Seventh Circuit Affirms that Multi-Month Leave of Absence Is Not Reasonable Accommodation Under ADA

Darin Williams
02.22.2021

In a recent opinion, the United States Court of Appeals for the Seventh Circuit affirmed that a multi-month leave of absence is not a reasonable accommodation under the Americans with Disabilities Act (ADA).

Paula McAllister was a machine operator for Innovation Ventures, LLC (Innovation). On June 10, 2016, McAllister suffered serious head and neck injuries in an unfortunate automobile accident, which required her to undergo surgery. Shortly after her surgery, McAllister sought medical leave under the Family and Medical Leave Act of 1993 (FMLA). In McAllister's doctor's FMLA certification, the doctor indicated that McAllister could not perform "any & all" functions and that she could not return to work until September 8, 2016.

"Thereafter, McAllister fell into a frustrating cycle wherein her doctors would examine her, predict she could return to work in some number of weeks, then later elongate their prediction at a follow-up visit." During this time, Innovations' Human Resources department contacted McAllister and notified her that, per its policies, an employee who could not return to work after six months of leave would be terminated.

After several additional rounds of doctor's appointments and predictions about when McAllister might be able to return to work, on November 14, 2016, McAllister's doctor sent a work status report to Innovation estimating

Attorneys

Darin M. Williams

Practice Areas

Counseling and Transactional

Public Sector

Seventh Circuit Affirms that Multi-Month Leave of Absence Is Not Reasonable Accommodation Under ADA

that McAllister could not return to work until February 2017. Innovation declined to extend McAllister's leave beyond six months and instead terminated her employment on December 14, 2016.

McAllister filed a lawsuit in the United States District Court for the Northern District of Illinois alleging, among other things, that Innovation failed to accommodate her disability under the ADA. The district court granted summary judgment for Innovation on McAllister's failure-to-accommodate claim. The district court found that McAllister was not a qualified individual with a disability as required to maintain a failure-to-accommodate claim because she could not "perform the essential functions of the employment position" either "with or without reasonable accommodation."

On appeal, McAllister argued that (1) she could have performed her job with accommodations; (2) that she could have performed another job without accommodations during the same time period; and (3) that Innovation should have granted her additional leave, which she argues would have been reasonable.

The Seventh Circuit affirmed the district court's decision. As to McAllister's first two arguments, the Court determined that her alleged ability to work with or without reasonable accommodations was directly contradicted by her doctors' orders. The Court reasoned that "absent evidence to the contrary, a doctor's view that an employee cannot return to work . . . in any position means an employee cannot establish that she is a qualified individual with a disability under the ADA." Because the doctors' orders had limited McAllister from working altogether, there was no reasonable accommodation that could have mitigated her limitations.

As to McAllister's final argument—that she should have been granted additional leave as a reasonable accommodation—the Court reiterated its position that "a multi-month leave of absence is beyond the scope of reasonable accommodation under the ADA." The Court reasoned that, "[e]ven assuming McAllister worked in August and September 2016, Innovation would have needed to grant McAllister leave from October 2016 until February 2017 (when her doctors expected to clear her), for a total of four months," which the Court held "is plainly not a reasonable accommodation."

Although previously questioned by some courts within the Seventh Circuit, this "per se" rule against a multi-month leave of absence under the ADA has been affirmed as the law of the Seventh Circuit. Other federal circuit courts, however, have rejected such a per se rule.

Seventh Circuit Affirms that Multi-Month Leave of Absence Is Not Reasonable Accommodation Under ADA

Still, even slight changes in the fact-pattern of *McAllister* would raise additional questions for an employer to address. For instance, although in *McAllister* the employer could make no accommodation based on the doctors' orders, in cases where a healthcare provider has ordered less than no work at all, employers may have to consider part-time or modified schedules or other vacant positions as potential reasonable accommodations.

As always, we encourage employers to contact their servicing Laner Muchin attorney when navigating the nuances of these issues.