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Offering Practical Guidance to Employers

An Employee Fails to Return from Leave As Originally Scheduled—Has That Employee "Voluntarily Resigned"?

By Susan E. Groff and Alexandra Gilinsky on January 30, 2017

What are employers to do if an employee has not provided a doctor's note to continue his or her leave and the initial end date for that leave has passed? When can employers deem such an employee to have "voluntarily resigned"? *Leticia Bareno v. San Diego Community College District* reminds employers that they must scrutinize what communications they have received from such employees about their leaves and their own attempts at follow-up before considering an employee to be, "voluntarily resigned."

On January 13, 2017, the California Court of Appeal for the Fourth Appellate District reversed the superior court's grant of summary judgment in favor of the San Diego Community College District (the "College") on the Plaintiff's sole cause of action for retaliation in violation of the California Family Rights Act ("CFRA").

Plaintiff had a history of being disciplined by the College for performance issues. In early 2013, Plaintiff was disciplined again with a three-day suspension from work with no pay. On the date Plaintiff was scheduled to return to work, Plaintiff notified the College of her need to take medical leave and provided a supporting doctor's note.

On the date her original leave was set to expire, a Friday, Plaintiff emailed the College a second doctor's note extending her leave an additional week. The College strongly denied ever receiving that email. On that same date, the Plaintiff sent the College another email – which was received – stating that she was out on a medical leave and

would notify all concerned of her return but provided no further detail of her return date or supporting documentation from her doctor.

Plaintiff continued to be absent from work the following work week (the "disputed week"). As a result, at the end of the disputed week, the College mailed Plaintiff a letter to inform her that her five consecutive unauthorized absences constituted a voluntary resignation. As soon as the Plaintiff received the College's letter, she immediately attempted to contact the College and provided the College with medical documentation supporting the medical necessity of her absences, but the College refused to reconsider.

The Court held that Plaintiff's communications could be deemed to be a reasonable request for additional leave. The Court found that even if the second doctor's note was not received, Plaintiff sent other communications which put the College on notice that she required further leave and was not, "voluntarily resigning" her employment.

This case serves as a cautionary tale to those employers who are tempted to declare an employee as having "voluntarily resigned" after that employee's initial request for leave has expired. This decision provides employers with a good reminder that they should tread carefully when an employee is out on protected medical leave and take affirmative steps to determine the employee's medical leave status if there is an apparent lack of certification for a certain time period.
