Reasonably Accommodate Disabled Employees

CHICAGO -- The U.S. Equal Employment Opportunity Commission (EEOC) announced here today that it has received a decision from Federal District Court in Chicago permitting its class case under the Americans with Disabilities Act (ADA) to proceed against Sears, Roebuck & Company.

According to the EEOC, U.S. District Judge Wayne R. Anderson has denied Sears' motion to dismiss the case which alleges that the giant retailer failed to provide one of its Chicago-area employees, John Bava, with a reasonable accommodation after he was injured while working for Sears. EEOC is also seeking relief on behalf of a class of all Sears employees with disabilities who lost their jobs because of Sears' inflexible application of its one year worker's compensation or medical-disability leave policy. EEOC contends that Sears violated Title I of the Americans With Disabilities Act (ADA) by terminating Bava and other employees because they spent more than one year on disability leave and without regard to their individual circumstances and return-to-work prospects.

In denying Sear's motion to dismiss the case, Judge Anderson wrote, "Even if the EEOC were required to plead a prima facie case of disability discrimination, we believe [the facts in the Complaint] would survive a [motion to dismiss.]"

"As for the class allegations," Judge Anderson continued, "the Complaint alleges that Sears 'maintained an inflexible worker's compensation one year leave policy which does not provide for reasonable accommodation of employees with disabilities.' We find that the issue of whether defendant's leave policy fails to accommodate its disabled employees is an issue upon which defendants have been given notice and is a claim for which [EEOC is] entitled to discovery."

The EEOC lawsuit was filed November 10, 2004, in the U.S. District Court for the Northern District of Illinois and captioned EEOC v. Sears, Roebuck & Co., Civil Action No. 04 C 7282. Judge Andersen's decision was dated July 22, 2005, and mailed to the parties.

Bava worked as a Service Technician out of Sears' Waukegan Road store in Bannock-burn, Illinois, north of Chicago. He was injured when he fell while on the job in April 2001. Although Bava took leave to recover, his injuries left him substantially impaired in his ability to perform physical tasks. According to EEOC, within three months after his injury Bava sought placement in two less physically demanding positions for which he was qualified, but Sears refused to place hire him in either position. As a result, he remained on leave because he was unable to return to his prior service technician job. Ultimately, his employment was terminated under Sears' disability or worker's compensation leave policy that inflexibly mandates the termination of employees on leave for more than one year.

John Hendrickson, EEOC Regional Attorney in Chicago said, "Sears is an enormous operation and whether or not it complies with the ADA makes a huge difference to thousands of workers. In EEOC's view, sending individuals with disabilities home when they could be working and then firing them when they've been at home 'too long' cannot be squared with what the ADA requires of employers. So we are pleased with the

Court's decision that EEOC's case is going to go forward."

In addition to Hendrickson, EEOC attorneys on the case are Supervisory Trial Attorney Gregory Gochanour and Trial Attorneys Ethan Cohen and Aaron DeCamp.

EEOC is the federal agency charged with the administration, interpretation and enforcement of Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination based on race, color, religion, sex, pregnancy or national origin. The EEOC is also responsible for enforcing the Age Discrimination in Employment Act of 1967, as amended; the Equal Pay Act of 1963; and the Americans with Disabilities Act of 1990, which prohibits discrimination based on disability. More information about the EEOC and the laws it enforces can also be found at www.eeoc.gov.

This page was last modified on August 2, 2005.



[Return to Home Page](#)