

Request For an Indefinite Leave of Absence is Not a Reasonable Accommodation Under the ADA

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The 8th U.S. Circuit court of Appeals recently upheld summary judgment in favor of an employer who terminated the employment of an individual undergoing cancer treatment. *Peyton v. Fred's Stores of Arkansas, Inc.*, 8th Cir., No. 08-2346, April 15, 2009. In that case, the Court held that because there was no reasonable accommodation that would have allowed the individual to perform the essential functions of her job during the period in which she was absent for treatment, there was no violation of the ADA.

An employer discriminates against an employee, in violation of the Americans with Disabilities Act, if the employer fails to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability." However, ADA protection extends only to individuals who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires.

Floyce Peyton, an experienced retail store manager, was hired by Fred's Stores of Arkansas as the manager of its Heber Springs store. After successfully completing three weeks of management training, Peyton began work on January 6, 2006. On January 9, Peyton was diagnosed with ovarian cancer and immediately was hospitalized. On that same day, Peyton's fiancée delivered a note, signed by Peyton's physician, to the store's assistant manager, which stated that "Floyce Peyton needs to be off work at least 1/9/06. Return date unknown."

Peyton underwent surgery on January 12. In the following days, the area manager for Fred's Stores attempted to discuss with Peyton what type of accommodation Peyton might need. At that time, Peyton responded that she did not know how long she would be out. The area manager then contacted the regional

vice-president to inform him of the situation and to advise him that the store was without a manager. On January 14, the area manager again called Peyton to let her know that the company had to “let [her] go.” The assistant manager was then made the store manager at Heber Springs.

In March, Peyton was given a limited release for work by her physician. After six months of chemotherapy, she was deemed physically able to perform the duties that would have been required of her as manager of the Heber Springs store. Peyton subsequently filed a law suit against Fred’s Stores, alleging that the company failed to accommodate her disability. The lower court granted summary judgment on behalf of the company; that decision was upheld by the Eighth Circuit on appeal.

The parties agreed that Peyton was disabled because of her illness and treatment, and that there was no information to indicate when, if ever, she would be able to return to work. They also agreed that, at the time of her hospitalization and initial treatment, Peyton was unable to perform the essential functions of her store manager job, with or without accommodation. Therefore, Peyton was not a “qualified individual with a disability” for purposes of the ADA at the time of her firing. Further, the Court found that Peyton’s inability to assert a return to work date would require the company to allow her an indefinite leave of absence which, it held, was *per se* unreasonable as an accommodation, as it would “burden [the employer] with the duty to see into the future,” which was not the intent of the ADA.

However, employers should not use this case as the basis for overlooking the interactive process required by the ADA when determining whether a reasonable accommodation exists. Because cancer treatment is specifically referenced in the ADA Amendments Act, employers should carefully review situations in which employees ask for accommodation for such treatment, and should assure that a sincere attempt is made to reasonably accommodate such individuals. Employers should pause before considering employment termination to assure that, in fact, the individual is unable to perform the essential functions of the job, and that there is no alternative to an indefinite absence.

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