Extended Leaves of Absence Rejected As a Reasonable Accommodation Under the ADA

By: Andrew J. Wolf

The United States Court of Appeals for the Seventh Circuit has concluded that an extended leave of absence, exceeding the twelve weeks allowed under the Family and Medical Leave Act ("FMLA"), does not constitute a reasonable accommodation under the Americans with Disabilities Act ("ADA"). This decision may shield employers from liability when they terminate an employee for failing to return to work following an FMLA-protected leave.

In *Severson v. Heartland Woodcraft, Inc.*, the plaintiff-employee took twelve weeks of FMLA leave to care for his serious back pain. On the last day of his FMLA leave of absence, the employee underwent back surgery. Due to the surgery, the employee requested that his employer accommodate his disability – under the ADA, not the FMLA – with an additional several months of leave to recover from the back surgery. The employer denied his request for additional leave and terminated his employment, although they offered him the opportunity to reapply for employment when he was medically able to return to work. The employee sued, claiming that his employer had violated the ADA by failing to provide him with a reasonable accommodation in the form of an extended leave of absence.

What constitutes a "reasonable accommodation" under the ADA is a fact-specific inquiry. The Equal Employment Opportunity Commission ("EEOC") and many courts take the position that "maximum leave" policies violate the ADA and that long-term leaves of absence may be required accommodations.

The United States District Court for the Eastern District of Wisconsin granted the employer summary judgment, finding that the additional leave requested was not a reasonable accommodation, and the Seventh Circuit affirmed that decision. The Seventh Circuit rejected the employee's (and the EEOC's) position, declaring that the ADA is "an antidiscrimination statute, not a medical-leave entitlement." The Court reasoned that "an extended leave of absence does not give a disabled individual the means to work; it excuses his not working" and went on to state definitively state that "a long-term leave of absence cannot be a reasonable accommodation" under the ADA. The Court explained that requiring extended leave under the ADA would, in effect, transform the ADA into "an open-ended extension of the FMLA," which was not the purpose of the ADA.

While the *Severson* decision may help shield employers from liability when they deny employees extended leaves of absence, this decision is only binding on federal courts within the Seventh Circuit, which encompasses Illinois, Indiana, and Wisconsin. Under Sixth Circuit law, which controls in Ohio, an extended leave of absence may still constitute a reasonable accommodation that an employer must provide—even if the employee has already exhausted his or her twelve weeks of leave under the FMLA. The EEOC

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also continues to take the position that employers may be obligated to provide employees with an unpaid leave of absence, even though they have exhausted leave under a workers' compensation claim or the FMLA. As such, Employers should proceed with caution when responding to employees' requests for leaves of absence, even when they have already exhausted their FMLA leave. Please contact a member of Hahn Loeser's Labor and Employment group if you need assistance managing complicated employee leave issues.

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