

Legal Briefings

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Employee Leave as a Reasonable Accommodation Under the Americans with Disabilities Act

Introduction

An employee with cancer is having adverse reactions to chemotherapy and asks for time off from work to get better. Does the Americans with Disabilities Act (ADA) require that the employer grant this request?² The answer is “Yes” according to most courts and the Equal Employment Opportunity Commission (EEOC).³ A leave of absence is considered a reasonable accommodation under the ADA even though it differs from most reasonable accommodations, which involve changes to the manner in which a job is performed. Time off from work, in the form of a leave of absence, may enable an employee with a disability to retain their job while allowing an employer to retain a productive employee.⁴ This legal brief will explore the issues surrounding employee leave as a reasonable accommodation under the ADA.⁵

ADA General Standards for Employee Leave

Generally, a reasonable accommodation is “any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.”⁶ Reasonable accommodations may include “modified work schedules” and

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“modifications of ... policies.”⁷ Courts basically are in uniform agreement with the EEOC’s position that under the ADA statute and regulations, “the use of accrued paid leave, or unpaid leave, is a form of reasonable accommodation when necessitated by an employee’s disability.”²

The general requirements surrounding leave are discussed in *EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship*, No. 915.002 (10/22/02). The employee must be a qualified individual with a disability, able to perform the essential functions of the job with or without reasonable accommodation.⁹ A reasonable accommodation must be provided unless it causes an undue hardship for the employer.¹⁰ However, an employer may chose from effective reasonable accommodations.¹¹ If an employer feels that an undue hardship exists, it should engage in the interactive process with the employee in order to determine an appropriate accommodation while making an individualized factual assessment of the situation.¹² “[T]he capabilities of qualified individuals must be determined on an individualized, case by case, basis.”¹³

Employee leave may be paid or unpaid but an employer does not have to provide paid leave to an employee with a disability “beyond that which is provided to similarly situated employees.”¹⁴ When paid leave is exhausted, unpaid leave should be provided as long as the leave is reasonable and does not cause an undue hardship, defined as “significant difficulty or expense.”¹⁵ The leave does not have to be taken all at one time as modified or part-time schedules may be required as a

reasonable accommodation.¹⁶ After the leave, the employee should be returned to the same job absent undue hardship. If there is an undue hardship, the employer must then examine reinstatement to an equivalent position. If this also constitutes an undue hardship, then reinstatement to a lesser position should be considered.¹⁷ The employee cannot be penalized for the leave and reasonable modifications to attendance or other policies may be required as part of the accommodation.¹⁸

If there is a reasonable accommodation other than leave that the employer desires to provide, such as reallocation of marginal functions or temporary reassignment, the employer may do so if the reasonable accommodation would be effective and eliminate the need for leave.¹⁹ However, the accommodation provided cannot interfere with the “employee’s need to address his/her medical needs.”²⁰ Some of these requirements are different that the standards under the Family and Medical Leave Act (FMLA).²¹

Examining an employee’s reasonable accommodation request requires a fact-intensive, individualized assessment in each case based on the circumstances surrounding that particular employee and employer.²² The individualized assessment is the cornerstone of the ADA.²³ Such an approach protects people with disabilities from “deprivations based on stereotypes or unfounded fear.”²⁴ In determining whether the leave constitutes an undue hardship for the employer, courts have rejected the application of *per se* company rules to deny leave as the ADA may require modifications to a company’s policies or procedures.²⁵

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In general, in ADA cases the burden of proof is on the employee to establish the following elements:

- (1) He or she has a disability;
- (2) He or she is otherwise qualified for the position, with or without reasonable accommodation;
- (3) He or she suffered an adverse employment decision;
- (4) The employer knew or had reason to know of the employee's disability; and
- (5) The position remained open while the employer sought other applicants or the disabled individual was replaced.²⁶

In a failure to accommodate case, the employee must also show that a reasonable accommodation existed.²⁷ If the employer does not grant the leave request, then it has the burden of proof in establishing that the leave request is unreasonable, constituting an undue hardship.²⁸

