SEYFARTH SHAW

One Minute Memo®

Reasonable Accommodation Protections Expanded to Non-Disabled Employees

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Seyfarth Synopsis: California court creates new duty to accommodate employees who, although not themselves disabled, are associated with a disabled person.

The Court of Appeal decision in *Castro-Ramirez v. Dependable Highway Express* is a stark reminder of the adage that hard facts make bad law. *Castro-Ramirez* holds that California's Fair Employment and Housing Act—which requires employers to accommodate employees with disabilities—also requires employers to accommodate employees who simply are associated with a person with a disability.

The Facts

Luis Castro-Ramirez drove truck routes for Dependable Highway Express, Inc. Upon hire, Ramirez notified DHE that his son required daily dialysis, and requested a schedule that would permit him to administer his son's dialysis in the evening. DHE accommodated that request for several years. His supervisors planned his routes so that he would be home in time to care for his son.

But then Ramirez got a new supervisor. His new boss gave Ramirez a route that required him to finish later in the day. Ramirez said he could not drive the assigned route because it would not get him home in time to administer dialysis to his son. Ramirez requested that he be assigned another route or be given the day off. The supervisor rejected both requests, advising Ramirez he had to accept the new route or be fired. Three days later, DHE terminated Ramirez's employment.

Ramirez sued for disability discrimination, failure to prevent discrimination, retaliation, wrongful termination in violation of public policy, failure to provide reasonable accommodation, failure to engage in the interactive process, hostile work environment, and failure to prevent harassment. He pursued a theory of "associational disability discrimination," arguing that DHE violated the FEHA when it fired him for requesting an accommodation to care for his disabled son. The trial court rejected that theory and granted DHE's motion for summary judgment. Ramirez abandoned his claim for reasonable accommodation and appealed the trial court's ruling with respect to his claims for disability discrimination, failure to prevent discrimination, retaliation, and wrongful termination in violation of public policy.

The Appellate Court Decision

Although Ramirez had abandoned his claim for failure to provide reasonable accommodation, the Court of Appeal went out of its way to hold that the FEHA creates a duty "to provide reasonable accommodations to an applicant or employee who is associated with a disabled person." The Court of Appeal rejected DHE's argument that the duty to accommodate is limited to disabled employees, reasoning that the "plain language" of the FEHA imposes a duty on employers to provide reasonable accommodations to an applicant or employee who is associated with a disabled person. The Court of Appeal noted that the statutory definition of "physical disability" encompasses "a perception that a person is associated with a person who has, or is perceived to have a physical disability." Thus, an employee's association with a physically disabled person is, according to the Court of Appeal's interpretation, itself a disability under the FEHA.

The Court of Appeal further determined that triable issues existed as to the retaliation claim. Ramirez had "showed opposition to a practice forbidden by FEHA," when he complained about the change in his schedule. The Court of Appeal then went on to hold that a request for reasonable accommodation, standing alone, constitutes protected activity under the FEHA. In support of this conclusion, the Court of Appeal cited a recent amendment to the FEHA that took effect on January 1, 2016, without discussing whether that amendment had retroactive effect.

The Court of Appeal's decision drew a strong dissenting opinion, which points out that the majority was substantially departing from federal law on the issue of reasonable accommodations in the context of associational disability. Federal courts hold that the ADA does not obligate employers to accommodate employees associated with a disabled person. And although the FEHA is broader than the ADA in certain respects, the dissent notes that courts "should not construe FEHA as departing from the ADA without a clear legislative statement of intent to do so." No such legislative statement exists here.

The dissent also notes that, as a practical matter, the CFRA already affords employees with the right to take intermittent leaves to care for disabled family members. Yet Ramirez never timely alleged a violation of the CFRA. Thus, according to the dissent, "there is no basis for finding a FEHA violation."

What *Castro-Ramirez* Means for Employers

Castro-Ramirez expands the class of persons entitled to reasonable accommodation under the FEHA, without providing clear guidance as to how California employers must handle employee requests for accommodations in their schedule to care for a family member, friend, or associate. For example, an employee, even though not entitled to take time off from work under the CFRA to care for a disabled relative, may contend that he now is entitled to a reasonable accommodation, in the form of an intermittent leave or reduced schedule, under the FEHA. California employers should consider reviewing their disability leave policies to ensure that they make clear that reasonable accommodations will be considered for employees who provide care to a person with a physical or mental disability, and not just employees who are disabled themselves. Managers, supervisors, and HR professionals should also be trained on this issue.

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