

California Workplace Law Blog

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California Court of Appeal Finds Employer's Denial of Accommodation to a Nondisabled Employee May Be Evidence of an Associational Disability Discrimination Claim

By Susan E. Groff and Melissa Yen on September 1, 2016

On August 29, 2016, the California Court of Appeal for the Second Appellate District reversed summary judgment earlier awarded to the employer in *Castro-Ramirez v. Dependable Highway Express, Inc.* In its reversal, the court found that an employer's denial of accommodation to a nondisabled employee may be evidence of associational disability discrimination under the Fair Employment and Housing Act ("FEHA").

The Facts

Plaintiff Luis Castro-Ramirez ("Plaintiff") began working for Dependable Highway Express ("DHE") in 2010. At that time, Plaintiff notified DHE that he had a disabled son who required dialysis on a daily basis. He requested work schedule accommodations that allowed him to administer dialysis to his son in the evenings and was given such a schedule. Plaintiff's typical schedule was from 9:00 or 10:00 a.m. until 7:00 or 8:00 p.m.

In March 2013, Plaintiff's supervisor was promoted to operations manager, and his new supervisor, Boldomero Munoz-Guillen ("Junior") changed Plaintiff's work schedule. That same month, Plaintiff complained to the operations manager that Junior had changed his hours, such that he was unable to attend to his son's daily dialysis needs.

Plaintiff told Junior, "Please, I need to have my job like always. I've always had help from everyone except you." The next day, Junior assigned Plaintiff to a shift starting at 12:00 p.m., and due to the route Plaintiff's supervisor assigned to him, he could not get back in time to administer dialysis by 8:00 p.m. Plaintiff requested the day off or an alternative shift, and reminded Junior that the operations manager had told Junior about Plaintiff's needs. Junior laughed, "[Plaintiff's former supervisor] doesn't work here anymore. Now it's me." Junior told Plaintiff that if Plaintiff did not handle the route, he would be terminated. Plaintiff refused, and DHE terminated Plaintiff's employment.

The Decision

The Court of Appeal noted that Plaintiff had abandoned his claim for failure to provide reasonable accommodation, and thus, declined to decide whether FEHA provided a duty to accommodate associational disability. However, the Court of Appeal explained that the FEHA creates an associational disability discrimination claim. The Court of Appeal opined that FEHA makes it unlawful to discharge a person from employment based on physical disabilities or other characteristics, which include “a perception that the person. . .is associated with a person who has, or is perceived to have, any of those characteristics.” Cal. Gov. Code § 12940(a), § 12940(o).

Based on that framework, the Court of Appeal opined that a jury could reasonably find that Plaintiff’s association with his disabled son was a substantial motivating factor in Junior’s decision both to deny an alternative work schedule and to terminate Plaintiff. “[T]hese facts may give rise to the inference that Junior acted proactively to avoid the nuisance plaintiff’s association with his disabled son would cause Junior in the future.”

The Court of Appeal also held that reasonable juror could find Plaintiff’s repeated complaints about the sudden changes to his schedule represented a protected activity, especially given the proximity of time between Plaintiff’s complaints and the termination. The Court of Appeal found Plaintiff did more than simply request an accommodation; he expressed a degree of opposition to the DHE’s failure to provide the altered schedule and thus there is a triable issue of fact as to retaliation.

The Dissent

The Court of Appeal’s dissenting opinion disagreed with the majority’s statement that it declined to decide whether FEHA establishes a separate duty to reasonably accommodate associational disabilities. Rather, the dissent believes the majority did just that. Effectively, the employer either must provide accommodations to employees associated with disabled persons, or face liability for associational discrimination for failure to provide such accommodations.

The *Castro-Ramirez v. Dependable Highway Express* ruling finds that an employer could be liable for discrimination and retaliation for adverse employment actions substantially based on associational disabilities. The decision also asserts that employer denial of accommodation requests by employees associated with disabled persons may be evidence of an associational disability claim. Accordingly, employers should review their policies and practices regarding responding to disability accommodation requests in light of this decision. Please contact Jackson Lewis with any legal questions about disability accommodation related issues.

