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Independence Day

“Tip of the Month”

Accommodating Disabilities Under the FMLA and ADA

When employees are injured or disabled or become ill on the job, they may be entitled to medical or disability-related leave under two federal laws: the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA).

Should the duration of an employee’s leave period under the FMLA (up to 12 weeks during a 12-month period) be insufficient to accommodate the injury or disability, the employee may be entitled to additional leave time if the disability also falls within the broad scope of ADA.

If notified that a disabled employee is unable to return to work following exhaustion of the FMLA leave period, the employer must consider whether the employee has an ADA protected disability before terminating employment. If the employee’s disability is covered under the ADA, the employer may have a duty to grant additional unpaid time off and a duty to reinstate the employee following leave. An employer’s reinstatement obligations may fall into one of the following categories:

Reinstatement to the same position: The ADA requires employers to hold employees’ jobs open as part of the employers’ reasonable accommodation efforts required under the ADA.

Reinstatement to a vacant equivalent position. Employers who cannot maintain the vacant position during an ADA leave without incurring undue hardship may reassign and reinstate the employee to a vacant equivalent position for which the employee is qualified, at the same level of pay and benefits as the employee’s original position.

Reinstatement to a vacant lesser position. If the original or an equivalent vacant position is not feasible without causing the employer undue hardship, the disabled employee may be assigned to a vacant lower-level position wherein the employer does not have to match the employee’s original pay and benefits.

No reinstatement. If undue hardship will result from the above-three options, the employer is not required to reinstate the employee following the period of leave. However, the employer will bear a heavy burden to show that none of the foregoing options were possible without causing undue hardship.

For ADA purposes, undue hardship is defined as “significant financial or operational difficulty or expense” in relation to the size of the employer, the resources available, and the nature of the operation.

If your company has questions on its rights and obligations with respect to federal employment law matters, then call the attorneys at Mesmer & Deleault today at (603)668-1971, or contact us by email at mailbox @ biz-patlaw.com.

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