Seventh Circuit Rejects EEOC Position Holding That a "Long-Term Leave of Absence" is Not a Reasonable Accommodation

By Stephen R. Gee / Oct 19, 2017

On September 20, 2017, the Seventh Circuit held a "long-term leave of absence," in addition to 12 weeks of Family Medical Leave Act (FMLA) leave, is not a reasonable accommodation under the Americans with Disabilities Act (ADA). The Seventh Circuit's decision brings some welcome clarity to the otherwise murky law on reasonable accommodations.

The Decision

In *Severson v. Heartland Woodcraft, Inc.*, a former production employee of Heartland Woodcraft, claimed the company violated the ADA when it: (1) denied his request for two to three months of additional unpaid leave after his 12 weeks of FMLA leave ended; and (2) terminated his employment once he exhausted his FMLA leave entitlement two weeks after his request. The employee was on FMLA after he suffered multiple herniated discs. He requested an extension of his leave after he learned he would need back surgery.

The Seventh Circuit affirmed the district court's grant of summary judgment in favor of Heartland, stating "[t]he ADA is an antidiscrimination statute, not a *medical-leave entitlement*." In doing so, the court explicitly rejected the Equal Employment Opportunity Commission's (EEOC) position that a long-term leave of absence request may be a reasonable accommodation if it is "(1) of a definite, time-limited duration; (2) requested in advance; and (3) likely to enable the employee to perform the essential job functions when he returns." The court explained "[i]f, as the EEOC argues, employees are entitled to extended time off as a reasonable accommodation, the ADA is transformed into a medical-leave statute-in effect, an open-ended extension of the FMLA."

Takeaways: What the Decision Means for Employers

While *Severson* provides favorable reasoning for employers defending litigation, it is important to note what the decision did not address. The court did not rule that all requests for an unpaid leave of absence are an unreasonable accommodation. For example, a request for a couple of extra days or weeks may still qualify as a reasonable accommodation under some circumstances. Instead, it held that a "long-term leave of absence" is not a reasonable accommodation when it is requested *for after* the employee has exhausted all available FMLA leave.

The Seventh Circuit also did not precisely define what constitutes a "long-term leave of absence" beyond stating that a multi-month leave of absence request in excess of statutorily-provided leave rights (e.g., FMLA) is not a "reasonable accommodation" under the ADA.

Finally, the *Severson* court did not address whether other courts (the Seventh Circuit only covers Illinois, Indiana, and Wisconsin) would reach the same result under the ADA, state or local disability accommodation or leave laws. Although some circuits (e.g., the Sixth Circuit covering Ohio, Michigan, Tennessee, and Kentucky) have cited the Seventh Circuit's precedent that a multi-month leave is not a reasonable accommodation, no circuit court has identified a length of leave that is *per se* unreasonable. In general, the courts have typically held a leave of absence in excess of a year is not a reasonable accommodation unless an employer's policy or practice provides more.

Recommendations

1. All employers can require some certainty on when the employee's leave will end. When an employer engages in the interactive process with the requesting employee (as required by the ADA), the employer should obtain written assurances from the employee's healthcare professional that the requested leave of absence will enable the employee to perform the essential duties of the employee's position with or without a reasonable accommodation. Each employee request must be individually assessed.
2. Employers with generous written employee leave policies or past practices providing leave in excess of statutorily-mandated leave rights (e.g., FMLA or other federal, state or local law) should be cautious in relying on the *Severson* decision (even in the Seventh Circuit). Courts have held such policies provide proof that lengthier leaves of absence do not impose an undue hardship on the employer. The best way employers can avoid this sticky issue is to implement an open-ended leave policy affording a case-by-case determination on requests for leave and leave extensions.
3. Employers should always apply their leave policies fairly and consistently to nondisabled and disabled employees alike; failure to do so may give rise to a discrimination claim.
4. Absent any applicable leave rights pursuant to federal (e.g., FMLA), state, or local law, an employee is not entitled to leave as a reasonable accommodation if the employer offers another non-leave reasonable accommodation. Therefore, employers may explore other non-leave accommodations for employees who are not entitled to leave under any other applicable law.

If you have any questions about ADA accommodations and extended leave as an accommodation, contact Stephen R. Gee at (616) 608-1144 | sgee@clarkhill.com or another member of Clark Hill's Labor and Employment Practice Group.

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