

Must You Accommodate 'Indefinite' Leaves of Absence?

Many HR professionals and attorneys think the term "reasonable accommodation" in the Americans with Disabilities Act (ADA) is really a conflict of concepts. Accommodating an employee's disability often affects schedules, duties and staffing. All this affects the employer's bottom line.

So why do the courts continuously find so many employees' requests for accommodations to be reasonable? When is a request unreasonable? Last week, one court finally drew a line with an employee who demanded "indefinite" leave ...

Case in Point: Jerry Ousley, a substance abuse counselor for New Beginnings, a nonprofit group in St. Louis, went out on medical leave for a knee injury. He asked his employer to accommodate his disability by extending his leave indefinitely ... and he suggested the company hire another substance abuse counselor to take over while he was out.

In other words, "Hold my job for me forever."



New Beginnings fired Ousley while he was out on medical leave. Bold move. So Ousley sued under the ADA, saying the organization failed to provide him a "reasonable accommodation" as required by the law. The employer defended itself by asserting that Ousley was not, as the law requires, "a qualified individual able to do the essential functions of the job with or without a reasonable accommodation" because his attendance was required to properly perform his counseling job. A request for indefinite leave, the employer argued, was not a reasonable accommodation.

What happened next ... and what lessons can be learned?

The court agreed with New Beginnings that Ousley was not able to perform an essential element of his counseling job—regular and reliable attendance. Therefore, the ADA did not cover Ousley, so the lawsuit was dismissed.

The court said that because Ousley failed to provide his employer with even an estimated date for his return to work, his leave extension request amounted to one for indefinite leave. Such a request, "is unreasonable because it would unduly burden New Beginnings to pay both Ousley and a replacement worker for an indefinite period of time." ([*Ousley v. New Beginnings C-Star Inc.*](#), E.D. Mo., 10/14/11)

3 Lessons Learned ... Without Going to Court

1. The ADA is not the FMLA. This case did not involve the Family and Medical Leave Act (FMLA) for whatever reason (maybe the employee or employer did not qualify). Remember, firing an employee who is out on FMLA is playing with fire. Know which laws apply and which ones don't.

2. To accommodate, you don't have to hire or reassign. The court wrote, "New Beginnings is not

obligated to hire additional employees or reassign other workers to assist a disabled employee in performing the essential functions of his or her job.”

3. Deny requests for unreasonable accommodations. This court held that a request for a never ending leave of absence was unreasonable. An employee who says, “I’ll be back!” needs a date.

Training Podcast: The ADA

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Does dealing with employee-leave requests make you want to take leave? Learn the latest leave-coordination strategies to keep disruption and liability to an absolute minimum. Stop wondering if you’re making the right decisions – and start managing employee leave with confidence. Employee Leave Workshop will show you how. [Listen to a free 90-second clip now!](#)