The Request for Leave as A Reasonable Accommodation

Generally, the reasonable accommodation process begins with a request by the employee with a disability. The request can be in “plain English” and no specific words must be used in requesting an accommodation. Any statement that lets the employer know that an individual “needs an adjustment or change at work for a reason related to a medical condition” is sufficient under the ADA.²⁹ Once an employer knows of a reasonable accommodation request, the employer

has a duty to “engage in the interactive process.”³⁰

Even without a specific reasonable accommodation request, the interactive process may be triggered if an employer knows of an employee's disability and has a reasonable basis to believe that a reasonable accommodation may be needed.³¹ This is true whether or not the employee specifically requests leave as reasonable accommodation, as the employer's notice of the employee's disability creates an affirmative duty to engage in a great deal of communication with the employee to find the appropriate accommodation.³²

Once a reasonable accommodation is provided, the employer's obligation under the ADA is not terminated. “The duty to provide reasonable accommodation is a continuing one and not exhausted by one effort.”³³ For example, in *Humphrey v. Memorial Hospital Association*, the court held that even though the employer provided the employee an accommodation by allowing a flexible start time, the employer had the continuing obligation to provide leave as an alternative form of accommodation when the flexible start time was not proving effective.³⁴ Even if an employee is terminated for failing to return to work after a period of leave, courts have held that the receipt by the employer of a second leave request required that the employer reconsider the termination.³⁵ In *Criado v. I.B.M. Corp.*, the court held that a one-month leave of absence does not absolve an employer's duty to accommodate because the duty to accommodate is not exhausted by one effort.

Medical Information Supporting a Request for Leave

An employer may request reasonable medical documentation to support a leave request only if the nature of disability and functional limits are not obvious.³⁷ Reasonable medical documentation is defined as, “only the documentation that is needed to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation.” An employer may request that the “documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional.” According to the EEOC, “in most situations an employer cannot request a person’s complete medical records” although an employer may request that the employee execute a “limited release allowing the employer to submit a list of specific questions to the health care or vocational professional.”³⁸

When requesting medical documentation, the employer should specify the information sought from the employee or health care or rehabilitation professional.³⁹ As an alternative to requesting medical information, “an employer may simply discuss with the person the nature of his/her disability and functional limitations.” It is recommended that the reason for the information request should be made clear to the employee. All medical information received by the employer should be kept confidential and stored separately from the employee’s personnel file.⁴⁰

If the employee fails to provide appropriate documentation, then the employer is not required to provide a reasonable accommodation.⁴¹ In *Jackson v. City of Chicago*, the employee failed to submit requested medical documentation to support her reasonable accommodation request.⁴² Therefore, the court held that the employee “failed to engage in the interactive process” and denied her accommodation request.⁴³

Lara v. State Farm Fire & Casualty Co. addressed the issue of medical documentation supporting a request for leave as a reasonable accommodation.⁴⁴ In such situations, the court held that an employer may require medical information regarding the expected duration of the employee’s disability, not just the expected duration of the leave.⁴⁵ Mr. Lara requested three to six months of additional leave but failed to supply information regarding the expected duration of his impairment. As a result of this failure, the court viewed the request as being for indefinite leave, which the court found to be unreasonable. Therefore, the court found in favor of the employer.⁴⁶

Whether Leave Constitutes an Undue Hardship

As mentioned above, reasonable accommodations must be granted unless the accommodation would result in an undue hardship. As stated by the EEOC:

“The only statutory limitation on an employer's obligation to provide "reasonable accommodation" is

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that no such change or modification is required if it would cause "undue hardship" to the employer. "Undue hardship" means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but also to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.⁴⁷

Whether leave would constitute an undue hardship is a fact specific inquiry based on the particulars of the situation involved. In cases where the employer deems that leave would cause an undue hardship, the employer still must engage in the interactive process to determine whether there are other appropriate accommodations.⁴⁸

The Amount of Leave

There is no set period of leave that is required under the ADA other than a "reasonable" period causing no undue hardship.⁴⁹ What may be a reasonable amount of leave in one situation, may not be reasonable in another situation after considering the employee's position, the financial impact of the leave on the employer, the employer's resources, and the employer's ability to conduct business, among other considerations.⁵⁰ The burden is on the employer to show that the length of leave requested would cause an undue

hardship. If the employer cannot make this showing, the accommodation should be granted.⁵¹ The following cases will help demonstrate the fact intensive nature of this inquiry.

