

Employee's Violation of Company Policy Justified Firing While on Leave, California High Court Holds

By Mark S. Askanas

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An employer did not violate California's Family Rights Act ("CFRA") by terminating an employee who engaged in outside employment while out on CFRA medical leave, conduct prohibited by the employer's policy, the California Supreme Court has ruled. *Richey v. AutoNation Inc.*, No. S207536 (Cal. Jan. 29, 2015).

The Court said the plaintiff had "no greater right to reinstatement or to other benefits and conditions of employment than if [he] had been continuously employed" during the statutory leave period. The Court also found that, although the arbitrator, who heard the matter and rendered an award in the employer's favor, may have erred in applying to the CFRA the "honest belief" defense used in cases under the federal Family and Medical Leave Act ("FMLA"), the employee suffered no prejudice because the arbitrator concluded the employer terminated him for violating company policy. This finding was sufficient to uphold the arbitration award, the Court said. (The defense allows employers to avoid liability under the FMLA when the allegedly discriminatory or retaliatory action is based on an honest, but mistaken, belief about an employee's misconduct.) Accordingly, the Court ruled the Court of Appeal erred in vacating the arbitrator's award.

Background

Avery Richey began working for Power Toyota Cerritos in 2004. He received an employment manual that said outside work while on approved CFRA leave was prohibited. Further, Richey signed an agreement requiring any employment dispute be settled by binding arbitration.

In early 2008, Richey opened a seafood restaurant while still under the company's employment. In March 2008, Richey injured his back at home, and Power Toyota placed him on CFRA medical leave of absence. In April 2008, Richey's supervisor sent him a letter reminding him that the company's policy prohibited outside employment while on a medical leave of absence and asking him to call if he had any questions. Richey did not respond to the letter.

Thereafter, the company learned that Richey was working at his restaurant while on leave and sent another employee to observe the restaurant. The employee saw Richey sweeping, bending over, and hanging a sign using a hammer. Richey later admitted to having handled orders and answering the phone at the restaurant while on leave. On May 1, 2008, the company terminated Richey's employment for engaging in outside employment while on a leave of absence in violation of its policy.

Richey sued the company for interfering with his rights under the CFRA and retaliating against him for taking leave, among other things. The company asked the trial court to compel arbitration, and the trial court granted the motion. After an 11-day hearing, the arbitrator rejected Richey's CFRA claims and entered an award in favor of the company. The arbitrator found the company properly terminated Richey based on its "honest belief" that he abused his medical leave by engaging in outside employment. The arbitrator also found the company fired Richey for violating its policy prohibiting outside employment during leave. The trial court confirmed the arbitrator's award, but the Court of Appeal vacated the award because it concluded the arbitrator committed legal error in applying the federal "honest belief" defense to Richey's CFRA claims. The company appealed.

Applicable Law

The CFRA allows covered employees to take leave of up to 12 weeks in any 12-month period to care for a family member or for the employee's own medical condition. Cal. Gov't Code §§ 12945.2(a) & (c)(2)(A). Employers must reinstate the employee to the same, or a comparable, position at the end of the leave. However, employees have no greater right to reinstatement than if the employee had been continuously employed during the CFRA leave period. To deny reinstatement, the employer has the burden of proving, by a preponderance of the evidence, that the employee would not otherwise have been employed at the time reinstatement is requested.

Meet the Author



Mark S. Askanas

Principal
San Francisco 415-394-9400
Email

Practices

Litigation

Services

Alternative Dispute Resolution

In general, courts cannot review arbitration awards for errors of fact or law, “even when those errors appear on the face of the award or cause substantial injustice to the parties.” *Moncharsh v. Heily & Blasé*, 3 Cal. 4th 1 (Cal. 1992). However, in cases involving unwaivable statutory rights, a court may vacate an arbitration award based on legal error if the employee is unable to obtain a hearing on the merits of such claims. *Pearson Dental Supplies, Inc. v. Superior Court*, 48 Cal. 4th 665 (Cal. 2010).

Difficult to Invalidate Arbitration Award

The Supreme Court ruled the Court of Appeal erred in vacating the arbitration award. The Court declined to decide whether the federal “honest belief” defense applies to CFRA claims because even if the arbitrator erred in applying the defense, it held Richey had failed to demonstrate the error deprived him of a hearing on the merits of his CFRA claims or was otherwise prejudicial.

The arbitrator found the company fired Richey because he ignored its policy against outside employment while on CFRA leave. The Court ruled that firing Richey for violation of company policy was a legally sound basis to uphold the award. Regardless of the arbitrator’s findings as to the employer’s honest belief, Richey was misrepresenting his medical condition. Accordingly, the Court concluded the arbitrator’s award must stand.

Employers are reminded that even when an arbitrator misapplies the law, it can be difficult to overturn an arbitration decision on appeal. Therefore, it is important to work closely with experienced counsel in drafting and reviewing employment arbitration agreements. Jackson Lewis attorneys are available to assist employers and answer questions about managing employee leaves of absence.

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