

One Minute Memo[®]



Court Rejects Employer's "Honest Belief" Defense In CFRA Leave Case

In *Richey v. AutoNation, Inc.*, the California Court of Appeal overturned an arbitrator's ruling against an employee's claim for violation of the California Family Rights Act ("CFRA"). The Court of Appeal rejected the arbitrator's reliance on the employer's "honest belief" that the employee had abused his approved leave. The Court of Appeal held that an honest belief was not enough for the employer to prevail, because the CFRA, unlike other discrimination laws, protects employees not only from discriminatory and retaliatory treatment but also from "interference" with the employee's exercise of rights.

Background Facts

While employed as a sales manager at Power Toyota, the plaintiff, Avery Richey, opened a family seafood restaurant. Later, while on an approved CFRA leave for a back injury, Richey worked in his restaurant. The company discharged Richey because its policy prohibited employees from accepting employment with another company while on approved CFRA leave. Richey then sued, alleging that his discharge violated the CFRA. The trial court ordered him to arbitrate the claim, pursuant to his arbitration agreement with the employer.

The arbitrator rejected Richey's CFRA claim, even though the company's policy barring other employment was confusing and even though Richey did not think he was violating the policy by managing his own restaurant. The arbitrator ruled that Power Toyota was nonetheless entitled to prevail on the basis of its "honest belief" defense - Power Toyota could discharge Richey if it had an "honest belief," even if mistaken, that he was abusing his medical leave or deceiving the company about his outside employment.

When Richey asked the trial court to vacate the arbitrator's ruling, the trial court upheld the arbitrator's decision, determining that the company could rely on its good faith, "honest belief" that Richey had abused his leave, and that an employer's suspicion of misuse was enough to justify its discharge decision.

The Court of Appeal's Holding

On Richey's appeal, the Court of Appeal reversed the trial court's affirmation of the arbitration award and ordered the trial court to vacate the award under California Code of Civil Procedure §1286.2(a)(4), which permits courts to vacate arbitration awards when arbitrators exceed their powers. The Court of Appeal ruled that the arbitrator's acceptance of Power Toyota's "honest belief" defense was clear legal error that exceeded the arbitrator's authority.

The Court of Appeal acknowledged that there are limits to the leave rights protected by the CFRA and the federal Family Medical Leave Act ("FMLA"), in that an employer may discharge or deny reinstatement to an employee on leave if the employee would not have been employed at the time reinstatement was requested (e.g., if the employee's reason for leave was untrue, the employer could discharge the employee for misconduct). But the arbitrator erred, the Court of Appeal held, by accepting Power Toyota's "honest belief" defense, which wrongly relieved the company of its burden to *prove with evidence* that it refused to reinstate Richey for abusing his medical leave by working another job while on that leave. The

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court acknowledged that although some cases have applied the employer's "honest belief" defense to uphold refusals to reinstate employees on leave, both federal and California courts have since rejected that defense.

Applying these principles, the Court of Appeal held that the arbitrator committed clear error in applying the "honest belief" defense. The arbitration agreement here stated that the arbitrator must resolve any dispute "based solely upon the law governing the claims and defenses" involved. The court therefore held that the arbitrator had exceeded his power. By accepting the company's "honest belief" defense, the arbitrator committed legal error, impairing Richey's ability to have his non-waivable CFRA claim heard on the merits.

Finally, the Court of Appeal determined that the arbitrator failed to make findings of fact to support the denial of Richey's CFRA claim. Although Power Toyota could have legally discharged Richey for misusing approved leave, the employer could not "simply rely on an imprecisely worded and inconsistently applied company policy to terminate an employee on CFRA leave without adequately investigating and developing sufficient facts to establish the employee had actually engaged in misconduct warranting dismissal."

What *Richey* Means for Employers

Richey means that California employers should exercise great caution in refusing to reinstate or in discharging an employee who is on CFRA family or medical leave, even when it appears that the employee has abused the leave or deceived the employer into approving the leave. Employers should thoroughly investigate each situation to ensure that a discharge would not violate the employee's CFRA rights. And employers' leave policies - such as policies on secondary employment during leave - should be clearly defined and adequately explained so that employees know exactly what is expected of them during an approved leave.

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