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Presented By SheppardMullin

California Court Of Appeal Holds That Employees Lose Reinstatement Rights If They Fail To Return To Work During The 12-Week Leave Period Protected Under CFRA

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On August 16, 2011, in *Rogers v. County of Los Angeles*, B217764, slip op. (2d App. Dist., Div. 2), the California Court of Appeal held that employees are not entitled to reinstatement of their jobs if they return to work after expiration of the 12-week leave period protected under the California Family Rights Act of 1993 (CFRA).

The CFRA entitles eligible employees to take a protected unpaid leave for up to 12 workweeks in a 12-month period for family care and medical leave to care for their children, parents, or spouses, or to recover from their own serious health condition. An employee who takes CFRA leave is guaranteed that taking such leave will not result in a loss of job security or any other adverse employment actions. Upon the employee's timely return from CFRA leave, an employer generally must restore the employee to the same or a comparable position.

In *Rogers*, the plaintiff had worked for the County of Los Angeles for many years as a personnel officer in the executive office, which was responsible for rendering administrative and other support services to the Los Angeles County Board of Supervisors and its various commissions. On April 3, 2006, plaintiff went on medical leave for "work-related stress," which she claimed resulted from some unidentified "attack on [her] integrity." She claimed this "stress" manifested in her

“crying at work, not being able to sleep or eat, and causing her blood pressure to become ‘out of whack.’” Plaintiff remained off work for a total of 19 weeks.

In May 2006, the County appointed a new director of the executive office. The new director determined that changes needed to be made to the structure of the office to make it run more efficiently. As part of the new director’s efforts to streamline the organization, she decided to bring in a new personnel officer in place of plaintiff because she “felt that somebody outside the organization would come in and would be independent, objective, maybe perhaps could provide some fresh eyes into the organization.” The uncontroverted evidence established that the decision had “absolutely” nothing to do with plaintiff taking a protected medical leave.

Upon returning to work following her leave, plaintiff was assigned to a high-level human resources position in a different department that was specially created for plaintiff. The County effectively conceded that the position involved “very different” job duties and was therefore not “comparable” to plaintiff’s previous position, although plaintiff’s pay would not have been reduced and she would not have lost any salary or benefits upon her return. However, plaintiff refused to accept the new position, claiming that it was a “demotion” and a “slap in the face,” and that she was “devastated,” “embarrassed,” “humiliated,” “hurt,” and “disappointed” by the proposed transfer. She filed suit, alleging two primary claims: (1) that the County interfered with her CFRA reinstatement rights; and (2) that the County retaliated against her for exercising her rights under the CFRA.

After a jury trial, plaintiff prevailed on both claims, and was awarded damages in the amount of $356,000. On appeal, the Court reversed. First, the Court held that the County could not legally have interfered with plaintiff’s CFRA reinstatement right because an employee has such a right only when he or she returns to work “on or before the expiration of the 12-week protected leave” period. Here, it was undisputed that plaintiff did not return to work within the applicable 12-week period. Accordingly, the County had no obligation at all to reinstate plaintiff or to

assign her to a “comparable” position. The Court also noted that the result would be the same under the CFRA’s federal counterpart, the Family Medical Leave Act (FMLA). Because plaintiff did not return during the protected period, it ultimately made no difference that the decision to transfer plaintiff was made during the 12-week protected leave period.

Second, the Court held that there was no evidence of retaliation, *i.e.*, that “the taking of medical leave was a motivating reason for the County’s decision to transfer [plaintiff].” In fact, the evidence put forth at trial established the opposite: that the director’s decision to reassign plaintiff was based solely on her plan to reorganize the executive office. Simply put, the County did not fail to comply with its obligations under the CFRA.

Employers may want to review their handbooks and other employment-related policies in which they address CFRA and similar leaves of absence to determine whether any changes should be made in light of the holding in *Rogers v. County of Los Angeles*.

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