



News & Updates

FEDERAL COURTS SIGNAL THAT DENIAL OF A REQUEST FOR INDEFINITE LEAVE MAY NOT VIOLATE THE ADA

Under the American with Disabilities Act (ADA), certain employers are required to make a reasonable accommodation to a qualified employee who has a disability. There is a growing trend in the federal courts that requests for an indefinite amount of time off from work due to a disability do not qualify as a reasonable accommodation and that an employer who denies such a request has not violated the ADA.

In *Kieffer v. CPR Restoration & Cleaning Service, LLC*, a supervisor injured his shoulder in August 2013 and filed a claim for Workers' Compensation benefits. Since he was not able to drive he requested a driver as an accommodation. This request was denied. The supervisor then requested, and was granted, leave beginning in September 2013. Around October 18, 2013, he told his employer he would return to work on November 13, 2013. Strangely, the employee returned to work unannounced on November 4, 2013, and his employer terminated him on the spot. He filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC). When the 180-day period had elapsed, Kieffer filed an action in the United States District Court for the Eastern District of Pennsylvania alleging violations of the ADA, the Family and Medical Leave Act (FMLA) and applicable state law.

After discovery, including the deposition of the plaintiff, CPR Restoration filed a motion for summary judgment on various grounds, and its motion was granted. The plaintiff appealed to the Third Circuit Court of Appeals, which affirmed the lower court's decision holding that the leave requested was not a reasonable accommodation. The court reviewed the deposition testimony in the case and found that the request for leave was "worded loosely as being for a few weeks or a few months." The court went on to find that there was no record that leave was requested as an accommodation or that it was requested for a definite rather than an open-ended period of time.

The Third Circuit Court of Appeals noted that other circuits have found that indefinite leave is not a reasonable accommodation, citing *Rascon v. U.S. West Communications, Inc* (Fifth Circuit). According to the court in *Kieffer*, the "basis for such holdings reflects the fact that an accommodation of a short period of definite leave would enable an employee to perform his essential job functions in the near future, as for example if the leave was taken in order to schedule a future course of treatment. The request for leave here specified neither a leave for a definite period, nor a return in the near future."

The two cases referenced above demonstrate that an employer may properly deny a request for leave under the ADA where the employee does not specify the period of time he will be off from work due to the disability at issue. It is important for employers and employees alike to be on the same page as far as how much and for how long a particular disability will disrupt business. An employer needs to be able to plan for worker shortages, and the courts are now recognizing this by restricting somewhat an employee's right to leave under the ADA.

For more information on how these federal court decisions may affect your business, please contact:

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