FREQUENTLY ASKED QUESTIONS RELATING TO "LEAVES OF ABSENCE" AS A REASONABLE ACCOMMODATION UNDER THE AMERICANS WITH DISABILITIES ACT

1. Is a leave of absence considered a *reasonable* accommodation under the ADA?

The EEOC and some federal courts, including courts in the Sixth Circuit, have taken the position that employers may be required to grant a "qualified individual with a disability" time off work or leave without pay if the employee has exhausted his or her paid leave, as part of the ADA's reasonable accommodation obligation, to help the employee receive treatment for his or her "disability," as defined by the ADA. Employers are not required to provide paid leave beyond that which is provided to similarly-situated employees.

Only those employees who have an ADA-defined disability are covered under the statute's reasonable accommodation provisions. If the employee does not qualify for leave under the ADA, he or she may be eligible for leave under the FMLA; thus, an employee's request for leave should be analyzed under both the ADA and the FMLA.

2. How much leave is considered reasonable under the ADA?

Unfortunately, there is not a bright-line rule regarding how much leave is reasonable or unreasonable under the ADA. Numerous courts have held that an employer need not grant an employee an *indefinite* period of leave to correct a disabling condition. A request for leave for an *uncertain* period of time may or may not be reasonable. For example, an employee's statement that he needed "more time" to get a doctor's appointment to learn of his chances for rehabilitation and that it would take a "couple of weeks" to get the doctor's statement was found to be a reasonable request for leave in one federal case, even though the employee was unable to articulate exactly when he could return to work at the time of his request.

3. Can an employer terminate a disabled employee whose disability-related absences cause him or her to exceed the number of permissible absences under a company leave or attendance policy?

A uniformly applied leave or attendance policy does not violate the ADA because it has a more severe effect on an employee because of his or her disability; however, if an employee with a disability requests a modification of such a policy, an employer may be required to provide it as a reasonable accommodation, unless it would pose an undue hardship.

Often, employers may be able to demonstrate that an employee who requests multiple leaves of absence or has a history of poor attendance is not "qualified" for his or her job. To demonstrate that an employee is not qualified due to his or her absenteeism, the employer must demonstrate that attendance is an "essential job function." While one might presume that attendance is an essential function of every job, the Sixth Circuit has expressly stated that there is no such presumption. Some of the factors courts consider when determining whether attendance is an essential job function include: (1) what are the consequences of not requiring the employee to perform the function; (2) does the employer have a written attendance policy; and (3) is the attendance policy consistently enforced.

4. If an employee requests leave as an accommodation under the ADA, does an employer have to grant this request or can it offer a different accommodation?

Instead of providing leave, an employer may offer a reasonable accommodation that requires an employee to remain on the job, as long as the accommodation is effective -- meaning, the employee must be able to address his or her medical needs. Employers are not required to provide employees with the "best" accommodation under the ADA, they are only required to provide a qualified individual with a disability with a *reasonable accommodation.*