

Appendix G

LEAVE AND UNDUE HARDSHIP: THE BASICS AND PRACTICAL APPLICATIONS

Many supervisors struggle to decide at what point an approved leave becomes an undue hardship for the organization. The basic issue for supervisors is whether the provider can deliver services according to professional and contractual expectations without making major financial expenditures. Leave of key staff for a substantial length of time can interrupt clinical operations, and there may be direct costs of bringing in temporary staff. In addition, peer responsibilities are difficult to replace (when few other staff have the peer's special qualifications). Ultimately, the key questions the supervisor must consider are:

1. Are services being delivered according to requisite provider and peer support service standards?
2. Can another employee handle those responsibilities effectively and for how long?
3. Can a "temp" peer be hired or contracted with for those responsibilities?

If the employee's leave request is "reasonable", the employer must make every effort to support the continuation of the peer role, with the understanding that some staff and clients may be temporarily inconvenienced. As the leave becomes longer it may start to feel less reasonable to the employer due to questions about the employee's return and the stress of holding a job open and not hiring a new person. Thus, employers should make an effort to document the impact of employees' absences on operations.

Additional important guidelines on leave as a Reasonable Accommodation (RA) include:

- In seeking leave as a reasonable accommodation, the employee need not show that the leave is certain (or even likely) to be successful in improving job performance, only that it could plausibly enable the employee to return and perform his/her job.
- For ADA purposes, the employer has the right to consider as most reasonable an alternative to leave.
- Employers are encouraged to request an approximate anticipated date of return.
- An employee may revise specific or estimated work return dates when it is medically justified, return to work remains feasible, and, it would not cause an undue hardship.
- Employers should through some fashion (e.g., phone, text) stay in touch with the employee and offer emotional support and encouragement.
- "Return to work planning" is a good idea, often supported through an Employee Assistance Program (see chapter 4).
- An employer can inform an employee on leave that continued absence would be unreasonable or an undue hardship as of a certain date, providing the reason(s), for this determination while identifying other possible accommodations that would work (e.g., return part-time, lightened job responsibilities).

For more information, the Job Accommodation Network (JAN) has general guidelines for "leave" at- <https://askjan.org/topics/leave.html>.