

## Employer's Enforcement of Its Call-In Policy Was Reasonable Vis-à-Vis Disabled Employee

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Employers frequently struggle with enforcement of call-in and job abandonment policies when there has been a lack of communication by a disabled employee. In ***Alejandro v. ST Micro Electronics*** (N.D. Cal.) 178 F.Supp.3d 850, the court offers a favorable ruling for employers seeking to enforce such a policy respective to a disabled employee who had been non-communicative about his whereabouts in violation of company policy.

On April 8, 2016, Judge Lucy H. Koh of the Northern District of California granted Defendant ST Micro Electronics, Inc.'s ("STM") motion for summary judgment on all of Plaintiff Jesse Alejandro's ("Plaintiff") claims.

Plaintiff alleged that he suffered from a bipolar disorder, generalized anxiety disorder and debilitating allergies. During Plaintiff's tenure with STM, these disabilities resulted in him missing time from work. Plaintiff missed time in 2013 and 2014 because of these disabilities.

Sean McCale ("McCale"), Plaintiff's manager, was informed of the disabilities and approved his requests for time off. However, McCale asked that Plaintiff or someone on his behalf report his absences in accordance with the Company's call-in procedure. In short, the policy provided, "[t]wo no call-ins within any twelve month rolling period, including 2 consecutive days with no notification will be considered job abandonment and is cause for immediate termination."

In March 2014, Plaintiff missed work because of his alleged disability. McCale encouraged Plaintiff to review STM's leave of absence programs. McCale also reminded Plaintiff of STM's call-in policy. McCale authored an email stating that if Plaintiff was sick, he would have to call, email or text McCale before 9:00 a.m. Plaintiff replied to the email acknowledging that he received, agreed and understood the agreement.

Two weeks after entering this agreement, Plaintiff was absent from work for a total of four days. Plaintiff did not contact McCale before 9:00 a.m. to inform him of his absence, although, the evidence demonstrated that Plaintiff placed and received phone calls, posted on his Facebook page and visited at least five different websites on those days. As a result, McCale terminated Plaintiff because

he violated STM's call-in policy.

The Court ruled that the undisputed facts demonstrated that Plaintiff's unreported absences violated STM's call-in policy. Plaintiff unsuccessfully argued that he lacked the capacity to enter into an agreement to provide McCale notice that he needed time off because of his disability. Plaintiff's argument that his disability prevented him from communicating was also refuted by the evidence that he made multiple phone calls and visited websites during his absence.

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