

## Leave of Absence as Reasonable Accommodation for Disability? It Depends.

By [Martha Zackin](#) on February 29, 2012

We have written before about the EEOC's position that inflexible leave of absence policies may violate the Americans with Disabilities Act. For example, as discussed in a [prior blog entry](#), in July 2011, the EEOC settled a lawsuit filed against Verizon and a number of its subsidiaries, which claimed that Verizon violated the ADA with its progressive discipline policy that imposed discipline for all absences, including those absences caused by an employee's ADA-covered disability. To resolve the lawsuit, Verizon agreed to pay \$20MM and to revise its attendance and ADA policies by providing exceptions to the no-fault attendance policy as reasonable accommodation for covered disabilities.

Recently, the United States Court of Appeals for the 10<sup>th</sup> Circuit disagreed, evidencing the reality that courts do not always follow the EEOC's lead. In [Valdez v. McGill](#), the plaintiff employee (Doyle "Rocky" Boyle) missed work due to legitimate, recurrent health-related issues. After he had exhausted his twelve weeks of available leave, Mr. Boyle submitted a note from his doctor, indicating that he would need an additional three weeks of leave. He was terminated the next day for, among other things, excessive absenteeism.

Mr. Boyle sued, claiming that the company violated the ADA and the New Mexico Human Rights Act by not granting additional leave and for failing to engage in the interactive process of accommodation, as required by the ADA. The Court disagreed, and set some interesting guidelines for determining when a request for leave is "reasonable" and for when, and to what extent, an employer must engage in the interactive process.

First, the Court held that although a leave of absence may be a "reasonable accommodation," it is only reasonable "as long as the employee's request states the expected duration of the impairment." For example, the Court continued, "when an employee seeks a leave of absence for treatment and has a good prognosis for recovery, a leave of absence is a reasonable accommodation. Conversely, when the employee seeks leave, but it is uncertain if or when he will be able to return to work, a leave of absence is not a reasonable accommodation." (citations omitted). Given Mr. Boyle's significant health issues, the Court found, it was unclear whether or when he would actually be able to return to work. Thus, a leave of absence was not a reasonable accommodation for Mr. Boyle's disability.

Next, the Court turned to the employer's obligation to engage in the interactive process of accommodation. Stating that the "interactive process is only a means to an end," the Court held that an employer is not required to engage "in a futile interactive process where, as [the Court] concluded was the case here, no reasonable accommodation was possible."

The Court's order and judgment was unpublished, meaning that it is not binding precedent. Nevertheless, the decision underscores the need for fact- and jurisdiction-specific analysis of a situation, before determining the best course of action.