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The Disabled Employee and Reasonable Accommodation under The Minnesota Human Rights Act: Where Does Absenteeism Attributable to the Disability Fit into the Law?

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THE DISABLED EMPLOYEE AND REASONABLE ACCOMMODATION UNDER THE MINNESOTA HUMAN RIGHTS ACT: WHERE DOES ABSENTEEISM ATTRIBUTABLE TO THE DISABILITY FIT INTO THE LAW?


**LAURA HARTMAN**

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I. INTRODUCTION

In *Lindgren v. Harmon Glass Co.*,¹ the Minnesota Court of Appeals considered whether medical absences resulting directly from an employee’s disability² are a legitimate nondiscriminatory reason to terminate employment.³ The court also considered the extent to which

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2. The employee was afflicted with rheumatoid arthritis. *Id.* at 806.
3. *Id.* at 808-09.
current Minnesota law mandates reasonable accommodation for absenteeism by the employer in that situation. The court held that excessive absenteeism may be a legitimate and nondiscriminatory reason for terminating a disabled employee even when absenteeism is directly related to the employee's disability. The court declined to require reasonable accommodation if a disabled employee's prolonged absences require the employer to hire a substitute employee during those periods.

This Case Note will provide an alternative analysis of Lindgren using the same legal guidelines, but resulting in a different outcome. The intent of this analysis is to show that there is a void in the Minnesota Human Rights Act's (MHRA) purported protection for disabled employees. The purpose and intent underlying the MHRA are not adequately supported by the language of the statute. The MHRA needs clarification of the protection afforded to qualified disabled employees, especially regarding medically necessary absences directly related to the disability. Until the language of the statute is changed to reflect the intent of the Act, drastic actions against disabled employees may be taken with minimal cause.

Part II of this Case Note will explore federal and Minnesota disability discrimination protection for qualified disabled employees. Part III will explain the facts of Lindgren and the court's holding and analysis. Part IV will present an alternative analysis of Lindgren, considering factors that the court neglected to address. Part V will pro-

4. Minn. Stat. § 363.03(1)(6) (1992) states that it is an unfair employment practice for an employer with 25 or more full or part-time employees to not make reasonable accommodation to the known disability of a qualified disabled person or job applicant unless the employer can demonstrate that the accommodation would impose an undue hardship.

5. Lindgren, 489 N.W.2d at 809-10.

6. Id. at 809.

7. Lindgren, 489 N.W.2d at 810.

8. See Minn. Stat. § 363.03(1)(6) (1992). The general purpose of the Minnesota Human Rights Act is to place individuals discriminated against in the same position they would have been in had no discrimination occurred. See Brotherhood of Ry. Clerks, Lodge 364 v. Balfour, 303 Minn. 178, 195-96, 229 N.W.2d 5, 13 (Minn. 1975). The goal of the statute is to allow disabled persons to return to the work force. LaMott v. Apple Valley Health Care Ctr., Inc., 465 N.W.2d 585, 591 (Minn. Ct. App. 1991).

Moreover, the intent of the Wisconsin Fair Employment Act, Wis. Stat. § 111.31(3) (1992), which is similar to the Minnesota Human Rights Act, is to encourage to the fullest extent possible the employment of all properly qualified individuals regardless of any handicap. McMullen v. Labor & Indus. Review Comm'n, 434 N.W.2d 830, 833 (Wis. Ct. App. 1988). Furthermore, the Wisconsin legislature intended that the Fair Employment Act be liberally construed to serve this purpose. Ray-O-Vac v. Wisconsin Dep't of Indus., Labor, & Human Relations, 236 N.W.2d 209, 214-15 (Wis. 1975).
pose guidelines for future examination of this issue to ensure that
disabled employees are treated fairly and equitably.

II. DISABILITY DISCRIMINATION

A. Federal Law

1. The Rehabilitation Act of 1973

The Rehabilitation Act of 19739 was the first legislation to provide
federal protection to disabled individuals. The Act prohibited all
federal government employers and contractors from discriminating
against their employees, required them to use affirmative action to
employ individuals with disabilities,10 and provided that disabled in-
dividuals could not be excluded from participation in any program
receiving federal financial assistance, solely because of their
disability.11

In enacting the Rehabilitation Act, Congress enlisted all programs
receiving federal funds in an effort to "share with handicapped
Americans the opportunities for an education, transportation, hous-
ing, health care, and jobs that other Americans take for granted."12
Although this Act provided significant protection to federal govern-
ment employees, no federal protection existed for disabled job appli-
cants and employees in the private workplace.

2. The Americans with Disabilities Act

The Americans with Disabilities Act13 (ADA) extends federal pro-
tection to disabled employees and job applicants against discrimina-
tion in private employment.14 The ADA is construed to provide at
least as much protection to disabled individuals in the private work
place as the Rehabilitation Act.15

a. Coverage

Title I of the ADA, which deals with employment, states that em-
ployers may not discriminate against "qualified"16 applicants and
employees on the basis of disability.17 The ADA’s coverage and pro-
tection will ultimately apply to employers with fifteen or more em-

10. Id. §§ 701, 793.
11. Id. § 794(a).
14. Id.
15. Regulations to Implement the Equal Employment Provisions of the Ameri-
cans with Disabilities Act, 29 C.F.R. § 1630.1(c) (1993).
16. See infra note 22 for the definition of a qualified disabled person.
ployees, but for the first two years following the effective date, it only applies to employers with twenty-five or more employees.18

b. "Disability" and "Qualified Disabled Person"

The ADA protects people who have a disability.19 The ADA defines a "disability" as (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record of such impairment; or (3) being regarded as having such an impairment.20

to all aspects of an employer's practices, including job applications, hiring, advancement, discharge, compensation, and job training. 1d. § 12112(a).


20. id. § 12102(2). The ADA defines "physical or mental impairment" as
(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or
(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

34 C.F.R. § 104.3(j)(2)(i) (1993). The existence of an impairment under the ADA is to be determined without regard to mitigating measures such as medicines or prosthetic devices. 29 C.F.R. app. § 1630.2(h) (1993).

The term "substantially limits" means:
(i) Unable to perform a major life activity that the average person in the general population can perform; or
(ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.


A major life activity includes "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i) (1993). Major life activities are those activities that the average person can perform with little or no difficulty. 29 C.F.R. app. § 1630.2 (i) (1993). The above list of activities is not exhaustive and can be expanded to include sitting, standing, lifting, and reaching. 1d.

An individual has a record of impairment if he or she "has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities." 34 C.F.R. § 104.3(j)(2)(iii) (1993).

An individual is regarded as having an impairment if he or she:
(A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; or (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment.

