

Ask Sarah: Handling Extended Employee Absences Effectively

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By Sarah Goodman



Dear Sarah:

Help! I have an employee who has been out of work for twenty weeks. He has an “expected” return to work date, but we have not received anything definitive. Because of his absence, business is suffering, and I need to find someone to take over his job duties. What am I legally permitted to do here!?

— *Frustrated & Confused HR Rep*

Believe it or not, encountering this issue is not uncommon. When an employee requests additional time off beyond their twelve-week Family Medical Leave Act (FMLA) entitlement (assuming FMLA applies to that employer), it often leaves employers feeling perplexed. Accommodating a disabled employee under the Americans with Disabilities Act (ADA) can pose significant challenges for employers. If the employee's limitations prevent them from fulfilling essential job duties, granting an unpaid leave of absence may be deemed a reasonable accommodation. However, relying solely on unpaid leave creates staffing challenges for employers. Nonetheless, if other alternative accommodations are not feasible, unpaid leave should be considered an option.

Reasonable accommodations for a qualified individual with a disability — defined as someone who, with or without reasonable accommodation, can perform the essential functions of their job — may involve various measures, including:

- Eliminating non-essential job duties
- Modifying job processes
- Providing supportive aids to assist the employee
- Adjusting schedules to accommodate needs
- Offering light duty positions if available
- Facilitating transfers to open positions
- Granting an unpaid leave of absence, among other options

While an employer is not obligated to provide the exact accommodation requested by an employee, it is required to provide a reasonable accommodation that enables the employee to effectively perform essential job functions.

If implementing the only feasible reasonable accommodation would result in substantial difficulty or expense for the employer or fundamentally alter the nature of the job, it may be deemed an undue hardship, exempting the employer from providing it.

The threshold for defining undue hardship may vary based on the employer's size and resources, but meeting this standard can be particularly challenging in certain circumstances.

The Equal Employment Opportunity Commission's (EEOC) ADA guidance suggests that considering unpaid leave as a reasonable accommodation is wise for employers. While EEOC guidance lacks the weight of law, courts often find it persuasive due to the agency's role in ADA enforcement. The duration of leave an employer must grant is not explicitly defined and should be assessed on a case-by-case basis. The EEOC and numerous federal courts assert that an indefinite leave of absence without a reasonable estimate of the return-to-work timeframe may constitute an undue hardship and is not mandatory. However, situations where an employee's medical provider recommends an extended absence before the employee returns to the job pose challenging and context-specific questions influenced by factors such as the nature of the employer's business, the employee's role, and the anticipated duration of absence.

While definitive answers may not exist for every scenario, if the requested leave has a defined duration and supporting medical documentation suggests it will enable the employee to return to work, employers retain the right to deny it if granting the leave would unduly burden the business. Furthermore, even if a specific leave initially seems manageable, circumstances may change over time, emphasizing the importance of requiring thorough documentation throughout the leave period. For example, requesting a note from the treating physician specifying an estimated return-to-work date and asking the medical provider to opine on the medical rationale for the leave may help make the leave process more transparent and facilitate the employee's return. Additionally, gathering this information could help employers apply the undue hardship analysis in a manner that is advantageous to its operations. Handling successive leave requests cautiously and seeking consultation before making decisions are crucial practices to uphold.

In conclusion, navigating extended employee leaves beyond the FMLA entitlement can be daunting for employers, especially when accommodating disabled employees under the ADA. While unpaid leave may be a reasonable accommodation, it can pose operational challenges. Employers must explore alternative accommodations while considering undue hardship factors, such as significant difficulty or expense. The EEOC's guidance on unpaid leave underscores its importance as a potential accommodation, albeit without a specified duration. However, indefinite leaves without a return-to-work timeframe may constitute undue hardship. Employers should carefully assess each situation, document medical rationales, and seek legal advice to make informed decisions.

If you're facing similar HR dilemmas or need legal guidance on employment matters, don't hesitate to contact me for assistance. Reach out today to ensure compliance with ADA regulations and protect your business's interests.

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