

Timing is everything under CFRA

An employee who doesn't return to work after 12 weeks of leave has no right to reinstatement, rules court of appeal



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Suppose an employer, for legitimate business reasons, transfers an employee who is on medical leave under the California Family Rights Act. The employee eventually returns to work, but only some time after the CFRA-protected portion of the leave has expired, and then claims the employer interfered with the CFRA right to reinstatement to her former job. Can the employee maintain a claim for interference with the CFRA rights?

In good news for employers, the Second District Court of Appeal in California 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 by employees who do not return to work after 12 weeks. *Rogers v. County of Los Angeles*, 11 C.D.O.S. 10423. However, despite the employer's win, companies must continue to exercise caution when denying reinstatement to employees who are returning from medical leave.

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FACTUAL BACKGROUND

Katrina Rogers worked for Los Angeles County for 36 years, eventually serving as the personnel officer in the executive office, a job involving supervising employees who performed personnel, payroll and human resources functions for the executive office and the county's Board of Supervisors. On April 3, 2006, Rogers went on 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." Rogers was released to return to work on Aug. 14, 2006, 19 weeks after the leave began.

Even if the CFRA/FMLA period has expired, an employee may have reinstatement rights under other statutes.

In the meantime, just two weeks after Rogers went on leave, the county appointed a new executive officer, Sachi Hamai. Hamai came into the position with a vision of making changes that would help the organization run more efficiently and bring in "fresh eyes." As part of this effort, Hamai decided to make some changes in the personnel office, including bringing in a new personnel officer to replace Rogers. The decision was not based on Rogers' performance, and several other employees in the department were also replaced.

Hamai then worked with the county's head of human resources to identify a

new position for Rogers. A new position was created which involved assisting the personnel officer of the internal services department (ISD) with performing high-level human resources work. The duties of the new position were quite different from Rogers' previous job, including the fact that she would no longer be supervising or managing anyone.

Rogers was told of the transfer on her first day back at work from the medical leave. She was very upset about the job change, despite the fact that the transfer did not impact her salary and benefits.

Rogers sued the county under the CFRA, alleging the county interfered with her CFRA rights by transferring her to a noncomparable position and retaliated against her for taking CFRA leave. (Her complaint also alleged other causes of action which were disposed of on a motion for summary adjudication by the county.) A jury sided with Rogers on the CFRA claims, and awarded her \$356,000 in damages.

The county filed an appeal, and the court of appeal has now reversed the judgment, directing the trial court to enter judgment in favor of the county.

COURT OF APPEAL DECISION

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

The court rejected Rogers' interference claim, holding 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 based its ruling on several factors. First, the court relied on the express language of CFRA, which, among other things, allows an employee to “take up to a total of 12 work weeks in any 12-month period” and provides a guarantee of employment in “the same or a comparable position upon the termination of the leave.” (Gov. Code §12945.2(a)) Second, certain CFRA obligations — such as the requirement that the employer continue the employee’s health benefits — are specifically tethered to the 12-week protected leave period. Third, the court explained that other courts have concluded that the CFRA and the federal Family and Medical Leave Act only provide job protection for 12 weeks. In fact, courts have held that an employer does not violate the FMLA by terminating an employee who is unable to return to work when the 12-week FMLA leave is exhausted. Finally, the court noted that the policy underlying the FMLA underscores that leave protection extends for a 12-week period, recognizing Congress’ intent to balance the interests of employers with the need for employees to have job security when taking reasonable leave for family and medical purposes.

The court concluded that as a matter of law, Rogers did not have an interference claim because her reinstatement right

expired at the 12-week mark. In particular, the county did not interfere with her protected leave because it afforded her the full 12-week CFRA allotment. The fact that the decision to transfer Rogers was made before she exhausted her 12 weeks of CFRA leave did not compel a different conclusion. What mattered to the court was that the decision was not communicated to her until she returned to work after 19 weeks of leave, well after her CFRA leave expired.

Turning to the retaliation claim, the court found that the county articulated a legitimate, nondiscriminatory reason for transferring Rogers, and there was, on the other hand, insufficient evidence that the transfer was motivated by Rogers’ exercise of her CFRA leave rights. In short, the county’s un rebutted legitimate reasons for the transfer “eliminated any obligation the County might have had to reinstate her.”

CAUTION FOR EMPLOYERS

In light of the holding that an employee’s right to reinstatement following a CFRA leave expires once the 12 weeks of leave are exhausted, *Rogers* is a welcome decision for employers. But caution is still required before making decisions that impact the reinstatement

rights 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. In fact, in a footnote, the *Rogers* court pointed out that job protection under the ADA “is almost perpetual, lasting as long as the employee continues to meet the statutory criteria,” while “the FMLA grants eligible employees 12 weeks of leave to deal with a specified family situation or medical condition.”

Furthermore, while the county was able to back up its contention that it transferred Rogers for reasons unrelated to the leave, employment law practitioners know that it is often an uphill battle to convince a judge or jury that an adverse employment action made during a protected leave was based on legitimate, nondiscriminatory reasons. As a result, employers still need to tread carefully when deciding to transfer any employee who has taken a CFRA/FMLA leave, even after that employee has exhausted his or her 12-week CFRA/FMLA allotment.