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The ADA does not prohibit discrimination against all individuals with disabilities but only "qualified" individuals with disabilities. A qualified individual is one who, with or without reasonable accommodation, is able to perform the essential functions of the position which he or she holds or desires.

c. Reasonable Accommodation

Employers are obligated under the ADA to make reasonable accommodation for the known physical or mental limitations of a qualified individual with a disability. The ADA defines "reasonable

Id. § 104.3(j)(2)(iv).


22. 29 C.F.R. app. § 1630.2(m) (1993). A two-step analysis is used to determine whether an individual is "qualified." First, it must be shown that the individual satisfies the prerequisites for the position, such as possessing the appropriate educational background, employment experience, skills, licenses, etc. Id. Second, it must be shown that the individual can perform the essential functions of the position, with or without reasonable accommodation. Id.

The term "qualified" refers to whether the individual is qualified at the time of the job action in question. The mere possibility of future incapacity does not by itself render a person not qualified. Id.

The ADA defines "essential functions" as "the fundamental job duties of the employment position the individual with a disability holds or desires." 29 C.F.R. § 1630.2(n) (1993). A job function may be essential for any of several reasons, including but not limited to:

(1) the reason the position exists is to perform that function;
(2) there are a limited number of employees available among whom the performance of that job function can be distributed; and/or
(3) the function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

Id. The ADA regulations indicate that the following evidence may be considered in determining whether a particular function is essential:

(i) The employer's judgment as to which functions are essential;
(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;
(iii) The amount of time spent on the job performing the function;
(iv) The consequences of not requiring the incumbent to perform the function;
(v) The terms of a collective bargaining agreement;
(vi) The work experience of past incumbents in the job; and/or
(vii) The current work experience of incumbents in similar jobs.

Id. § 1630.2(n)(3).

The determination of whether certain job functions are essential is critical because an individual must be able to perform them in order to be considered "qualified." Id. § 1630.2(m). If an individual is unable to perform the essential functions of the job, even with reasonable accommodations made by the employer, such an individual is not qualified and there is no obligation on the part of the employer to hire or promote the individual to that job. Id. See also Lemere v. Burnley, 683 F. Supp. 275, 280 (D.D.C. 1988) (holding plaintiff's unscheduled absences prevented her from following a regular work schedule under which she could perform the essential functions of her position).

23. 29 C.F.R. § 1630.9(a) (1993).
accommodation” as

(1) the modification or adjustment of a job application process to enable a qualified individual with a disability to be considered for the position;
(2) alterations in the workplace environment or manner in which the work is customarily performed; or
(3) modifications or adjustments that enable a disabled employee to enjoy the same benefits and privileges of employment as his or her co-workers.24

Examples of reasonable accommodation include: modification of existing employee facilities to provide for use by disabled individuals; job restructuring; modification of work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modification of examinations, training materials, or policies; and provision of qualified readers or interpreters.25

In determining the accommodation appropriate for a particular situation, the ADA suggests that the employer initiate an informal, interactive process with the disabled employee in need of accommodation.26 Through this process, the employer and employee should seek to identify as precisely as possible, the limitations resulting from the disability and the potential reasonable accommodations for those limitations.27 An employer must provide appropriate accommodation unless it can be shown that the accommodation would impose an undue hardship on the operation of the business.28

d. Undue Hardship

An accommodation is an undue hardship if its implementation causes significant difficulty or expense.29 The ADA enumerates four factors to be considered when analyzing hardship to an employer:

(1) the nature and cost of the needed accommodation;

25. 29 C.F.R. app. § 1630.2(o) (1993): The list of accommodation possibilities found in the ADA also includes (1) permitting the use of accrued paid leave or providing additional unpaid leave for medically necessary treatment; (2) providing transportation; (3) providing personal assistants, such as a page turner or a travel attendant; or (4) providing reserved parking spaces. Id. The interpretive guide to Title I of the ADA further defines reasonable accommodation as “any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.” 29 C.F.R. § 1630.9(a) (1993).
26. Id. § 1630.2(o)(3).
27. Id.
28. 29 C.F.R. § 1630.9(a) (1993).
29. 29 C.F.R. app. § 1630.2(p) (1993). In short, an undue hardship is “any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.” Id.
(2) the overall size and financial resources of the facility involved in the accommodation provision;
(3) the overall size and financial resources of the employer; and
(4) the type of operation of the employer.50

If the employer can show that an accommodation would create an undue hardship, the disabled employee should have the opportunity to provide his or her own accommodation.31 The employer must provide as much of an accommodation that would not constitute an undue hardship and would allow the disabled employee to provide or pay for the remainder.32

B. Minnesota Law

The Minnesota Human Rights Act (MHRA) prohibits employment discrimination based on physical or mental disability.33

1. Coverage

The MHRA, with the exception of the reasonable accommodation requirement, applies to all Minnesota employers.34 The reasonable accommodation requirement applies to employers with a specified number of employees.35 The MHRA's definitions of "disability" and "qualified disabled person" are the same as the ADA's definitions.36

2. Reasonable Accommodation

The MHRA establishes an affirmative duty for certain employers to make accommodations for qualified disabled employees or job applicants.37 If an employer fails to accommodate an employee's disability, the employer is guilty of an unfair and illegal employment practice.38

Four elements must be met before an employee may invoke the reasonable accommodation statute.39 First, the employer must have more than twenty-five part-time or full-time employees. Second, the

31. Id.
32. Id. In addition to undue hardship, the ADA provides that an employer is not required to accommodate an individual who poses a direct threat to the health or safety of others in the workplace. Id. § 1630.2(r).
33. MINN. STAT. § 363.03 (1) (1992).
34. Id.
35. Id. § 363.03(1)(6). Under this section, an employer is subject to the reasonable accommodation requirement if it has at least 25 part or full time employees. Effective July 1, 1994, the required number of employees decreases to 15. Id.
36. MINN. STAT. § 363.01(15), (35) (1992). For the ADA definitions, see supra notes and 20-22 accompanying text.
37. Id. § 363.03(1)(6).
38. Id. § 363.03(1)(a).
39. Id.
employer must have knowledge of the employee's disability. Third, the employee must have a qualified disability. Fourth, the employer must fail to make reasonable accommodation for the disability.40

The employee establishes a prima facie case of discrimination by meeting these four elements. The employer, however, can defeat the claim by showing that accommodation would impose an "undue hardship" on the business.41

According to Minnesota case law, an employee's disability must affect his or her job performance before the employer is liable for breaching its statutory duty to make accommodations for the disability. In *Manderscheid v. Beyer*,42 the Minnesota Court of Appeals stated that the accommodation argument is applicable only where the employee was fired for poor job performance and there was a disability affecting that job performance.43 The following year, in *Karst v. F.C. Hayer Co.*,44 the court of appeals determined that an employee could have performed his duties with scheduling accommodations and that only the employer's unwillingness to accommodate the disability kept any accommodation from occurring.45

