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LEGAL ALERT



Legal Alert: California Supreme Court Reverses Judgment in Favor of Employer in California Family Rights Act Case

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In a case of first impression in California, on Monday (April 7, 2008) the California Supreme Court held that working a part time job while seeking medical leave from a full time job is not conclusive evidence under the California Family Rights Act (CFRA) that the employee is able to perform the job from which she seeks leave. *See Lonicki v. Sutter Health Central (4/7/08)*. The Court also held that the employer's failure to seek a third opinion regarding the employee's medical condition did not bar the employer from later claiming that the employee did not suffer from a serious health condition.

As discussed in our January 8, 2008 Legal Alert, the plaintiff in this case, Lonicki, worked in Sutter's sterile processing department. There, she was responsible for picking up equipment and processing instruments used in patient care. She was working 32 hours per week. During the course of Lonicki's employment, Sutter added a trauma center, which Lonicki asserts caused her employment to become increasingly hectic and stressful.

While she was employed by Sutter, Lonicki also worked in the sterile processing department at Kaiser Hospital. This position was primarily a weekend job, though there were some additional hours during the week. The duties Lonicki performed at Kaiser were the same as those she performed at Sutter.

Ultimately, Lonicki requested a medical leave of absence from Sutter due to stress associated with her job. **Significantly**, Lonicki was still working for Kaiser when she said she could not work at Sutter. There were difficulties obtaining information from Lonicki's health care provider, so Sutter approved the absence as paid time off, rather than medical leave. Lonicki was released by her doctor to return to work, but did not return on the date of the release. When she returned on a later date, only to ask for additional time off, she was terminated.

Lonicki filed suit alleging violation of the CFRA, which requires that an employer grant a medical leave of absence if the employee's serious health condition "makes the employee unable to perform the functions of the position of that employee . . ." Sutter sought, and was granted, summary judgment, on the grounds that, while Lonicki allegedly was unable to perform the functions of her job at Sutter, she was performing the same functions at Kaiser. Hence, she was not unable to perform the functions of her job, and was not entitled to

leave. The Court of Appeal affirmed the trial court's grant of summary judgment in favor of Sutter.

The California Supreme Court reversed. In so ruling, the Court addressed two separate provisions of the CFRA. First, the Court held that the fact that the employer did not seek a third opinion regarding Lonicki's medical condition did not bar the employer from later claiming that the employee did not suffer from a serious health condition.

Second, the Court addressed the circumstance under which an employee may be unable to perform her job, while still capable of performing the same job (on a part-time basis) for a different employer. The Court held that that, while such evidence does not conclusively establish that the employee is able to do her full-time job, it is evidence of such. Relying on a 2000 FMLA decision from the Eighth Circuit, the Court explained that "the inquiry into whether an employee is able to perform the essential functions of her job should focus on her ability to perform those functions in her current environment." See *Stekloff v. St. John's Mercy Health System* (8th Cir. 2000).

The Court's decision gives Lonicki the opportunity to take her CFRA claim to trial.

Employers' Bottom Line:

Administering California's many different types of leave laws requires a meticulous understanding of the laws and how they interact with one another. Should you have any questions about how to make sure that the laws are properly administered, or about any other issue of California law, contact the author of this Alert, Helene Wasserman, in the Firm's Los Angeles office, at 213-237-2403 or hwasserman@fordharrison.com.

Helene is the host of the Employer Helpcast, which is a "one stop website" for both "nuts and bolts" employment law advice and insight into new legal developments affecting employers. The Employer Helpcast can be found at <http://employerhelpcast.blip.tv>.