

Managing Employee Requests for “Indefinite” Disability Leave: the D.C. Court of Appeals Offers Guidance

Barbara E. Hoey

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Managing employees’ requests for disability accommodations can be challenging, particularly when an employee requests leave for extended or unlimited periods of time. A common misperception by employers is that once an employee’s FMLA leave runs out, the employer no longer has any obligation to accommodate such an employee, particularly if they request more time off, beyond the FMLA period.

In this situation, employers must be mindful of the interaction between the Family Medical Leave Act (“FMLA”) and the Americans with Disabilities Act (“ADA”), as well as their state counterparts. An employer may be legally obligated to provide additional accommodations, including in the form of leaves, under the ADA and/or state disability laws, even after an employee’s FMLA leave expires. But how long is too long? When does an employer have a legitimate basis for terminating an employee who has no definitive answer as to when he/she can return to work?

The Court of Appeals for the District of Columbia recently addressed this issue in *Minter v. District of Columbia*, and provided some useful guidance for employers in managing this all too familiar dilemma.

Minter v. District of Columbia

In *Minter v. District of Columbia*, the plaintiff suffered from arthritis, which made it difficult for her to maintain a regular forty hour workweek. In September of 2006, she asked her employer about working a reduced schedule to accommodate her disability. The employer considered the plaintiff’s request, and had a follow up meeting with her in December. During this meeting, the employer expressed reservations about the reduced work schedule, but asked for additional medical records so they could fully evaluate her request.

In December 2006 and January 2007, the plaintiff took several weeks off due to her medical condition, and in February, she stopped coming in to work altogether. Between February and May, the employer made several letter requests for medical documentation, but the plaintiff failed to respond. In June, the employer wrote the plaintiff and told her that she either had to report for duty, or provide the requested medication documentation, and if she did neither, they would have no choice but to find her absent without leave and subject to disciplinary action.

The plaintiff finally responded and faxed a “Disability Certificate” from her physician stating that she was “Totally Disabled” since September 2006 and would be so disabled “indefinitely.” The plaintiff

told the employer she “hoped” to return to work by September of 2007. The employer responded that it could no longer wait for her uncertain return, and terminated her employment.

The plaintiff brought a lawsuit against the employer under the ADA and the Rehabilitation Act alleging that the employer unlawfully refused to accommodate her disability and unlawfully terminated her in retaliation for requesting an accommodation.

The Court rejected the plaintiff’s failure to accommodate claim with respect to her initial request for a reduced work schedule. The Court found that the employer engaged in the interactive process in good faith by meeting with the employee and requesting additional medical information so they could evaluate her request and make an informed decision. Thereafter, the employer sent the plaintiff a string of emails, and urged her to keep her appointment for a follow up meeting and reiterated their request for information. It was the plaintiff who disrupted the interactive process by failing to keep her follow up appointment and to provide any additional information until six months later.

Additionally, the Court held that the employer’s denial of the plaintiff’s request for an accommodation in June 2007 **was not unlawful**, because at that point, the plaintiff was not a “qualified individual” with a disability given that she could not perform an essential function of the job – showing up for work. She had not worked in more than three months, and had submitted a note from her physician stating that she was totally disability, indefinitely.

Lastly, the Court found that her termination was **lawful and non-retaliatory**, because she effectively abandoned her job by failing to report to work for over three months, and failing to provide medical documentation supporting her absence, despite the employer’s numerous requests. When she finally did contact her employer, she submitted medical documentation that she was “totally disability” and “hoped” to return to work by September –three months later. The Court held that “because an essential function of any . . . job is an ability to appear for work,” the employer’s explanation for her termination – job abandonment – was legitimate and nondiscriminatory.

Take Aways

Don’t Act Too Quickly. In this case, the employee was periodically out of work for two months, and then was completely out of work for three months, and requested at least an additional three months of leave, with no promises she would actually return to work. This wasn’t just a matter of a couple of weeks.

- **Always engage in the interactive process in good faith.** The Court credited the employer for sitting down with the employee, on two separate occasions, to discuss her request for a reduced work schedule. Although the employer may have expressed reservations as to the feasibility of the request, they requested additional medical documentation from the plaintiff so they could make an informed decision, and scheduled a follow up meeting to further discuss the request. Had the employer simply denied the request, the Court may have reached a different result.
- **Lay the Foundation.** While the employee was out of work from February through June, the employer diligently followed up, requesting a return to work date and additional medical documentation. When the employee finally responded three months later with a medical note saying she was “totally disabled” and would be out “indefinitely,” the employer decided to terminate her employment for job abandonment. The court found this was a legitimate, nondiscriminatory reason for termination. However, it is important to note that the employer

took its time before responding, and gave the employee the opportunity to submit documentation before it took action. Its patience paid off.

- **The Leave Request Must Really Be “Indefinite.”** While the plaintiff indicated that she “hoped” she could return to work in September, the Court noted that she did not provide any back up documentation for this anticipated return date, and the only medical documentation she submitted said she was out “indefinitely.” Had her doctor indicated that she would, in fact, be back in September, the Court may have come to a different conclusion.
- **There is No Magic Number for How Long is Too Long.** While we can look to this employee’s extended six-month absence as guidance for what is considered an unreasonable leave period, how long is too long will always depend on the particular circumstances. In this case, the Court relied on many factors in finding her termination to be lawful: (1) she was out for three-months prior to her request for an additional three months of leave; (2) she failed to respond to numerous requests from her employer seeking information about her medical condition and return to work; (3) her documentation from her medical provider stated that she was “totally disabled” for an “indefinite” amount of time; and (4) her “hope” that she would be back by September was not supported by any medical documentation. While this Court found that six months was long enough to satisfy the employer’s ADA obligations under these particular circumstances, the Court may have reached a different result in the absence of any one of these factors.