In 1991, the court of appeals held that a plan could be set up requiring restructured work assignments so that two housekeepers could work together.46 In *LaMott v. Apple Valley Health Care Center Inc.*, the court found unreasonable the employer's contention that the team cleaning approach was cost prohibitive and impossible to implement.47

Recently, in *Finn v. National Camera Exchange, Inc.*,48 the court of appeals rejected an employer's argument that it had no obligation to accommodate an employee's disability by reducing the number of hours worked per week. Of significance, the court found that the employer did not know whether the employee could work full time when the termination decision was made.49 Because the discharge occurred without knowledge of that vital piece of information, the

40. MINN. STAT. § 363.03(1)(6) (1992). The MHRA defines reasonable accommodation as including, but not limited to (1) making facilities readily accessible to and usable by disabled persons; (2) job restructuring or modifying work schedules; (3) acquiring or modifying equipment or devices; and (4) providing aides on a temporary or periodic basis. *Id.*
41. MINN. STAT. § 363.03(1)(6) (1992).
42. 413 N.W.2d 227 (Minn. Ct. App. 1987).
43. *Id.* at 230.
44. 429 N.W.2d 318 (Minn. Ct. App. 1988), rev'd on other grounds, 447 N.W.2d 180 (Minn. 1989).
45. *Id.* at 322.
47. *Id.*
49. *Id.*
grant of summary judgment was reversed and the case was remanded
to determine whether accommodation was required.50

Because reasonable accommodation analysis is fact specific, it
must be evaluated on a case-by-case basis. Unfortunately, little Min-
nesota case law exists to date, making it difficult to predict the pa-
rameters of "reasonable" and "undue hardship" and to track the
law's evolution as more claims arise.

3. Undue Hardship

The MHRA incorporates the four ADA factors in its definition of
"undue hardship."51 Additionally, the MHRA requires a docu-
mented good faith effort to explore less restrictive or less expensive
alternatives, including consultation with the disabled person or with
other knowledgeable disabled persons or organizations.52

C. Disparate Treatment: The McDonnell Douglas Test

In all employment claims brought under the MHRA involving dis-
parate treatment53 or in claims where there is no direct evidence of
discrimination, Minnesota courts utilize the *McDonnell Douglas*54
test.55 The Minnesota Supreme Court has emphasized that the trial
court is not required to "rigidly and mechanically" apply this anal-
ysis.56 Rather, the three-part analysis is merely a tool that provides a
sensible, orderly way to evaluate the evidence.57

Under the *McDonnell Douglas* test, the employee has the initial bur-
den to prove a prima facie case of discrimination by a preponderance
of the evidence.58 A prima facie case may be established by showing:

(1) the employee is a member of a protected class;59

50. Id.
51. See supra notes 29-30 and accompanying text.
52. MINN. STAT. § 363.03(1)(6)(e) (1992).
53. "The crux of a disparate treatment claim involving an employer's decision to
discharge an employee is that the employer is treating that employee less favorably
than others on the basis of an impermissible classification." Hubbard v. United Press
Int'l, Inc., 330 N.W.2d 428, 442 (Minn. 1983); see also 29 C.F.R. app. § 1630.15(a)
(1993). An example of an employer's legitimate nondiscriminatory defense under
the disparate treatment theory is that an employee's poor performance is unrelated
to the individual's disability. Id.
55. See, e.g., Sigurdson v. Isanti County, 386 N.W.2d 715, 721 (Minn. 1986);
Danz v. Jones, 265 N.W.2d 395, 399 (Minn. 1978).
56. Sigurdson, 386 N.W.2d at 721-22.
57. Id. at 722 (citing Furnco Constr. Corp. v. Waters, 438 U.S. 567, 577 (1978)).
58. Id. at 720 (citing Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248,
252-53 (1981)).
59. In determining whether an employee is a member of a protected class, the
Minnesota courts look to the definition of disability under the Minnesota Human
(2) the employee sought and is qualified for the job she held;
(3) the employee was discharged, despite her qualifications; and
(4) after discharge, the employer assigned a non-member of the
protected class to do the same work.60

If the employee establishes a prima facie case, the burden then
shifts to the employer to present evidence of a legitimate nondis-
criminatory reason for its actions.61 The employer’s reason for ter-
mination must be based on sufficiently objective criteria so the court
can determine whether the employee has demonstrated pretext.62

If the employer alleges a sufficiently legitimate reason, then the
employee has the opportunity to show that the reason or justification
stated by the employer is a pretext for discrimination.63 To avoid
summary judgment, the employee must present specific facts show-
ing that a discriminatory reason motivated the employer or that the
employer’s proffered explanation is unworthy of credence.64 To
prevail, the employee must persuade the court that the employer in-
tentionally discriminated because of a disability.65

D. Disparate Impact

Disparate impact occurs when an employer’s practice has the effect
of discrimination, although the practice does not appear or intend to
discriminate.66 The employer may defend against a disparate impact
charge by showing that the challenged business practice is uniformly
applied, job-related, consistent with job necessity, and that any other
practice cannot be reasonably accommodated.67

When a disability discrimination claim brought under the MHRA
does not involve a dispute about disparate treatment or if there is
direct evidence of discrimination, the complainant must demonstrate

60. See, e.g., Hubbard v. United Press Int’l, Inc., 330 N.W.2d 428, 442 (Minn.
1983); Miller v. Centennial State Bank, 472 N.W.2d 349, 352 (Minn. Ct. App. 1991);
Rutherford v. County of Kandiyohi, 449 N.W.2d 457, 461 (Minn. Ct. App. 1989),
review denied (Minn. Feb. 28, 1990).
61. Sigurdson v. Isanti County, 386 N.W.2d 715, 720 (Minn. 1986) (citing Texas
Dep’t of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981)).
62. Pretext is defined as “pretense; false appearance; ostensible reason or motive
assigned or assumed as a color or cover for the real reason or motive.” WEBSTER’S
NEW UNIVERSAL UNABRIDGED DICTIONARY 1426 (2d ed. 1983). See Feges v. Perkins
Computers, Inc., 393 N.W.2d 200, 203 (Minn. Ct. App. 1986)), aff’d in part and rev’d in
part, 483 N.W.2d 701 (Minn. 1992).
63. Sigurdson, 386 N.W.2d at 720 (citing Texas Dep’t of Community Affairs v.
Burdine, 450 U.S. 248, 256 (1981)).
64. Id.
65. Id.
66. 29 C.F.R. app. § 1630.15(c) (1993).
67. Id. § 1630.15(c). Two examples of legitimate disparate impact practices are
business policies which require the employee to have a driver’s license and an em-
ployer’s no-leave policy. Id.
that she falls within one of the classes of individuals protected by the MHRA before a court will determine whether recourse is available under the MHRA.\textsuperscript{68} To demonstrate membership in a protected class, the individual must show that she is mentally or physically impaired (or has a record of impairment, or is regarded as having an impairment),\textsuperscript{69} that the impairment is a substantial limitation,\textsuperscript{70} and that the substantial limitation results from the impairment and affects one or more life activities.\textsuperscript{71} If the complainant can prove each of the above-mentioned factors, then she meets the definition of a "disabled person" under the MHRA and may proceed with an employment discrimination claim.\textsuperscript{72}

