A Timely Analysis of Legal Developments

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In This Issue:

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California's Second District Court of Appeal, in a rare departure from employee-protective decisions, overturned a jury's verdict in favor of a plaintiff who was unable to return to work within the 12 weeks covered by the California Family Rights Act (CFRA).

No Reinstatement Under CFRA for Employee Unable to Return to Work Within 12 Weeks

By Robert Blumberg

"After 19 weeks of medical leave, long-time employee Katrina L. Rogers returned to her job with the County of Los Angeles, only to learn that she was being transferred to another position in another department." *Rogers v. County of Los Angeles*, No. BC382187 (Aug. 16, 2011). Based upon these facts a jury in Los Angeles Superior Court awarded Rogers over $350,000, finding that her employer had violated her rights under the California Family Rights Act (CFRA). On appeal, California's Second District Court of Appeal entered a surprising decision, rejecting the jury's verdict and finding that the County had not violated Rogers' rights under the CFRA.

Background

The plaintiff worked for the County of Los Angeles for 36 years, most recently as the personnel officer in the executive office. In April 2006, Rogers took a medical leave, allegedly due to work-related stress. The County provided Rogers with appropriate paperwork explaining her rights under the CFRA and the federal Family and Medical Leave Act (FMLA), including her right to up to 12 weeks of job-protected leave. Based upon her doctor's certification that she was unable to work, the plaintiff remained on leave for 19 weeks.

Shortly after the plaintiff began her leave, the County appointed a new executive officer who supervised Rogers' department. This new executive officer reorganized the executive office shortly after her arrival. She eliminated some positions and added other positions. She also made the decision to replace the plaintiff with a new personnel officer. The executive officer testified that the decision to replace the plaintiff was not because of her performance, but was because she felt that a new person was needed.

After 19 weeks of leave, the plaintiff returned to work, expecting to resume her position in the County's executive office. Instead, on her return, she was told that she had been replaced. The plaintiff was offered a transfer to the internal services department. She was assured receipt of the same compensation and benefits in the new position, but Rogers rejected the transfer because she felt it was a demotion. Rogers called in sick for the remainder of the week and then submitted her notice of retirement. She never worked in the new position.

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After the trial court dismissed other claims, the matter proceeded to trial on a single claim for violation of Rogers' CFRA rights. The jury found that the County interfered with Rogers' rights under the CFRA by transferring her to a noncomparable position. The jury also found that the decision to transfer her was in retaliation for exercising her CFRA rights. The jury awarded Rogers $356,000, including: $100,000 for past lost earnings; $206,000 for future lost earnings; and $50,000 for past emotional distress damages. The jury did not award future emotional distress damages.

The Appellate Court Overturns the Jury's Verdict

Where Plaintiff Did Not Seek to Return to Work Within 12 Weeks, the County Had No Duty to Reinstate Her Under the CFRA

In overturning the jury's verdict, the appellate court examined two distinct issues: interference with CFRA rights and retaliation for exercising CFRA rights. First, the court found that, under the CFRA, reinstatement is only guaranteed when an employee's leave does not exceed the statutory maximum – 12 weeks. The Second District found that, because the plaintiff was not capable of returning to work within the 12-week period protected by the CFRA, the County did not violate her right to reinstatement. In doing so, the appellate court concluded that "the CFRA's reinstatement right only applies when an employee returns to work on or before the expiration of the 12-week protected leave period." Further, the court found that this was true even though the decision to transfer the plaintiff was made prior to the expiration of the 12-week period. The Second District explicitly noted that the policies behind the CFRA and FMLA were intended to balance the rights of employees with the needs of the employers, and were not meant to be a "trap for unwary employers" that provide employees with the mandated leave.

The Plaintiff Presented No Evidence to Rebut the County's Legitimate Business Reasons for the Transfer

In the second part of the decision, the Second District found that the plaintiff presented insufficient evidence to establish a retaliation claim. The appellate court accepted the jury's determination that the new position offered to the plaintiff was not comparable to her original position, and could, therefore, constitute an adverse employment action. The court found, however, that, even after resolving all conflicting evidence in the plaintiff's favor, she still lacked sufficient evidence to prove that the executive officer's decision to transfer her was motivated by her medical leave. Because the County's legitimate business reason was undisputed, the Second District found that the plaintiff could not establish the "'requisite causal connection between her protected actions in taking a CFRA medical leave' and the decision to transfer her to another position."

Two Areas of Concern Remain

Even Where the Appellate Court Found No Evidence of Retaliation, A Jury Still Awarded Plaintiff $356,000

While the County ultimately prevailed, the decision highlights the inherent risks of a jury trial. Perhaps because it was not needed for the court's decision, the Second District questioned, yet left undisturbed, the jury's finding that the new position was not comparable to the old position, even though the duties were similar and the compensation was the same. While the appellate court found there was no evidence of retaliation, the jury found that there was and awarded the plaintiff $356,000. Further, the court might not have disturbed a jury verdict if there had been any evidence of mixed motive, or conflicting evidence of an improper motive, no matter how weak.

The Second District's Decision Does Not Address Accommodations Under the Americans with Disabilities Act

The *Rogers* decision solely concerned a claim under the CFRA. Either the plaintiff did not bring – or the trial court had previously dismissed – a claim under the Americans with Disabilities Act (ADA) or analogous portions of the California Fair Employment and Housing Act (FEHA). Nonetheless, the *Rogers* decision included a footnote from a federal court decision comparing the FMLA to the ADA. Quoting from *Spangler v. Federal Home Loan Bank of Des Moines*, 278 F.3d 847, 851 (8th Cir. 2002), the appellate court noted, while "the ADA's protection is almost perpetual, lasting as long as the employee continues to meet the statutory criteria, the FMLA grants eligible employees 12 weeks of leave to deal with a specified family situation or medical condition."[1]

The quote from *Spangler*, while having no bearing on the Second District's decision in *Rogers*, may later be used by a plaintiff to support a claim that a disabled employee is entitled to job protection for leaves lasting beyond the 12-week period set forth in the CFRA

and FMLA as a reasonable accommodation under the ADA and FEHA. The decision gives no real guidance to employers should that argument be made, nor does it offer assistance to an employer trying to determine whether it must keep a position open for an employee on a medical leave of absence that exceeds 12 weeks. Thus, even where an employee exceeds his or her right to leave under the CFRA/FMLA, this may not end the inquiry. Until the courts clarify this obligation, employers should consider whether an employee has a need for additional leave or other accommodations under the ADA and FEHA, and whether such an accommodation is reasonable under the particular circumstances.

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[1] Ironically, despite this language, the court in *Spangler* actually found no violation of the ADA where an employee was unable to perform the essential functions of her job regularly, but found a potential violation of the FMLA for failure to provide a needed leave of absence.