

An Employer's Honest Belief That An Employee Took Medical Leave For An Improper Reason Is Not Enough To Justify a Dismissal

Under the California Family Rights Act (CFRA), an employer must reinstate an employee to the same or a comparable position upon returning from an approved medical or family care leave (Gov. Code §12945.2(a).) CFRA is silent as to when an employer may lawfully dismiss an employee if it suspects that the employee is misusing his/her leave. The recent decision of *Richey v. AutoNation, Inc.* (November 13, 2012) __ Cal.App.4th __ (2012 WL 5492902) provides some guidance in this area and serves as a reminder that based on the strict language of CFRA, employee leave issues must be dealt with carefully—particularly before a dismissal or reinstatement decision is made.

Avery Richey had worked as a sales manager at Power Toyota for over three years when he decided to open a family restaurant as a side business venture in 2007. Concerned that the restaurant was distracting him from his job, Power Toyota supervisors met with Richey to discuss attendance and performance issues. In 2008, Richey suffered a back injury at home and his physician certified that he was unable to perform his duties at Power Toyota. The dealership granted his request for CFRA leave.

One of Richey's supervisors sent him a letter advising him that the company had a policy which precluded employees from engaging in other employment, including self-employment, while on leave. Richey did not respond to this letter because he believed that the policy, as stated in the employee handbook, did not apply to him as a business owner. The employee handbook for Power Toyota provided, "You are not allowed to accept employment with another company while you are on approved (CFRA) leave."

In responding to reports that Richey was working at his restaurant during his leave, one of his supervisors sent another employee to drive by the restaurant. The employee parked outside for a few minutes and saw Richey sweeping, bending over, and using a hammer to hang a sign. On two other occasions, Power Toyota employees observed Richey taking orders and acting as a cashier at the restaurant. Based on these observations, Power Toyota terminated Richey based on its honest belief that he was engaging in outside employment while on leave.

Richey filed a lawsuit alleging a violation of CFRA. The court of appeal ruled that Power Toyota was not entitled to terminate Richey based on its honest belief that he was misusing medical leave. The court held that application of the honest belief defense deprived Richey of his statutory right to reinstatement, which is based on the important public policy of giving employees an opportunity to take leave from work for significant family or medical reasons without jeopardizing their job security. The court determined that in order to dismiss an employee that misuses approved leave, an employer cannot simply rely on an imprecisely worded and inconsistently applied company policy. The employer also bears the burden of conducting an adequate investigation and developing sufficient facts to establish that the employee actually

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engaged in misconduct warranting a dismissal. Finally, the court recognized that the mere fact that an employee is able to perform a different job does not necessarily mean he or she is able to perform the essential duties of the current job for which his or her leave was granted.

It is important for employers to thoroughly investigate and document suspected misuse to ensure that a dismissal or refusal to reinstate would not violate the employee's leave rights under the CFRA. It is also essential for employers to have clearly defined medical and family care leave policies and ensure that employees understand their rights and responsibilities during an approved leave.

If you have any questions regarding the *Richey* decision and how it may impact your existing leave policies, or if you have questions regarding employee leave rights in general, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#), or download our [Client News Brief App](#).

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