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How Much Leave is Too Much? Determining When an Employer May Deny or Stop an Extended Medical Leave of Absence

By H. Carlton Hilson December 2018

Employers continue to face challenges managing employee requests for additional or extended medical leaves of absence for employees who are not eligible for or have exhausted FMLA leave. The Equal Employment Opportunity Commission ("EEOC") and many federal courts have found that unpaid leave may be a form of reasonable accommodation under the Americans with Disabilities Act ("ADA") even when FMLA leave is not available if the employee will likely be able to perform the essential functions of his or her position upon return. Because employee leaves and accommodation requests are fact specific and analyzed on a case-by-case basis, courts have been reluctant to place definitive limits on the length of employee leaves as reasonable accommodations. As a result, employers are often uncertain on whether an additional or extended leave of absence request must be granted and when they can finally say "enough is enough."

Fortunately, the courts have recently provided some helpful guidance to employers in this area. For example, the Eleventh Circuit Court of Appeals recently held in *Billups v. Emerald Coast Utilities Authorities* that an employee is not entitled to leave under the ADA unless it would permit the employee to return "in the present or in the immediate future." 2017 WL 4857430 (11th Cir. Oct. 26, 2017). The plaintiff in *Billups* sustained a shoulder injury and began a continuous FMLA leave. About halfway through the employee's FMLA leave, his doctors determined that surgery would be required and that he would not be able to return for approximately six months. Following discussions with the employer in the months to follow and the employee's failure to provide a definitive return-to-work date by the employer's deadline, the employer terminated the employee's employment.

In the resulting ADA lawsuit, the employee argued that his employer should have accommodated him "by offering a limited period of unpaid leave while he recovered from surgery." The Eleventh Circuit, however, affirmed dismissal of the suit and held that the employee was not a qualified individual with a disability under the ADA because he indisputably could not work at the time of his termination, failed to meet the employer's request to provide a certain return-to-work date, and failed to show that additional leave would have enabled him to perform his job's essential functions "presently or in the immediate future."

The Seventh Circuit Court of Appeals took a similar approach in *Severson v. Heartland Woodcraft, Inc.*, and held that a multi-month, continuous leave of absence was not an ADA reasonable accommodation. 872 F.3d 476 (7th Cir. 2017). The plaintiff in *Severson* had a back injury that

required him to take FMLA leave. On week 10 of his continuous FMLA leave, the plaintiff notified his employer that his condition would require surgery scheduled for the last day of his 12 week FMLA entitlement and that he would need an additional 2-3 months of leave to recover. The employer denied the request for additional leave, terminated the plaintiff, and invited him to reapply when he was able to return to work. Rather than reapplying, however, the employee filed suit under the ADA for failure to accommodate.

The district court granted summary judgment in favor of the employer, and the Seventh Circuit affirmed. Although the Seventh Circuit found that "a brief period of leave to deal with a medical condition" may be a reasonable accommodation depending on the circumstances, the court held that "a medical leave spanning multiple months does not permit the employee to perform the essential functions of his job." "Simply put," the court wrote, "an extended leave of absence does not give a disabled individual the means to work; it excuses his not working."

Based on a review of these and other recent decisions, several principles are clear:

1) If an employee requests medical leave but is ineligible for FMLA, employers must consider whether unpaid leave would be a reasonable accommodation under the ADA or state law.

2) Employers are generally not required to grant indefinite, open ended medical leaves as an accommodation under the ADA. Employees typically must provide employers an estimate on the amount of leave needed or a return-to-work date.

3) Depending on the circumstances, employees who are not eligible for or have exhausted FMLA leave are generally not entitled to additional or extended leaves lasting many months as a reasonable accommodation.

4) An employee's request for brief leaves may not be a reasonable accommodation where the employee's amount of leave requested or return-to-work date frequently changes or there is no evidence the employee will be able to perform the essential functions of his or her job at the conclusion of the leave.

Although the courts have recently provided some helpful guidance for employers faced with employee requests for lengthy leaves of absence, every situation must be analyzed on its own to determine an employer's obligations under the law and the best course of action for those involved. Decisions are highly fact specific. Therefore, employers should consult with legal counsel before denying an employee's lengthy or complicated leave request.

We will continue to monitor this area of the law and provide updates that follow.

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