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Extended medical leave under ADA soundly rejected by 7th Circuit

The 7th U.S. Circuit Court of Appeals was called upon to decide whether an employee's request for extended medical leave (five to six months) constituted a reasonable accommodation under the Americans with Disabilities Act.

On Sept. 20, the court responded with a resounding "no," issuing a powerful decision which, among other things, held that an employee who needs long-term medical leave cannot work and thus is not a "qualified individual" as defined by the ADA. *Severson v. Heartland Woodcraft Inc.*

Raymond Severson was employed by Heartland Woodcraft in West Bend, Wis., a fabricator of retail display fixtures from 2006 to 2013. Severson suffered from back pain since 2005 but it usually did not stop him from doing his work.

Because of poor work performance, Heartland demoted Severson from his operations manager position to a second shift "lead" on June 5, 2013.

Severson never worked in this position because earlier that day he wrenched his back at home and had to leave work early. Thereafter, he requested and was granted 12 weeks of leave under the Family and Medical Leave Act by Heartland. On the last day of approved leave, Severson underwent back surgery advising Heartland that the typical recovery time for this type of surgery was at least two months.

Severson's request for an extension of his medical leave was denied by Heartland and his employment was terminated upon the expiration of his approved leave.

On Oct. 17, Severson's doctor gave him clearance to return to work on light duty and on Dec. 5, the doctor lifted the light duty restriction. Severson, rather than reapplying for his position at Heartland, as he was instructed to do by the company, filed suit alleging that Heartland discriminated against him in violation of the ADA by failing to accommodate his physical disability.

The Equal Employment Opportunity Commission filed an amicus brief in support of Severson's argument that evidenced medical leave is a reasonable ADA accommodation and participated in oral argument before the court.

The court began its analysis by reviewing the ADA's definition of

reasonable accommodation noting that the definition tells us only what reasonable accommodation "may" include. As such, the court determined that use of the permissive term "may include" rather than "must include" or "includes" means that the concept of reasonable accommodation is flexible.

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Going further, the court stated, "the baseline requirement found in the definition of a 'qualified individual' is concrete: A reasonable accommodation is one that allows the disabled employee to 'perform the essential functions of the employment position.' Section 42 U.S.C. Section 12111(8).

If the proposed accommodation does not make it possible for the employees to perform his job, then the employee is not a 'qualified individual' as that term is defined in the ADA." Id.

This decision clearly rejects the EEOC's standing position that long-term leaves must be considered a form of reasonable accommodation.

As such, the court found that a long-term leave of absence cannot be a reasonable accommodation. "Simply put, an extended leave of absence does not give a disabled individual the means to work; it excuses his not working."

According to the court, long-term medical leave is in the domain

of the Family and Medical Leave Act. In issuing its decision, the court explicitly rejected the EEOC's interpretation of long-term leave as an ADA accommodation. "If, as the EEOC argues, employees are entitled to extended time off as a reasonable accommodation, the ADA is transformed into a medical leave statute in effect, an open-ended extension of FMLA. That's an untenable interpretation of the term 'reasonable accommodation.'"

The court, however, clarified that intermittent time off or a short leave of absence, "say, a couple of days or even a couple of weeks," may be an appropriate accommodation analogous to a part-time or modified work schedule both of which are listed as examples in the ADA reasonable accommodation definition.

This decision clearly rejects the EEOC's standing position that long-term leaves must be considered a form of reasonable accommodation. While the EEOC will undoubtedly continue to push its interpretation in deciding charges filed with the agency, the Severson case is now the law of the land in the 7th Circuit.

While the decision provides some much-needed breathing room for employers who face these types of requests on a regular basis, consultation with human resources and legal counsel is strongly recommended before making a decision to deny an employee's ADA request or terminate his or her employment.