

CLIENT NEWS BRIEF

Court Reaffirms Absences To Attend Medical Appointments May Be Evidence Of A Disability

In *Ross v. County of Riverside*, decided on June 20, 2019, the California Court of Appeal for the Fourth Appellate District reaffirmed that repeated or extended absences from work for the purpose of attending doctor's appointments amount to a limitation on a major life activity, thus physical impairments which cause such repeated or extended absences may meet the definition of a physical disability.

Christopher Ross, a County of Riverside employee, brought a lawsuit against his former employer for multiple claims including violations of the Fair Employment and Housing Act (FEHA). The trial court had granted the County of Riverside's summary judgment motion, stating that Mr. Ross could not establish his FEHA disability-related claims. The Court of Appeal reversed, holding that although Mr. Ross had not provided any medical documentation to his employer stating restrictions or limitations on his ability to perform his job duties, the evidence presented could establish a temporary physical impairment that was actually disabling or perceived as disabling, and was enough to demonstrate there is a triable issue to allow the case to proceed in court.

Background

Mr. Ross worked for the County as a deputy district attorney. In 2013, Mr. Ross began exhibiting symptoms that required medical evaluation and testing to determine whether he had a serious medical condition.

A few months later, Mr. Ross informed his supervisors that he was receiving testing from an out-of-state clinic and that the doctors had informed him he could not have any stress at work as it was causing many of his symptoms. However, a formal diagnosis of Mr. Ross' condition had not been made.

Shortly after notifying his supervisors of the testing, Mr. Ross requested an assignment "without stress, no quotas, no deadlines, no pressure." At that time, the County requested a doctor's note indicating Mr. Ross' work restrictions or limitations. Mr. Ross did not provide medical documentation outlining any restrictions or limitations on his ability to perform his work duties, and even admitted that none of his physicians at the out-of-state clinic suggested any restrictions on his work, other than advising him to reduce his stress.

From June 2013 through November 2013, Mr. Ross missed approximately three weeks of work to attend medical appointments. The County placed Mr. Ross on a paid leave of absence pending a fitness for duty examination, but Mr. Ross never returned to work with the County.

In July 2014, Mr. Ross sued the County for multiple violations of law, including violations of FEHA's disability-related provisions. The trial court granted the County's motion for summary judgment as to Mr. Ross' claims for disability discrimination, failure to reasonably accommodate and failure to engage in the interactive process, on the grounds that Mr. Ross could not establish he was disabled. The Court of Appeal reversed, finding that the trial court had erred in

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Dulcinea Grantham
Partner and Co-Chair
Labor and Employment Practice Group
Walnut Creek Office
dgrantham@lozanosmith.com



Janae D. Castellani
Associate
Fresno Office
jcastellani@lozanosmith.com



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granting the motion as there was sufficient evidence presented by Mr. Ross to demonstrate an issue as to whether Mr. Ross had a disability under the FEHA that the trial court should consider.

“Disability” Within the Meaning of the FEHA

Both the federal Americans with Disabilities Act (ADA) and the FEHA under California law, prohibit discrimination on the basis of disability. Employers must take part in a good faith interactive process and provide reasonable accommodations to qualified individuals with disabilities, unless to do so would cause an undue hardship.

“Physical disability” is defined to include any physical impairment that affects one or more body systems—including the neurological and immunological systems, and limits a major life activity. Working is considered to be a major life activity, and a physical impairment is considered limiting if it makes the achievement of the major life activity difficult. The appellate court pointed to repeated or extended absences from work for medical appointments as constituting a limitation on the major life activity of working, therefore supporting Mr. Ross’ claim of having a “disability.”

Further, physical disabilities can be temporary or short term and include not only those physical impairments that are actually disabling, but include those which are potentially disabling or are perceived to be potentially disabling. Therefore, even in cases where an employee does not have a current disability, if by the employer’s actions it is apparent that the employer perceives the employee could be disabled in the future, this would be considered a physical disability under FEHA. The Court of Appeal found that the County’s actions in transferring Mr. Ross to another unit, requests for medical documentation, and placing him on a paid leave of absence pending a fitness-for-duty exam, potentially show that Mr. Ross had a disability or should have been perceived by the County as being disabled and therefore protected under the FEHA.

Takeaways

While the court did not decide the merits of this case, the opinion does provide many different types of evidence, including absences for medical appointments, which can establish a disability or a potential disability thereby triggering an employer’s duty to engage in the interactive process with and accommodate an employee. The decision in *Ross* highlights the fact-specific nature of all disability cases, and further reminds employers that their obligation to their employees may go beyond what is included in an employee’s doctor’s note.

If you have any questions about this case or labor and employment matters in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).