

## **Long-Term Accommodations Under the ADA—Are Courts Following the Seventh Circuit’s 2017 Decision in *Severson*, which found that a Multi-Month Leave of Absence is not a Reasonable Accommodation?**

It is well established that an indefinite leave of absence is generally not a “reasonable accommodation” under the Americans with Disabilities Act (“ADA”). However, employers have often struggled with how to handle situations when a worker who has already taken a large amount of leave (usually, through the FMLA) seeks additional time off to recover.

For employers in Illinois, Wisconsin and Indiana, within the 2017 *Severson v. Heartland Woodcraft* decision, the Seventh Circuit Court of Appeals provided an employer-friendly ruling that a multi-month (non-FMLA) leave of absence is not a reasonable accommodation under the ADA. 872 F.3d 476 (7th Cir. 2017). In *Severson*, an employee exhausted 12 weeks of FMLA leave due to a back condition. *Id.* at 478. The employee then asked for an additional leave of absence to undergo and recover from disc decompression surgery. *Id.* The employer was told that recuperation time was typically 2 months for this type of surgery, which the employer refused to accommodate. *Id.* at 479.

Prior to the Court’s ruling in *Severson*, the Equal Employment Opportunity Commission (“EEOC”) filed a brief as *amicus curiae* in support of the terminated employee. *Id.* at 482. The EEOC proposed that a leave of absence “should qualify as a reasonable accommodation when the leave is: (1) of a definite, time-limited duration; (2) requested in advance; and (3) likely to enable the employee to perform the essential job functions when he returns [to work].” *Id.* However, the *Severson* court dismissed this argument, holding that its adoption would “transform” the ADA into “an open-ended extension of the FMLA” — an interpretation the court called “untenable.” *Id.*

Accordingly, in deeming the requested 2-month leave of absence as unreasonable, the Seventh Circuit found that a “long-term leave of absence cannot be a reasonable accommodation.” *Id.* at 481. On the other hand, “[i]ntermittent time off or a short leave of

absence—say, a couple of days or even a couple of weeks—may, in appropriate circumstances, be analogous to a part-time or modified work schedule.” *Id.* Moreover, the Court further found that “an employee who needs long-term medical leave cannot work and thus is not a ‘qualified individual’ under the ADA.” *Id.* at 479.

### **Across the Nation, Courts Have Reacted to *Severson*.**

Of course, the EEOC and some courts disagree with the *Severson* court’s legal analysis, while other jurisdictions have adopted the Seventh Circuit’s holding. This memorandum summarizes decisions of courts outside the Seventh Circuit that have had an opportunity to weigh in as to whether a multi-month leave of absence may or may not constitute a reasonable accommodation.

#### **Decisions Rejecting *Severson*.**

##### **1. *Liu v. DeJoy* – U.S. District Court for the Central District of California, 2023.**

In *Liu*, an employee sought medical leave to recover from a back injury that he suffered during a car accident. Ultimately, the District Court denied summary judgment and rejected the U.S. Postal Service’s arguments that an employee’s request for six-weeks of leave was unreasonable. Not only did the employer attempt to have the Court apply the Seventh Circuit’s analysis in *Severson*, but it also cited case-law from other jurisdictions holding that an indefinite leave of absence is not a reasonable accommodation.

The *Liu* Court refused to apply this case-law, and while it did not specifically address the *Severson* court’s holding related to multi-month leaves of absence, the *Liu* Court explained that: “[e]ven if binding on this Court, USPS’s cases [including *Severson*] are not applicable. The record does demonstrate that Liu requested indefinite leave, but only six weeks of leave. *Liu v. DeJoy*, 664 F. Supp. 3d 1030, 1047 (C.D. Cal. 2023).

