



Could this be you? Summarily terminating an employee with a disability after 12 weeks of family and medical leave

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Recently, we worked with a client who was considering terminating an employee with autoimmune disease who had exhausted his 12 weeks of Family and Medical Leave Act (FMLA) leave. At the end of his FMLA leave, the employee was unable to return to work and told the client that he needed an additional month of unpaid leave. Knowing that the employee had exhausted his FMLA leave, the client was inclined to deny the employee's additional request for leave and to terminate his employment.



Author page »

We explained to the client that denying the employee the additional leave and terminating his employment presented certain legal risks. Although the employer had granted, and the employee had exhausted, his 12 weeks of job-protected FMLA leave, that did not end the legal analysis. Because the employee has been significantly afflicted by this autoimmune disease, the employee was most likely a person with a disability under the Americans with Disabilities Act (ADA), and the client needed to consider its ADA obligations, as well as any of its other applicable leave policies.



Author page »

We reminded the client that employees with ADA disabilities are entitled to reasonable accommodations of their essential job functions unless it would cause the employer an undue hardship. An employee with an ADA-protected disability who needs additional leave may be entitled to such leave if there is no other effective accommodation that will allow the employee to return to work and perform the employee's essential job functions, absent an undue hardship to the employer. We also shared that in order for the leave to be an effective accommodation, the employer typically must be able to reinstate the employee to his position at the conclusion of the leave barring intervening operational changes that meet the undue hardship standard.

Since violations of the ADA can expose employers to awards of back pay, front pay, compensatory damages (e.g., pain and suffering), punitive damages and attorney's fees, the client decided to provide the employee with additional leave subject to the employee's submission of appropriate medical documentation justifying the need for the leave time.