III. \textit{Lindgren v. Harmon Glass Co.}

\textbf{A. Facts}

Patricia Lindgren worked as a secretary for Harmon Glass Company and suffered from rheumatoid arthritis.\textsuperscript{73} While employed by Harmon Glass, Lindgren underwent nine surgical procedures\textsuperscript{74} to

\begin{footnotesize}
\begin{enumerate}
\item Cooper v. Hennepin County, 441 N.W.2d 106, 110 n.1 (Minn. 1989).
\item See supra note 20 and accompanying text.
\item The Minnesota Supreme Court has looked to the Code of Federal Regulations for guidance in interpreting and defining the requirement that the impairment be a substantial limitation. \textit{Cooper}, 441 N.W.2d at 111. The federal regulations define substantial limitations as the degree that the impairment affects employability. If a disabled individual is likely to experience difficulty in securing, retaining or advancing in employment, this individual would be considered substantially limited. \textit{Id.} (citing 41 C.F.R. app. § 60 (1987)). The Minnesota Supreme Court also listed factors to be applied on a case-by-case basis to determine whether a person is "substantially limited":
\begin{enumerate}
\item the number and types of jobs from which the impaired individual is disqualified;
\item the geographic area to which the applicant has reasonable access;
\item the applicant's own job expectations and training;
\item the criteria or qualifications in use generally; and
\item the types of jobs to which the rejection would apply.
\end{enumerate}
\textit{Cooper}, 441 N.W.2d at 111 (citing \textit{E. E. Black Ltd. v. Marshall}, 497 F. Supp. 1088, 1100-01 (D. Hawaii 1980)). Under \textit{Black}, "all employers offering the same job or similar jobs would use the same requirement or screening process" in employment situations. \textit{Id.}
\item See supra note 20.
\item Cooper, 441 N.W.2d at 110.
\item As a direct result of her arthritis, it was necessary for Lindgren to undergo extensive surgeries, which included a hip joint replacement, three follow-up hip revision procedures, knuckle replacement on both hands, and two bone grafts. \textit{See Appellant's Brief at 2.}
\end{enumerate}
\end{footnotesize}
combat the effects of her arthritis. In August 1989, Lindgren’s supervisor approached her for the first time about her medical absences, telling Lindgren that further surgeries might result in a reassessment of her employment.

In November 1989, Lindgren’s supervisor again approached her about her medical absences, reiterating that he would “have to take a serious look at her continued employment” if she were to require major surgery again. The supervisor did not discuss any performance problems at either of the meetings with Lindgren.

In February 1990, Lindgren’s artificial hip dislocated, requiring emergency surgery. Prior to Lindgren’s return to work, she was informed that her employment was terminated, effective immediately.

Harmon Glass contended that Lindgren’s attendance record was unacceptable regardless of the cause of her absences. Harmon Glass stated that, even had the absences been caused by something other than her rheumatoid arthritis, the employment decision would have been the same. Additionally, Harmon Glass maintained that Ms. Lindgren’s attendance at work was an important part of her job, and that her absences “adversely affected the business.”

The trial court granted summary judgment for Harmon Glass on all claims. 

75. Lindgren, 489 N.W.2d at 806. Each surgical procedure Lindgren underwent was medically necessary to keep her vocationally functional, and each required three to five weeks of recuperation. Appellant’s Brief at 2. With the exception of a February 1990 emergency surgery, all of the operations were scheduled in advance and the dates were known to Harmon Glass, to “create a minimum of disruption in her job.” Lindgren, 489 N.W.2d at 806. Between March 1989 and March 1990, the year immediately prior to her termination from employment, Ms. Lindgren underwent three surgeries and missed 63 days of work. Id.

76. Lindgren v. Harmon Glass Co., 489 N.W.2d 804, 806 (Minn. Ct. App. 1992), review denied (Minn. Oct. 20, 1992). Lindgren’s supervisor also expressed concern over a vacation that Lindgren was planning to take after her medical/disability leave. Lindgren went on vacation as planned because she would have forfeited a substantial deposit if she had not gone as scheduled. Id.

77. Id.

78. Id.

79. Appellant’s Brief at 2.

80. Lindgren, 489 N.W.2d at 807. Upon Lindgren’s termination, the supervisor wrote a letter to Lindgren stating in part, “[i]t was difficult to have to make the decision that your arthritis is now preventing you from being able to perform your job responsibilities. I do care about you, and I want to do what is fair and just for you, at the same time as I take care of the secretarial needs at our office.” Id.

81. Id.

82. Id.

83. Id.

B. The Court's Holding and Analysis

The Minnesota Court of Appeals affirmed the district court and held that excessive absenteeism was a legitimate and nondiscriminatory reason for terminating a disabled employee, even when the absenteeism was directly related to the employee's disability.85 Although the court questioned whether Lindgren's poor job performance as articulated by Harmon Glass was the real reason for Lindgren's discharge,86 the court concluded that excessive absenteeism was the real reasons for Lindgren's termination.87

The court also found that Lindgren's poor attendance record was a legitimate nondiscriminatory basis for discharge and addressed the ramifications of Lindgren's disability being the cause of her absences.88 According to the court, the direct link between the disability, the absences, and the termination did not automatically render Harmon Glass' termination decision discriminatory.89 Consistent with Minnesota precedent, the court maintained that problems created by a disability may be a legitimate nondiscriminatory basis for termination.90 The court concluded that Lindgren's absenteeism affected her job performance because her job required regular attendance.91

Finding that Lindgren failed to establish that Harmon Glass had

and lack of reasonable accommodation claims she brought claims for breach of contract and defamation. Id. at 806.

85. Id. at 809-11.

86. Id. at 808. The court discussed testimony given by three of Lindgren's superiors which stated that they were "concerned about Lindgren's attitude, the amount of work she was able to handle, and the effect her inefficiencies had on the office." Id. The court found it significant that these concerns were never brought to Lindgren's attention prior to termination nor discussed among the superiors when they were deciding Lindgren's continued employment status. Id. Additionally, the court pointed to substantial evidence showing Lindgren's favorable employment record. Id.

