LEGAL UPDATES

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Long Medical Leaves Not Required Under ADA, Court Rules

Service

Labor & Employment

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KEY POINTS

A federal appeals court has ruled that an employee who needs long-term medical leave cannot work and thus is not a "qualified individual" under the ADA.

In the Seventh Circuit states of Wisconsin, Illinois and Indiana, employers may deny requests for long-term unpaid medical leave beyond FMLA.

The law is less clear in other jurisdictions, and decisions should be made with guidance of legal counsel.

Decision Narrowly Defines "Qualified Individual"

Is a long-term leave of absence a "reasonable accommodation" that an employer must grant pursuant to the Americans with Disabilities Act (ADA)? The U.S. Court of Appeals for the Seventh Circuit recently said "no," a decision that contrasts starkly with the position and guidance of the Equal Employment Opportunity Commission (EEOC).

The Background

In *Severson v. Heartland Woodcraft, Inc.*, the employee took a 12-week leave under the Family Medical Leave Act (FMLA) to deal with serious back pain. On the last day of his FMLA leave, the employee had back surgery that required him to remain off work two or three more months. The employee

asked for additional leave as an accommodation under the ADA, but the employer denied the request and terminated the employee because he had exhausted his FMLA leave and could not return to work. The employee sued under the ADA, alleging the employer failed to provide a reasonable accommodation – namely, a three-month leave of absence after his FMLA leave expired. The District Court awarded summary judgment to the employer, and the employee appealed.

The Ruling

On September 20, 2017, the Seventh Circuit affirmed the District Court's decision, holding that the ADA is an anti-discrimination statute, not a medical leave entitlement. Specifically, the Court found that the ADA applies only to those who can do the job – i.e., only forbids discrimination against a "qualified individual on the basis of disability." The Court reaffirmed its understanding that a "qualified individual with a disability is a person who, with or without reasonable accommodation, can perform the essential functions of the employment position."

In *Severson*, the Court reaffirmed and clarified its 2003 ruling in *Byrne v. Avon Prods., Inc.*, which held that an employee who needs long-term medical leave cannot work and thus is not a "qualified individual" under the ADA. The Court affirmed that "not working is not a means to perform the job's essential functions," and that "an extended leave of absence does not give a disabled individual the means to work; it excuses his not working." In so holding, the Court stated that "an inability to do the job's essential tasks means that one is not qualified, it does not mean the employer must excuse the inability."

The Court went on to clarify what would qualify as a reasonable accommodation in light of *Byrne*. The Court said that, for example, "intermittent time off or a short leave of absence—say, a couple of days or even a couple of weeks—may, in appropriate circumstances, be analogous to a part-time or modified work schedule, two of the examples of reasonable accommodations listed in the ADA."

Meanwhile, at the EEOC…

The decision in *Severson* directly contradicts the EEOC's arguments in another recent case coming out the Seventh Circuit's jurisdiction, *EEOC v. United Parcel Serv., Inc.* In that case, the EEOC took the position that UPS maintained an inflexible policy that unfairly terminated injured or disabled workers if they reached the company's 12-month cap for a leave of absence rather than providing them with jobs they could do or extending their medical leave in violation of the ADA. While the parties settled the UPS case through a consent decree, this case illustrates that the EEOC's position on offering a long-term leave of absence as a reasonable accommodation is now at odds with the law in the Seventh Circuit.

Several other circuit courts have addressed this issue, and the outcomes are split. The Tenth Circuit found that multi-month leaves of absence under the Rehabilitation Act (a law similar to the ADA, but applying to recipients of federal funds) were not required. In contrast, other Circuit Courts have found leave to be a reasonable accommodation under the National Labor Relations Act, and the First, Sixth, Ninth and Tenth circuits have all recognized that leaves of absence can be reasonable accommodations under the ADA.

What This Means to You

Employers in the jurisdiction of the Seventh Circuit (Wisconsin, Illinois and Indiana) are likely not required to offer a long-term leave of absence as a reasonable accommodation. However, employers are still required to engage in the interactive process and determine if other reasonable accommodations are available to the employee, such as transferring the employee to a vacant job, implementing a modified schedule, or intermittent, short leave of absence for a few days or weeks.

Employers in jurisdictions that have not yet addressed this issue should follow the EEOC guidance and explore the possibility of providing additional long-term leaves of absence as a reasonable accommodation.

Contact Us

For more information about how this ruling may affect your organization, contact Erik K. Eisenmann or
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