In *Garcia-Ayala v. Lederle Parenterals, Inc.*, the Court held that a reasonable accommodation request for over four months of leave was reasonable.⁵² In *Garcia-Ayala*, an employee with breast cancer was terminated pursuant to company policy after being on medical leave and short-term disability benefits for one year.⁵³ During the year, the employer used temporary employees to perform Ms. Garcia's job duties. The temporary employees did not result in an extra cost to the employer above the salary that would have paid to Ms. Garcia had she been able to work. At the end of the one-year period, the employer notified Ms. Garcia that she was going to be terminated due to a blanket company policy limiting leave to one year. Ms. Garcia requested that her job be kept open for her for approximately five additional months as her doctor expected her to be able to return to work after that time. The company denied her request.⁵⁴

The court in *Garcia-Ayala* stated that the employee's need for recovery and the company's resources are the factors to consider in determining a reasonable length of time for leave.⁵⁵ Citing the U.S. Supreme Court, the *Garcia-Ayala* court held that enforcing *per se* employment policies that mandate termination of employees after a set period of time on leave violate the ADA, as individualized assessments are "essential" to disability claims.⁵⁶ The court found that Ms. Garcia's request for leave would not

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Cause an undue hardship as the employer provided up to a year of leave to all employees pursuant to company policy and could continue using temporary workers to perform Ms. Garcia's job.⁵⁷ Temporary workers did not result in an increased cost to the employer and performed the work satisfactorily; hence there was no undue hardship.⁵⁸ The Court also noted that, "Some employees, by the nature of their disability, are unable to provide an absolutely assured time for their return to employment."⁵⁹ However, this "does not necessarily make a request for leave to a particular date indefinite" or unreasonable as "[e]ach case must be scrutinized on its own facts."⁶⁰

While the court in *Garcia-Ayala* found that a total of seventeen months of leave could be reasonable, under different facts, another court found that a leave request for six months was unreasonable.⁶¹ In *Epps v. City of Pine Lawn*, a police officer for a small municipality requested six months of leave as a reasonable accommodation. The court held that the city "could not reallocate Mr. Epp's job duties among its small staff of fifteen to twenty-two police officers."⁶² The amount leave was not vital to the Court's decision. Instead, the Court concluded that reallocating the employee's job functions would be unduly disruptive to the City of Pine Lawn.⁶³

100% Healed Policies

As noted above, the court in *Garcia-Ayala*, found that a *per se* employment policy requiring termination of employees after one year on medical leave violated the

ADA as it failed to involve the mandated individualized assessment.⁶⁴ A District Court in Illinois reached the same conclusion in *EEOC v. Sears, Roebuck & Co.*⁶⁵ Due to the employer's policy of automatic terminating employees after one year on disability leave, the court allowed a class action against Sears to proceed.

A related *per se* policy that has been held to violate the ADA is one where employers require that employees be employees be "fully healed" or "100% healed" to return to work after leave.⁶⁶ In *McGregor v. National R.R. Passenger Corp.*, the court summed up the problems with such *per se* policies as follows:

A "100% healed" or "fully healed" policy discriminates against qualified individuals with disabilities because such a policy permits employers to substitute a determination of whether a qualified individual is "100% healed" from their injury for the required individual assessment whether the qualified individual is able to perform the essential functions of his or her job either with or without accommodation.⁶⁷

