The ADA, FMLA, and Collective Bargaining Agreements

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In the early 1990's, Congress passed several laws designed to provide employees with expanded rights in the workplace. Two of these laws, the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA), can also impact Union members' rights obtained through a collective bargaining agreement (CBA).

The ADA prohibits employers from discriminating against a qualified individual when hiring or firing, training, advancing, or compensating its employees, because of that individual's disability if that disability can be reasonably accommodated. An employer is required to reasonably accommodate qualified employees with a disability to allow performance of a position's essential functions. The employer must reasonable accommodate the employee unless the employer can demonstrate that the accommodation would impose an undue hardship. Additionally, a company can refuse to employ a disabled individual if the disability would endanger that individual's safety in performing his or her job.

So how does this affect CBAs? The United States Supreme Court, in <u>US Airways, Inc. v. Barnett</u>, held that an employer's showing that a requested accommodation conflicts with seniority rules is ordinarily sufficient to show that an accommodation is not reasonable. This is especially true when seniority rights are collectively bargained-for rights. However, the court left open the possibility that an employee may be able to show special circumstances showing the accommodation is reasonable despite the seniority system. Moreover, the Court has recently continued a narrow interpretation of employee's rights statutes, holding, in <u>CGA, P.C. v. Wells</u>, that shareholders and owners of a professional association were not employees of the company, and do not count to the 15-employee minimum required for application of the ADA.

The Family and Medical Leave Act provides eligible employees with 12 weeks of leave for qualifying serious medical conditions. The Act states that nothing in the Act diminishes an employer's obligations under a CBA. An employer may, after collective bargaining, provide its employees with more generous leave packages than the 12 weeks guaranteed by FMLA.

While the FMLA does not address the manner in which leave is to be provided when the employee is entitled to both FMLA leave and CBA-authorized leave, several cases have held that the when an employee is entitled to FMLA leave and collectively-bargained leave, the two leaves run consecutively.

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