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Accommodate Much? Restrictive Seventh Circuit Leave Ruling Lives On

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Letter of the Law: A Revival! No employment lawyer worth her salt would choose anything other than “Accommodation” for the Letter A.

And so it begins…. HR professionals know all too well that the ADA requires employers to provide reasonable accommodations to qualified individuals with disabilities. While accommodations often include overcoming physical obstacles such as inaccessible workplace areas and unwieldy equipment, they more commonly pertain to workplace rules. For example, employers are asked to change when or where work is performed, leave or breaks are provided, and how tasks are accomplished. The 7th Circuit has explained that the employer must “rethink its preferred practices” and “consider modifications of jobs, processes, or tasks” to allow a disabled employee to work, “even where established practices or methods seem to be the most efficient or serve otherwise legitimate purposes.”

Even further, the EEOC has issued guidance for employers to provide a leave of absence as a possible (and required) accommodation. But what about an “extended” leave of absence? Last fall, in a surprising decision, *Severson v. Heartland Woodcraft, Inc.*, the 7th Circuit considered the familiar question: how much leave is required under the ADA?

In a decision hailed as a win for employers, the Court said that an “extended” leave of absence was not a required accommodation. (Check out our earlier post here.) The ruling was even more notable because it put a number on it: Two to three months of additional leave after exhausting FMLA leave is not a reasonable accommodation. The decision remains contrary to the EEOC’s guidance and went so far to say that the ADA is “not a medical leave entitlement.” Why are we talking about the decision again? SCOTUS decided this week not to review the ruling. By allowing the decision to stand, the *Severson* case is the law of the 7th Circuit (and others where courts have taken a similar approach). Employers may pause before agreeing to provide a multi-month leave of absence as an accommodation.

Be cautious, though. In a concurrence in another case, Seventh Circuit Court Justice Ilana Rovner reminded employers that “[h]olding that a long term medical leave can never be part of a reasonable accommodation does not reflect the flexible and individual nature of the protections granted” by the ADA. Stay tuned for the musing of the Letter B…

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