In *Henderson v. Ardco, Inc.*, the court noted that, "All courts that have examined the question ... agree that a 100% rule is impermissible as to a disabled person."⁶⁸ Such policies have been termed "*per se* violations of the ADA" and clearly "unlawful."⁶⁹ Such policies may also give rise to a claim that the employee was "regarded as" being disabled by the employer.⁷⁰

Requests for Indefinite Leave

Courts often analyze leave requests for a set period of time differently than leave requests for an indefinite period of time, which are often seen as being unreasonable.⁷¹ Employees are generally required to present evidence of an estimated duration of treatment so that the leave requested is not considered unreasonably indefinite.⁷² When a request for leave is so vague as to be a request for indefinite leave, rather than being for a set period of time, courts have been less inclined to deem the leave request as being reasonable.⁷³ Therefore, a leave request was found unreasonable where there was no real prospect for recovery and the employer would have been unduly burdened by waiting indefinitely for the employee's return.⁷⁴ In *Rascon v. U.S. West Communications, Inc.*, the court felt that "an indefinite unpaid leave is not a reasonable accommodation where the plaintiff fails to present evidence of the expected duration of her impairment."⁷⁵

Not all courts agree that leave for an indefinite period of time is necessarily unreasonable. As noted earlier, *per se* employment policies may violate the ADA's requirement of a fact-intensive individualized assessment. The court in *Cehrs v. Northeast Ohio Alzheimer's Research Center*, stated:

[W]e are not sure that there should be a *per se* rule that an unpaid leave of indefinite duration (or a very lengthy period, such as one

year) could never constitute a "reasonable accommodation" under the ADA.⁷⁶

Similarly, the *Garcia-Ayala* court stated that, even if "a leave is indefinite does not make it reasonable" due to "the need for individual factual evaluation."⁷⁷ As with other reasonable accommodation situations, employers may be required to show that a request for indefinite leave poses an undue hardship.⁷⁸

Two recent district court cases help demonstrate the issues with indefinite leave requests. In *Owens v. Quality Hyundai*, the court found that it was not reasonable to reinstate a qualified employee after eleven and one-half months on leave, as there were no vacant positions.⁷⁹ Termination of the employee in this situation was reasonable, as he never gave a "definite date for his return."⁸⁰ In *Jackson v. Wal-Mart Stores*, the District Court of Pennsylvania ruled in favor of Wal-Mart on a disability discrimination claim, finding that indefinite leave is not a reasonable accommodation.⁸¹ The court held that, in general, an indefinite period of leave is not considered a reasonable accommodation. The court found no indication that the plaintiff would be able to perform the essential function of regular attendance within a reasonable time if granted more leave.⁸²

For employees, these cases demonstrate that it is best to specify a period of leave whenever possible when requesting leave as a reasonable accommodation if at all possible. For employers, these cases demonstrate that, even if an accommodation request is viewed as

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as seeking indefinite leave, denying the leave based on a blanket or *per se* policy should be avoided. As with any reasonable accommodation request, employers should engage in the interactive process and make an individualized assessment of the situation.

Intermittent Leave

Just like a leave of absence for a period of time, intermittent leave, involving a “modified work schedule,” may be a reasonable accommodation under the ADA absent undue hardship.⁸³ The ADA statute specifically includes “modified work schedules” and “modifications of ... policies” as reasonable accommodations.⁸⁴ According to the EEOC:

A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, ... allowing an employee to use accrued paid leave, or providing additional unpaid leave. An employer must provide a modified or part-time schedule when required as a reasonable accommodation, absent undue hardship, even if it does not provide such schedules for other employees.

