

# Must we indefinitely retain injured employee who has been out on workers' comp?

**Q. We have an employee who has been out with a work-related back injury for more than six months. We have not received any indication from her doctor about when she will be able to return. Must we keep her on workers' compensation leave status indefinitely? Do we have to indefinitely hold open her job?**

**A.** The short answer is "no." Minnesota workers' compensation law does not require indefinite leave for an employee who has suffered a work injury.

An employee on an indefinite workers' compensation leave who has exhausted any FMLA leave may be lawfully terminated and has no absolute right to reinstatement to her current position at the time she is deemed medically able to return to work.

That being said, workers' compensation law requires employers to undertake a fact-based analysis similar to the ADA's reasonable accommodation analysis. When an employer has been provided a definite return-to-work date, even one that is fairly distant, it must analyze whether it can accommodate the employee with an extended leave of absence and keeping her position open or whether this would be an undue hardship.

Minnesota courts have generally held that it is not reasonable to accommodate an indefinite, lengthy leave when the employee cannot establish that she will ever be able to return to work or when that might occur. If terminated, however, such an employee should be free to reapply for a job once she is physically able to return to work (with or without a reasonable accommodation).

Beware possible legal exposure for unlawful retaliation against an employee for asserting workers' comp rights. Make sure you are acting consistently with other leave of absence situations, including leaves necessitated for reasons other than workers' compensation covered injuries.