

# Seventh Circuit Holds that Multiple-Month Extended Leaves Are Not Reasonable Accommodations Under the ADA

## Labor & Employment Law Update

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Because not all recoveries from medical conditions come in neat twelve-week packages, employers commonly need to address employees' requests for additional leave after they have exhausted all leave afforded under the Family Medical Leave Act ("FMLA") or company policy.

The U.S. Equal Employment Opportunity Commission has long taken the position that terminating an employee who has exhausted FMLA leave, but is still not able to return to work, may violate the Americans with Disabilities Act ("ADA"). For instance, the EEOC guidance, issued on May 9, 2016, opined that providing additional leave may be necessary as a reasonable accommodation.

The Seventh Circuit Court of Appeals recently issued a decision running contrary to this EEOC guidance and the prevailing precedent in other circuits, holding in *Severson v. Heartland Woodcraft, Inc.*, that an employee is not entitled to extended leave as a reasonable accommodation under the ADA.

In this case, employee Severson took a twelve-week medical leave from work under the FMLA to deal with serious back pain (the statutory maximum). Shortly before this leave expired, Severson 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 company denied Severson's request to continue his medical leave beyond the FMLA entitlement, terminated his employment, and invited him to reapply when he was medically cleared to work. Instead, Severson sued, alleging a failure to reasonably accommodate his disability—namely, a three-month leave of absence after his FMLA leave expired.

The Seventh Circuit affirmed the district court and clarified that a medical leave spanning multiple months is beyond the scope of a reasonable accommodation. Finding that the employer did not violate the ADA by refusing to provide the additional leave, the Seventh Circuit explicitly stated that an employee, who cannot not work or perform their job's essential functions, is not a "qualified

individual” under the ADA. Further highlighting its position, the Court distinguished between the FMLA, which it held was intended to provide long-term medical leave for those who cannot work, while the ADA is meant to require accommodation only for those “that can do the job.”

Before employers in Illinois, Wisconsin and Indiana reinstate strict Maximum Leave Policies and No-Fault Termination policies, whereby employees are automatically terminated if they cannot return to work when FMLA or other awarded leave is exhausted, several limitations to Severson should be noted.

Severson’s holding is limited to “medical leave[s] spanning multiple months.” The Court acknowledged that finite extensions of leave for shorter durations – described as “a couple of days or even a couple of weeks”, but less than multiple months – may still be deemed a reasonable accommodation.

The Court further acknowledged that intermittent leaves of short duration may constitute reasonable accommodations in the same way a part-time or modified work schedule may be a reasonable accommodation for employees dealing with medical flare-ups. Moreover, employers should be cautious about maintaining 100% Healed Policies, whereby an employer requires employees to have no medical restrictions whatsoever when their leave ends.

At any time employees have exhausted their leave, but are not fully cleared to return to work, the employer 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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