##### **2. *EEOC v. Manufacturers & Traders Tr. Co.* - U.S. District Court for Maryland, 2019.**

Fully rejecting *Severson*, this U.S. District Court stated that there was: “good reason to doubt the soundness of *Severson*’s logic.” In *EEOC v. Manufacturers & Traders Tr. Co.*, a bank had a generous paid leave policy. Although an individual on extended leave could have their position replaced under the policy, upon return, the employer was supposed to consider reassignment as reasonable accommodations.

Notwithstanding, a branch manager needed an extended, multi-month leave for a high-risk pregnancy. During the leave, her position was replaced, but after she recovered from her medical condition, the employer allegedly failed to reassign her to other branches for which she was qualified. During litigation, the employer requested that the Court adopt the *Severson* decision’s holding to create a *per se* rule that any extended leave could not be a “reasonable accommodation” under the ADA. However, granting the plaintiff’s motion for summary judgment on a failure to accommodate claim, the District Court rejected this argument, as well as the holding in *Severson*. *Equal Emp. Opportunity Comm'n v. Manufacturers & Traders Tr. Co.*, 429 F. Supp. 3d 89, 108 (D. Md. 2019).

### ***3. Estep v. Forever 21 - U.S. District Court for Oregon, 2018.***

Similar to the Maryland case above, in *Estep*, citing *Severson*, the employer argued that the Court should adopt a rule that extended leave of up to a year was *per se* unreasonable. Here, a District Manager was diagnosed with cancer and requested multiple leaves for treatment, which totaled up to one year.

However, refusing to follow *Severson*, the *Estep* Court cited Ninth Circuit precedent holding that extended leave may be a reasonable accommodation, as long as it does not pose an undue hardship to the employer. *Estep v. Forever 21 Retail, Inc.*, No. 3:16-CV-02214-SB, 2018 WL 5924497, at \*9 (D. Or. Nov. 13, 2018).

#### 4. *Ruiz v. Paradigmworks – 9<sup>th</sup> Circuit U.S. Court of Appeals, 2019*

While the Ninth Circuit Court of Appeals has never expressly cited, followed, or rejected *Severson*, it did reverse a U.S. District Court for the Southern District of California decision that relied upon *Severson*.

Initially, citing *Severson*, the lower court granted summary judgment in favor of the employer. As background, an outreach admissions counselor suffered a broken ankle and underwent surgery, which resulted in an initial four-month unpaid leave of absence. After her doctor opined that she would not be able to return to work for another two months, her employment was terminated. Following *Severson*, the District Court held that based on the extended medical leave, the employee was not a “qualified individual” under the ADA. *Ruiz v. Paradigmworks Grp., Inc.*, No. 16-CV-2993-CAB-BGS, 2018 WL 1010475, at \*4 (S.D. Cal. Feb. 22, 2018), *rev'd and remanded*, 787 F. App'x 384 (9th Cir. 2019).

However, although it did not expressly address *Severson*, the Ninth Circuit Court of Appeals reversed the lower court’s decision by finding that there was a possibility (to be resolved by a jury) that the employee was entitled to the extended, multi-month leave under the ADA. In that respect, the Court stated that “an extended medical leave, or an extension of an existing leave period, may be a reasonable accommodation if it does not pose an undue hardship on the employer.” The Court also explained that the employee’s “doctor provided a finite estimate of five weeks, and ‘the mere fact that a medical leave has been repeatedly extended does not necessarily establish that it would continue indefinitely’ . . . Further, even if Ruiz ultimately needed to extend her medical leave longer, a broken ankle is the type of injury from which people generally heal in the foreseeable future.” *Ruiz v. ParadigmWorks Grp., Inc.*, 787 F. App'x 384, 386 (9th Cir. 2019)

## **Decisions Following, Approving and/or Adopting *Severson***

### **1. *Hossain v. Duke Energy - U.S. District Court for South Carolina, 2020***

Granting summary judgment for the employer, the District Court agreed that following an employee's 18-month leave of absence, the employer was not under an obligation to accommodate his leave request, where the employee estimated a return to work approximately three to eight months later. Notably, in *Hossain*, the District Court also cited persuasive precedent holding that requests for five-month, eleven-month, and indefinite leaves were not reasonable accommodations. *Hossain v. Duke Energy*, No. 4:18-CV-0404-SAL-TER, 2020 WL 6276879, at \*4 (D.S.C. July 21, 2020), report and recommendation adopted, No. 4:18-CV-00404-SAL, 2020 WL 4932277 (D.S.C. Aug. 24, 2020).

