12 Months of Additional ADA Leave Not Reasonable, Court Says

THREE LESSONS TO BE LEARNED FROM 1ST CIRCUIT DECISION

Insights
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A federal appellate court recently ruled that an employee's request for 12 months of additional medical leave was not reasonable, and thereby upheld the dismissal of her Americans with Disabilities Act (ADA) lawsuit against her former employer. Employers can learn three important lessons from the May 2, 2017 decision.

Factual Background: Long Leave Rejected
Taymari Delgado worked for AstraZeneca Pharmaceutical as a hospital specialist in the company's Puerto Rico location. In December 2011, she submitted a request for short-term disability benefits after her doctors found a small brain tumor; she sought five months of leave through May 2012. The employer granted her leave through March 11, but at that point informed her that she had not provided adequate documentation of her disability or her need for further absences from work. She did not respond, so her employer sent her a letter indicating that she needed to return to work by March 22. Failure to do so by that point, the letter said, would lead to a presumption that she had resigned from the company.

March 22 came and went, and no further documentation was provided, nor did Delgado return to work. Delgado claims that a human resources representative called her and pressured her to resign in a hostile phone call. Regardless of how that call actually went, she provided additional documentation to support her absence (her doctor said she was "severely ill") and her employer extended her leave through April 29.

That date came and went as well, and Delgado still did not return to work. The employer sent another letter informing her that she was to return to work by May 17 or would be presumed to have resigned from work. On May 17, Delgado's doctor faxed additional medical documentation to AstraZeneca indicating that her condition would last "more than a year" and that she would be incapacitated for 12 more months, requesting additional leave on her behalf.

The company once again concluded that the documentation did not justify further medical leave, and left a voice mail for Delgado informing her that she had not provided the necessary justification for her absences. By letter the next day, the company confirmed that she had been instructed to return to work by May 17, had failed to do so, had failed to provide adequate justification for her absence,

and had not contacted her supervisor to discuss the matter. Therefore, the letter indicated that her employment at the company would come to an end.

Delgado then initiated a disability discrimination lawsuit under the ADA, alleging the company failed to reasonably accommodate her by not extending her leave for another 12 months as requested, and also claiming the company failed to engage in a mandatory interactive process to discuss reasonable accommodations. The lower court dismissed her case, and Delgado appealed the case to the 1st Circuit Court of Appeals. On May 2, 2017, the appeals court issued an opinion affirming the dismissal of her action and ruling in AstraZeneca's favor in all respects.

First Lesson: 12 Months Of Additional Leave Was Not "Reasonable"

The 1st Circuit Court of Appeals, which hears federal cases from Massachusetts, Maine, New Hampshire, and Puerto Rico, first ruled that Delgado's request for additional leave was not reasonable under the ADA. The court said that it had to decide whether the requested accommodation was feasible – or "facially reasonable" – for the employer under the circumstances. The court said it was not. "The sheer length of the delay," it said while examining the request for 12 months of leave on top of the 5-month leave already provided to her, "jumps off the page." It pointed out how the employer would be faced with obvious burdens given such a long absence, "not the least of which entails somehow covering the absent employee's job responsibilities during the employee's extended leave."

The court then examined cases from various jurisdictions which rejected reasonable accommodation requests for leaves spanning anywhere between two months and nine months, concluding that 12 months was just too long. It pointed out a 10th Circuit case from 2014 authored by now-Supreme Court Justice Neil Gorsuch, where he stated, "It perhaps goes without saying that an employee who isn't capable of working for so long isn't an employee capable of performing a job's essential functions – and that requiring an employer to keep a job open for so long doesn't qualify as a reasonable accommodation. After all, reasonable accommodations…are all about enabling employees to work, not to not work."

Finally, although Delgado tried to argue that AstraZeneca failed to offer evidence demonstrating that her additional leave would have caused it to face an undue hardship, the court pointed out that the burden was on Delgado to show her leave request was reasonable. The burden, the court said, was not on the employer to show the hardship it would face.

Second Lesson: "Narrow" Ruling Does Not Necessarily Set A Rule In Stone

The court was quick to note, however, that this ruling does not mean that all 12-month leave requests will be automatically held to be unreasonable under the ADA. "Our conclusion today is a narrow one," the 1st Circuit said. It refrained from issuing a ruling that would conclude leaves of a certain length were automatically unreasonable in "every" case. Instead, the court said that each circumstance would need to be examined individually to determine whether each leave request was reasonable under the fact pattern presented.

This point is important for employers to consider. Although it may not be your burden to demonstrate an undue hardship when defending against a reasonable accommodation claim, it will be to your benefit to present evidence showing that the length of time requested is unreasonable for whatever specific reasons apply in the individual circumstance in front of you. That will enable you to demonstrate that the length of time requested by the employee is not reasonable given the fact pattern at play. While it is helpful to cite to other cases to show how other courts have rejected leave requests of a similar (or even shorter) length, this court decision reminds us all that a long leave request, on its own, will not necessarily suffice to justify rejection of a leave.

Third Lesson: Interactive Process May Not Be Necessary In Every Case

Finally, the court rejected Delgado's claim that AstraZeneca failed to engage in a good faith interactive process with her. Although the ADA itself does not mention the need for such a process, courts in various jurisdictions have agreed with the Equal Employment Opportunity Commission (EEOC) and concluded that employers are obligated to initiate a collaborative dialogue with any employee requesting an accommodation to exchange information about the underlying medical condition, the need for accommodation, and various related topics.

However, in this case, the 1st Circuit rejected Delgado's claim. "Where, as here," the court said, "the employee fails to satisfy her burden of showing that a reasonable accommodation existed, the employee cannot maintain a claim for failure to engage in an interactive process." The court cited to several other cases from the 1st Circuit to support this position.

Employers are cautioned to tread carefully in this area, however. First of all, several federal appellate jurisdictions take the opposite position and conclude that an employer has an absolute duty to engage in an interactive process in every such instance. If this case had arisen in one of those jurisdictions, Delgado may very well have prevailed. Second, even if you are in the 1st Circuit, it is difficult for an employer to predict whether an employee will be able to prove a reasonable accommodation exists **unless** it engages in an interactive process. Therefore, although this line of thought presents a solid defense should your case end up in litigation, it may be worthwhile to engage in a collaborative (and documented) dialogue with your worker to discern what accommodations are requested. Even if you decide to reject such a request, you will have one less claim to worry about should the employee resort to litigation at some later point, as you will have fulfilled your interactive process obligations.

If you have any questions about this case or how it may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our Boston office at 617.722.0044.

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