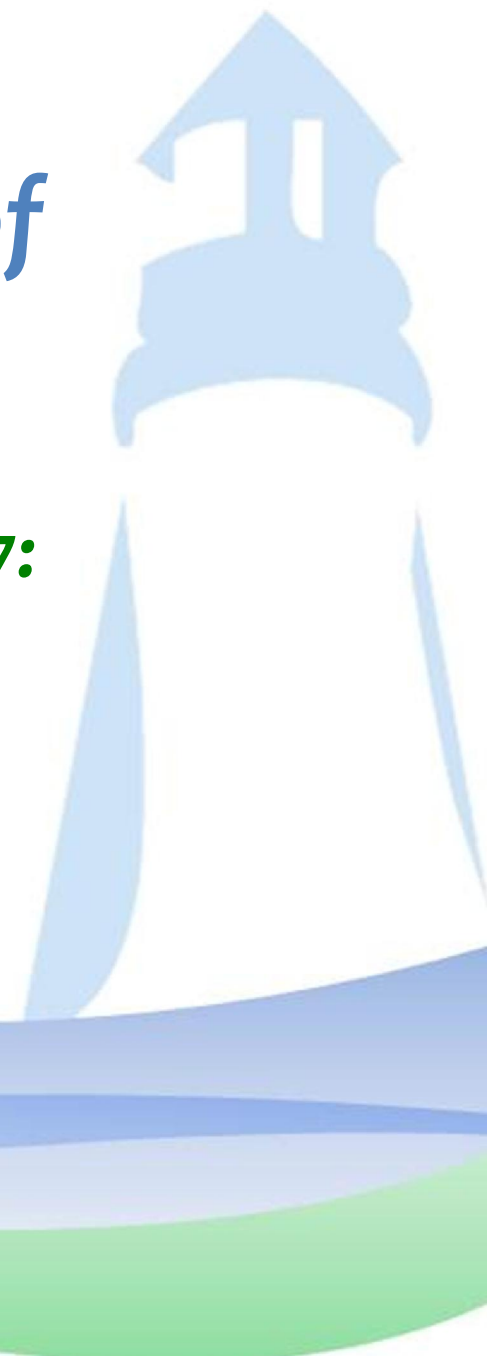


Staying Afloat in the Sea of Employment Law

*Labor Law Case Developments for 2017:
Calm Waters or Sea Changes?*

By Jonathan Cardosi, Duffy & Sweeney



Severson v. Heartland Woodcraft

What's the Issue?

- The trial court ruled that the employer was not obligated to fulfill Plaintiff's request for a reasonable accommodation, which consisted of a three-month leave of absence **after** his FMLA leave expired
- The appellate court needed to determine whether the ADA **allows for medical leave as a reasonable accommodation**

Severson v. Heartland Woodcraft

- *“The ADA is an antidiscrimination statute, **not a medical leave entitlement**”*
- *The Act forbids discrimination against a “qualified individual **on the basis of disability**”*
- *A “qualified individual” with a disability is a person who “with or without reasonable accommodation, can perform the essential functions of the employment position”*

Severson v. Heartland Woodcraft

- “The term “reasonable accommodation” is expressly limited to those measures that will **enable the employee to work**
- An employee who needs long-term medical leave cannot work and this is not a **“qualified individual”** under the ADA.
- “Simply put, an extended leave of absence does not give a disabled individual the means to work; **it excuses his not working”**

Severson v. Heartland Woodcraft

Practice Points for Employers

- Reassignment to a vacant position may be a reasonable accommodation under the ADA, but, in both the Seventh and First Circuits (RI), the **burden is on the Plaintiff** to show that there are in fact vacant positions available at the time of termination
- An employer is **not** required to “create a new job or strip a current job of its principal duties to accommodate a disabled employee”

Goss v. Umicore, USA, Inc.

- FMLA entitles an eligible employee to a **total of 12 workweeks of leave during any 12-month period** because of a serious health condition that makes the employee unable to perform the functions of his or her position
- The pertinent regulations place the **burden on the employee** to notify the employer of the need for such leave
- Where the leave is **unforeseeable**, an employee must provide notice to the employer **as soon as practicable** under the facts and circumstances of the particular case
- Employee must supply **sufficient information** for an employer to **reasonably determine** whether the FMLA **may apply** to the leave request

Goss v. Umicore, USA, Inc.

Holding

- Plaintiff cannot establish that his first bout of bronchitis satisfies the statutory definition of “serious health condition”
- Under the FMLA, “serious health condition” is defined as “an illness, injury, impairment, or physical or mental condition that involves (A) inpatient care in a hospital, hospice, or residential medical facility; or (B) continuing treatment by a health care provider”
- **No** inpatient treatment for bronchitis
- **No** continuing treatment by health care provider

Goss v. Umicore, USA, Inc.

Holding

- A reasonable jury could believe the notices contained “**sufficient information** for an employer to **reasonably determine** whether the FMLA **may apply**”
- Plaintiff “stated the serious nature of his condition, details known to him at the time about his condition, and the length – in excess of ten days – of his continued absence”
- Plaintiff raised a genuine factual issue as to whether he satisfied the FMLA requirements

Goss v. Umicore, USA, Inc.

Practice Points for Employers

- Be aware of all communications between supervisors and employees concerning health issues and absences, **including texts**
- In Rhode Island, the employee need only provide enough information to show that he or she **may** need FMLA leave, and need not name the FMLA specifically
- Courts will place the burden on the employer to obtain any additional information required to determine if an employee is eligible

Mancini v. City of Providence

Must the Captain go down with the ship?

- Sergeant in the Providence Police Department sues the City of Providence **and** the Chief of Police for alleged violations of the Rhode Island Fair Employment Practices Act
- Alleged that he was illegally denied a promotion to lieutenant based upon the promotional process defined in the CBA

Mancini v. City of Providence

- Court considered the approaches of other jurisdictions and concluded that the statute does **not** authorize the imposition of individual liability
- Public Policy favors the discretion of management to make key personnel decisions without fear of legal action

Comments? Questions?

Jonathan Cardosi

401.455.0700

jcardosi@duffysweeney.com

