

HR Heads-up

PERIODIC UPDATES ON IMPORTANT HR LEGAL ISSUES

OCTOBER 9, 2017

Leaves of Absence as Disability Accommodation: New Clear Guidance ... or Not So Fast

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On September 20, 2017, the Seventh Circuit Court of Appeals, the federal circuit that includes Wisconsin, issued a somewhat surprising decision regarding leaves of absence as a reasonable accommodation under the Americans with Disabilities Act (the “ADA”). The Court ruled that a multi-month leave of absence requested by a disabled employee is beyond the scope of a reasonable accommodation under the ADA.

The facts of the case, *Severson v. Heartland Woodcraft, Inc.*, — F. 3d — Case No. 14-CV-1141 (7th Cir. Sept. 20, 2017), were straightforward. Severson had a chronic back condition that was diagnosed while he was employed for Heartland. The condition would flare up at times, making it difficult for Severson to walk, bend, lift, sit, stand, move and work. In June 2013, Severson had a significant flare-up and took an FMLA leave from work. Over the summer months, he submitted periodic notes from his doctor informing Heartland that he was experiencing ongoing symptoms and could not work.

Two weeks before Severson’s FMLA leave was to expire, he informed Heartland that his condition had not improved and that he needed surgery on the date that his 12 weeks of FMLA leave expired. He told Heartland’s HR Director that the typical recovery time for this surgery was at least two months, and requested the extended leave. Heartland notified Severson the day before his surgery that his employment with Heartland would end when his FMLA leave expired the day after his surgery and invited him to reapply with the company when he recovered from surgery and was medically cleared to work.

Severson was cleared to work several months later, but instead of reapplying with Heartland, he filed a lawsuit alleging that Heartland had failed to accommodate his disability. The district court ruled in favor of Heartland and Severson appealed the case to the Seventh Circuit Court of Appeals.

On appeal, the parties focused their arguments on whether a long-term leave of absence is a reasonable accommodation under the ADA. The Court’s analysis focused on the fact that the ADA makes it unlawful for an employer to discriminate against a “*qualified individual* on the basis of disability.” A qualified individual under the ADA is one who, with or without reasonable accommodation, can perform the essential functions of the job.

Looking to the ADA's language, the Court confirmed that a "reasonable accommodation" is one that allows the disabled employee to perform the essential job functions. The Court went on to state that "a long-term leave of absence cannot be a reasonable accommodation" because an extended leave "does not give a disabled employee the means to work." Instead, it excuses the employee from working.

The Court noted that shorter periods of intermittent leave, such as a period of a few days or a "couple of weeks," may constitute a reasonable accommodation. However, a leave spanning months "removes the employee from the class protected by the ADA."

The EEOC filed an [*amicus* brief](#) arguing that a leave of absence is a reasonable accommodation if it is definite and limited in duration, it is requested in advance and is likely to enable the employee to perform the job's essential functions when the employee returns. The Court explicitly rejected the EEOC's position, stating that using the EEOC's logic, the length of the leave would not matter which would transform the ADA into a medical leave statute.

The Court's decision is a clear rejection of the EEOC's long-held position that long-term leaves of absence are a required form of reasonable accommodation and would appear to give employers in the Seventh Circuit's jurisdiction a clear path to reject accommodation requests for long-term leaves of absence.

However, as with most legal issues, things are not as clear cut as they seem. First, the Seventh Circuit's decision in *Severson* arguably conflicts with decisions in other federal circuits across the country. Therefore, employers with multi-state operations cannot assume that the Seventh Circuit's legal reasoning would be adopted in other jurisdictions.

Second, the Court's ruling is arguably inconsistent with well-established rulings on disability accommodation under the Wisconsin Fair Employment Act (the "WFEA"). As discussed above, the ADA makes it unlawful for an employer to discriminate against a "*qualified individual* on the basis of disability," and looks to whether the individual can, with or without reasonable accommodation, perform *the essential functions of the job*. Wisconsin law, on the other hand, does not rely on an essential functions analysis, and instead looks to whether an accommodation allows the employee to adequately undertake job functions. This has led to more employee-friendly decisions on disability accommodations under the WFEA than under the ADA. And, if there is a conflict between the WFEA and the ADA, employees in Wisconsin would be entitled to the benefits of the more generous law.

Moreover, Wisconsin's Labor and Industry Review Commission ("LIRC") and courts have consistently held that a leave of absence is a valid type of accommodation under the WFEA. The case law has generally held that temporary leaves may be reasonable accommodations but leaves of an "indefinite" duration are not reasonable under the law. In several cases where the employee's leave was deemed indefinite, however, the employee had been absent from work between 12 and 18 months. Therefore, it is far from clear that a two or three month leave, like that at issue in the *Severson* case, would be deemed outside the scope of required accommodation under the WFEA.

While the Seventh Circuit's decision in *Severson* provides some of the most definitive guidance on leaves of absence as ADA accommodations, employers in Wisconsin should continue to proceed with caution in assessing leaves of absence as reasonable accommodations.

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