87. Id. The court relied on evidence presented by Harmon Glass and testimony given by Lindgren in deciding that there were no disputed facts. Id. Harmon Glass presented evidence that Lindgren's absenteeism was excessive. Lindgren testified that she recognized her discharge was based on her absenteeism after her surgeries. Id.

88. Id. at 809. The Lindgren court referred to a recent Minnesota Supreme Court decision, Shockency v. Jefferson Lines, 439 N.W.2d 715 (Minn. 1989), where it was held that a bus company had a legitimate nondiscriminatory reason for discharging a black employee who had a history of alcohol abuse, tardiness, and unexcused absences. Id. at 808.


90. Id. at 809 (citing Miller v. Centennial State Bank, 472 N.W.2d 349, 353-54 (Minn. Ct. App. 1991)). In Miller, problems with the employee's performance caused by the employee's sleep apnea constituted a legitimate nondiscriminatory reason for termination. Miller, 472 N.W.2d at 353-54.

91. Lindgren, 489 N.W.2d at 809.
an undisclosed, discriminatory motive for the termination decision, or that absenteeism (Harmon Glass' stated reason) was a pretext for discrimination, the court held that Lindgren had not met her burden under the *McDonnell Douglas* test.\(^2\)

The *Lindgren* court also held that Lindgren could not be further accommodated for her excessive absenteeism, and justified its decision on three grounds.\(^3\) First, Lindgren's disability kept her from performing one essential function of her job: regular attendance.\(^4\) Second, it was beyond reasonable accommodation to expect Harmon Glass to provide a substitute employee to actually perform Lindgren's job functions every time she was absent.\(^5\) Third, Harmon Glass' refusal to continue to hire temporary help during future absences was not unreasonable, even if Lindgren's prognosis showed that future surgeries or extended absences were unlikely.\(^6\) The court noted that Harmon Glass already attempted to accommodate Lindgren's disability for twelve years.\(^7\) In conclusion, the court held that Harmon Glass' accommodation of Lindgren's disability was "entirely reasonable."\(^8\)

### IV. Analysis of Lindgren

The question raised by *Lindgren*—whether necessary medical absences resulting directly from an employee's disability are a legitimate nondiscriminatory reason to terminate the employee—was an

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\(^2\) *Id.* The court noted that Lindgren made no claims regarding unfair treatment, bias, prejudice, or being subjected to insults while employed by Harmon Glass. *Id.* The court also noted that Lindgren failed to show pretext by establishing that it was more likely that Harmon Glass' motives were improper or biased, or that Harmon Glass' proffered explanation was not credible. *Id.* In general, evidence of the treatment of the employee and the general policy and practice of the employer may be relevant. *Id.*

\(^3\) *Id.* at 810. The court, after reviewing the statutes defining reasonable accommodation in the work place and qualified disabled persons, concluded that Harmon Glass did not violate the Minnesota Human Rights Act. *Id.* at 809.

\(^4\) *Lindgren v. Harmon Glass Co.*, 489 N.W.2d 804, 809 (Minn. Ct. App. 1992), *review denied* (Minn. Ct. App. 1992). Additionally, the court noted that, although it was undisputed that Lindgren could perform her job when present, she could not do so when she was absent. *Id.*

\(^5\) *Id.* at 810.

\(^6\) *Id.* at 809. The court referred to a prior holding rejecting an employer's claim that accommodation was unreasonable. *See* LaMott *v. Apple Valley Health Care Ctr., Inc.*, 465 N.W.2d 585, 591 (Minn. Ct. App. 1991). The LaMott court's reasoning was based, in part, on the fact that the employee's co-worker would not do the employee's work, but that the two would work together. *Id.*

\(^7\) *Lindgren*, 489 N.W.2d at 810. Lindgren argued that Harmon Glass did not reasonably accommodate her disability because Lindgren's supervisor admitted that he made the termination decision without any information regarding her medical condition or prognosis. *Id.*

\(^8\) *Id.*
issue of first impression in Minnesota. The Lindgren opinion narrowly construed the reasonable accommodation and undue hardship standards in a manner unfavorable to qualified disabled employees in need of medical leave.

The analysis below will show an alternative view of the Lindgren case. First, the McDonnell Douglas test will be applied to the facts. Second, two crucial threshold factors which the court did not scrutinize in their holding, undue hardship to Harmon Glass and Lindgren’s medical prognosis, will be discussed. Third, the purposes of the MHRA provision governing disability discrimination in the workplace will be considered in light of its actual language.

A. The McDonnell Douglas Test

1. Prima Facie Case

Although Minnesota has never considered whether individuals afflicted with rheumatoid arthritis are members of a protected class,99 Lindgren could have met the protected class requirement by showing that her arthritis substantially limited one or more major life activities.100 To meet the requirement of being qualified for her position, Lindgren needed to show that she met the minimum objective qualification of the job.101 Because there was no dispute that

99. In Manderscheid v. Beyer, 413 N.W.2d 227, 229 (Minn. Ct. App. 1987), the court noted that there would be no determination of whether arthritis would be considered a “disability” for statutory purposes because there was a legitimate nondiscriminatory reason given for the employee’s discharge. However, the court in McMullen v. Labor & Indus. Review Comm’n, 434 N.W.2d 830, 831 (Wis. Ct. App. 1988) did treat plaintiff’s rheumatoid arthritis as a disability for the purpose of determining whether his employer should have accommodated his arthritis as mandated by Wisconsin’s Fair Employment Act.

100. Lindgren’s rheumatoid arthritis has “impacted every aspect of her life. She is unable to partake in any strenuous activity requiring significant pressure to be placed on her arthritic joints.” Appellant’s Brief at 16. See Brookshaw v. South St. Paul Feed, Inc., 381 N.W.2d 33 (Minn. Ct. App. 1986). In Brookshaw, the court refused to consider a disability discrimination claim because the employee failed to demonstrate by either affidavit or deposition evidence a factual question that his ulcer or mental stress substantially limited any of his major life activities. Id. at 36.

101. See Khalifa v. Hennepin County, 420 N.W.2d 634, 640 (Minn. Ct. App. 1988) (citing Legrand v. University of Arkansas, 821 F.2d 478, 481 (8th Cir. 1987)), review denied (Minn. May 4, 1988); see also Swanson v. West Publishing Co., No. C9-88-1553, 1989 WL 1556, (Minn. Ct. App., Jan. 17, 1989). In Swanson, the appellant was not performing his job in a satisfactory fashion and his job evaluations and employment record as a whole generally reflected marginal to poor performance. Id. at *2. Further, the employee conceded that he did not have the necessary powers of mental concentration to enable him to perform the essential functions of the job. Id. The court concluded that the employee was “unable to establish a prima facie case of discriminatory discharge so as to withstand a summary judgment motion.” Id.

