California Employers May Be Required To Provide Additional Employee Leave Beyond The Four Month Leave Provided For By The California Pregnancy Disability Leave Law

Under the California Fair Employment and Housing Act (FEHA), an employer is required to provide a reasonable accommodation to a qualified disabled employee, unless the employer demonstrates that the accommodation would produce "undue hardship…to its operation." (Cal. Gov't Code §12940(m)) An employer may, however, discharge an employee with a physical disability who "is unable to perform his or her essential duties….even with reasonable accommodations." (§ 12940(a)(1)) The California Pregnancy Disability Leave Law (PDLL) is part of the FEHA and requires, in addition to the provisions set forth in Sections 12940, employers to provide a female employee disabled by pregnancy up to four months of leave.

The California Court of Appeal was recently asked to decide whether a trial court erred in sustaining defendant's demurrer and finding that Sanchez had no viable causes of action under the FEHA. The specific issue, which is one of first impression, was whether an employee who has exhausted all permissible leave available under the PDLL, may nevertheless state a cause of action under the FEHA. In Sanchez v. Swissport, Inc., 213 Cal. App. 4th 1331 (2013), the California Court of Appeal held that the remedies of the PDLL augment, rather than supplant, those set forth in the FEHA.

Sanchez was employed by Swissport as a cleaning agent. In February 2009, Sanchez was diagnosed with a high risk pregnancy requiring bed rest. As a result, Sanchez requested Swissport to provide a leave of absence under the PDLL. Swissport provided Sanchez with 19 weeks of leave, which consisted of both accrued vacation and available leave under the PDLL. In July 2009, three months before her expected date of delivery, Swissport terminated Sanchez claiming that she exhausted her time allotted under the PDLL.

Sanchez sued Swissport in superior court for pregnancy discrimination and failure to accommodate under the FEHA. Swissport filed a demurer contending that Sanchez had no viable causes of action under the FEHA because Swissport has provided Sanchez the maximum four months of leave under the PDLL. The Superior Court sustained Swissport's demurer because, the court noted, at the time of termination Sanchez was unable to perform the essential job functions and has exhausted her four-month leave.

The California Court of Appeal reversed. The Court rejected Swissport's argument that Sanchez's exclusive remedy for reasonable accommodation of her pregnancy-related disability is the PDLL, and once the maximum four-month leave expired, Sanchez was entitled to no other protection under the FEHA. The Court found that Swissport's construction was contradicted by the plain language of the PDLL, which clearly states that its remedies are in addition to those set forth in the FEHA. Thus, the Court concluded, Sanchez was entitled to the four-month leave, in addition to any other protections afforded under the FEHA, i.e., section 12940(m), which provides reasonable accommodations for known physical disabilities.

This case has important implications for employers. Employers may be required to provide an employee, in addition to the four-month leave under the PDLL, with additional leave as a reasonable accommodation under the FEHA.

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