Sanchez v. Swissport, Inc.
Out Of Statutory Leave But Not Necessarily Out Of A Job

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As an employer in California there are several different overlapping statutory schemes that must be considered in determining how to deal with an employee's temporary inability to work. Complying with one or more of them does not relieve an employer of the duty to consider and comply with them all, especially insofar as the duty to reasonably accommodate an employee's medical condition or even a temporary disability under the FEHA is concerned. The California Court of Appeal makes that clear in *Sanchez v. Swissport, Inc*. (February 21, 2013), a case of first impression.

In *Sanchez*, the plaintiff, a cleaning agent for Swissport, Inc. was disabled by a high risk pregnancy requiring bed rest in the first few months of her pregnancy. The plaintiff requested and received a temporary leave of absence. Although her baby was not due to be delivered until October 19, 2009, after approximately 19 weeks, she had exhausted all of the leave time she was entitled to under the California Family Rights Act (CFRA) and Pregnancy Disability Leave Law (PDLL) and had utilized all of her accrued vacation time. Swissport, Inc. terminated her employment in July 2009, a few months before she gave birth due to her failure to return to work. Sanchez filed suit alleging she was fired because of her pregnancy, pregnancy-related disability and/or requests for accommodations. The trial court dismissed the lawsuit on demurrer on grounds that she failed to state a claim under the FEHA because the employer had granted her the maximum amount of leave under the PDLL and the CFRA. The Court of Appeal reversed.

Although the PDLL caps pregnancy disability leave at four months, and Plaintiff was unable to perform the essential functions of her job without accommodation at that time, it does not mean that she was unable to perform the essential functions of her job with reasonable accommodations. The Court held that the FEHA's protections were in addition to those protections under the PDLL and CFRA. Absent undue hardship to the employer, the employee was entitled to a reasonable accommodation—"which may include leave of no statutorily fixed period." Thus, although the employer had provided the employee with all statutory leave to which she was entitled, they could still be found liable for failure to engage in the interactive process and failure to accommodate Plaintiff's medical condition related to her pregnancy under the FEHA.

The moral of the story: even after all statutory leaves have been provided, an employer should always engage in the interactive process and must consider whether there is a duty to provide a reasonable accommodation, such as additional leave. In recent times, additional unpaid leave and telecommuting have been popular requests for accommodation that employers have been asked to consider. An employer has to make sure the denial of such a request is justified by an undue hardship (with respect to additional leave) or by an inability to perform the essential job functions (in terms of requests for telecommuting). There are a few ways to do this proactively and before such a situation arises. Job descriptions should be up to date and should accurately reflect the duties of the position, including which duties require physical presence in the workplace, proximity to supervision and face to face interaction with other employees.

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