CLIENT ALERTS & INSIGHTS

The ADA is not an Extended Medical Leave Statute, Says the Seventh Circuit

OCTOBER 3, 2017

On September 20, 2017, the Seventh Circuit drew a clear line in what has been an ambiguous area: a "multi-month" leave is not a "reasonable accommodation" under the ADA. In the Seventh Circuit at least, employers are no longer required to provide open-ended leaves of absence as a "reasonable accommodation." In *Severson v. Heartland Woodcraft, Inc.*, Severson took leave from his job for back problems. Severson's doctors scheduled back surgery for the day his job-protected leave under the Family and Medical Leave Act (FMLA) expired. He requested additional leave from work for recovery as a "reasonable accommodation" under the Americans with Disabilities Act (ADA). But because Severson was unable to perform his job's essential functions for months from his surgery, his employer denied his requested accommodation and terminated his employment.

Affirming dismissal of Severson's lawsuit, the Seventh Circuit looked to the ADA's language. Under the ADA, a disabled employee is "qualified" to receive a reasonable accommodation that enables him to perform his job's essential functions. According to the Seventh Circuit, the ADA's language expressly limits reasonable accommodations to "those measures that will enable an employee to work." Additional leave means the employee is not working. So although intermittent leaves or leaves of a couple days or weeks might be reasonable accommodations, the Court instructed that leaves where the employee is not working for months are not reasonable accommodations.

Significantly, the Seventh Circuit in *Severson* rejected the Equal Employment Opportunity Commission's (EEOC) long-standing interpretation of the ADA's "reasonable accommodation" language in relation to leave. The EEOC's position is that short-term leaves may be reasonable accommodations under the ADA, as well as long term leaves that are (1) of "definite, time-limited duration," (2) requested in advance, and (3) will enable the employee to perform the position's essential functions when he or she returns. Some federal circuit courts have held in line with the EEOC's position by affirming extended, multi-month leaves under the ADA, so long as the leaves are not "indefinite." Employers have struggled with these decisions when determining what length of leave is too long to be protected under the ADA or when leave becomes "indefinite."

The *Severson* opinion means that employers in the states within the Seventh Circuit (Illinois, Indiana, and Wisconsin) may have more certainty when denying multi-month leaves of absence and terminating an employee who has no remaining FMLA leave. Courts outside the Seventh Circuit are not bound to follow this ruling. It looks like this may be setting up for a showdown in the Supreme Court. Regardless, any request for a leave of absence or for a reasonable accommodation must be assessed based on your jurisdiction's current decisions and the EEOC regulations on a case-by-case basis.

For more information on this topic, please contact an attorney in Benesch's Labor & Employment Practice Group.

Peter Kirsanow at pkirsanow@beneschlaw.com or 216.363.4481.