Published on *The National Law Review* https://natlawreview.com

Employee with Mild Symptoms of COVID-19 Was Not "Disabled" Under California Law

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In Michelle Roman v. Hertz Local Edition Corp., a United States District Court Judge for the Southern District of California granted summary judgment in favor of Hertz, and against former employee Michelle Roman, whose employment was terminated after she contracted COVID. Roman claimed that her job should have been protected by the California Fair Employment and Housing Act (FEHA) while she suffered from mild symptoms of COVID. Hertz terminated Roman's employment after she came to work sick, which violated company policy. The Court held that because Roman's COVID symptoms were mild and temporary, they did not qualify as a "disability" under FEHA. Therefore, FEHA did not protect Roman's job from termination.

Roman worked as a manager for Hertz in National City, California. During 2020, Roman received training from the company about COVID protocols, including that employees showing signs of COVID should not be admitted into the workplace. Despite this training, Roman showed up at work for two days while experiencing mild symptoms of COVID, such as "super mild body aches," fatigue, and pain in her hips and back that was "killing her." Roman did not believe that her symptoms were sufficiently severe to be caused by COVID. Nevertheless, she took a COVID test to be sure.

The next day while at work, Roman learned that she had tested positive for COVID. She informed her manager of the news and was immediately sent home. After quarantining for two weeks, and receiving a negative COVID test, Roman tried to return to work, but instead was fired by Hertz for previously coming to work with symptoms of COVID, which violated company policy.

The basis for Roman's lawsuit against Hertz was that because she became infected with COVID, she suffered from a disability. Employees with a disability are entitled to protection against discriminatory and adverse actions under FEHA, as well as a reasonable accommodation. To determine the definition of "disability," the Court reviewed Cal. Code Regs. Tit. 2, §11065(d)(9)(B), which provides that a disability does not include conditions that are mild, do not limit a major life activity, and have little to no residual effects. The regulation further provides that the common cold, seasonal or common influenza, muscle aches, soreness, and non-migraine headaches do not qualify as a disability. Because Roman's COVID symptoms were mild and did not linger, the Court found that she did not have a disability under FEHA and, therefore, she was not protected from termination.

In an important caveat, the Court noted that although many cases of COVID most resemble cold like symptoms, some cases are much more severe, with long duration, which “would easily qualify as a FEHA disability.” Similarly, the California Department of Fair Employment and Housing guidelines provide “whether illness related to COVID rises to the level of a disability (as opposed to a typical seasonal illness such as the flu) is a fact based determination.” The Court further noted that “long COVID” “may well fall within FEHA’s definition of disability.”

If an employee contracts COVID, and experiences severe and/or long-lasting symptoms, the employee may have a “disability” as that term is defined by applicable law. As with any other disability, the employer would then have an obligation to engage in the interactive process, provide the employee with a reasonable accommodation, as necessary, and ensure that the employee is not discriminated or retaliated against because of his or her disability. However, if the employee’s COVID symptoms are mild and of short duration, the employer has no obligation to engage in any of these activities, and the employee’s job may not be protected.

National Law Review, Volume XII, Number 145