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Employment Law

Julie A. Bruch
O'Halloran Kosoff Geitner & Cook, LLC, Northbrook

Seventh Circuit Rules that Employers Do Not Have to Allow Extended Medical Leave as a "Reasonable Accommodation" Under the ADA

Employers and attorneys frequently struggle with determining the amount of time to allow an employee to remain off work following the expiration of Family Medical Leave Act (FMLA), 29 U.S.C. §§ 2601 *et. seq.*, leave as a reasonable accommodation under the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 *et. seq.* In *Severson v. Heartland Woodcraft, Inc.*, 872 F.3d 476, 481 (7th Cir. 2017), the Court of Appeals for the Seventh Circuit issued a pro-employer ruling holding that "a long-term leave of absence cannot be a reasonable accommodation." The decision is filled with language that will greatly assist defense attorneys in ADA cases involving employees who request time off of work as a reasonable accommodation.

Raymond Severson was employed at Heartland Woodcraft, Inc. for seven years in a physically demanding job as a fabricator. *Severson*, 872 F.3d at 478. In early June 2013, Severson took 12 weeks of FMLA leave due to back myelopathy, which during flare-ups, made it hard for him to walk, bend, lift, sit, stand, move, and work. *Id.* at 479. On his last day of leave, Severson had back surgery and needed another two to three months off of work. *Id.* Severson requested an extension of his medical leave once his FMLA entitlement ended. *Id.* Heartland denied the extension, telling Severson that his employment would end when his FMLA leave expired on August 27, 2013 and he was invited to reapply with the company when he recovered from surgery and was medically cleared to work. *Id.* at 480.

Following back surgery, Severson's doctor gave him a release to return to work on October 17, 2013 with a restriction of no lifting more than 20 pounds and a full release on December 5, 2013. *Id.* Instead of reapplying at Heartland, Severson sued the company claiming that Heartland discriminated against him in violation of the ADA by failing to accommodate his disability. *Severson,* 872 F.3d at 480. Severson argued that the company could have offered him three accommodations: "(1) a two-or three-month leave of absence; (2) a transfer to a vacant job; or (3) a temporary light-duty position with no heavy lifting." *Id.* The district court granted Heartland's motion for summary judgment, finding that the proposed accommodations were not reasonable. *Id.*

On appeal, the Seventh Circuit initially noted that there was no dispute that Severson had a disability and that frequently lifting 50 pounds or more was an essential function of Severson's position and he was unable to perform this function at the time he was fired. *Id.* Thus, the focus of the court's analysis was whether Heartland violated the ADA by failing to reasonably accommodate Severson's disability. *Id.* Answering that question in the negative, the court initially looked to Section 12111(8) of the ADA definition of "qualified individual" which states that: "A 'reasonable accommodation' is one that allows the disabled employee to 'perform the essential functions of the employment position that such individual holds or desires." *Id.* (*quoting* 42 U.S.C. § 12111(8)). The court noted that, "[i]f the proposed accommodation does not make it possible for the employee to perform his job, then the employee is not a 'qualified individual' as that term is defined in the ADA." *Severson*, 872 F.3d at 481.

Based on these definitions, the court held that a reasonable accommodation under the ADA does not include a long-term leave of absence. *Id.* In its holding, the court stated that, "[s]imply put, an extended leave of absence does not give a

disabled individual the means to work; it excuses his not working." *Id.* This does not mean that employers never have to grant leaves of absences as reasonable accommodations. Rather, the court noted that "a brief period of leave to deal with a medical condition could be a reasonable accommodation in some circumstances" following *Byrne v. Avon Prods., Inc.*, 328 F.3d 379, 381 (7th Cir. 2003). *Id.* at 481. The Seventh Circuit defined such brief period as "a couple of days or even a couple of weeks" but reiterated that "a medical leave spanning multiple months does not permit the employee to perform the essential functions of his job." *Id.*

The court flatly rejected the position advocated by the EEOC 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 functions of the job when he returns." *Id.* at 482. In the court's view, the EEOC's interpretation would transform the ADA "into a medical-leave statute—in effect, an open-ended extension of the FMLA," which the court deemed "an untenable interpretation of the term 'reasonable accommodation.'" *Severson,* 872 F.3d at 481.

With respect to Severson's other proposed accommodations, the court found that Severson failed to meet his burden of proving that there were vacant positions available at the time of his termination. *Id.* at 482. In addition, Heartland was not required to offer Severson a temporary light-duty position with no lifting because the evidence showed that the company did not have a policy of providing light-duty positions for employees who suffered work-related injuries and on occasion the company had given occupationally injured employees temporary duties for no longer than two days. *Id.* In such a case, the court noted that "[i]f an employer 'bends over backwards to accommodate a disabled worker . . . , it must not be punished for its generosity.'" *Id.* at 483.

Practical Takeaways

When an employee requests a leave of absence as a reasonable accommodation under the ADA, employers should still go through the interactive process to meet with the employee and discuss such issues as (1) what is the employee's disability; (2) the job functions that the employee is not able to perform due to the disability; (3) whether those job functions are essential or nonessential; (4) the expected length of time that the requested accommodation will be needed; (5) where there is any other type of accommodation that the employer can provide rather than the extended leave; and (6) if there are any available open positions for which the employee is qualified that the employee can perform and which meet the employee's restrictions. Keep in mind that this should be an individualized process and employers should not automatically reject an employee's request for a leave of absence under *Severson.*

Following the interactive process meeting, if it turns out that the need for time off is only a few days or weeks, serious consideration should be given to granting the request. Requests for leaves of absence greater than a few weeks (when FMLA either does not apply or has been exhausted) could be denied under the reasoning of *Severson*. Of course, employers are free to grant more generous leave benefits to employees, but the *Severson* decision provides important guidance for employers on their legal obligations under the ADA.

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About the Author

Julie A. Bruch is a partner with *O'Halloran Kosoff Geitner & Cook, LLC*. Her practice concentrates on the defense of governmental entities in civil rights and employment discrimination claims.

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