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Two to Three Month Leave of Absence Not a Reasonable Accommodation, 7th Circuit Holds

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How long is too long, when an employee requests leave for medical reasons? Employers have received welcome guidance from the Seventh Circuit U.S. Court of Appeals on this question. In *Severson v. Heartland Woodcraft, Inc.*, No. 15-3754 (7th Cir. Sept. 20, 2017), the Seventh Circuit held that a request for a two to three month leave of absence is not a reasonable accommodation under the Americans with Disabilities Act (ADA). This is as close to a bright-line rule as could be hoped for in this all too murky area of ADA law.

Mr. Severson worked in a physically demanding role for a Wisconsin retail fabricator. He suffered from serious back problems, for which he used his full 12 weeks of leave under the Family and Medical Leave Act (FMLA) beginning in June 2013. Back surgery was scheduled for the last day of his FMLA leave, August 27, 2013, and would require him to be absent another two to three months. His employer terminated his employment at the end of his FMLA leave, and notified Mr. Severson that he was welcome to reapply when he was able to work. After surgery, Mr. Severson was cleared to work with a 20-pound lifting restriction on October 17, 2013, and cleared to work without restrictions on December 5, 2013.

Mr. Severson filed suit, claiming that his employer violated the ADA by denying him

a two to three month leave of absence commencing when his FMLA leave expired. It was undisputed that Mr. Severson had a disability, and that at the time of his termination, he could not perform the essential functions of his position which included lifting at least 50 pounds. The district court granted summary judgment for the employer, and Mr. Severson appealed.

The Seventh Circuit affirmed summary judgment for the employer. According to the court, an extended leave of multiple months does not permit the employee to perform the essential functions of his job, and therefore, Mr. Severson was not a qualified individual under the ADA at the time he was terminated. Put another way, an employee's inability to work for several months removes him from the class of people protected by the ADA for purposes of the leave request.

According to the court, the ADA is not a leave entitlement statute: "Long term leave is the domain of the FMLA," whereas, "the ADA applies only to those who can do the job." The court noted that intermittent or short term leave of "a couple of days or even a couple of weeks" may be appropriate in some cases, but a long term leave of absence "cannot be a reasonable accommodation."

The Equal Employment Opportunity Commission takes the position that a long term medical leave can be a reasonable accommodation if a definite time period (regardless of how long) is requested in advance and is likely to enable the employee to perform essential functions of the job upon expiration of the leave. However, the Seventh Circuit held this to be an "untenable interpretation" of reasonable accommodation as it improperly would convert the ADA to a leave entitlement statute.

Mr. Severson claimed he also should have been accommodated by being moved to a vacant position or to temporary light duty with no heavy lifting. The court disposed of this by noting that it is the employee's burden to identify a vacant position at the time he was terminated, and he did not do so. In addition, an employer need not create light duty jobs to accommodate employees under ADA, absent a policy that it created light duty in other situations, and there was no such policy here.

One notable aspect of the opinion is the lack of qualifiers and caveats. There is little discussion about the nature of Mr. Severson's specific condition or the extent of hardship that would be posed to the employer if the leave were granted. This is because, according to the Seventh Circuit, the undue hardship question is secondary to whether the employee's request for long-term leave qualifies as a request for a reasonable accommodation. Because a multi-month leave is not a reasonable accommodation, the question of whether the leave would pose undue hardship to the employer is not reached.

Handling Leave Requests After *Severson*

The ruling is likely to change the way some employers in the Seventh Circuit handle leave requests. While leaves of under two months will still need to be closely examined for all applicable ADA issues, employers in the Seventh Circuit may consider implementing different policies for requests that span multiple months after exhaustion of other leave entitlements. If an employee has exhausted FMLA leave and other leave entitlements, most of these employers no longer need to

speculate how much longer an employee's absence must be accommodated under the ADA.

However, employers should not too quickly deny a multi-month leave request without further inquiry. Employers need to consider non-ADA issues such as their own leave policies and practices, in addition to the FMLA and other leave entitlement laws, which may warrant granting the leave request. Moreover, as was the case here, alternate ADA accommodations may need to be considered such as reassignment, modified duties, or a modified schedule. In addition, claims brought under state disability law are not necessarily subject to this ruling; one practical result of *Severson* could be that in the Seventh Circuit extended leave disability claims are brought under state law. As with most employee ADA issues, careful inquiry in conjunction with legal counsel, when appropriate, is recommended.

Nonetheless, this case does remove a significant amount of guesswork under federal law for many employers in Illinois, Wisconsin, and Indiana. And, although the case is not binding in other jurisdictions, employers elsewhere also may see more instructive guidance on leave of absence time limits start to trend at the district and appellate court level.