

April 2013

# Reporter

## Employment Law

*by Karina B. Sterman, Esq.*

### **“We won! Wait, no, we lost!”: The Narrative Arc of a Disability Discrimination Lawsuit**

#### **Scene 1: The Setting**

An employee (Prock) becomes temporarily but totally disabled by an anxiety disorder, goes out on a disability leave and receives disability benefits. The disability leave is extended by the employee's doctor several times. Finally, when the employee is expected to return from his last leave, he calls the employer (Tamura) and notifies it that he is still disabled and can't return for another six weeks. Likely feeling the freedom of the absence of a doctor's note and annoyed at having to accommodate the employee yet another time, the employer puts Prock on hold. After a few minutes, the employer returns and informs the employee that the company can't hold his position that long and terminates him. *Prock v. Tamura Corp. of Am.*, No. E054185 (Cal. Ct. App. Jan. 25, 2013)

#### **Scene 2: The Tension Builds**

Prock sues Tamura for disability discrimination under the California Fair Employment and Housing Act (FEHA). The employer fights back and files a motion for summary judgment against Prock because he was unable to perform any of his job functions, was totally disabled and was not a qualified individual with a disability. The employer also reminds the court that Prock was accommodated in his disability several times when his leave was repeatedly extended.

#### **Scene 3: The Climax**

The employer wins! The trial court buys the argument and throws out the case.

### **Upcoming 2013 Seminars at ECJ**

**Tuesday, May 21, 2013 - 9:30 a.m.-11:30 a.m.**

Conducting an Internal Investigation

*by Kelly O. Scott, Esq.*

**Wednesday, May 22, 2013 - 9:30 a.m.-11:30 p.m.**

Sexual Harassment Prevention Training

*by Kelly O. Scott, Esq.*

Please contact Brandi Franzman at [bfranzman@ecjlaw.com](mailto:bfranzman@ecjlaw.com) for registration information.

## **Scene 4: Change of Plans**

Prock appeals his loss to the California Court of Appeals.

## **Scene 5: The Denouement**

The Court of Appeal reverses the employer's win! In the process, the Court of Appeal reminds the employer that an employee's receipt of disability benefits does not automatically bar his disability discrimination claims because he could have returned to work if given additional leave. The court also chastises the employer for getting tired of the employee and failing to engage in the interactive process when the employee requested the last extension of his leave. The Court of Appeal reversed summary judgment in favor of the employer and returned the case to the trial court.

**...and "Cut!"**

## **What is the moral of the story?**

An employer cannot afford to get impatient with employee disability. California law prohibits an employer from discharging an employee because of the employee's mental or medical condition unless the employee is unable to perform the essential functions of his or her job "even with reasonable accommodations." In addition, an employer must make "reasonable accommodation for the known physical or mental disability" of the employee, unless the employer can demonstrate that doing so would "produce undue hardship to its operation." Further, an employer must engage in a "timely, good faith, interactive process" to determine "effective, reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition." This means that you continue to engage in the interactive process until there are no more mutually agreeable options left.

## **Did you know...**

That the IRS ruled that mandatory gratuities (e.g., "18% gratuity is automatically added to checks for parties of 6 or more") are wages and not tips? The repercussions of this are two-fold: taxes and higher base wage rates for calculating overtime.

The IRS decision (Ruling 2012-18) was announced last year and was supposed to go into effect January of this year. Apparently that was not enough time for businesses to change existing practices so the IRS has announced they are generously delaying the effective date of this ruling until January of 2014.

Time to get ready.

**Well, now you know!**

## **Do You Have Staff Infection?**

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