In *Byrne v. Avon Products, Inc.*, the court noted that, “Time off may be an apt accommodation for intermittent conditions.”⁸⁵ Similarly, in *Haschmann v. Time Warner Entertainment*, the court upheld a jury verdict in favor of the employee when the company declined to accommodate her lupus by granting leave

for the intermittent flare-ups resulting from her condition.⁸⁶

Whether the Need for Leave Makes an Employee Unqualified

Leave is different than most reasonable accommodations because the employee is asking for time off from work rather than a workplace adjustment in order to address disability-related issues. An employer may show that a leave request is unreasonable if it renders the employee unqualified for the position. This may occur in cases of periodic or intermittent leave where the employee is not able to meet the essential attendance requirements or other functions of the position. However, where a leave of absence would reasonably accommodate an employee’s disability and allow him/her to perform the essential functions of the job, that employee is a “qualified individual” under the ADA.⁸⁷ Moreover, even if there is a possibility that symptoms related to the disability would return again following the leave of absence, that possibility does not excuse the employer from refusing to accommodate.⁸⁸ The employee has the burden throughout litigation of proving that he or she is a qualified individual.⁸⁹

There are two components to proving one is a qualified individual. First, the employee must show that s/he has “the requisite skill, experience, education and other job-related requirements for the employment position.”⁹⁰

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Second, the employee must demonstrate the ability to perform the “essential functions” of the position “with or without reasonable accommodation.”⁹¹ A request for leave may call into question whether the employee is qualified under the second prong of this definition as employers often claim that attendance is an essential job function.⁹² Courts are sometimes sympathetic to this assertion.⁹³ However, as noted previously, modifications to attendance policies may be required as a reasonable accommodation.

When seeking leave as a reasonable accommodation, an employee may be required to show that the leave will “plausibly” enable them “to adequately perform” the job at the conclusion of the leave.⁹⁴ “However, the ADA does not require an employee to show that a leave of absence is certain or even likely to be successful to prove that it is a reasonable accommodation.”⁹⁵ All that needs to be submitted is evidence that leave is a possible effective resolution for the employee. For example, the court in *Humphrey* held that the doctors note stating that the employee’s condition was treatable and that she might need time off to get better, was enough to prove that leave would be an accommodation.⁹⁵

In *Haschmann*, the Court discussed the tension between leave as an

accommodation and attendance requirements stating:

We do not dispute that a business needs its employees to be in regular attendance to function smoothly... However, it is not the absence itself but rather the excessive frequency of an employee’s absences in relation to that employee’s job responsibilities that may lead to a finding that an employee is unable to perform the duties of his job. Consideration of the degree of excessiveness is a factual issue well suited to a jury determination.⁹⁷

The court in *Rascon* also addressed this issue stating that the relevant inquiry is not whether attendance is an essential function of an employee’s job when “disability leave is at issue.”⁹⁸ (Emphasis in original). Instead of focusing on attendance, the *Rascon* court assessed whether the leave posed an undue hardship on the employer.⁹⁹ Similarly, it has been held that “no presumption should exist that uninterrupted attendance is an essential job requirement...”¹⁰⁰ Therefore, an employer will need to show factually that an employee is unqualified for the job due to the need for leave and cannot rely upon presumptions or blanket policies.

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Conclusion

While leave is generally viewed as a possible reasonable accommodation by the courts, there are many related issues that must be addressed by the employer and the employee. While it is hard to deduce simple rules regarding leave as an accommodation, these cases do emphasize that conducting an individualized assessment in each case is vital. As with all ADA cases, whether leave

is a reasonable accommodation in a particular case depends on the factual situation involved and how the leave will affect the employer and the employee. Employees should strive to provide as definite a period as possible in requesting leave. Employers should refrain from relying on *per se* rules or blanket policies and make sure that they conduct an individualized assessment when examining an employee's request for leave as a reasonable accommodation under the ADA.

Notes:

