back period ended. Bradshaw appealed the denial, alleging that Reliance improperly applied the preexisting exclusion clause and that it failed to evaluate whether she had any preeclampsia and/or stroke-related symptoms during the look-back period.

Dr. Jason Pollock, a board-certified doctor of obstetrics and gynecology, performed an independent medical review of Bradshaw's records on behalf of Reliance. He concluded that there was no evidence of preeclampsia and/or stroke-related symptoms during the look-back period, and preeclampsia could not have been predicted then. He also concluded that Bradshaw's pregnancy and stroke were related because preeclampsia would develop only through a pregnancy and, thus, the preeclampsia contributed to or caused her stroke. Reliance denied Bradshaw's appeal, finding that her pregnancy qualified as a preexisting condition that "contributed" to her stroke.

Litigation ensued. Applying a de novo standard of review, the district court granted Reliance its motion for summary judgment, finding that the denial of benefits under the preexisting condition exclusion was not wrong and, even if it were, it was not unreasonable.

Bradshaw appealed to the Eleventh Circuit. The parties agreed that the policy gave Reliance the authority to interpret the policy; thus, the court found that the applicable standard of review here was the arbitrary-and-capricious standard. Since Reliance acted under an apparent conflict of interest, the court found the same abuse-of-discretion standard would apply but took the conflict of interest into account. Under this standard, the court was tasked with determining whether the Reliance "interpretation was made rationally and in good faith—not whether it was right."

The Eleventh Circuit reversed the district court decision, holding that the interpretation of the preexisting clause by Reliance, particularly its interpretation of the phrase *contributed to,* was unreasonable and contrary to the goals of ERISA to protect employee interests in their employee benefit plans. The Eleventh Circuit construed the language "caused by; contributed to by; or resulting from a 'Pre-existing Condition' to exclude coverage for only those losses substantially caused by, substantially contributed to by, or substantially resulting from a preexisting condition," noting that strict interpretations of plan documents and stringent construction may yield "untenable results."

The Eleventh Circuit rejected Reliance's "but for" argument—an argument that in essence stated that but for Bradshaw's pregnancy, she would not have developed high blood pressure, and but for that high blood pressure, she would not have developed preeclampsia, and but for the preeclampsia, she would not have suffered a debilitating stroke—finding that "Connecting Bradshaw's healthy pregnancy during the look-back period to her ultimate disabling condition requires four links. On this record, that's too many. To view Bradshaw's healthy pregnancy as a substantially contributing factor to her disability simply requires too much attenuation."

The court found that the Reliance interpretation would require a claimant to be in "perfect health at the time of [obtaining the policy] before the policy would benefit" the claimant. The court highlighted the fact that its own precedent, along with cases and reasoning from the Fourth and Tenth Circuits, supports its conclusion here.

The court notes that the only condition Bradshaw had during the permissible look-back period was a healthy pregnancy and that her "pregnancy cannot be said to have substantially contributed to her total disability." The court further notes that pregnancy is not considered a precursor to stroke, nor does it normally progress or develop into a stroke. The district court decision was reversed with the Eleventh Circuit holding that the use of the preexisting condition exclusion by Reliance when denying Bradshaw's claim was unreasonable. The case is remanded to the district court so that she can be awarded benefits.

Employee Not Entitled to Compensation for Time Spent Completing Health and Wellness Screenings

Watterson v. Garfield Beach CVS, LLC. 2017 Wage & Hour Cas. 2d (BNA 269, 039). 694 Fed. Appx. 596 (9th Cir. Aug. 2, 2017).

An employee is not entitled to receive compensation for time spent completing an annual health screening and online wellness review as part of her voluntary wellness program.

The employer offered a group medical insurance program, the CVS Caremark Welfare Benefit Plan, to its em-

ployees. The plan instituted a program under which participants were required to pay an additional $50 toward their medical insurance premium per month if they did not complete an annual health screening and online wellness review. The plan required participants to complete the health screening at a CVS Minute Clinic or Quest Lab, and the employer specified the timing within which it had to be completed.

In or around 2012, Roberta Watterson did not complete the online wellness review and had to pay the additional $50 toward her medical insurance premium. Thereafter, Watterson completed both the annual health screening and the online wellness review, and she was not compensated for the time spent complying with the plan requirements. Watterson filed suit alleging, among other things, that she should have been compensated for such time.

Under California law, employees are required to be compensated for *hours worked,* which is defined as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

Seeking to have the case dismissed, the employer moved for summary judgment. The employer took the position that it was not required to compensate Watterson for the time spent complying with plan requirements. The employer prevailed before the district court. Watterson appealed to the Ninth Circuit Court of Appeals, and the decision was upheld by the Ninth Circuit panel in a 3-0 ruling.

In its decision, the Ninth Circuit highlights, among other things, the fact that the employee was not "subject to the control of" or "suffered or permitted to work" by CVS, despite the fact that the employer set the parameters around the location that such screenings had to be performed and the timing of when they had to be performed. The Ninth Circuit notes that the employer did not require her to sign up for the medical insurance—She did so voluntarily. Moreover, completing the plan requirements was not a condition of her employment, and completion of such requirements was not part of her job duties. In light of the foregoing, the employee could not "establish a genuine issue of material fact as to whether time spent completing annual health screenings and wellness questionnaires for a voluntary and optional wellness program instituted by CVS for its employees meets the definition of 'hours worked.' "

Seventh Circuit Rules That Long-Term Leaves of Absence Are Not Reasonable Accommodations Under ADA

Severson v. Heartland Woodcraft, Inc., 872 F.3d 476 (7th Cir. Sep. 20, 2017), 101 Empl. Prac. Dec. P 45, 882.

A long-term leave of absence is governed by the Family Medical Leave Act (FMLA), not the Americans with Disabilities Act (ADA). A long-term leave of absence is not a "reasonable accommodation" under ADA.

Raymond Severson worked for Heartland Woodcraft, Inc., from 2006 through 2013. In June 2013, Severson took a 12-week medical leave under FMLA due to back pain. On the very last day of his FMLA leave, Severson underwent back surgery, requiring that he remain out of work for an additional two to three months. Heartland denied his request for additional medical leave, informing him that his employment was being terminated at the conclusion of his FMLA leave. Heartland did, however, invite Severson to reapply when he was cleared to return to work.

Upon being cleared to return to work three months later, rather than reapply for his position, Severson filed suit against Heartland, alleging that it had discriminated against him under ADA by failing to provide him a reasonable accommodation—namely an additional three months of leave after he had exhausted his FMLA leave.

Heartland prevailed in the lower court. An appeal ensued, and the question before the Seventh Circuit was whether Heartland violated ADA by failing to reasonably accommodate his disability. Heartland prevailed again. In its decision, the Seventh Circuit notes that although the term *reasonable accommodation* is flexible under ADA, the term *qualified individual* is not. In other words, a reasonable accommodation under ADA must permit the disabled employee to actually "perform the essential functions of the employment position." If an accommodation does not allow the employee to perform the job, then the employee cannot be deemed to be a "qualified individual" under ADA.

In a decision highly favorable to employers, the Seventh