

ADA Alert: Seventh Circuit Significantly Restricts Leave as a Reasonable Accommodation...but Cities, States and Other Circuits Take a Different View

Article By:

Labor and Employment Practice

Employers, at least those in Illinois, Indiana and Wisconsin, have finally been given clear guidance regarding how much leave an employee should be given when he or she is unable to perform the essential functions of his or her job due to a disability. The Seventh Circuit, in rulings issued in September and October 2017, has staked out a position that directly contradicts the position long taken by the U.S. Equal Employment Opportunity Commission (EEOC) that employers must provide disabled employees with an extended leave of absence as a reasonable accommodation under the Americans with Disabilities Act (ADA). In *Severson v. Heartland Woodcraft, Inc.* (Case No. 15-3754, Sept. 20, 2017), the plaintiff took twelve weeks of leave under the Family and Medical Leave Act (FMLA) and, before that leave expired, asked for an additional three-month leave of absence as a reasonable accommodation for a chronic back condition. The employer denied his request and terminated his employment. The plaintiff alleged that his request for an additional three months of leave following the exhaustion of his FMLA leave was a reasonable accommodation under the ADA.

The Seventh Circuit disagreed, finding that the “ADA is an antidiscrimination statute, not a medical-leave entitlement” and that “[a]n employee who needs long-term medical leave cannot work and thus is not a ‘qualified individual’ under the ADA.” The court specifically rejected the EEOC’s position, offered in an *amicus* brief, that a long-term medical leave of absence is a reasonable accommodation when the leave is of a definite and time-limited duration, requested in advance and likely to enable the employee to perform the essential functions of the job when he returns. In so ruling, the court importantly found that the EEOC interpreted the ADA as a “medical-leave statute – in effect, an open-ended extension of the FMLA[,]” and that the resulting interpretation of a reasonable accommodation, as elicited by the EEOC, was “untenable.”

Notably, the Seventh Circuit held that intermittent leave is likely still protected under the ADA such that employers may have to offer it as a reasonable accommodation if it enables the employee to remain employed. In addition, the court confirmed that employers must also consider reassignment to an open position available at the time as a reasonable accommodation to be explored as part of the interactive process. Last but not least, the court explained that employers must offer light-duty assignments to disabled employees who are not occupationally injured if light duty is already offered to employees who were occupationally injured, unless an “undue hardship” can be shown.

Doubling down on its position approximately one month later, in *Golden v. Indianapolis Housing Agency* (Case No. 17-1359, Oct. 17, 2017), the Seventh Circuit affirmed the conclusion it reached in *Severson*, holding that a request for six months of medical leave after the expiration of the 12-week FMLA period “removes an employee from the protected class under the ADA” and rendered the employee requesting that leave unqualified under the ADA.

Leave Remains a Possible Accommodation outside the Seventh Circuit

While the *Severson* and *Golden* decisions are viewed as “wins” for employers, the plaintiff in *Severson*, likely with the support of the EEOC, may seek review by the United States Supreme Court. Further, and importantly, the Seventh Circuit’s view is not shared by all other circuits, so the reach of *Severson* is limited for now. Furthermore, states, counties and/or cities may provide employees with rights and protections beyond what they enjoy under the ADA. For example, while the New York State Human Rights Law (NYSHRL) does not consider indefinite leave a reasonable accommodation, there is no accommodation, including indefinite leave, that is categorically excluded from the universe of reasonable accommodations under the New York City Human Rights Law (NYCHRL). Notably, the NYCHRL’s definition of “disability,” unlike the NYSHRL’s definition, does not incorporate the ability to perform the job in a reasonable manner or with “reasonable accommodation.” Accordingly, under the NYCHRL, extended leave, even an indefinite one, may be viewed as a reasonable accommodation. Further, under the NYCHRL it is the employer’s burden to show that an accommodation would create an undue hardship.

And while indefinite leave is not a reasonable accommodation under the NYSHRL, much like under the ADA, courts have held that temporary leaves of absence, even extended leaves, may well be reasonable accommodations under the NYSHRL. Therefore, employers in New York should thoroughly engage in the interactive process and carefully undergo an analysis of the feasibility of all possible accommodations, including the availability of an extended leave of absence.

While indefinite leave has likewise been rejected as a reasonable accommodation in Washington, DC, lengthy, extended leaves remain an option employers should consider during the interactive process unless they can establish that the leave would constitute an undue hardship. The D.C. Circuit Court of Appeals addressed open-ended leaves in *Minter v. District of Columbia*, 62 F. Supp. 3d 149 (D.C. Cir. 2015) – a case involving an employee whose doctor reported that her condition rendered her “totally disabled” and would continue “indefinitely” after she missed three consecutive months of work due to sarcoidosis, rheumatoid arthritis, fibromyalgia and an intervening injury. Although the doctor advised the District that the employee “hope[d] to return to work in another three months,” the D.C. Circuit held that the employee was not a “qualified individual with a disability” because she would be out of work for, at a minimum, six months, and could not attend work regularly.

Despite having rejected open-ended leave as a reasonable accommodation, the D.C. Circuit left the door open with respect to requests seeking leave for a definite, albeit extended period, in *Miller v. Hersman*, 759 F. Supp. 2d 1, 15–16 (D.D.C. 2010), a case involving a federal employee seeking leave for a six-month period. The agency denied the requested accommodation but offered no evidence that the extended period of leave would have created an undue hardship. The court accordingly denied the agency’s motion for summary judgment on the employee’s Rehabilitation Act claim. (The standards for determining employment discrimination under the Rehabilitation Act, which applies to employees of the federal government, are the same as those used in Title I of the ADA.) Accordingly, extended leave up to six months (or even more) may be a reasonable accommodation in Washington, DC, unless an employer can demonstrate that the length of leave requested by a disabled employee would constitute an undue hardship.

Regardless of location, employers should take a fresh look at how they handle reasonable accommodation requests, including how they evaluate requests for leave, whether block or intermittent, whether they allow employees to take long-term leave for non-ADA reasons, whether they offer light duty to certain employees and how they handle reassignment to a vacant position if and when they determine that leave is not feasible and that there is no accommodation that will enable the employee to perform the essential functions of his or her position. Of course, as always, employers are encouraged to engage in the interactive process early and often, and to consult with legal counsel before making a decision to terminate an employee following a request for leave or other accommodation due to a disability. While employers operating in the Seventh Circuit now have a better idea of whether and for how long they may have to permit an employee to take leave, time off is but one of the accommodations that should be considered and evaluated as part of the interactive process.

© 2025 Vedder Price

National Law Review, Volume VII, Number 353

Source URL: <https://natlawreview.com/article/ada-alert-seventh-circuit-significantly-restricts-leave-reasonable-accommodation>