Indefinite leave of absence: A reasonable accommodation under the New York City Human Rights Law?

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A recent decision of the New York Court of Appeals, involving an employee on disability leave who was terminated after advising his employer that his return to work date was “indeterminate at this time,” has established yet another distinction in the judicial analysis of disability discrimination claims under the New York State Human Rights Law (“NYSHRL”) and the New York City Human Rights Law (“NYCHRL”). In Romanello v. Intesa Sanpaolo, S.p.A., 2013 N.Y. LEXIS 2755; 2013 Slip Op 6600 (N.Y. Oct. 10, 2013), the Court upheld dismissal of the employee’s NYSHRL claim on a motion to dismiss, but departed from well-established principles of disability law when it reinstated the employee’s NYCHRL claim, reasoning that the employer had the burden under the NYCHRL to prove the employee’s request for an indefinite leave of absence was not a reasonable accommodation and posed an undue hardship to the employer.

Employers are subject to disability accommodation requirements under federal, New York State and New York City laws. Under federal law, the Americans with Disabilities Act (“ADA”) requires an employer to provide reasonable accommodations to qualified employees or applicants with disabilities, except when such accommodation would cause an undue hardship to the employer. An employee is “qualified” for a position if he or she can perform the essential functions of the position, with or without reasonable accommodation, and meets the other job-related requirements of the position. Under the ADA and various state and local civil rights laws, most courts and administrative agencies have found that a leave of absence from work—designed to allow the employee to recover from and/or receive treatment for a medical condition—can be required as a reasonable accommodation, provided that such absence does not create an undue hardship. However, courts have consistently held that an employee’s request for an indefinite leave of absence is not a reasonable accommodation and poses an undue hardship on the employer under the ADA and the NYSHRL. Relying upon this well-established interpretation, many employers have made decisions to deny the requests of employees for an indefinite leave of absence when no projected return to work date can be determined. Courts have accepted this reasoning as a stalwart defense in disability discrimination lawsuits arising out of employee requests for indefinite periods of leave.
Based on the Court’s decision in Romanello, however, employers in New York City should proceed cautiously when considering an employee’s request for an indefinite period of disability leave. Significantly, the case was decided in the context of the employer’s pre-answer motion to dismiss based on documentary evidence. While an indefinite leave of absence may well present undue hardship under the NYCHRL, employers should recognize that dismissal on a pre-answer motion will depend on whether the employer can present admissible documentary evidence sufficient to establish undue burden on the motion.

In this case, Mr. Romanello—who was a 25-year employee of Intesa Sanpaolo, S.p.A.—became ill and was unable to work for an extended period of time. After being absent for approximately five months, Intesa sent Mr. Romanello’s counsel a letter, notifying him that Mr. Romanello had exhausted his Family Medical Leave Act leave of absence and asking whether Mr. Romanello intended to return to work or if he was abandoning his position. Mr. Romanello’s counsel wrote back to Intesa, clarifying that Mr. Romanello had no intention of abandoning his position but, “he has been sick and unable to work, with an uncertain prognosis and a return to work date that is indeterminate at this time.” Upon receipt of this letter, Intesa terminated Mr. Romanello’s employment.

Mr. Romanello subsequently brought a lawsuit against Intesa claiming disability discrimination in violation of the NYSHRL and the NYCHRL. Based on the established legal doctrine that an indefinite leave of absence is not a reasonable accommodation and the documentary evidence submitted by the parties (the letters), Intesa successfully moved in the trial court to dismiss Mr. Romanello’s claims of disability discrimination. On appeal, the Appellate Division, First Department, affirmed the dismissal. Thereafter, Mr. Romanello further appealed his case to New York’s highest court, the New York State Court of Appeals.

In its recent decision, the Court of Appeals affirmed the dismissal of Mr. Romanello’s NYSHRL claim, recognizing that “[i]ndefinite leave is not considered a reasonable accommodation under the State HRL.” The Court of Appeals, however, reinstated Mr. Romanello’s NYCHRL claim. In doing so, the Court emphasized that the NYCHRL affords protections to employees greater than those provided by the NYSHRL. The Court further recognized that, unlike the NYSHRL, it is the employer’s burden under the NYCHRL to show that a requested accommodation poses an undue hardship. Furthermore, the NYCHRL provides employers with an affirmative defense whereby an employer will not be found liable for discrimination “if the employee cannot, with reasonable accommodation, satisfy the essential requisites of the job.” Administrative Code of City of NY § 8-107(15)(b). Analyzing these various obligations in conjunction with one another, the Court determined that “the employer, not the employee, has the ‘pleading obligation’ to prove that the employee ‘could not, with reasonable accommodation, satisfy the essential requisites of the job.’”

Based on this standard, the Court of Appeals ultimately held: “Intesa did not meet its obligation under the City HRL to plead and prove that plaintiff could not perform his essential job functions with an accommodation. Because Intesa made no such allegation or showing on its CPLR 3211 motion to dismiss, the City HRL claim should not have been dismissed.”

This decision highlights the different obligations imposed upon employers by the NYCHRL, the NYSHRL and the ADA, and that, when faced with a request for a reasonable accommodation, each statute must be taken into consideration. Overall, the Romanello decision represents a mixed-bag for New York employers. The decision is certainly helpful because New York’s highest court reaffirmed the long-line of cases holding that an indefinite leave of absence is not a reasonable
accommodation under the NYSHRL (consistent with the ADA) and that the employee bears the burden of pleading and proving that “upon the provision of reasonable accommodations [which do not impose an undue burden on the business] the employee could perform the essential functions of his or her job.” Under the NYCHRL, however, the employer bears the burden of pleading and proving that the employee could not perform his essential job functions with a reasonable accommodation.

It should be noted that the Court’s decision in Romanello does not hold or suggest that an indefinite leave of absence will be required as a reasonable accommodation under the NYCHRL, based either on the facts presented or any other hypothetical facts. Ultimately, on the pre-answer motion, the Court determined that the documentation relied upon by Intesa was not sufficient to prove that granting Mr. Romanello’s request would be an undue hardship. If, however, undisputed documentary evidence exists, it is entirely possible that an employer could prove that such a request would be an undue hardship, even at the initial pleadings stage.

Whether a requested accommodation is “reasonable” or presents an undue hardship is a decision to be made based upon all of the facts and circumstances and the application of the various federal, state and local disability laws. Accordingly, the Romanello decision should serve as a warning of caution to employers in New York City to (i) consider every request for an accommodation carefully; (ii) be familiar with the various requirements and burdens imposed by the ADA, the NYSHRL and the NYCHRL; (iii) engage in the interactive process regarding requests for accommodation; (iv) document the interactive process regarding requests for accommodation; and (v) consider all of the facts surrounding an employee’s request for a leave of absence—indefinite or otherwise—prior to making any final determination.

For additional information or advice, please feel free to call or e-mail your Nixon Peabody advisor or:

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