

A Glimmer Of Hope For Employers In “Associational” Reasonable Accommodation Cases

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As we explained [previously](#), in April 2016 the Second Appellate District held that California’s Fair Employment and Housing Act (FEHA) creates a separate duty to provide reasonable accommodation to an applicant or employee who is “**associated**” with a disabled person. On rehearing of the *Castro-Ramirez v. Dependable Highway Express, Inc.* decision (Case No. B261165, B262524), the Court has retreated from its prior holding.

In its new decision, the Court stated that it is not deciding the issue of whether the FEHA establishes a separate duty to reasonably accommodate employees who “associate with” a disabled person because the issue was not presented on appeal. At the same time, however, the Court observed that the FEHA “may reasonably be interpreted to require accommodation based on the employee’s association with a physically disabled person.” Thus, this Court suggests that it may find such a duty in a future case that presents the issue.

Instead, while purporting not to decide whether the FEHA requires an employer to accommodate a nondisabled employee with a disabled associate, the Court found that “[the accommodation issue] appears significantly intertwined with the statutory prohibition against disability discrimination.” The Court noted that the FEHA forbids discrimination based on a person’s association with another who has a disability and reversed the trial court’s summary judgment decision.

In this case, the employee’s son was disabled and needed a kidney transplant. The employer had accommodated the employee for many years with a work schedule that enabled him to leave work in time to administer his son’s dialysis every evening. However, a new supervisor changed the employee’s schedule. The employee objected and refused to work the later schedule. The employer terminated his employment because he refused a work assignment.

Based on the facts alleged, the Court found that one reasonable inference was that the employee’s supervisor, as the person responsible for scheduling, wanted to avoid the inconvenience and distraction the employee’s need to care for his disabled son posed. Thus, according to the Court, the supervisor “engineered” a situation in which the employee would refuse to work the shift,

giving the employer reason to terminate him. In other words, the employee's termination for refusal to work the shift was a pretext for the supervisor's desire to be rid of someone whose disabled associate made the supervisor's job harder.

Additionally, the Court concluded that the employer was not entitled to summary adjudication on the employee's retaliation claim because the employee "did more than simply request an accommodation." His repeated complaints about the sudden changes to his schedule represented "some degree of opposition" to the defendant's failure to continue to provide that schedule, sufficient to amount to protected activity.

Employer Take Away

The Court's language leaves open the possibility that California employers will need to provide reasonable accommodation to employees who are "associated with" or provide care to someone with a physical or mental disability. But, for now, there is no published authority that recognizes such an obligation.

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