### **2. *Jones v. Southwest Gas Corp. - U.S. District Court for Nevada, 2019***

In this case, an employee needed leave to treat a neurological condition, which her physician indicated could last for up to a year. The employee first requested leave on October 16, 2017 until October 27, 2017, which was then extended through December 1, and again extended through January 1, 2018. Because the doctor's notes said that the return-to-work date was subject to change, in November, the employer determined that it could not accommodate this extended leave, which was considered indefinite.

Granting summary judgment and citing *Severson*, the District Court agreed that the leave requests were indefinite, and as such, did not constitute reasonable accommodations. *Jones v. Sw. Gas Corp.*, No. 218CV1142JCMDJA, 2019 WL 6729314, at \*6 (D. Nev. Dec. 11, 2019).

### **3. *Forge v. Sisters of Charity of Leavenworth - U.S. District Court for Kansas, 2019***

In *Forge*, the District Court agreed that an employer was not required to extend a leave of absence for an additional 30-days where an employee had already taken six months of leave to deal with a flesh-eating bacterial condition. Notably, based on the fact that the individual had already taken a significant amount of leave, the *Forge* Court reasoned that the employee's:

“request for yet another 30-day leave was essentially a request for indefinite leave—an accommodation that is unreasonable as a matter of law.” *Forge v. Sisters of Charity of Leavenworth*, No. 18-2204-JWL, 2019 WL 4241130, at \*9 (D. Kan. Sept. 6, 2019).

**4. *Brothers v. STVT-AAI Education, Inc. - U.S. District Court for the Eastern District of North Carolina, 2019.***

In *Brothers*, the District Court partially dismissed claims raised by a plaintiff, who was a Senior Admissions Representative for a College, who needed an extended leave-of-absence to address Stage 3 breast cancer. Ultimately, the College terminated her employment a few months after the plaintiff had exhausted her FMLA entitlement.

Citing *Severson*, the *Brothers* Court agreed that the employee’s “requested accommodation is unreasonable as a matter of law because it would amount to an indefinite leave, or at least a months-long extended leave beyond the 12 weeks allotted by the FMLA.” *Brothers v. STVT-AAI Educ., Inc.*, No. 7:19-CV-19-BO, 2019 WL 3987752, at \*3 (E.D.N.C. Aug. 22, 2019).

**5. *Ezzell v. City of Plant City - U.S. District Court for the Middle District of Florida, 2017.***

Following *Severson*, the *Ezzell* Court granted summary judgment in favor of the employer on the accommodation where the public employer had already provided four extra weeks of leave beyond that required by the FMLA and there was no clear indication of when the worker would be returned to full duty. The City maintenance worker exhausted his FMLA leave to undergo back surgery and was even released to return to light duty. Nevertheless, the *Ezzell* Court ruled that the City was not required to create a light-duty position as a reasonable accommodation, since it would eliminate the essential duties of the position. *Ezzell v. City of Plant City*, No. 8:16-CV-1009-T-AEP, 2017 WL 11741412, at \*13 (M.D. Fla. Oct. 17, 2017).

**Conclusion**

Multi-month leaves of absence can make it difficult for public sector employers to staff their departments and allocate resources to meet the needs of the public. As shown above, courts vary widely in whether such multi-month leaves are a reasonable accommodation. If your jurisdiction is grappling with multi-month or indefinite leaves of absence, consult with an attorney in your area to determine how these cases, and others like them, may affect your handling of leave requests.

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