

# Employer Still Wins – Even Though Job Eliminated and Work from Home Request is Denied



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WRITTEN BY [DABNEY D. WARE](#) – 3/4/19

Dealing with leave issues is a familiar situation to human resources and employment law professionals – but there can be happy endings for employers, even when there is a sympathetic story involved, in addition to legal rights under Family and Medical Leave Act (FMLA) and the Americans With Disabilities Act (ADA). Recently, a federal appeals [court sided](#) with an employer, the City of Oak Park Heights, Minnesota, by concluding it was not discriminatory or improper to have eliminated an employee’s job after FMLA exhaustion but before the employee was able to return to work.

The same court—the U.S. Court of Appeals for the Eighth Circuit (covering a number of states in the center of the country)—also determined that the senior accountant employee did not have a right to work from home as he tried to transition back to working full time, when the need to work from home was not part of his documented medical restrictions.

The employer in this case demonstrated flexibility in response to the employee’s difficult circumstances. He’d been employed more than 15 years when his normal life was interrupted by a bout with “flesh-eating bacteria.” The recovery involved multiple surgeries and five months in hospitals or nursing facilities before being able to recuperate from home. During this time, FMLA leave was exhausted, and multiple requests for extensions of unpaid leave were made and granted. While on leave, the employee’s duties were successfully absorbed by others, leading the city to conclude it could

increase efficiency by eliminating the position. Accordingly, the city gave the employee the option of severance or accepting a different position at lower pay. Not surprisingly, the employee wanted his old job back, and so the communication continued.

After almost a year of leave, returning to work looked like a real option and the employee requested to return to his prior job, as well as having a four-month transition period during which he could work at home and gradually increase his hours back to full time. However, his documented medical restrictions only specified he should work half-time for two months—and there was no mention of needing to work from home. Despite being offered the alternate job, including part time as mentioned in the medical restriction, the employee did not return to work and was terminated. By this time, the employee had an attorney and litigation started over the termination and whether the employer properly engaged in the interactive process. As mentioned above, the appeals court decided in favor of the employer.

Why is this worth talking about? Because holding a job open is not always required, even though [EEOC guidance](#) says that absent undue hardship, an employer that grants leave as a reasonable accommodation should hold the employee's original position open. (FMLA does generally require that a job be held open, but that was not really at issue since the job elimination occurred several months after FMLA was exhausted.) The court noted the EEOC guidance was not legally binding and there was no medical reason the employee needed to return to his former job, since the former job and the alternate were both sedentary desk jobs. And it probably helped that the position was eliminated altogether (not filled by someone else) after the employee had been absent for six months. The court noted evidence supporting that the position elimination did indeed result in increased

efficiency and therefore the position elimination did not create an inference of discrimination.

As for the request to work from home, it appears the employee thought working remotely was justified for multiple reasons (which may have been correct) – including that he was not yet able to drive and needed to lie down occasionally to relieve leg pain. Unfortunately for him, those issues were not communicated to the employer and not documented in the medical restrictions. Finally, the employee also admitted that in order to permit him to do some functions remotely, extra work would be created for others, which the court did not think was necessary.

All in all, this is a good outcome for employers – but it is worth noting that this positive outcome took a great deal of effort and patience.

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