SEPTEMBER 29, 2017

ADA DOES NOT REQUIRE MULTI-MONTH LEAVES OF ABSENCE, SEVENTH CIRCUIT SAYS

"The ADA is an antidiscrimination statute, not a medical-leave entitlement," wrote Judge Sykes in a case of major significance to human resource professionals. Building on prior Seventh Circuit precedent, the opinion went on to state that employees who require long-term medical leave cannot work and therefore are not "qualified individuals" under the ADA. This case, *Severson v. Heartland Woodcraft*, was decided on September 20 and helps clarify employers' duty to accommodate disabled employees within the Seventh Circuit, which encompasses Indiana, Wisconsin and Illinois. This case is also important persuasive authority elsewhere.

FACTS OF THE CASE

The employee in this case took FMLA leave for back pain. After steroid injections failed to resolve the problem, it was determined that he needed surgery. The surgery was scheduled for the last day of his 12 weeks of FMLA leave. He informed the employer of the need for surgery and requested three additional months to recover from the surgery. His employer rejected this request, stating that his employment would end the day after his last day of FMLA-protected leave and inviting him to reapply after he was fit for work. Based on this refusal, the employee sued under the ADA for failure to accommodate. The District Court granted the employer's motion for summary judgment. The employee appealed. The Seventh Circuit affirmed.

ANALYSIS OF THE DECISION

The vague legal tests that are involved in setting the limits of the duty to accommodate disabled employees have made "reasonable accommodations" one of the most vexing legal issues dealt with by employers on a day-to-day basis. Most courts have been hesitant to draw any bright line rules. In situations where an employee would be able to perform all essential job functions after a definite amount of leave, the EEOC has maintained (as it argued in this case) that employers are obliged to analyze whether granting such leave would impose an "undue hardship." If not, the leave typically must be granted.

Rejecting this approach, the Seventh Circuit declined to reach the "undue hardship" analysis, finding instead that a three-month leave of absence is not a "reasonable accommodation" under the statute insofar as it does not enable an employee to perform all essential job functions, but rather excuses an employee from performing them. The court did find, however, that "[i]ntermittent 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" and may therefore be a required accommodation under the ADA.

PRACTICAL TAKEAWAYS

This opinion, helpful as it is, still leaves some gray area, even in the Seventh Circuit - a "couple of weeks" of leave may be a "reasonable accommodation," but a three-month leave is not.[1] Arguably, therefore, any amount of leave less than three full months still needs to be analyzed carefully. Moreover, state law must always be considered and often imposes additional considerations. Employers also must wrestle with whether they need to provide a leave of absence to a disabled worker similar to an employee who takes leave for reasons unrelated to a disability.

Despite the remaining gray area, it is extremely helpful for employers in the Seventh Circuit to know that a three-month leave is not a "reasonable accommodation" under the ADA. Outside the Seventh Circuit, this holding will be helpful persuasive authority that will likely put pressure on other courts to begin clarifying the limits of the duty to accommodate in their respective jurisdictions.

If you have any questions or would like more information on this topic, please contact:

- Jonathon Rabin at (248) 457-7835 or jrabin@hallrender.com;
- Robin Sheridan at (414) 721-0469 or rsheridan@hallrender.com;
- Brian Sabey at (720) 282-2025 or briansabey@hallrender.com;
- James Junger at (414) 721-0922 or jjunger@hallrender.com; or

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[1] Note that the phrase used in the opinion is “multi-month” leave. (“Inability to work for a multi-month period removes a person from the class protected by the ADA.”) On its face, this holding would seem to cover at least anything greater than two full months. However, the facts of the case suggest that the actual request was for three months, so the most conservative reading is that this holding has no binding application to anything less than three months.

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