1. This legal brief was written by Alan M. Goldstein, Senior Attorney with Equip for Equality, the Illinois Protection and Advocacy Agency (P&A). Equip for Equality is providing this information under a subcontract with the DBTAC: Great Lakes ADA Center, University of Illinois at Chicago, U.S. Department of Education, National Institute on Disability Rehabilitation and Research Award No. H133A060097. Mr. Goldstein would like to thank Equip for Equality Legal Advocacy Director Barry C. Taylor and Nithya Abraham for their valuable assistance with this article.
2. 42 U.S.C. § 12101 *et seq.*
3. See e.g., *Garcia-Ayala v. Lederle Parenterals, Inc.*, 212 F.3d 638, 646 (1st Cir. 2000); *Cehrs v. Northeast Ohio Alzheimer's Research Center*, 155 F.3d 775, 782, (6th Cir. 1998). The EEOC is the government agency charged with providing ADA employment regulations and guidance under 42 U.S.C. § 12116. For EEOC Guidance on Reasonable Accommodations, see generally, *EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship*, No. 915.002 (10/22/02), www.eeoc.gov/policy/docs/accommodation.html.
4. The difficulty people with disabilities face in obtaining and retaining employment is well documented. "18% of people with disabilities worked full-time for an employer or themselves while 55% of those without disabilities fit the category... Only 35 percent of people with disabilities reported being employed full or part time, compared to 78 percent of those who do not have disabilities." National Organization on Disability/Harris Survey, Employment, June 10, 2004. The ADA seeks to improve the employment situation for people with disabilities "to assure equality of opportunity, full participation, independent living, and economic self-sufficiency." 42 U.S.C. § 12101(a)(8).
5. See 42 U.S.C. §§ 12111(5)(A), 12111(8); *EEOC Enforcement Guidance, supra*.
6. 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997).
7. 42 U.S.C. § 12111(9)(B).
8. *EEOC Enforcement Guidance, supra*, Question 16. See, e.g., *Garcia-Ayala v. Lederle Parenterals, Inc.*, 212 F.3d 638, 646 (1st Cir. 2000); *Cehrs v. Northeast Ohio Alzheimer's Research Center*, 155 F.3d 775, 782, (6th Cir. 1998).
9. 42 U.S.C. § 12111(8).
10. 42 U.S.C. § 12112(b)(4).
11. See 29 C.F.R. § 1630.9 Appendix (1995); *EEOC Enforcement Guidance, supra*, Question 9. See also *US Airways, Inc. v. Barnett*, 535 U.S. 391, 400, 122 S. Ct. 1516, 1522 (2002). The Court explained that "in ordinary English the word 'reasonable' does not mean 'effective.' It is the word 'accommodation,' not the word 'reasonable,' that conveys the need for effectiveness."
12. *EEOC Enforcement Guidance, supra*, Questions 1, 5-7.
13. 29 C.F.R. § 1630.5 Appendix (1995).

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Notes (continued):

