

One Minute Memo®



Supreme Court Declines to Address “Honest Belief” Defense to CFRA Claims

By David D. Kadue and Timothy M. Fisher

Many federal courts have endorsed the “honest belief” defense against interference and retaliation claims under the Family and Medical Leave Act (FMLA). Under this doctrine, an employer is not liable if it honestly, even if mistakenly, relied on nondiscriminatory reasons for dismissing an employee who was on protected medical leave. In *Richey v. AutoNation, Inc.*, the California Supreme Court was asked to decide whether this defense applies to interference and retaliation claims under the California Family Rights Act (CFRA). However, the Supreme Court sidestepped this issue, leaving the law unsettled. At the same time, the Supreme Court affirmed the extraordinarily narrow scope of judicial review of arbitration awards.

The Facts

Power Toyota of Cerritos (Power Toyota) hired Avery Richey in 2004. Richey signed an arbitration agreement covering all employment disputes.

In March of 2008, Richey injured his back while moving furniture at his home, and Power Toyota granted his request for medical leave. During the previous month, Richey had opened a seafood restaurant, where he began to work during his leave.

In April 2008, Power Toyota sent Richey a letter stating that employees were not allowed to pursue outside employment while on leave and inviting Richey to call if he had any questions. Richey had also received an employment manual noting that outside work while on CFRA leave is prohibited. Later that month, an employee of Power Toyota visited Richey’s restaurant and saw him sweeping, bending over, and hanging a sign using a hammer at the restaurant. Richey admitted to handling orders and answering the phone at the restaurant while on leave, but said that these tasks were within the medical restrictions he had received from his doctor. Power Toyota discharged Richey on May 1, 2008, during a medical leave set to expire on May 28, 2008.

Richey sued Power Toyota for retaliation because he took an approved CFRA leave and because it failed to reinstate following leave. The trial court granted Power Toyota’s motion to compel arbitration.

Following an eleven-day hearing, the arbitrator issued an award against Richey, ruling that Power Toyota could “terminate Mr. Richey if it has an ‘honest’ belief that he is abusing his medical leave and/or is not telling the company the truth about his outside employment.”

The trial court denied Richey’s motion to vacate the award and granted Power Toyota’s petition to confirm the award.

The Appellate Court Decision

The Court of Appeal reversed the trial court. The Court of Appeal rejected the existence of an “honest belief” defense under the CFRA, concluding that such a defense would be at odds with an employer’s burden to prove that an employee was not eligible for reinstatement. The Court of Appeal further concluded that the arbitrator’s use of this defense constituted clear error that abridged Richey’s statutory rights under the CFRA and was, therefore, grounds for vacating the award in that the award exceeded the arbitrator’s authority.

The California Supreme Court Decision

The Supreme Court reversed the Court of Appeal, but avoided addressing either the legitimacy of an “honest belief” defense or the proper scope of judicial review of an arbitration decision. The Supreme Court determined that even if the arbitrator had erred in applying the defense, and even if such an error could justify vacating the award, the error was harmless in that there was “overwhelming” evidence supporting the arbitrator’s finding that Richey was dismissed for violating Power Toyota’s policy against outside work during a CFRA medical leave. The Supreme Court, in effect, determined that it was unnecessary to frame the issue as turning on the employer’s honest belief regarding the underlying facts where the employer’s belief as to the underlying facts (or at least key facts) was not only honest, but also accurate.

What *Richey* Means for Employers

The Supreme Court itself acknowledged that, after its decision, “[w]hether the honest belief defense applies when an employer terminates an employee based on a reasonable belief that the employee is violating company policy while on CFRA or FMLA leave is an unsettled question of law.” Accordingly, employers should thoroughly investigate and substantiate suspected misconduct in order to avoid having to rely on the honest belief defense.

Although the Supreme Court ultimately did not further develop this area of law, it did provide an overview of the principles governing the availability of judicial review of arbitration awards, reminding us that judicial review in this context is very limited. Because of its limited holding, the Supreme Court did not have to reach the defendant’s invitation to adopt the “manifest disregard” standard that some federal courts have used in reviewing arbitration awards. *Richey* thus serves as a good opportunity for employers to examine their arbitration agreements to ensure that, to the extent possible, the agreements provide for the employer’s preferred balance of finality versus opportunity for judicial review.

[David D. Kadue](#) is a partner in Seyfarth’s Los Angeles office and [Timothy M. Fisher](#) is an associate in the firm’s Los Angeles office. If you would like further information, please contact your Seyfarth Shaw LLP attorney, David D. Kadue at dkadue@seyfarth.com or Timothy M. Fisher at tfisher@seyfarth.com.

www.seyfarth.com

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