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Inflexible Leave Policies can Protect the Rights of the Disabled

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Last week, the 10th Circuit Court of Appeals issued its decision in *Hwang v. Kansas State University*, and directly addressed the legality of so-called "inflexible leave policies," i.e., policies that set an exact limit on the amount of leave an employee can take. In that case, Ms. Hwang was hired as a professor at Kansas State and was diagnosed with cancer. Kansas State had a policy that allowed for no more than six months' sick leave. Ms. Hwang argued that this "inflexible" policy was illegal on its face. The 10th Circuit disagreed.

Interestingly, the court pointed out that these types of "inflexible" leave policies are not necessarily illegal, and can even "serve to protect rather than threaten the rights of the disabled." Specifically, the court noted that such a policy can ensure that disabled persons are not singled out for discriminatory treatment, "as can happen in a leave system with fewer rules, more discretion, and less transparency."

Related to this analysis was the court's recognition that six months' leave is almost never consistent with performing the essential functions of any job. The court held that requiring an employer to keep a job open for more than six months does not qualify as a reasonable accommodation, due to the fact that reasonable accommodations are "all about enabling employees to work, not to not work."

The most significant portion of this ruling was undoubtedly the court's support for "inflexible" leave policies. By recognizing that such policies can "introduce an element of due process and limit potential unfairness in personnel decisions," the court supplied an unprecedented level of support for such policies. Employers should be mindful of this holding in drafting leave policies, recognizing that historically "inflexible" policies have officially garnered federal court support.

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