Labor and Employment Alert: Seventh Circuit Holds That Long-Term Medical Leave Is Not a Reasonable Accommodation

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For years, the Equal Employment Opportunity Commission (EEOC) has advocated that long-term leaves of absence are a required form of reasonable accommodation under the Americans with Disabilities Act (ADA). Just recently, in *Severson v. Heartland Woodcraft,* the Seventh Circuit Court of Appeals completely rejected the EEOC's position – "A multimonth leave of absence is beyond the scope of a reasonable accommodation under the ADA."

Raymond Severson took a 12-week medical leave under the Family Medical Leave Act (FMLA) from his fabricating work at Heartland Woodcraft to deal with serious back pain. On the last day of his FMLA leave, he underwent back surgery, which required that he remain off of work for two or three months. Severson asked Heartland to continue his medical leave, but he had exhausted his FMLA entitlement. Heartland denied his request and terminated him, but said he could reapply when he was cleared to return to work. Instead of reapplying after being medically cleared, Severson sued claiming that Heartland violated the ADA by not providing him the three-month leave of absence.

The Seventh Circuit rejected Severson's claim. The court explained that the ADA forbids discrimination against qualified individuals with a disability who, with or without reasonable accommodation, can perform their job. Under the ADA, a "reasonable accommodation" may include making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations.

Given this, the court found that a reasonable accommodation "is expressly limited to those measures that will enable the employee to work." By definition, an employee like Severson who needed long-term medical leave *cannot* work and so is not a qualified individual under

the ADA. “Simply put, an extended leave of absence does not give a disabled individual the means to work; it excuses his not working.” Short-term and intermittent leave, however, may be reasonable accommodations.

In so holding, the court expressly rejected the EEOC’s argument that the length of leave does not matter. The EEOC had filed a friend of the court brief in the case arguing that “a long-term medical leave of absence should qualify as a reasonable accommodation when the leave 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 found this argument transforms the ADA into a medical-leave statute – “in effect, an open-ended extension of the FMLA. That's an untenable interpretation of the term ‘reasonable accommodation.’” After all, “the ADA is an antidiscrimination statute, not a medical-leave entitlement.”

Severson marks the clearest rebuke of the EEOC’s position that an extended leave is a reasonable accommodation under the ADA. Employers within the Seventh Circuit’s jurisdiction (Illinois, Indiana, and Wisconsin) now have a strong argument that such leave is not required. Despite this, employers should note that the EEOC's position on leave remains unchanged and that the Seventh Circuit’s holding in *Severson* may conflict with decisions in the First, Sixth, Ninth, and Tenth Circuits. Contact your Vorys lawyer if you have questions about leaves of absence and reasonable accommodations.