Exceeding 12-Week Protected Family Leave Period May Forfeit Employment Position

by Nicole R. Roysdon
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On August 16, 2011, the Second Appellate District of the California Court of Appeal ruled in *Rogers v. County of Los Angeles* (2011) 198 Cal.App.4th 480, that the plaintiff was not entitled to reinstatement of her position because she did not return to work at the end of the 12-week protected leave period established under the California Family Rights Act ("CFRA"). The court also found that the plaintiff's retaliation claim failed because the defendant provided a legitimate, non-discriminatory reason for transferring her to a different department, and the plaintiff did not provide sufficient evidence in response.

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Facts in *Rogers*

On April 3, 2006, Plaintiff Katrina Rogers ("Ms. Rogers") took medical leave from her job with the County of Los Angeles ("County") due to work-related stress. Ms. Rogers had worked for the County for more than 36 years in various capacities. At the time of her leave, Ms. Rogers was a personnel officer in the executive office. Her duties included supervising personnel, payroll and human resources employees. *Rogers*, *supra*, 198 Cal.App.4th at 483.

On April 12, 2006, Ms. Rogers received a letter from the County explaining that her leave would continue until the conditions of her leave changed or until her leave time was "exhausted." The letter further explained that she had "a right for up to 12 weeks of unpaid family/medical leave in a 12-month period." Ms. Rogers saw her medical provider several times during her medical leave. He did not release her back to work until August 2006. *Rogers*, *supra*, 198 Cal.App.4th at 483-484.

While Ms. Rogers was on leave, the County appointed a new executive officer, Sachi A. Hamai. Ms. Hamai began to restructure the executive office upon her appointment. She ultimately decided to bring in a new personnel officer in place of Ms. Rogers in order to bring independent, "fresh eyes" into the organization. Ms. Hamai testified that her decision had nothing to do with Ms. Rogers' performance or with her personally, nor did the fact that Ms. Rogers was on leave impact the decision; rather, the decision to transfer Ms. Rogers was a "business decision." After consulting with the County's director of personnel and head of human resources, Ms. Hamai decided to transfer Ms. Rogers to the Internal Services Department ("ISD"). *Rogers*, *supra*, 198 Cal.App.4th at 484-485.

On August 14, 2006, 19 weeks after she began her leave, Ms. Rogers returned to work and was notified by Ms. Hamai that she was being transferred to ISD to work as a human resources manager. Ms. Rogers became upset when notified of this transfer. She testified that she considered the transfer a demotion. Ms. Rogers also testified that the new position was not comparable, even though her pay and benefits would remain the same, because she would not be supervising or managing anyone, but would instead be performing high level staff work. Ms. Rogers left the office early the same day she returned and called in sick the rest of the week. She sent the County notice of her retirement on August 21, 2006. *Rogers*, *supra*, 198 Cal.App.4th at 485-486.

In December 2007, Ms. Rogers sued the County for violation of the CFRA, alleging that the County interfered with her CFRA rights by transferring her to a noncomparable position and that the County retaliated against her for exercising her right to take CFRA leave. Ms. Rogers' CFRA claim went to trial, after which the jury returned a special verdict in her favor, finding that the County had interfered with her CFRA rights by transferring her to a noncomparable

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position and had retaliated against her for exercising her CFRA rights. Following the trial court's denial of the County's motion for judgment notwithstanding the verdict, the County timely appealed the jury's verdict, arguing that Ms. Rogers' interference claim was barred as a matter of law and that there was insufficient evidence to support her retaliation claim. *Rogers, supra*, 198 Cal.App.4th 482-483, 486.

The CFRA Only Entitles Employees to a 12-Week Period of Protected Leave

The appellate court first examined the purpose and provisions of the CFRA. The CFRA, which is contained within the California Fair Employment and Housing Act ("FEHA," Gov. Code §§12900 *et seq.*), is intended to give employees an opportunity to leave work for certain medical reasons without jeopardizing their job security. *Rogers, supra*, 198 Cal.App.4th at 487. The CFRA "entitles employees to take up to 12 unpaid workweeks in a 12-month period for family care and medical leave to care for their children, parents, or spouses, or to recover from their own serious health condition." *Id.* at 487. "An employee who takes CFRA leave is guaranteed that taking such leave will not result in a loss of job security or other adverse employment actions." *Id.* When an employee timely returns from CFRA leave, "an employer must generally restore the employee to the same or a comparable position." *Id.*

The appellate court noted that the CFRA closely parallels the federal Family and Medical Leave Act ("FMLA"), and that because the CFRA and FMLA contain nearly identical provisions, "California courts routinely rely on federal cases interpreting the FMLA when reviewing the CFRA." *Id.*

The appellate court also stated that CFRA violations generally fall into the following types of claims: "(1) 'interference' claims in which an employee alleges that an employer denied or interfered with her substantive rights to protected medical leave, and (2) 'retaliation' claims in which an employee alleges that she suffered an adverse employment action for exercising her right to CFRA leave." *Id.* at 487-488.

