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Tenth Circuit Recognizes the Legality of "Inflexible Leave Policies"

In a significant decision for employers, the United States Court of Appeals for the Tenth Circuit[1] recently ruled that inflexible leave policies (policies that result in termination if an employee is unable to return to work after a fixed amount of time) are not inherently discriminatory. To the contrary, according to the Tenth Circuit, such policies may actually "…serve to protect…the rights of the disabled" by insuring fair and uniform treatment in the workplace.

In Hwang v. Kansas State University (10th Cir. – May 29, 2014), the plaintiff was granted six months of medical leave under her employer's policy. When the plaintiff's request for additional leave was denied, she filed suit under the Rehabilitation Act, a statute very similar to the Americans with Disabilities Act that applies to recipients of federal funding. The plaintiff argued that her employer's inflexible leave policy was inherently discriminatory and that her employer was legally obligated to provide additional leave as a reasonable accommodation. In rejecting this argument, the Tenth Circuit held that requiring the employer to keep a job open beyond its six month policy was not a reasonable accommodation. According to the Tenth Circuit, reasonable accommodations are "…all about enabling employees to work, not to not work." The Tenth Circuit further held that the employer's inflexible leave policy may actually help prevent disabled employees' leave requests from being secretly singled out for discriminatory treatment "…as can happen in a leave system with fewer rules, more discretion, and less transparency."

[1] The United States Court of Appeals for the Tenth Circuit is the federal appellate court for Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming.

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It is unclear whether, and to what extent, other federal courts – including New Hampshire's – will adopt the reasoning of Hwang. As such, employers are well-advised to proceed with extreme caution, and with thoughtful guidance, before implementing and/or enforcing an inflexible leave policy. Nevertheless, the Hwang case is a significant and important departure from the position adopted, and frequently litigated, by the EEOC. For employers who are forced to defend inflexible leave policies in litigation, Hwang provides valuable guidance and helpful language.

For additional information regarding this, or any other employment or labor law matter, please contact the attorneys in the Portsmouth, New Hampshire office of Jackson Lewis P.C.