

Plaintiff Petitions the Supreme Court to Hear Extended Leave ADA Case

Labor & Employment Law Update

on January 24, 2018

On January 18th, the plaintiff in *Severson v. Heartland Woodcraft Inc.* petitioned the United States Supreme Court to review his case, in which he claimed that a multi-month leave under the ADA, beyond the Family and Medical Leave Act's (FMLA's) mandated 12 weeks off, constitutes a reasonable accommodation.

Back in September 2017, we reported on the seventh circuit's decision *Severson*. In the case, Severson took a twelve-week medical leave under the FMLA to deal with serious back pain. Before this leave expired, however, he notified his employer that he was scheduled to undergo back surgery and requested an additional two to three months of leave to recover from surgery. The employer denied Severson's request, terminated his employment, and invited him to reapply when he was medically cleared to work. Severson sued, alleging a failure to reasonably accommodate his disability.

The seventh circuit affirmed the district court's decision and held that a medical leave spanning multiple months is beyond the scope of a reasonable accommodation and that the employer's denial of extended leave did not violate the ADA. In the opinion, the court stated that an employee who cannot not work or perform their job's essential functions, is not a "qualified individual" under the ADA.

A month after *Severson*, the seventh circuit reaffirmed its position that the ADA does not require extended leave. In *Golden v. Indianapolis Housing Agency*, the plaintiff, who suffered from breast cancer, sought extended leave to undergo surgery. Her recovery period was expected to last as much as six months. The employer refused to grant more than four additional weeks of leave. After Golden exhausted her FMLA and the four additional weeks of leave and could not return to work, she was terminated from employment. Just as it did in *Severson*, the seventh circuit held that "a multi-month leave of absence is beyond the scope of a reasonable accommodation under the ADA."

The Supreme Court has not yet decided whether it will hear the *Severson* case. In the meantime, however, our September 2017 recommendations remain in effect. Once employees exhaust their leave and are unable to return, employers should engage in the ADA's interactive process and consider the following before

deciding to terminate employment:

- Whether the employee's current medical restrictions affect the employee's ability to perform the essential functions of the position;
- If the restrictions do impact the employee's ability to perform the essential functions, are reasonable accommodations available that would enable the employee to perform these functions;
- Whether vacant positions exist that the employee would be qualified to perform and could be reassigned into;
- Whether the employer has a policy of creating light-duty positions for employees who are occupationally injured and whether this benefit could be extended to the employee without posing an undue hardship; and
- Whether the employee's request for additional leave is definite in time and of a short duration, and if this extended leave could be provided without posing an undue hardship.

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