Right to Reinstatement Expires When Protected CFRA Leave Expires

The court then turned to Ms. Rogers' claim that the County interfered with her CFRA rights by transferring her to another position that was not comparable to the position she held prior to taking the leave. *Id.* at 488. However, the court agreed with the County that the trial court never should have submitted the interference claim to the jury because, as a matter of law, Ms. Rogers was not entitled to reinstatement since she was on leave longer than the protected 12 weeks. *Id.*

The court's based its decision on several factors. First, "the CFRA's statutory language expressly allows an employee 'to take up to a total of 12 workweeks in any 12-month period ... .'" *Id.* at 488, *quoting* Gov. Code §12945.2(a). The statute also expressly states that "'[t]he aggregate amount of leave taken under this section or the FMLA, or both, ... shall not exceed 12 workweeks in a 12-month period.'" *Id., quoting* Gov. Code §12945.2(s).

Second, an employer's other obligations are expressly tied to the 12-week protected leave policy. *Id.* As an example, the appellate court referred to the requirement that an employer "maintain and pay for coverage in a group health plan 'for the duration of the leave, not to exceed 12 workweeks in a 12-month period ... .'" *Id., quoting* Gov. Code §12945.2(f)(1). Furthermore, "[u]nder certain circumstances, the employer can recover premiums paid for maintaining coverage for the employee under the group health plan of the employee 'fails to return from leave after the period of leave to which the employee is entitled has expired.'" *Id.* at 488-489, *quoting* Gov. Code §12945.2(f)(1)(A).

Third, the court found that "other courts interpreting the CFRA and the FMLA have concluded that the statutes only ensure pro-

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tected leave for a 12-week period." *Id.* at 489. Specifically, the court relied on *Neisendorf v. Levi Strauss & Co.* (2006) 143 Cal.App.4th 509, which "cited three federal cases holding that an employer does not violate the FMLA when it fires an employee who is unable to return to work at the conclusion of the 12-week protected period." *Id.*

Finally, the court found that its conclusion was supported by policy considerations underlying the FMLA, which closely parallels the CFRA. *Id.* Specifically, while Congress intended to mandate a minimum of 12 weeks of leave for employees who had serious health conditions and protect their jobs while they took that leave, Congress "'did not intend to construct a trap for unwary employer who already provide for 12 or more weeks of leave for their employees.'" *Id.* at 489-490, *quoting Ragsdale v. Wolverine Worldwide, Inc.*, *supra*, 218 F.3d 933, 940.

Based upon this reasoning, the court found that because Ms. Rogers' right to reinstatement expired when the 12-week protected CFRA leave expired, her CFRA interference claim failed as a matter of law and should not have been submitted to the jury. *Id.* at 490.

Retaliation Claim Fails Because Employer had Legitimate, Non-Discriminatory Reason for Transfer

The appellate court also agreed with the County's contention that Ms. Rogers' retaliation claim failed because there was insufficient evidence that she suffered an adverse employment action as a result of taking her right to CFRA leave. *Id.* The court noted that it is unlawful for an employer to discharge or discriminate against an individual who exercises his or her rights under the CFRA. *Id.* at 490-491. However, to make out such a claim, a plaintiff must demonstrate that he/she suffered an adverse employment action *because* he/she exercised the right to take CFRA leave. *Id.* at 491.

The court found that the County's reasons for transferring Ms. Rogers were legitimate and non-discriminatory. *Id.* at 492. Ms. Rogers did not provide any evidence in response to these reasons. *Id.* In fact, at the time that the County made the decision to transfer her, there was no evidence that it knew Ms. Rogers would take "extended leave." *Id.* Thus, the court found that Ms. Rogers "'failed to establish the requisite causal connection between her protected actions in taking a CFRA medical leave' and the decision to transfer her to another position." *Id.*, *quoting Neisendorf*, *supra*, 143 Cal.App.4th at 519. The court concluded that "because the County's 'legitimate, nondiscriminatory reason' for the decision to transfer Rogers eliminated any obligation the County might have had to reinstate her, Rogers 'could not state a valid claim under the CFRA.'" *Id.* at 492-493, *quoting Neisendorf*, *supra*, 143 Cal.App.4th at 520. **TBN**