



Leave to Accommodate a Disability May Stretch Endlessly

by Jillian Barron and Nate Bailey

The Americans with Disabilities Act ("ADA") may require employers to allow disabled employees well more than six months of unpaid leave as a reasonable accommodation, according to a federal district court in western Washington. There is no doubt that unpaid leave beyond the three months guaranteed by the Family and Medical Leave Act ("FMLA") can be a reasonable accommodation under the ADA. But the district court's October 23 decision in [*Casteel v. Charter Commc'ns, Inc.*](#) suggests that such a reasonable accommodation might include unpaid leave of surprising length.

Background

Charter's employee handbook provided that employees may be entitled to two 30-day unpaid leaves of absence as a reasonable accommodation under the ADA. Including the 12 weeks provided by the FMLA, Charter's policies thus allowed disabled employees up to five months of unpaid leave as a reasonable accommodation.

Between November 2008 and July 18, 2009, Casteel exhausted her 12 weeks of FMLA leave due to symptoms of undiagnosed cancer. After being diagnosed in early July, she asked Charter for an additional 30 days of medical leave. Her doctor provided a note stating that her condition would probably last six months, but he anticipated that she could return to work on August 15, 2009. Charter granted Casteel's request.

In mid-August, Casteel's doctor notified Charter that she would be unable to return to work until September 15. Charter granted Casteel's request for another 30 days of leave in accordance with its policy. But in September, Casteel's doctor wrote another note, this time stating that she would not be able to return to work until February 4, 2010. Casteel thus expected to be absent from work for more than nine months including her FMLA leave.

In October, Charter called Casteel and asked if any accommodation would allow her to return to work earlier. Casteel said no and reiterated that she could not return to work before February 4. Charter immediately sent her a letter terminating her employment citing its leave policy and her inability to work.

Casteel sued, claiming that Charter violated the Washington Law Against Discrimination and the ADA by discriminating against her on the basis of her disability and for failing to provide a reasonable accommodation. Charter moved for summary judgment, arguing that Casteel was not a qualified individual with a disability because she was unable to perform the essential functions of the job. Charter also argued that Casteel had requested a *de facto* indefinite leave of absence, which is unreasonable as a matter of law.

The Court's Analysis

The court first noted that a "qualified individual with a disability" is an employee who can perform the essential job functions with or without a reasonable accommodation. The court also noted that a period of extended leave can be a reasonable accommodation if it does not constitute an undue hardship for the employer. Relying on those principles, the court reasoned that an employee is a qualified individual if an extended period of leave would allow her to perform the essential job functions without imposing an undue hardship on the employer.

The court next considered whether Casteel had requested an indefinite leave, which some courts have found is not a reasonable accommodation. Charter argued that Casteel's pattern of missing her expected return-to-work dates, each time asking for more leave, showed she was requesting indefinite leave. The court disagreed, finding that despite missing two earlier return-to-work dates, the doctor's note pegging her return for February 4 was evidence that Casteel requested only *definite* leave. The court noted that February 4 was consistent with the doctor's original prediction that Casteel's condition might last six months, perhaps giving reason to believe that this leave request would be Casteel's last. This evidence was sufficient to defeat Charter's motion for summary judgment.

Take Home

Charter's dilemma is one that many employers face—what to do when an employee's disability-based leave goes on and on, with repeated requests for a new return date, which then must be extended yet again. In *Casteel*, the district court made clear that Charter could not rely exclusively on the extraordinary length of an employee's leave as the basis for denying that accommodation. The court would require employers to analyze each situation independently to determine whether requested leave of *any* length would impose an undue hardship. The case further suggests that a doctor's note citing a specific return date may be sufficient to avoid a finding of indefinite leave, even when the doctor has pushed back the date again and again. In contrast, some courts have held that employers need not accommodate such extended leave. *See, e.g., Hwang v. Kan. State Univ.*, 753 F.3d 1159 (10th Cir. 2014) ("It perhaps goes without saying that an employee who isn't capable of working for [more than six months] isn't an employee capable of performing a job's essential functions").

For the time being, employers in Washington State should consider each request for disability leave individually, analyzing the burden on the business and other employees before deciding whether to provide or deny long-term leave as an accommodation.

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