

Is a Long-Term Leave of Absence a Reasonable Accommodation?

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The Americans with Disabilities Act of 1990 ([ADA](#)) provides a comprehensive mandate for the elimination of discrimination, including employment discrimination, against individuals with disabilities. [Disability discrimination](#) in employment is commonly thought to refer to an employer's decision to terminate an employee because of his or her disability, or a refusal to hire or promote an individual because of a disability. But unlawful disability discrimination in employment can take other forms, such as failing or refusing to provide a reasonable accommodation to a qualified individual with a disability.

On the surface, providing a [reasonable accommodation](#) to a qualified individual with a disability seems like a straightforward concept. However, the ADA does not set forth a bright line rule delineating who is considered a "qualified individual." Instead, it states only that a "qualified individual" is someone who "with or without reasonable accommodation, can perform the essential functions" of the job the individual holds or has applied for. 42 U.S.C. § 12111(8). Nor does the ADA clearly define what constitutes a reasonable accommodation. Although the ambiguity around these concepts better ensures that courts analyze failure to accommodate claims on a case-by-case basis instead of imposing narrow categorical rules, the lack of clear definitions in this context has led to disagreement among courts as to who is properly deemed a "qualified individual" and what constitutes a "reasonable accommodation."

Among the more hotly contested reasonable accommodation debates is whether a temporary leave of absence constitutes a reasonable accommodation under the ADA. Even though the U.S. Equal Employment Opportunity Commission (EEOC) has long stated that a leave of absence can constitute a reasonable accommodation in certain circumstances, many courts have disagreed.

About *Severson v. Heartland Woodcraft Inc.*

The decision of the U.S. Court of Appeals for the Seventh Circuit in *Severson v. Heartland Woodcraft, Inc.*, 872 F.3d 476 (7th Cir. 2017) highlights the ongoing conflict. In *Severson*, the plaintiff, Raymond Severson, was an employee of Heartland Woodcraft, where he had worked with an excellent attendance record for approximately seven years. In June 2013, Heartland granted Mr. Severson's request to take 12 weeks of unpaid leave under the [Family Medical Leave Act](#) (FMLA) to treat a back condition. On August 13, 2013, approximately two weeks before the expiration of his FMLA leave, Mr. Severson advised Heartland that the non-surgical measures had not corrected his back condition and requested an additional two to three months of leave to undergo (and recover from) back surgery. On August 28, 2013, the day after Mr. Severson's FMLA leave ended, Heartland denied Mr. Severson's request for additional leave and terminated his employment.

Following his termination, Mr. Severson sued Heartland alleging that it discriminated against him in violation of the ADA by failing to provide him the reasonable accommodation of additional temporary leave. He argued that his back condition constituted a disability under the ADA, and that he was a

qualified individual who was entitled to a reasonable accommodation because he could perform the essential functions of his job with the reasonable accommodation of a two to three month leave of absence. Heartland did not contest that Mr. Severson's back condition qualified as a disability under the ADA, or that he satisfied the prerequisites for his position. However, Heartland argued, and the U.S. District Court for the Eastern District of Wisconsin agreed, that Severson was not a qualified individual who was entitled to a reasonable accommodation because at the time of his termination he was unable to perform essential functions of his job, such as lifting. Based on this conclusion, the district court granted Heartland's motion for summary judgment on Mr. Severson's failure to accommodate claim. Mr. Severson appealed.

The EEOC Weighs In

On appeal to the U.S. Court of Appeals for the Seventh Circuit, the EEOC filed an amicus brief in support of Mr. Severson in which it argued that the district court erred by considering whether Mr. Severson could perform the essential functions of his job as of the date Heartland denied his leave request instead of the date his doctor projected he could return to work. The EEOC emphasized that although the question of whether someone is qualified under the ADA is typically assessed as of the time of the relevant employment decision, the analysis changes if the requested accommodation cannot be immediately implemented. For instance, the EEOC pointed out that if it would take an employer a month to modify existing facilities to make the workplace readily accessible – which is an example of a reasonable accommodation the ADA specifically identifies in the statutory text – it would conflict with the ADA to find an individual not qualified because the requested accommodation could not be enacted immediately. Similarly, the EEOC argued, as the accommodation of leave is only provided when the leave ends, the employer should assess whether the employee would be able to perform the essential functions of his job at the end of the leave. To do otherwise would logically result in a bright line rule that would require a court to find that any employee who had to take a temporary medical leave of absence to treat his or her disability is not a qualified individual entitled to the protections of the ADA. Because Mr. Severson's doctor projected that he would be able to resume his duties at the end of two or three months, the EEOC argued that the district court should have deemed him qualified and assessed whether the requested accommodation was reasonable.

The EEOC also emphasized that a holding that an employee who is forced by disability to take medical leave is not qualified (and in effect makes leave unavailable as a reasonable accommodation) is inconsistent with the EEOC's longstanding interpretation of the ADA and its legislative history.

The Court Issues Its Opinion

Nevertheless, the U.S. Court of Appeals for the Seventh Circuit rejected Mr. Severson's and the EEOC arguments that Mr. Severson is "qualified" and entitled to accommodation, and instead upheld the district court's grant of summary judgment in favor of Heartland. *Severson*, 872 F.3d at 481. In its opinion, the court set forth the bright line rule that "a long-term leave of absence cannot be a reasonable accommodation" reasoning that "an extended leave of absence does not give a disabled individual the means to work; it excuses his not working." *Id.* Although this rule seems to foreclose the possibility of temporary leave lasting two or three months as a reasonable accommodation, the court later limited its holding by stating that "intermittent time off or a short leave of absence...may, in appropriate circumstances be analogous to a part-time or modified work schedule." *Id.*

Despite the unfavorable ruling in *Severson*, temporary leave as a reasonable accommodation under the ADA is not a lost cause. Even under the seemingly employer-friendly rule in *Severson*, short-term leave, such as for a couple days or weeks, is still an option for employees who need to take leave to seek treatment or recuperate from treatment for their disability. Moreover, not only have other courts reached the opposite conclusion under similar circumstances as the Seventh Circuit in *Severson*, the

EEOC's position on the issue remains the same, and it will continue to evaluate charges filed by employees from that perspective. To reiterate, the EEOC's view of the proper analysis of denial of accommodation requests is that the individual's ability to perform the essential functions of the job with an accommodation means this assessment must be made based on the individual's abilities if the leave is granted. The question of whether leave of a particular duration would pose an undue hardship is a separate inquiry and will always depend on the particular circumstances of the job and the employer's resources.

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