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Court Holds that Long-Term Leaves of Absence are Not a Reasonable Accommodation, but Wisconsin Employers Must Proceed with Caution

The Americans with Disabilities Act ("ADA") has long been interpreted to allow employees to take a leave of absence as an accommodation for a disability. The Equal Employment Opportunity Commission (the "EEOC") takes the position that leaves of up to one year are "reasonable" accommodations.

All that has changed—at least in Wisconsin, Illinois, and Indiana. A Seventh Circuit Court of Appeals decision—*Severson v. Heartland Woodcraft, Inc*.—held that "a long term leave of absence cannot be a reasonable accommodation." The U.S. Supreme Court recently declined to review that ruling. But Wisconsin employers should be wary; whether Wisconsin state law requires employers to grant long term leaves of absence as an accommodation is still an open question.

Factual Background

In June 2013, Heartland Woodcraft, Inc. ("Heartland") employee Raymond Severson ("Severson") injured his back at home and took a twelve week leave of absence under the Family and Medical Leave Act ("FMLA") to recuperate. Two weeks before Severson exhausted his available FMLA leave, he notified Heartland that his back pain had not improved and requested an additional two months off to undergo back surgery. Heartland denied Severson's request and terminated his employment, but invited him to re apply when he was medically cleared to work. Severson brought suit, alleging violations of the ADA.

The Seventh Circuit Finds No Discrimination

Severson argued that, by not providing him with a multi-month leave of absence after his FMLA leave had expired, Heartland had failed to reasonably accommodate his disability. The Seventh Circuit rejected Severson's argument in no uncertain terms, holding that "a long term leave of absence cannot be a reasonable accommodation." Long term leave, the Court held, "is the domain of the FMLA" and the "[i]nability to work for a multi month period removes a person from the class protected by the ADA."

POSTED:

Apr 27, 2018

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Lessons for Employers

- The Court's opinion leaves open the possibility that intermittent or brief periods of leave taken to deal with a medical condition—lasting two or three days or even two or three weeks—may, in appropriate circumstances, be a reasonable accommodation. But a medical leave spanning multiple months is not.
- Because this decision arguably conflicts with decisions from federal courts in other states, employers should not assume this holding will apply in every state in which they operate.
- Similarly, Wisconsin state agencies and courts may take a different view of Wisconsin state law and require Wisconsin employers to provide long term leave as a reasonable accommodation.
- The EEOC strongly disfavors "maximum leave" policies that terminate employees who have either exhausted their allowed FMLA leave or are not eligible for such leave, but who might be able to return to work with additional leave. Although the Seventh Circuit expressly rejected the EEOC's position, the EEOC is likely to continue to investigate "maximum leave" policies.

If you have any questions about the implications *Severson v. Heartland Woodcraft, Inc.* may have for your business, or whether an employee's request for leave is a "reasonable accommodation" under the ADA, please contact Katie Triska, Robert Driscoll, or your Reinhart attorney.

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