Lindgren could perform her job when she was present,\textsuperscript{102} she was deemed qualified for her job.

Further, there was no dispute that Lindgren was fired or that one of Lindgren's co-workers, a nonmember of a protected class, was assigned to take over Lindgren's work.\textsuperscript{103} In sum, Lindgren met her burden of establishing a prima facie case.

2. Answer and Pretext

Once Lindgren established a prima facie case, Harmon Glass had to show that Lindgren's absences constituted a legitimate nondiscriminatory reason for her discharge. Although the Minnesota Supreme Court has held that tardiness and unexcused absences may justify dismissal,\textsuperscript{104} the court has not determined that medically necessary, excused absences provide a legitimate and nondiscriminatory reason for firing a disabled person.

A survey of case law from other jurisdictions shows a focus on narrow, fact specific elements, making it difficult to develop a concise statement of the law. The cases can be grouped into two categories: whether the absences are communicated to the employer in advance\textsuperscript{105} and whether a set, rigid employee attendance schedule is a matter of convenience or necessity to the employer.\textsuperscript{106}

\footnotesize{functions when she was unable to do so and endangered the health and safety of the elderly residents of whom she was in charge. The court held that her actions negated any claim she might have had as a qualified disabled person, and her prima facie case failed. \textit{Id.}}

In Biltz v. Northwest Airlines, Inc., 363 N.W.2d 94, 97 (Minn. Ct. App. 1985), the court held that the employer did not discriminatorily discharge a pilot who had been diagnosed as alcoholic where he did not possess bona fide occupational criteria for the job, having had his medical certificate revoked and having refused to seek treatment to obtain certification. \textit{Id.}


103. \textit{See} Appellant's Brief at 18.


105. \textit{See} Wimbley v. Bolger, 642 F. Supp 481 (W.D. Tenn. 1986) (requiring advance notice and proper documentation substantiating where the absent employee had been and submitting an appropriate leave request), \textit{aff'd}, 831 F.2d 298 (6th Cir. 1987).

Other courts have held that when a plaintiff's supervisor cannot rely on the attendance of a qualified disabled employee, accommodation is not necessary. In *Wimbley v. Bolger*, a disabled postal worker was terminated for his absences from work, which were necessitated by his need to secure medical treatment for his disability. In upholding the nondiscriminatory nature of the termination, the Federal District Court of Tennessee emphasized that the employee was entitled to be absent from work to obtain treatment without being disciplined, "but he had the obligation to notify his supervisor in advance that he would be absent." His failure to comply with the appropriate leave request to cover his absences formed a legitimate non-discriminatory basis for his termination.

In *Walders v. Garrett*, a Navy civilian employee afflicted with chronic fatigue immune dysfunction syndrome was discharged for excessive absenteeism resulting directly from her disability. The Federal District Court of Virginia ruled that the Navy lawfully discharged her. In support of the holding, the court cited plaintiff's random absenteeism rate and minimal prescheduled medical appointments. The court found that the plaintiff's supervisors could not count on her attendance or predict her absences, although perfect attendance is not a necessary element of all jobs, reasonably regular and predictable attendance is necessary for many, *aff'd*, 956 F.2d 1163 (4th Cir. 1992); *Santiago v. Temple Univ.*, 739 F. Supp. 974, 979 (E.D. Pa. 1990) (discussing standard attendance policy), *aff'd*, 928 F.2d 396 (3d Cir. 1991); *Silk v. Huck Installation & Equip. Div.*, 486 N.Y.S.2d 406, 406 (App. Div. 1985) (holding that employer's dismissal was not discriminatory when job required consistent good performance).

108. *Id.*
109. *Id.* at 485.
110. *Id.*
112. *Id.*
113. *Id.* at 312.
114. *Id.* at 310.
115. *Id. See also* *Carr v. Barr*, 59 Empl. Prac. Dec. (CCH) ¶ 41,651, at 71,729 (D.D.C. June 23, 1992) (holding employee's repeated failure to follow the established procedures for reporting her disability-related absences was more a matter of discipline than related to her disability); *Magel v. Federal Reserve Bank*, 776 F. Supp. 200, 205 (E.D. Pa. 1991) (stating employee's chronic absenteeism caused by asthma, where she was essentially unable to work in the winter months, constituted a legitimate nondiscriminatory basis for discharge), *aff'd*, 5 F.3d 1490 (3d Cir. 1993); *Santiago v. Temple Univ.*, 739 F. Supp. 974, 979 (E.D. Pa. 1990) (determining employee with intermittent eye inflammation was unable to be present at work in any predictable or reliable manner and subsequent uncertainty and risk of employee's being allowed to sporadically appear at his emergency room job was legitimate basis for discharge), *aff'd*, 928 F.2d 396 (3d Cir. 1991); *Matzo v. Postmaster Gen.*, 685 F. Supp. 260, 263 (D.D.C. 1987) (explaining postal service lawfully dismissed employee with mental illness due to repeated absences without leave), *aff'd*, 861 F.2d 1290 (D.C. Cir. 1988); *Illinois Bell Tel. Co. v. Human Rights Comm'n*, 547 N.E.2d 499, 508 (Ill.
Courts have also found it necessary to consider whether attendance is a matter of convenience or necessity to the employer. In *Magel v. Federal Reserve Bank*, the court held that a disabled supervisor’s job required her to be present. The job could not be adequately performed from her home, by telephone, from the hospital, or by substitution. Moreover, her absences reduced output, increased the need for overtime, adversely affected the staff’s productivity, reduced the quality and timeliness of her work unit’s output, and affected the morale of her staff members. The court concluded that her medically related absences constituted a lawful basis for her discharge.

Likewise, in *Silk v. Huck Installation & Equipment Division*, the employer specifically advised the disabled employee that attendance in her new position was critical. Because her job required consistent attendance, which she had actual notice of, the employee’s subsequent termination based on her frequent and erratic attendance was lawful.

In *Lindgren*, with the exception of her last emergency surgery, all of Lindgren’s absences were planned in advance, giving Harmon Glass the opportunity to schedule accordingly. Moreover, Lindgren was never told that her attendance was a critical requirement of her...
job. Harmon Glass' advance notice of Lindgren's absences and the lack of a set, rigid attendance schedule indicates Lindgren's discharge was based more on her disability than her attendance record.

B. Reasonable Accommodation: Undue Hardship

The Lindgren court failed to analyze whether the accommodation necessary to employ Lindgren would create undue hardship to Harmon Glass. The accommodation Lindgren needed was the provision of aides on a temporary or periodic basis, which is authorized by the MHRA. Thus, because Lindgren is a qualified disabled person, whose employer has more than twenty-five employees, and an accommodation to the known disability has been identified, the accommodation was mandatory unless Harmon Glass showed undue hardship.

