HEALTH CARE PROVIDER ALERT

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Does The ADA Require An Employer To Extend A Leave Taken Under the FMLA?

By Michael Brohman, Partner

Are you an employer who must provide benefits to employees under the Family Medical Leave Act ("FMLA") because you have had 50 or more employees for at least 20 weeks during the past year? If so, do you sometimes get confused between your obligations under the FMLA and the obligations you may have to disabled employees under the Americans with Disabilities Act ("ADA")? At least with respect to the issue of employee leaves, the United States Circuit Court for the Seventh Circuit (covering Illinois, Wisconsin and Indiana federal cases) recently provided guidance to employers to help them navigate through a potential conflict of obligations under these two federal laws.

Employers covered by the FMLA are required to give eligible employees up to 12 weeks of unpaid medical leave during a one-year period of time to deal with a serious medical issue. Under the ADA, employers are required to provide "reasonable accommodations" to employees whose serious medical issues come within the definition of a "disability." Assume that you have an FMLA eligible employee who takes a full 12-week leave to deal with a serious medical issue. If at the completion of the 12-week period, that same employee asks you to extend the leave because the medical problem issue persists, do you violate the "reasonable accommodation" requirement of the ADA if you deny the requested extension and terminate the employee's employment? In the recent decision in Severson v. Heartland Woodcraft, Inc., No. 15-3754, the Seventh Circuit answered this question by saying no. As the Court ruled, the ADA is "an anti-discrimination statute, not a medical-leave entitlement."

The district court awarded summary judgment in Heartland's favor, and the Seventh Circuit affirmed that decision.

The Seventh Circuit initially noted that Severson did have a disability at the time he was fired in that Severson was unable to perform the essential functions of his job due to his back issues. The court then focused on whether Heartland had violated the ADA by failing to reasonably accommodate Severson's disability when it refused to extend Severson's leave. In this regard, the court looked at the statutory definition of "reasonable accommodation" and concluded that a "reasonable accommodation" is one that allows a disabled employee to perform the essential functions of his employment. According to the court, if 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."

Turning to the facts of the case, the court ruled that a long-term leave of absence cannot be a reasonable accommodation. In the court's words, "an extended leave of absence does not give a disabled individual the means to work; it excuses his not working." The court further noted that employees are already protected by the FMLA's grant of up to a 12 week medical leave, a provision which recognizes that employees will sometimes be unable to perform their job duties due do a serious health condition. By contrast, according to the court, the ADA provides remedies to employees who can do their stated job with the assistance of a reasonable accommodation. As the Seventh Circuit concluded:

> "If, as the EEOC argues, employees are entitled to extended time off as a reasonable accommodation, the ADA is transformed into a medical-leave statute—in effect, an open-ended extension of the FMLA. That's an untenable interpretation of the term 'reasonable accommodation.'"

For its physicians and physician groups who have employees, Roetzel attorneys provide advice on a wide variety of employment law issues, including issues pertaining to discrimination, harassment, the FMLA, the ADA and the Age Discrimination in Employment Act. If you have any questions regarding this area of the law, please do not hesitate in contacting us.

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