14. *EEOC Enforcement Guidance, supra*, Question 16.
15. 42 U.S.C. § 12111(10)(A). Generally, this legal brief will be examining unpaid leave as a reasonable accommodation.
16. *Id.* at Question 22.
17. *EEOC Enforcement Guidance, supra*, Question 18.
18. *Id.* at Question 17, 19.
19. *Id.* at Question 17, 19.
20. *Id.* at Question 20.
21. 29 U.S.C. § 2601 *et. seq.* (1993). Employee leave may also be required under the Family Medical Leave Act (FMLA), 29 U.S.C. § 2601 *et. seq.* (1993). This legal brief will not address leave under the FMLA and will only discuss leave under the ADA but a future legal brief may address the interaction of the ADA and FMLA. It should be noted that, if both the ADA and FMLA apply, “An employer should determine an employee’s rights under each statute separately, and then consider whether the two statutes overlap regarding the appropriate actions to take.” *EEOC Enforcement Guidance, supra*, Question 21. The law providing the broadest protection to the employee should then be followed. 29 C.F.R. § 825.702. *See also, EEOC Fact Sheet: The Family Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964.* (7/6/2000).
22. *Cehrs*, 155 F. 3d at 782; *Criado v. IBM Corp.* 145 F.3d 437, 443 (1st Cir. 1998).
23. *See School Board of Nassau County v. Arline*, 480 U.S. 273, 287 (1987). *See also Garcia-Ayala*, 212 F.3d at 647; *Cehrs*, 155 F.3d at 782.
24. *Cehrs*, 155 F. 3d at 782.
25. *Garcia-Ayala*. 212 F.3d at 647.
26. *Cehrs v. Northeast Ohio Alzheimer’s Research Center*, 155 F.3d 775, 779 (6th Cir. 1998).
27. *Id.* at 781.
28. *Id.*
29. *EEOC Enforcement Guidance, supra*, Question 1.
30. *See, e.g., Humphrey v. Memorial Hospital Assoc.*, 239 F.3d 1128, 1137 (9th Cir. 2001); *Haschmann v. Time Warner Entertainment*, 151 F.3d 591 (7th Cir. 1998).
31. *See e.g., Criado v. IBM Corp.* 145 F.3d 437, 444 (1st Cir. 1998).
32. *Id.*
33. *Humphrey*, 239 F. 3d at 1138; *Garcia-Ayala* at 648 citing *Ralph v. Lucent Technologies, Inc.*, 135 F. 3d 166, 171-72 (1st Cir. 1998).
34. *Humphrey*, 239 F. 3d at 1138.
35. *See Cehrs*, 155 F.3d at 784; *Ralph*,. 135 F.3d at 172; *Humphrey*, 239 F.3d at 1138.
36. *Criado v. IBM Corp.* 145 F.3d 437, 445 (1st Cir. 1998).
37. *See EEOC Guidance, supra*, Question 6 (citing 29 C.F.R. sec 1630.0).
38. *EEOC Guidance, supra*, at Question 6.
39. *Id.*
40. *EEOC Guidance, supra*, at Question 6; 42 U.S.C. § 12112(d)(3)(B), (d)(4)(C) (1994); 29 C.F.R. § 1630.14(b)(1) (1997).
41. *EEOC Guidance, supra*, at Question 6.
42. 414 F.3d 806, 814 (7th Cir. 2005).
43. *Id.*
44. *Lara v. State Farm Fire & Casualty Co.*, 121 Fed. Appx. 796, 799 (10th Cir. 2005).
45. 121 Fed. Appx. at 801, citing *Cisneros v. Wilson*, 226 F.3d , 1113, 1130 (10th Cir. 2000).).
46. *Id.*
47. *EEOC Enforcement Guidance, supra*, “General Principles,” citing 42 U.S.C. §§ 12111(10), 12112(b)(5)(A) (1994); 42 U.S.C. § 12111(10) (1994); 29 C.F.R. § 1630.2(p) (1997); 29 C.F.R. pt. 1630 app. § 1630.2(p) (1997).

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Notes (continued):

