Is a leave of absence still considered a reasonable accommodation?

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Providing a leave of absence to help support injured or ill employees in returning to work is often difficult for many employers, especially when facing production deadlines, staff shortages and holiday vacations. While some employers are able to accommodate employees in these situations, others face challenges in using leave as an accommodation, which can cause frustration and confusion for all involved. In light of this dilemma, a new case from the 7th Circuit arises, with a decision that makes some employers excited about a future without leave of absence as a reasonable accommodation.

In the case Severson v. Heartland Woodcraft, No. 15-3754 (7th Cir. Sept. 20, 2017), Raymond Severson began his career with Heartland Woodcraft around 2006 and over time had been promoted to an operations manager for the fabricator of retail display fixtures. In 2010, he was diagnosed with back myelopathy caused by impaired functioning and degenerative changes in his back, neck and spinal cord. This back condition typically did not prevent him from performing his essential functions, however he did have flare-ups that were particularly debilitating and at times, hindered his ability to walk, bend, lift, sit, stand, move and work.

In 2013, Severson was demoted to a second-shift lead position due to performance issues. This new position involved manual labor, specifically lifting more than 50 pounds, operating production machinery, etc. During this same timeframe, Severson aggravated his back at home and, as a result, requested a leave of absence under the Family and Medical Leave Act (FMLA). Heartland gave him the 12-week FMLA leave and, on the last day of that leave, Severson had surgery and requested an additional two more months of continued medical leave to recover from surgery. Heartland denied Severson's request and terminated him. Heartland advised that he could reapply when he was medically cleared to work. Of course, Severson sued under the Americans with Disabilities Act (ADA) alleging his employer should have accommodated him by providing two to three months of additional leave beyond his FMLA entitlement, as well as other options.

The U.S. Court of Appeals for the 7th Circuit, which has jurisdiction over Illinois, Indiana and Wisconsin, held that a request for a two-to-three-month leave of absence is not a reasonable accommodation pursuant to the ADA. The court characterized the ADA as an "anti-discrimination" statute, not a "leave entitlement" statute. As a result of this decision, many employers were overjoyed at the shift and grateful for the tide finally turning. But on a cautionary note, this is one decision where additional leave time was not considered to be a reasonable accommodation. Other court circuits and the Equal Employment Opportunity Commission (EEOC) have greatly differed in their opinion of this issue and, additionally, employers with the 7th Circuit's thought process have been greatly penalized for this mindset.

As a result of this case, the EEOC filed an amicus brief arguing that the extended leave was reasonable because it was for a definite period of time, was requested in advance, and would have enabled the employee to return to work. The EEOC argued that the inquiry as to whether an accommodation is reasonable should not focus on the employee's ability to perform the essential functions of the job at the point of termination, but rather, at the end of the requested leave.

Interesting enough, the 7th Circuit court did not go as far as to state that the ADA never requires leave as an accommodation. The court gave a couple of examples contrasting how a multi-month leave of absence is viewed differently from a leave of absence that is "intermittent," "a couple of days," or "even a couple of weeks."

RECOMMENDATIONS FOR EMPLOYERS:

Many employers have asked for Sedgwick's point of view in light of this new case. Sedgwick maintains that a leave of absence is considered a reasonable accommodation as long as it is not an undue hardship on the employer. Again, we reiterate the 7th Circuit's decision is one example and does not fall in line with other jurisdictions or with the EEOC's view of a reasonable accommodation.

The *Severson v. Heartland* case highlights the need for a critical eye toward a leave of absence (multi-month or intermittent) as a reasonable accommodation. In light of the ruling in this case, employers should ensure their accommodation review programs consider each request for a leave of absence, as well as other requested accommodations, on a case-by-case basis and not automatically deny them because they are requests for multi-month absences or requested due to the exhaustion of FMLA.

It's also a good idea for employers to conduct regular reviews of their policies and include language that employees may be eligible for additional leave as an accommodation under the ADA, if reasonable. Human resources professionals should always listen closely and give serious consideration to employees' requests for leave accommodations.

For further information, please review the EEOC's 2016 resource document Employer-Provided Leave and the Americans with Disabilities Act. This publication offers insight into situations where employers would be expected to provide a leave of absence, unless the employer can show the leave of absence created an undue hardship.

Should you have any questions about this ruling, please contact your Sedgwick client services representative.

RESOURCES

Employer-Provided Leave and the Americans with Disabilities Act. EEOC. 2016.
http://www.eeoc.gov

Severson v. Heartland Woodcraft, No. 15-3754 (7th Cir. Sept. 20, 2017)
http://caselaw.findlaw.com/us-7th-circuit/1874573.html