

### Practical Applications of the Americans with Disabilities Act, According to the Seventh Circuit

This past July, the United States Court of Appeals for the Seventh Circuit issued its ruling in the matter of Swanson v. Village of Flossmoor, an opinion that illustrates the practical applications of the Americans with Disabilities Act (ADA).

#### Facts and Title VII Claim

The plaintiff in this matter, Mark Swanson, was a patrol officer employed by the defendant, the Village of Flossmoor, Ill. He suffered a stroke on July 31, 2009 and took a leave of absence pursuant to the Family and Medical Leave Act (FMLA) until August 19, 2009. He returned to work with a note from his doctor, which suggested that Swanson work part-time until he was to be seen by a neurologist on September 18, 2009. Swanson began using two days of his accrued medical leave each week; he received his full paycheck while working the remaining three days. He began experiencing headaches and lightheadedness and requested to be placed on "light duty". The Deputy Police Chief told him no such light duty was available. Swanson continued to work three days per week while using his accrued medical leave, until September 30, 2009 when he suffered a second stroke. The second stroke led to Swanson's resignation.

Swanson filed suit against the Village. He claimed that the Village discriminated against him on the basis of his race and national origin. A plaintiff must file a complaint with the EEOC within 300 days of experiencing discrimination. As Swanson did not, the summary judgment that had been granted in favor of the Village was affirmed.

#### ADA Claim

Swanson's remaining allegations arise out of his claim that the Village failed to reasonably accommodate him upon returning to work from his first stroke by not permitting him to work exclusively at a desk. He claims that this failure to provide light duty or part-day work between August 19, 2009 and September 30, 2009 was a violation of the ADA.

Under the ADA, it is illegal for an employer to discriminate against a person with a disability if that person is qualified to do the essential functions of his job and the employer is aware of his limitations. To succeed in his ADA claim, Swanson had to prove that he had a disability, that he was qualified to perform his job, that the Village took an adverse employment action against Swanson, and that the Village would not have taken this adverse action against him if he was not disabled.

The United States Court of Appeals for the Seventh Circuit affirmed the district court's granting of summary judgment in favor of the Village. The Village did not contest the fact that Swanson had a disability or was reasonably qualified to perform his job, but the Court found that the Village took no adverse employment action against him that would have not otherwise been taken had Swanson not been disabled. The Village made it clear that it had discretion to make the decision as to whether to create or provide a light duty option. In order to be considered for light duty, the Village policy required an employee to submit an acceptable physician's report specifying his limitations so that the department could determine whether a suitable light duty a position could be arranged. Swanson's note contained none of these directives. Instead, the note suggested that short-term accommodations be made for Swanson to work part-time, which was the arrangement Swanson and the Village reached.

The law entitles Swanson to a reasonable accommodation in light of his limitations and his employer's needs. An accommodation is "reasonable" if it is effective and its costs are not clearly disproportionate to the benefits that it will produce. A reasonable accommodation may include a change in such things as ordinary work rules, facilities, conditions, or schedules, but does not require elimination or change of essential job functions, assignment of essential job functions to other employees, or lower productivity standards. The employee does not have the right to his choice

of accommodation; he merely has the right to a reasonable accommodation. In allowing Swanson to work three days per week and use his leave for the remainder of the week, the Village provided this reasonable accommodation. It should also be noted that permitting an employee to use paid leave has been specifically held to constitute a reasonable accommodation by the courts.

### **The Take-Away**

The employer of a person who is disabled, under the terms of the ADA, must provide a reasonable

accommodation that will allow that person to continue performing the required functions of his or her job. What constitutes a “reasonable accommodation” depends on the disabled person’s job requirements and the nature of the disability. While placing Swanson on desk duty would have been an acceptable accommodation, the Village also had the right to reach an alternative solution, pursuant to its policies, as long as the alternative accommodation was reasonable.

**Swanson, Martin & Bell, LLP recognizes associate Laura Klement Anderson for her efforts in drafting this newsletter.**

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