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Does Employer have to Accommodate Nondisabled Employee Because of Another's Disability? Yes, Says One California State Appellate Court

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Last month, a *California* state appellate court issued a decision that, as the dissent characterized, went "where no one has gone before." In *Castro-Ramirez v. Dependable Highway Express, Inc.*, the court held that California's ***Fair Employment and Housing Act (FEHA)*** – California's anti-discrimination law – requires an employer to provide a reasonable accommodation to a nondisabled employee who associates with a disabled person. This troubling and broad interpretation of the law, which effectively would import a caregiver accommodation requirement into the law, has certainly captured the attention of employers even outside this jurisdiction.

Brief Background

The plaintiff was the only family member able to provide daily home dialysis to his son. The plaintiff's initial supervisor knew about the condition and for three years accommodated his schedule so he could provide the treatment. A subsequent supervisor opted against providing this accommodation and later fired the plaintiff after he refused a shift assignment. (We'll note that our use of the phrase "opted against" understates the new supervisor's actions and we are otherwise intentionally withholding any additional commentary regarding this supervisor's overall disposition.)

The plaintiff sued alleging, among other things, associational discrimination, which is discrimination on the basis of associating with someone in a protected class. In other words, he was terminated because he associated with his disabled son. The trial court dismissed, but the plaintiff appealed.

The California Appellate Court Enters New Legal Territory

Strap yourself in – here is the court's analysis.

First, the court noted that FEHA makes it unlawful "[f]or an employer, because of the . . . physical disability . . . of any person . . . to discharge the person from employment . . . or to discriminate against the person in compensation or in terms, conditions, or privileges of employment"

(§12940(a)). No problem there.

Second, the court noted that the definition of "physical disability . . . includes a perception that the person is associated with a person who has, or is perceived to have, any of those characteristics" (§129926(*o*)), and thus when the FEHA forbids discrimination based on physical disability, it also forbids discrimination based on a person's association with another who has a disability. Fair enough.

Third, the court set forth the three-part test for proving disability discrimination under the FEHA: (1) the plaintiff suffered from a disability; (2) the plaintiff was otherwise qualified to do his job with or without a reasonable accommodation; and (3) the plaintiff was subjected to adverse employment action because of his disability. Check.

Finally, the court adopted this three-part test for a claim of associational discrimination and said that under part No. 1 of the test, the "disability" from which the plaintiff suffers would be "his or her association with a disabled person." Wait, what?! In other words, whether one is "disabled" is not limited to his or her *own* disability; rather, given how broadly FEHA defines "physical disability" under §12940(a), you can be considered "disabled" simply through your association with another person with a disability. From there it's not too hard to see why the court next concluded that an employer has duty to reasonably accommodate this newly-minted class of disabled employee. Yes, you read that correctly – employers have to reasonably accommodate employees associating with disabled individuals.

The court reached this conclusion even though (i) FEHA has a standalone cause of action that makes it unlawful for an employer to refuse to reasonably accommodate a known physical disability *of the employee* and says nothing about accommodating the disabilities of others; (ii) a bevy of other FEHA provisions, when all read together, signal that accommodations are limited to an employee's own disability (*see e.g.*, §§12940(a)(1)-(2), (n) and 12926(f), (m), and (p)); (iii) no caselaw or other authority exists reading such a requirement into the statute; and (iv) even plaintiff had conceded no such requirement existed.

Takeaways

We now have one California appellate court (the Second Appellate District – Division Eight) creating a new cause of action under FEHA where one did not previously exist. As the dissent noted, the court has "indeed boldly gone into a new frontier, fraught with danger for California employers, a mission best left to the Legislature."

We agree, and we note that the California State Legislature has fulfilled this mission on several other occasions. It has passed separate reasonable accommodation laws (sometimes in the form of amendments to the FEHA) requiring employers to accommodate an employee's religion; because of an incident of domestic violence, sexual assault, and stalking; to allow the employee to express milk; and most recently, because of a condition related to pregnancy, childbirth, or a related medical condition. Some City Legislatures have gone further, like San Francisco, which passed a caregiver accommodation law.

We also wonder whether the court considered the potential impact of its decision. First, that it may effectively require employers (at least in that District) to accommodate a whole new class of individuals – those who need to care for a disabled person. Second, that its reasoning can be deployed elsewhere to further broaden FEHA. For example, would the Court reach the same

conclusion with respect to an religious-based associational discrimination claim such that employers would have to accommodate employees associating with someone else's protected religious beliefs or observances? And what about for employees associating with pregnant women?

We will track closely how this all plays out. Will the employer appeal? Will other courts follow suit? Will the legislature speak up? In the meantime, employers in the Second District, which includes Los Angeles County, should proceed with caution when faced with an accommodation request by someone who associates with a disabled person.

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