48. See, e.g., *Humphrey v. Memorial Hospital Assoc.*, 239 F.3d 1128, 1137 (9th Cir. 2001); *Haschmann v. Time Warner Entertainment*, 151 F.3d 591 (7th Cir. 1998); *Bultemeyer v. Fort Wayne Community Schools*, 100 F.3d 1281 (7th Cir. 1996).
49. See 42 U.S.C. § 12112(b)(5)(A).
50. *Garcia-Ayala*, 212 F.3d at 649.
51. *Cehrs*, 155 F.3d at 782.
52. 212 F.3d 638, 646 (1st Cir. 2000).
53. *Id.* at 642.
54. *Id.*
55. *Id.* at 647-648.
56. *Id.* at 647, citing *School Board of Nassau County v. Arline*, 480 U.S. 273, 287 (1987). See also *Cehrs*, 155 F.3d at 782
57. *Id.* at 642-643.
58. *Id.*
59. *Id.* at 648.
60. *Id.*
61. 353 F.3d 588 593 (8th Cir. 2003).
62. *Id.*
63. *Id.*
64. *Garcia-Ayala*, 212 F.3d at 647, citing *School Board of Nassau County v. Arline*, 480 U.S. 273, 287 (1987).
65. No. 04-cv-7282 (N.D. Ill. 2005).
66. See e.g., *McGregor v. National R.R. Passenger Corp.*, 187 F.3d 1113, 1116 (9th Cir. 1999).
67. *Id.*
68. 247 F.3d 645, 653 (6th Cir. 2001).
69. *Allen v. Pacific Bell*, 212 F.Supp.2d 1180, 1196 (C.D. Cal. 2002) (*per se* violation); *Wright v. Middle Tennessee Elec. Membership Corp.*, 2006 WL 3541716, at page 8 (M.D.Tenn. 2006) (*per se* violation); *EEOC v. Yellow Freight System, Inc.* 2002 WL 31011859, at page 20 (S.D.N.Y. 2002) ("That the policy was unlawful is clear.").
70. See e.g., *Johnson v. Paradise Valley Unified School District*, 251 F.3d 1222, 1228 (9th Cir 2001).
71. See e.g. *Garcia-Ayala*, 212 F.3d at 647-648; *Haschmann v. Time Warner Entertainment*, 151 F.3d 591, 601 (7th Cir. 1998); *Wood v. Green*, 323 F.3d 1309, 1312-1313 (11th Cir 2003).
72. *Rascon v. U.S. West Communications, Inc.*, 143 F.3d 1324, 1334 (10th Cir. 1998).
73. *Id.*; *Wood*, 323 F.3d at 1312-1313. See also, *Lara v. State Farm Fire & Casualty Co.*, 121 Fed. Appx. 796, 799 (10th Cir. 2005); *Brown v. The Pension Boards, United Church of Christ*, 2007 WL 1484124, at page 9 (S.D.N.Y. May 21, 2007).
74. *Hudson v. MCI Telecommunication Corp.*, 87 F.3d 1167, 1168-1169 (10th Cir. 1996).
75. *Rascon*, 143 F.3d at 1333; See also, *Lara*, 121 Fed. Appx. at 799.
76. *Cehrs*, 155 F.3d at 782.
77. *Garcia-Ayala*, 212 F.3d at 648.
78. *Cleveland v. Federal Express Corp.*, 83 Fed. Appx. 74, 79, 80 (6th Cir. 2003).
79. 2007 WL 495248, at page 5 (N.D. Ill 2007).
80. *Id.*
81. 2007 WL 1041027, at page 11 (W.D. Pa. Apr. 5, 2007).
82. *Id.*
83. *EEOC Enforcement Guidance, supra*, Question 22; *Ralph v. Lucent Technologies, Inc.*, 135 F.3d 166, 172 (1st Cir. 1998) (a modified schedule is a form of reasonable accommodation). See also, *Haschmann v. Time Warner Entertainment*, 151 F.3d 591 (7th Cir. 1998); *Byrne v. Avon Products, Inc.*, 328 F.3d 379 (7th Cir. 2003); *Humphrey*, 239 F.3d at 1136. 42 U.S.C. § 12111(9)(B).

EMPLOYEE LEAVE AS A REASONABLE ACCOMMODATION

Notes (continued):

84. 42 U.S.C. § 12111(9)(B).
85. *Byrne*, 328 F.3d at 381.
86. *Haschmann*, 151 F.3d at 601.
87. *Humphrey*, 239 F.3d at 1135-1136.
88. *Id.*
89. *Cehrs* 155 F.3d at 782.
90. 29 C.F.R. § 1630.2(m). See also, *Garcia-Ayala*, 212 F.3d at 646.
91. *Id.*
92. See, e.g., *Jovanovic v. In-Sink-Erator*, 201 F.3d 894, 899-900 (7th Cir. 2000).
93. *Rascon v. U.S. West Communications, Inc.*, 143 F.3d 1324, 1334 (10th Cir. 1998).
94. *Humphrey*, 239 F. 3d at 1135-1136, citing *Nunes v. Wal-Mart Stores, Inc.*, 164 F. 3d 1243, 1247 (9th Cir. 1999).
95. *Humphrey*, 239 F. 3d. at 1136.
96. *Id.*; See also, *Rascon* 143 F.3d at 1336.
97. *Haschmann*, 151 F.3d at 601.
98. *Rascon*, 143 F.3d at 1333.
99. *Id.* at 1333-1334.
100. *Cehrs* 155 F.3d at 783.