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Weekly Employment Brief

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Request For Vacation To Visit Ailing Parents Not CFRA Leave Request

In *Stevens v. Department of Corrections,* a sergeant at a state correctional facility submitted a written request for vacation "to spend the Christmas holiday" with his family. Stevens also wrote that both parents' health had "deteriorated significantly" and that he expected them to pass away in the near future. The employer denied the request because there were no open vacation slots. Stevens filed a grievance that was denied. Subsequently, the Department reassigned him to another position. Stevens sued, alleging that the Department violated the California Family Rights Act "CFRA," the state-law equivalent to with the federal Family Medical Leave Act or "FMLA" by denying his vacation request, and retaliated against him by reassigning him. In dismissing the suit, the California court of appeal ruled that despite the employee's statement about his parents' deteriorating health, his request for vacation to "spend" time with his family "did not reasonably alert the Department to an intent to care for his parents, rather than to visit them over the holidays." Similarly, the court observed that an employee's request to use sick time does not automatically place the employer on notice of a CFRA-qualifying event for the employee's own serious health condition. In contrast, the court opined that an employee's notice of the birth or adoption of a child, or a child's serious ailment suffices as notice of a CFRA event. Although the Stevens case was a good result for employers, employers should carefully consider whether a request for time off related to a sick parent is a CFRA event.

Arbitration Agreement Defeated By Employer Reserving Right To Equitable Relief In Court

Continuing to refine the requirements for a valid arbitration agreement in California, a California court of appeal recently held that the employer effectively defeated its right to enforce an arbitration agreement by unilaterally reserving for itself the right to seek equitable relief for an employee breach of a proprietary information agreement. In *O'Hare v. Municipal Resource Consultants* the employer, a provider of financial consulting services, hired O'Hare pursuant to a written employment agreement. The agreement required the parties to arbitrate any claims arising out of employment. The contract also contained provisions requiring O'Hare to protect the employer's confidential and proprietary information, and allowed the employer to seek equitable relief in court for any violation. After his termination, O'Hare filed a lawsuit for age discrimination in court and challenged the legality of the arbitration agreement. Striking down the agreement as unconscionable, the court ruled that the employer improperly reserved for itself the unilateral right to seek relief in court for O'Hare's breach of confidentiality. Accordingly, if employers wish to reserve the right to seek injunctive relief for an employee violation of a proprietary information agreement, they should make the clause bilateral allowing both the employee and employer to seek injunctive relief for a breach and otherwise require both parties to arbitrate all claims for money damages.

Retaliation Claim Rejected For Bringing False Harassment Complaint

A federal district court in Kansas recently dismissed the retaliation lawsuit brought by two employees who were discharged for falsely accusing their supervisor of sexual harassment. In *Renner-Wallace v. Cessna Aircraft Company* the employer, Cessna, argued that it had terminated the employees in question for attempting to "set up" their supervisor, and submitted evidence from three co-workers who independently corroborated that they saw the plaintiffs studying sexual harassment materials and overheard them discussing getting rid of their supervisor. This was a rare case, where the employer obtained solid evidence of fabrication by the complaining employee. Generally, employers should not take action against an employee for bringing a complaint of sexual harassment, even if unsubstantiated, so long as the employee brought the charge in good faith.

Employee Who Resigned May Not Sue For Failure to Reinstate Under The FMLA

A federal district court in Wisconsin recently rejected an employee's claim under the Federal Family Medical Leave Act "FMLA" because the employee had resigned her position before commencing the leave. In *Hanson v. Sports Authority,* Debra Hanson resigned her position as a manager before commencing a one-week pregnancy-related leave of absence with the expectation of returning to a part-time, non-management position for the duration of her pregnancy. Because of complications, her leave extended from September 1999 to December. Upon her request for reinstatement, the employer refused to reinstate her to her former job as a manager. The court held that, in this unusual case where the employer had evidence of an express resignation, it could not be liable for a violation of FMLA. Generally, the employer must reinstate the employee, returning from an FMLA leave, in the same or at least comparable position. California employers should remember that they also are required to comply with the California Pregnancy Disability Leave Act.