

## **Forcing an Employee Who Requests Intermittent Leave to Take a Continuous Leave of Absence May Violate His Rights under the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA)**

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Can an employer force an employee to take more medical leave than he requests or desires?

FMLA regulations provide that an employer “may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for leave.” 29 C.F.R. § 825.205(a). The ADA provides that an employer cannot force an employee to accept an accommodation that he does not want. 42 U.S.C. §12201(d).

In *Brown v. Gestamp of Ala. LLC*, 2018 U.S. Dist. Lexis 119520, 2018 WL 3455687 (N.D. Al. 7/18/18), Gestamp required employee George Brown to go out on leave because it alleged that Brown’s doctor’s FMLA certification showed he could not perform his essential job functions.

Brown had requested intermittent FMLA leave from his position as a Materials Handler to address flare-ups of his chronic medical conditions. In each of 2014, 2015 and 2016, Brown’s doctor certified he needed leave for gout, arthritis, hypertension, chronic joint pain, chronic headaches and dizziness. The limitations he listed on Brown’s FMLA form included an inability to lift above 10 pounds or to push, pull manipulate or bend. He stated that Brown could be incapacitated for a continuous period of time for treatment and recovery, and would need to make a doctor’s appointment every 3-4 months with “recovery after flare up in 1-2 weeks.” He also stated Brown could have “episodic flare-ups [once a month] periodically preventing [him] from performing his job functions,” with 5 days of incapacity per episode.

In 2014 and 2015, Gestamp approved Brown for intermittent FMLA leave which he used sporadically. In 2016, however, Gestamp denied Brown’s request for intermittent leave and instead placed him on continuous leave. Gestamp alleged that the restrictions listed on Brown’s FMLA form prevented him from safely performing his job. Brown’s physician refused to remove the restrictions, but did not clarify whether they applied only during flare-ups.

Brown contended he was only limited during occasional flare ups and that he could have continued working with the reasonable accommodation of intermittent FMLA leave. He asserted Gestamp violated the FMLA and the ADA and constructively discharged him by instead forcing him to go out on continuous leave.

The Court found that Gestamp may have been entitled to place Brown on involuntary continuous leave if it had “correctly determined that his limitations required” such leave. The Court also found, however, that because Brown’s doctor provided the same information on the 2014, 2015 and 2016 forms; Brown had “successfully worked in the same position in [2014-2015] with the reasonable accommodation of intermittent leave”; and Brown’s medical condition did not change in 2016, a reasonable jury could find that Brown was qualified for his position and was only limited during flare-ups that could be accommodated by intermittent leave.

The Court concluded that Gestamp had not constructively discharged Brown --who resigned after a month of continuous leave, but that Brown had presented jury issues requiring trial on his ADA reasonable accommodation and his FMLA interference and retaliation claims.