

Reasonable Accommodations Enable Employees to Work, “Not to Not Work”

Article By:

Michael J. Soltis

The recent Tenth Circuit decision in **Hwang v. Kansas State University** upholding the employer’s inflexible leave policy causes one to ponder the logic of leave as an **accommodation** under the **ADA** in a broader sense. When contemplating such issue, the “oxymoronic anomaly” relating to this issue comes to the fore. Just what is this anomaly?

Start with the words of the amended ADA. An employer discriminates on the basis of disability by “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability....” A qualified individual is one “who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” (Emphasis added) “Can perform” is in the present tense.

But how can an individual who has been on leave because he or she cannot perform the essential functions of the job, with or without an accommodation, has exhausted all of the leave available under the employer’s policy, and is seeking additional leave because he or she still cannot perform those functions, be a “qualified individual” with a disability, i.e. one who can perform those functions?

Others have recognized this anomaly. “When a period of leave from a job may appropriately be considered an accommodation that enables an employee to perform that job presents a troublesome problem, partly because of the oxymoronic anomaly it harbors...,” observed one judge. “Not working is not a means to perform the job’s essential functions,” observed another.

In rejecting the plaintiff’s claim that she was entitled to more leave than allowed under her employer’s policy as a reasonable accommodation, the Hwang court echoed the same concept: reasonable accommodations “are all about enabling employees to work, not to not work.”

Jackson Lewis P.C. © 2025

National Law Review, Volume IV, Number 160

Source URL: <https://natlawreview.com/article/reasonable-accommodations-enable-employees-to-work-not-to-not-work>

