

CLIENT ALERT

California Court of Appeals Creates a New Disability Cause of Action, Spurring Worries for Employers

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In a rare move on an issue of first impression, the California Court of Appeal for the Second Appellate District held that California's Fair Employment and Housing Act (FEHA) requires employers to provide reasonable accommodations to employees who are associated with a person with disabilities. *Castro-Ramirez v. Dependable Highway Express, Inc.*, (Cal. App. 2nd April 4, 2016). In so doing, the court set forth complicated new precedent that will likely have employers and litigators alike twisting in uncertainty.

In *Dependable Highway*, Plaintiff Castro-Ramirez, a truck driver, had requested schedule accommodations from his employer (Dependable Highway Express, Inc. (DHE)) so that he could care for his son, who required nightly dialysis, which only Castro-Ramirez himself could administer. Initially, DHE informally agreed to accommodate Castro-Ramirez by providing him with shift assignments that allowed him to be home to administer his son's treatment, but Castro-Ramirez never formally requested leave under the Family Medical Leave Act (FMLA) or California's counterpart, the California Family Rights Act (CFRA).

Castro-Ramirez was subsequently terminated for failing to take a shift assigned to him that fell outside of his normal, but not guaranteed, hours. Following his termination, Castro-Ramirez filed suit in California state court asserting claims against DHE for associational disability discrimination, failure to accommodate, and retaliation under the FEHA. The trial court granted summary judgment to DHE on all claims. Castro-Ramirez appealed the associational disability and retaliation claims only.

On appeal, the court, ruling 2-1, determined that, although Castro-Ramirez appealed only the ruling concerning his associational disability discrimination and retaliation claims, it would also consider whether DHE failed to accommodate Castro-Ramirez in violation of the FEHA. Significantly, the court considered the failure to accommodate issue even though it was not brought up on appeal, and although such claims, under California precedent, have been limited to claims of discrimination.

In its analysis, the court noted that associational disability discrimination is a "seldom-litigated cause of action." However, the court found that the idea that someone can be discriminated against because of an actual disability, or because they are associated with someone who has a disability, is firmly rooted in the definition of "physical disability" under the statute, which includes association. For example, a plaintiff could argue that he was

discriminated against because he has a spouse or family member whose disability may somehow impact the employer, such as being on a health care plan or requiring use of FMLA or CFRA leave.

However, the court noted that neither the FEHA nor other precedent clearly provides that an employer must also provide accommodations to an employee because of *someone else’s disability*. Specifically, the court stated, “[n]o published California case has determined whether employers have a duty under FEHA to provide reasonable accommodations to an applicant or employee who is associated with a disabled person.” Nevertheless, the court held that the FEHA creates a duty to accommodate based on associational disability.

Essentially, the court determined that since the California legislature provided protection for associational discrimination, the legislature must have also wanted to provide associational accommodation protections. Finding that triable issues of material fact existed on Castro-Ramirez’s causes of action for associational disability discrimination, failure to prevent discrimination, retaliation, and wrongful termination in violation of public policy, the court then reversed and remanded the matter for trial.

It is uncertain whether this decision will result in a shift in judicial treatment of disability association cases, or whether this decision will be an outlier. DHE may still appeal this decision to the California Supreme Court. Employers should follow this litigation closely, as the impact could be widespread if the Court of Appeals’ decision stands.

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