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California Court Rules that CFRA Reinstatement Rights Don't Extend Beyond 12 Weeks

In a decision that aligns the California Family Rights Act ("CFRA") with the federal Family and Medical Leave Act ("FMLA"), a California Court of Appeal has ruled that an employee's right to reinstatement under the CFRA expires at the end of the 12-week protected CFRA leave period, precluding interference claims for employees who fail to return to work after 12 weeks. While the case, *Rogers v. County of Los Angeles*, No. B217764 (August 16, 2011), is welcome news for the employer community, it does not erase the need for employers to proceed with caution when denying reinstatement after an employee has taken a protected leave.

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The case involved Katrina L. Rogers, who was a long-time employee with the County of Los Angeles, serving as the personnel officer in the executive office, a job involving supervising employees who performed personnel, payroll, and human resources functions. On April 3, 2006, Rogers took a medical leave due to work-related stress. The County notified her that she was eligible for up to 12 weeks of unpaid family/medical leave in a 12-month period, and that her leave would run until she was able to perform her essential job functions or her leave time was "exhausted." During the leave, Rogers saw her doctor every few weeks, and she was released to return to work on August 14, 2006 -- 19 weeks after the leave began.

In the interim, just two weeks into Rogers's leave, a new executive officer, Sachi Hamai, was appointed. Hamai decided to make some changes in the personnel office, including bringing in a new personnel officer to replace Rogers because she felt that the organization could use "fresh eyes." The decision was not based on Rogers's performance, and several other employees in the department also were replaced. Eventually, Rogers was transferred into a newly created position in the internal services department to perform high-level human resources work. The new job paid Rogers the same salary and benefits, although the duties were very different from her old position, including the fact that she would no longer be supervising or managing anyone. She was informed of the transfer on her first day back at work.

Rogers sued under the CFRA, alleging that the County interfered with her CFRA rights by transferring her to a non-comparable position and retaliated against her for taking CFRA leave. A jury agreed and awarded her \$356,000 in damages. The County appealed.

The Court of Appeal explained that CFRA violations give rise to two types of claims: 1) interference claims, involving a denial or interference with the employee's right to take protected leave; or 2) retaliation claims, in which the employee alleges that he or she was subjected to an adverse action for exercising leave rights.

Rejecting Rogers's interference claim, the appellate court concluded that "CFRA's reinstatement right only applies when an employee returns to work on or before the expiration of the 12-week protected leave." The court relied on CFRA's express language which allows an employee to "take up to a total of 12 workweeks in any 12-month period" and provides a guarantee of employment in the same or comparable position "upon the termination of the leave." In addition, said the court, other CFRA obligations -- such as the requirement that the employer continue the employee's health benefits -- are tethered to the 12-week protected leave period. The court also explained that other courts interpreting the CFRA and FMLA have concluded that those statutes only provide job protection for 12 weeks. Finally, the court noted that the policy underlying the FMLA underscored the fact that leave protection extended for up to 12 weeks.

The court concluded that, as a matter of law, Rogers did not have an interference claim. In particular, the County did not interfere with Rogers's protected leave because it afforded her the full 12 weeks of CFRA leave and, while it made the decision to transfer her during the leave, the decision was not communicated to Rogers until her return after 19 weeks, when her leave had already expired. The mere fact that the decision was made during the protected portion of her leave did not support an interference claim.

Turning to the retaliation claim, the court found insufficient evidence that Rogers suffered an adverse action as a result of exercising her right to take CFRA leave. Rather, the Court found that the County had a legitimate, nondiscriminatory reason for transferring Rogers that was unrelated to the fact that she took leave.

The *Rogers* case is good news for employers, in light of the holding that an employee's right to reinstatement to the same or comparable position following a CFRA leave expires

once the 12 weeks of leave are exhausted. Employers should still be cautious, however, when making employment decisions that impact the reinstatement of an employee who is on an extended medical leave. Even if the CFRA/FMLA period has expired, the employee may have reinstatement rights under other statutes, such as the Americans with Disabilities Act and its California counterpart, the Fair Employment and Housing Act. Furthermore, while the County was able to demonstrate that it transferred Rogers for reasons unrelated to the leave, employers should bear in mind that it is often an uphill battle to convince a judge or jury that an adverse employment decision made during a protected leave was based on legitimate, nondiscriminatory reasons.

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