The term "undue hardship" was created to relieve an employer of the obligation to make an accommodation when it would be an unjustifiable burden. The Minnesota Court of Appeals has considered two cases regarding undue hardship. In LaMott v. Apple Valley Health Center Inc., the court held there was no undue hardship to the employer where the aid of a second worker was required to accommodate an employee's disability. The employer's position that a team cleaning approach would be cost prohibitive and impossible to implement was deemed unreasonable.

In Karst v. F. C. Hayer Co., the court acknowledged that a change in job assignments and assistance from co-workers in doing heavy lifting may not create an undue hardship to the employer. The court noted these accommodations would not cause any change in business and accordingly, the court reversed the lower court's grant of summary judgment in favor of the employer.

125. See Appellant's Brief at 12.
126. MINN. STAT. § 363.03(1)(6) (1992).
127. Id.
131. Id. at 591.
132. The plan required two housekeepers to work together on a floor and when the tasks were completed on that floor, they would move to a second floor. Id.
133. Id.
135. Id. at 322.
136. Id.; see also Ferguson v. United States Dep't. of Commerce, 680 F. Supp. 1514 (M.D. Fla. 1988). In Ferguson, the court required that the employer give an employee
Other jurisdictions have also addressed whether accommodating medically related absences creates undue hardship to the employer. In *Walders v. Garrett*, the Federal District Court for the Eastern District of Virginia found undue hardship where the employee sought to work only when her illness permitted. Other accommodations, such as removing leave restrictions or modifying the employer's work schedule, would not have enabled her to maintain regular attendance. The court noted that no one else was able to take the employee's place while she was absent. In addition, the court noted the employee worked in a division comprised of a small group of employees where each was required to work under strict deadlines, maintaining high productivity levels. Under these circumstances, allowing the employee frequent and unpredictable absences created an undue hardship for the employer.

In *Illinois Bell Telephone Co. v. Human Rights Commission*, the Illinois Court of Appeals determined that placing an employee in a unit utilizing a flexible “non-scheduled days” system countered predictable absences caused by her disability and posed no undue hardship to the employer. The court found that making this accommodation would not be overly expensive or unduly disruptive because the system was already in place. The court thus held that the employer unlawfully discriminated against the employee by unreasonably failing to provide an available accommodation and by not permitting the employee to rectify her attendance problem.

suffering from alcoholism another chance, provided he was otherwise found fit for employment, despite a three year record that included 389 absences. *Id.* at 1518. The court reasoned that the employer's failure to recognize and confront the problem sooner had aggravated the employee's problems and made accommodation (in the form of another chance) appropriate. *Id.*

138. *Id.* at 313.
139. *Id.*
140. *Id.* Walders attempted to compare her situation with a disabled secretary, Kathy Jorden, who worked for the same employer. *Id.* The Navy provided Jorden with unpaid leave, advances in sick leave, and participation in a leave transfer program and flex-time. *Id.* Jorden was not disciplined for her absences. *Id.* at 313. Jorden testified that even though her disability required her to use large amounts of leave, she was able to meet deadlines and otherwise fulfill her job responsibilities. *Id.* In distinguishing Walders' situation, the court noted that Walders' responsibilities included more stringent deadlines. *Id.* More importantly, when Jorden missed work, other secretaries either filled her post or assumed her work by means of a common computer network. *Id.*

141. *Id.*
144. *Id.* at 509.
145. *Id.*
146. *Id.*
In *Carr v. Barr*, a District of Columbia court decided that chronic long-term absenteeism was a condition that could not be accommodated without undue hardship. The court refused to require the employer to allow the employee unrestricted flexibility in her arrivals and departures. Reassignment was unavailable because unpredictable and unexplained absences would be detrimental to her performance of any available job. Planning and scheduling for other employees would be “unthinkable without some type of reliance.” Any attempt to accommodate the employee would have resulted in undue hardship to the employer.

The *Lindgren* court stated that the provision of a substitute employee to perform Lindgren’s job functions every time she was absent was not a reasonable accommodation. Yet the fact that Lindgren was previously hospitalized and remained employed was strong evidence that Harmon Glass could accommodate her disability-related absences. Why else would Harmon Glass acquiesce to a long-term employee’s previous hospitalizations and then suddenly claim it was too much of an inconvenience or hardship to continue the employment?

Certainly an employee convalescing from a disability should not expect the employer to keep the position open indefinitely. The ability to report to work is one of the qualifications of employment. But, in situations where a job is not unique, other workers may fill in and perform the tasks of a disabled worker who is temporarily hospitalized.

Lindgren was not absent on a day-to-day basis; she required blocks of disability time. The majority of her absences, unlike those in *Carr*, were predictable and explainable. Her secretarial job was not specialized as in *Walders*. Like *LaMott*, Lindgren presented facts that were ideal for accommodation with minimum disruption or inconvenience to the employer. Mere administrative annoyance,

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148. Id. at 71,729.
149. Id.
150. Id.
151. Id.
154. See supra note 75.
157. Similar to the *LaMott* team cleaning approach, which a job coach testified would be necessary for one to two years, Harmon Glass could easily seek a medical
such as arranging for a temporary worker, should not be sufficient hardship to preclude accommodation.\(^{158}\) Both the nature of Lindgren’s job and her ability to give ample notice of any impending hospitalizations allowed Harmon Glass to schedule an aide, without undue disruption to its business operations.

C. Reasonable Accommodation: Prognosis

The *Lindgren* court should have given proper attention to Harmon Glass’ failure to appraise Lindgren’s medical condition and prognosis.\(^{159}\) To consider prognosis before terminating a qualified disabled employee is essential in determining whether reasonable accommodation is possible.\(^{160}\)

Inconsistent with its *Lingren* holding, the Minnesota Court of Appeals recently reversed a summary judgment because the employer, prior to terminating the employee, did not know the employee’s prognosis.\(^{161}\) The employer assumed that the employee’s future medical condition would be the same as it had been, precluding full-

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[^158]: See, e.g., Nelson v. Thornburgh, 567 F. Supp. 369 (E.D. Pa. 1983), aff’d, 732 F.2d 146 (3d Cir. 1984), cert. denied, 469 U.S. 1188 (1985). In *Nelson*, the court ruled that social utility justified requiring the Pennsylvania Department of Public Welfare to provide readers to three blind income maintenance workers. *Id.* With the accommodation, the blind workers were able to perform their jobs as well as sighted workers. *Id.* at 370. The court weighed the social costs of refusing the accommodation against the economic costs of providing the accommodation. *Id.* at 370-71. The court reasoned that “[w]hen one considers the social costs which would flow from the exclusion of persons such as the plaintiffs from the pursuit of their profession, the modest cost of accommodation—a cost which seems likely to diminish as technology advances and proliferates—seems by comparison, quite small.” *Id.* at 382.

