

Richey v. AutoNation, Inc: Employee Working Elsewhere During Medical Leave Was Properly Terminated

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Avery Richey worked for **Power Toyota Cerritos**, part of the AutoNation consortium of automobile dealerships, for approximately four years before allegedly injuring his back while moving furniture at his home. Following the injury, Richey applied for and was granted a medical leave of absence (which was extended on multiple occasions) under the **California Family Rights Act ("CFRA")** and the federal **Family and Medical Leave Act**. Approximately one month before Richey allegedly injured his back, he began working on plans to open his own seafood restaurant, and Richey's supervisors at Power Toyota had met with him to discuss his performance and attendance problems and their concern that he had become "distracted." Power Toyota had a written policy prohibiting employees from engaging in outside work while out on an approved CFRA leave of absence. After a Power Toyota employee observed Richey "sweeping, bending over, and hanging a sign using a hammer" at his restaurant while on leave, the company fired him. Richey exhausted his administrative remedies under the California Fair Employment and Housing Act and filed a civil action in court against his employer for racial discrimination, harassment, retaliation for taking CFRA leave and failure to reinstate him following CFRA leave. The civil action was compelled to arbitration, based upon the parties' express agreement to have all employment disputes arbitrated.

After an 11-day hearing, the arbitrator rejected all of Richey's claims and concluded that "Power Toyota [could legally] terminate Mr. Richey if it has an 'honest' belief that he is abusing his medical leave and/or not telling the company the truth about his outside employment." Richey sought to vacate the award on the ground that the arbitrator committed reversible legal error by accepting Power Toyota's honest belief defense. The trial court denied Richey's motion to vacate the award; the Court of Appeal reversed the trial court's judgment, concluding that the arbitrator violated Richey's right to reinstatement under the CFRA; and the California Supreme Court in this opinion reversed the Court of Appeal on the ground that any error that the arbitrator may have committed did not deprive Richey of an unwaivable statutory right to reinstatement because the arbitrator found that he was dismissed for violating his employer's written policy prohibiting outside employment while on medical

leave.

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