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Extended Leave Not a "Reasonable Accommodation" Under ADA

Employees who have exhausted their right to paid sick leave and unpaid leave under the Family and Medical Leave Act ("FMLA") often request additional unpaid leave as a "reasonable accommodation" due them under the Americans with Disabilities Act ("ADA"). Now, the United States 7th Circuit Court of Appeals, whose jurisdiction includes Illinois, has taken an important step in defining the parameters of an employer's obligation to provide such leave under those circumstances. In *Severson v. Heartland Wood Craft, Inc.*, the Court ruled that the ADA did not require that an employer grant an employee a multi-month period leave to recover from surgery which would have extended beyond the employee's 12-week period statutory leave period under the FMLA.

In *Severson*, the employee, who suffered from debilitating spinal impairments, properly exercised his right to the 12-week FMLA

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leave. Before his FMLA leave was scheduled to expire, the employee requested that he be given an additional 3-month leave to recuperate from surgery as a reasonable accommodation. The employer refused his request and terminated him at the conclusion of his FMLA leave, but invited the employee to reapply for work once he had recovered from surgery. Rather than re-apply, the employee filed suit alleging that the employer violated the ADA because, among other things, it failed to reasonably accommodate his disability. The U.S. District Court rejected the employee's claim and granted judgment in favor of the employer. The Court of Appeals agreed with the District Court and upheld its decision.

The Court of Appeals examined the language of the ADA and concluded that a "reasonable accommodation" was "one that allowed a disabled employee to perform the essential functions of the employment position." Based on this understanding, the Court held that if the accommodation does not make it possible for the employee to return to work, the employee is not a "qualified individual" within the meaning of the ADA, and therefore could not prevail in a lawsuit against an employer. Simply put, the Court of Appeals decided that the employee was

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not denied a "reasonable accommodation" because the accommodation he sought was more time off of work, not an accommodation that would permit him to do his job. However, the Court distinguished "long-term" leave from intermittent time off and short-term leave of "a couple of days or even a couple of weeks", which might be considered a reasonable accommodation under some circumstances.

The Court of Appeals also rejected the employee's argument that he should have been allowed to take a vacant position with the employer that arose after he was terminated. Instead, the Court of Appeals decided that the employer's duty to provide alternative employment as an accommodation meant that the alternative position had to exist at the time of the employee's termination. In other words, the ADA does not require an employer to create a new job for the employee or remove the important duties of a currently existing job to accommodate an employee.

Severson is an important case because, while it confirms an employer's duty under the ADA to accommodate a disabled employee, it makes it clear that the employer's duty cannot be converted into a right to a multi-month extension of leave

beyond the 12-week period set forth in the FMLA.

If you have any questions concerning how *Severson* may apply to your employees, please contact our attorneys at our Flossmoor Office at 708-799-6766, or our Oak Brook Office at 630-928-1200.