

# FMLA Insights

Guidance & Solutions for Employers

## Want Some Insight into the EEOC's priorities in the Area of ADA and Leaves of Absence? Follow EEOC Commissioner Chai Feldblum on Twitter

by Jeff Nowak February 29, 2012

With the growth of blogs and other social networking like Linkedin and Twitter, news comes at us fast and furious these days. In a recent blog post, LexBlog CEO and legal marketing guru Kevin O'Keefe cited a recent survey finding that 55 percent of people hear about breaking news on Facebook and 20 percent on Twitter.

Clearly, sites like Twitter and LinkedIn are revolutionizing the manner in which we find our news and cultivate relationships with prospective clients and influencers. Over the past couple of months, however, I have found something fascinating: I can tune into these various media to find out what's most important to the leaders of both the EEOC and Department of Labor.

Stick with me here. If you took a look at the EEOC's web site lately, you'll find press release after press release trumpeting the agency's latest settlements and/or victories over employers. In fact, there are so many PRs your eyes glaze over reading through them.

Enter EEOC Commissioner Chai Feldblum, one of the top five officials of an agency that rigorously enforces our federal employment laws. On any given day, by following Cmmr. Feldblum on Twitter, you can find out in 140 characters or less what her and the EEOC's priorities are. This information is precious for at least two reasons: 1) it keeps us up to date on what the EEOC cares about; and 2) it helps employers (and attorneys who help employers) proactively engage our managers on ways they can and should follow the law. I am sure you can think of more.

Consider for a second Commission Feldblum's "tweets" over the past few months:

- Employee with post-partum depression needed time off as a reasonable accommodation. <http://dld.bz/a9fm4>
- Nice settlement with American Apparel on an ADA leave case. <http://dld.bz/a84Vf> Looking forward to having comprehensive guidance soon.
- Spread the word! Do individualized assessment of accommodation when employee returns from short-term disability. <http://1.usa.gov/uNBCna>

What does Commissioner Feldblum care about? Leaves of absence as a reasonable accommodation. What can we then assume what really is on the EEOC's mind these days? You guessed it: Leaves of absence as a reasonable accommodation.

Call me weird, obsessed or something worse, but I usually check in with Commissioner Feldblum daily on Twitter to see what's on her mind. Why? More often than not, I find a helpful nugget to share with one of my employer clients, to use in my employment law training sessions or to simply file away for future use. Fyi: I have not (yet) been accused by anyone on the management side of being a traitor because I follow Cmmr.



Feldblum, so no worries -- you're not selling out! To the contrary, you'll have a leg up in serving your employer or employer clients even better. So, take the leap and follow her on Twitter [here](#).

## Insights for Employers

If you're still scared of Twitter and have no desire to venture into a world that will change your life (unreservedly for the better), here are just a few good reminders that I have gleaned from Commissioner Feldblum's tweets, all of which are instructive to employers:

1. Utilize "Automatic termination" provisions at your own risk. As another recent [EEOC settlement](#) instructs us, policies that call for termination of employment after the employee has been absent for a certain period of time (e.g., 3 mos., 6 mos., etc.) will doom employers every time. These kinds of policies do not sufficiently meet the employer's obligation to engage in the ADA's interactive process and to determine whether a reasonable accommodation is necessary. At a minimum, ADA and attendance policies must incorporate a case-by-case assessment of the individual employee's situation and an employer's duty as to reasonable accommodation. EEOC Regional attorney John Hendrickson and I covered this topic in detail in an August 2011 Webinar, which (I hope!) helped employers better understand the EEOC's position on this topic. The Webinar and materials can be accessed [here](#).
2. When you fire an employee while he or she is on a leave of absence due to a disability, you better have your ducks in a row! As a recent [EEOC settlement](#) makes clear, employers must be able to articulate a very sound, legitimate, nondiscriminatory reason for terminating an employee on a leave of absence.
3. Be particularly careful with medical conditions such as [depression](#), anxiety and other impairments that are not as visible as ones we can readily see (e.g., an employee in a wheelchair). The ADA requires an employer to provide a reasonable accommodation of an employee's disability, unless the employer would suffer an undue hardship, so it's critical that employers individually assess an employee's need for leave.

Happy tweeting!

Tags: [Chai Feldblum](#), [Department of Labor](#), [EEOC](#), [Equal Employment Opportunity Commission](#), [Facebook](#), [John Hendrickson](#), [leave as a reasonable accommodation under the ADA](#), [LinkedIn](#), [Twitter](#)

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