[^159]: *Lindgren v. Harmon Glass Co.*, 489 N.W.2d 804 (Minn. Ct. App. 1992), review denied (Minn. Oct. 20, 1992). The court summarily dismissed consideration of Lindgren’s prognosis stating that Harmon Glass had already done its fair share of reasonable accommodation. *Id.* at 810. The Minnesota Human Rights Act, however, mandates that in order for an employer to claim the undue hardship exception to the reasonable accommodation requirement, there must be “documented good faith efforts to explore less restrictive or less expensive alternatives, including consultation with the disabled person or with knowledgeable disabled persons or organizations.” MINN. STAT. § 363.03(1)(6)(e) (1992). There is no evidence that Harmon Glass fulfilled these duties. *Lindgren*, 489 N.W.2d at 810.

[^160]: See Robert B. Fitzpatrick, *Reasonable Accommodation and Undue Hardship under the ADA: Selected Issues*, C742 ALI-ABA 1199 (1992). Fitzpatrick notes the employer should not make medical judgments. Rather, the employer should consult with a doctor and/or the disabled employee to determine whether reasonable accommodation is possible, and the form in which it should take. *Id.* at 1215.

time work. The court refused to decide whether the termination decision was lawful without knowing exactly what information the employer had prior to termination.

In *Walders*, the Virginia federal district court made a specific finding that a similar rate of absenteeism for the employee would occur in the future. Based on that finding, the court concluded that no accommodation was possible. Similarly, in *Illinois Bell*, the Illinois appellate court relied on the employer’s admission that the employee was discharged because the employer perceived no change in her physical condition after surgery. This finding alone was the basis of the human rights commission’s holding of unlawful discriminatory discharge, which was affirmed by the appellate court.

Lastly, in *Carr*, findings of fact showed both the employee and her doctor acknowledged that she would never be capable of regular work attendance. The court concluded that the lingering and unpredictable nature of the employee’s medical attacks would keep her from maintaining any fixed or modified schedule, and therefore would preclude accommodation.

The *Lindgren* court stated that, regardless of Lindgren’s prognosis, Harmon Glass’ refusal to continue to hire temporary help during future absences was not unreasonable. The duty to accommodate a disabled employee, however, requires looking toward the future for the best solution for both the employer and the employee. The court’s refusal to consider prognosis is contrary to established case and statutory law. Only when facts demonstrated that Lindgren’s prognosis was such that future surgeries or extended absences were likely could accommodation be precluded and the termination made lawful.

162. *Id.*

163. *Id.*


165. *Id.* at 306.

166. *Id.* at 314.


168. *Id.* at 508.


171. *Id.* at 71,728.

172. *Id.*


174. *See Minn. Stat. § 363.03(1)(6)(c) (1992).*
D. Goals of the Minnesota Human Rights Act

The Minnesota Human Rights Act requires an employer to reasonably accommodate a qualified disabled employee's disability unless there is undue hardship. The goal of the disability discrimination statute is to facilitate the return of disabled workers into the work force. The MHRA contemplates providing job restructuring and aids for disabled employees. Indeed, "Minnesota's disabled citizens are an untapped resource that is willing and able, with assistance from employers and the state, to make a productive contribution to our society."

In balancing the equities between society's interests and the interests of business, often times there is a price to be paid by business in the interest of social progress. Other times, social agendas must be compromised in the name of economics. With regard to qualified disabled workers, the Minnesota legislature has clearly targeted the advancement of disabled persons in the work force as a priority. With that priority in mind, the Minnesota Supreme Court has consistently held that the provisions of the MHRA are to be liberally construed.

While instructive, the MHRA falls short of providing a bright line test for the legality of firing a disabled person due to medically necessary absences. The MHRA fails to address accommodating planned, medically necessary absences. There are thousands of disabled Minnesota citizens, many of whom require periodic short-term

175. Id.
176. LaMott v. Apple Valley Health Care Ctr., Inc., 465 N.W.2d 585, 591 (Minn. Ct. App. 1991). Additional goals and missions of disabled persons and groups representing them have been outlined:
(1) To assist persons with disabilities to secure maximum independence and self-sufficiency by having equal access to employment opportunities;
(2) To assure employment opportunities are based on objective evaluations and not subjective presumptions;
(3) To assist persons with disabilities to live independently, and to fully participate in the community;
(4) To promote the dignity, safety, and rights of disabled persons;
(5) To eliminate confusion over the issue of minimum qualifications and reasonable accommodation;
(6) To provide employment placement and vocational services for disabled persons and to assist them in reentering previous employment or funding alternative employment suited to their strengths and abilities; and
(7) To assist persons with disabilities to avoid relying on federal and state tax dollars, depending on public assistance, or existing on subsistence levels of income.
Cooper v. Hennepin County, 441 N.W.2d 106, 113 (Minn. 1989).
177. MINN. STAT. § 363.03(1)(6) (1992).
178. LaMott, 465 N.W.2d at 591.
179. See MINN. STAT. § 363.01 (1992).
180. See Continental Can Co. v. State, 297 N.W.2d 241, 248 (Minn. 1980); see also City of Minneapolis v. Richardson, 307 Minn. 80, 89, 239 N.W.2d 197, 203 (1976).
disability-related medical leave to secure long-term vocational ability. Certainly, the right of these disabled workers to maintain their health and keep their jobs is part of the MHRA's intent.

Permitting an employer to remove a disabled worker from the workplace because she required surgery to remain functional for her job's duties is contrary to the goal of the disability protection under the MHRA. Such an action, however, appears allowable under the MHRA's current language. The MHRA has a loophole in its disability anti-discrimination provision. It is silent on the commonly occurring issue of disability-related absenteeism, except for the vague balancing mechanism which exists under the auspices of the reasonable accommodation provision. Clearly, this allows for cases such as Lindgren to fall between the cracks. While Lindgren's discharge is not legally sanctionable under the MHRA, it is contrary to its underlying purpose. The legislature must re-examine the MHRA and include language specifically addressing absenteeism and medically necessary leave from work.

V. CONCLUSION

The Lindgren court construed the facts and the MHRA to negatively affect disabled employees in need of periodic, medically necessary absences. In determining whether Harmon Glass could reasonably accommodate Lindgren, the court should have considered her prognosis, the true consequences or hardship to Harmon Glass resulting from the accommodation, and the intent underlying the MHRA. To prevent cases like Lindgren from continuing to be dismissed, the MHRA should offer qualified disabled persons protection from discharge based on medically necessary absences directly related to the disability. Without such protection, employers can discharge disabled employees for absences beyond their control. The law must be revised, giving disabled employees a greater chance of fair and equal treatment in the workplace.
