

Important Lesson for Employers: Tenth Circuit Decision Regarding the Oklahoma Anti-Discrimination Act

The 10th Circuit Decision Offers Lessons for Employers Who Receive A Request for Leave of Absence as a Reasonable Accommodation

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On February 9, 2024, the United States Court of Appeals for the Tenth Circuit affirmed the dismissal of a former employee's claims for disability discrimination, but reversed dismissal of his alternative age discrimination claim. *Cline v. Clinical Perfusion Systems*, No. 22-5107 (10th Cir. Feb. 9, 2024). The new opinion offers a few notable lessons for employers who must decide what to do when an employee cannot return to work due to an extended illness or impairment.

Facts

Charles Cline lost consciousness while stopped at a red light in Tulsa, Oklahoma. He was resuscitated by emergency responders, but the incident resulted in an extended stay in the ICU at St. Francis Hospital. While in the ICU, he was heavily sedated and could not speak, eat, or care for himself. Eventually he recovered enough to be transferred for inpatient rehabilitation, but his impairments were expected to last "more than six months."

At that point, Cline's employer decided to terminate and declined a request from Cline's wife to keep his job open until Cline could return. Cline's recovery was faster than expected, and his physician released him four months after the incident occurred. According to the allegations, Cline's employer had hired two new employees to fill his position, both of whom were younger and less experienced. Cline was 61 at the time.

Cline asserted claims for disability discrimination under the Rehabilitation Act, the Affordable Care Act (ACA), and the Oklahoma Anti-Discrimination Act (OADA), and also for age discrimination under the OADA. The district court dismissed Cline's claims, concluding he could not plausibly allege that, at the time of termination, he would have been able to perform his job functions with reasonable accommodation, and also concluding that Cline was unable to establish that his age was a but-for reason for his termination.

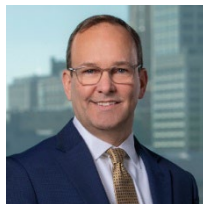
Tenth Circuit Analysis

The Tenth Circuit affirmed dismissal of Cline's disability discrimination claims, noting the only possible accommodation for Cline would have been a leave of absence, and at the time of termination, Cline would not have been able to specify a reasonable date for his return that was less than six months. Thus, Cline could not request a reasonable accommodation that did not pose an undue hardship on his employer. However, the appellate court also reversed the lower court's dismissal of the age discrimination claim, noting that litigants are entitled to plead inconsistent legal theories and inconsistent facts. Thus, Cline could plausibly allege, and did, that "age was the factor that made a difference" in his termination, even while also alleging that his disability was the determinative factor. The court remanded Cline's actions for further proceedings on the age discrimination claim.

Key Takeaways for Employers

- **A brief leave of absence for medical treatment or recovery can be a reasonable accommodation.** However, an employee's leave request must assure the employer that the employee will be able to resume essential functions of their job by an estimated date that is in the "near future." A leave of absence exceeding six months is *per se* unreasonable. Whether a leave request with an estimated date *less* than six months will be considered "reasonable" depends on the particular fact situation, including the essential functions of the job and the impact of the requested leave on business operations.
- **Engaging in a good faith interactive process is crucial.** This involves dialogues with the employee about the nature of their limitations, the duration of the required leave, and potential alternative accommodations.
- **Documentation is vital.** Maintaining thorough documentation of the interactive process, the rationale behind accommodation decisions, and any communications with the employee is vital. This documentation can be instrumental in defending against potential claims.
- **Always be truthful.** It can be hard to tell an employee who is already suffering from extended illness or impairment that they are being terminated because they can't return to work soon enough. Cline's employer allegedly told Cline's wife it was having financial difficulties, which he alleges was false. This opened the door for Cline's argument of pretext and his age discrimination claim. Had the employer communicated the straight and hard fact that it simply could not afford to leave the position open for an indefinite period, there would be no liability exposure.
- **Legal and Policy Review:** Employers should review their policies on leaves of absence and accommodations to ensure they are in compliance with current legal interpretations. Policies should be flexible enough to accommodate the varied nature of disabilities while considering the operational capacities of the business.
- **Training and Awareness:** Training management and HR professionals on the legal nuances of leave as an accommodation will help them make informed decisions that are both compassionate and legally compliant.

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