



California Court Requires Employers to Provide Reasonable Accommodations to Employees Who Are “Associated With” a Disabled Person

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The California Court of Appeal, in its highly controversial opinion in *Castro-Ramirez v. Dependable Highway Express*, held that under the California Fair Employment and Housing Act (“FEHA”), an employer’s duty to provide reasonable accommodations applies not only to disabled employees and applicants, *but also to employees and applicants who are “associated with” a disabled person*. No other published California case has held that the FEHA requires employers to provide a reasonable accommodation to employees or applicants based on their association with a disabled person.

Summary

Plaintiff Luis Castro-Ramirez alleged that he requested work schedule accommodations from his employer, Dependable Highways Express, Inc. (“DHE”), which would enable him to administer dialysis to his disabled son on a daily basis. DHE accommodated Castro-Ramirez’s request as often as it could for three years, but in early 2013, a new supervisor became responsible for setting Castro-Ramirez’s work schedule, and assigned him shifts starting later in the day. The later shifts interfered with Castro-Ramirez’s ability to administer dialysis to his son in the evenings. Castro-Ramirez complained to his supervisor and a manager about the later shifts and communicated his need to leave early to tend to his son. After Castro-Ramirez refused to work an assigned late shift, he was fired. Castro-Ramirez sued DHE for, among other claims, disability discrimination, retaliation, and wrongful termination. The trial court granted DHE’s motion for summary judgment, and Castro-Ramirez appealed. In evaluating Castro-Ramirez’s claim, the Court of Appeal looked to Government Code section 12926(o), which extends the FEHA’s protections to those who are “associated with a person who has, or is perceived to have, any of those characteristics. Therefore, the Court reasoned, an employee’s association with a disabled person should be treated as though it were itself a disability. The Court then held that under the FEHA, employers are required to provide an employee who is associated with a disabled person with a reasonable accommodation that would allow the employee to perform the essential functions of his or her job. Finally, the Court held that Castro-Ramirez’s complaints to his manager and supervisor about the change to his schedule, when both knew that Castro-Ramirez required earlier hours to administer dialysis to his son, could reasonably be considered protected activity under the FEHA, and that it was error for the trial court to dismiss his retaliation claim. The dissenting judge argued that the FEHA does not create a duty to accommodate an employee’s disabled family member, and that the “majority has indeed boldly gone into a new frontier, fraught with danger for California employers...”

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What is associational discrimination?

“Associational discrimination” is discrimination against an individual because of the individual’s relationship or association with a person in a protected class. Protected classes under the FEHA include race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, sexual orientation, and military and veteran status. For example, Castro-Ramirez’s claim for associational discrimination was based on his association with his disabled son, who needed a kidney transplant. It is not entirely clear what type of relationship



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constitutes an “association” under the FEHA, but California courts have interpreted “association” to include children and sibling relationships and other courts have suggested that even a friendship may form the basis of an associational discrimination claim.

Does Castro-Ramirez v. Dependable Highway Express change the interactive process?

While the Court of Appeal did not directly address an employer’s obligation to engage in the interactive process with a non-disabled employee who needs an accommodation to tend to the needs of a disabled associate, this duty may now exist for employers. Thus, if an employee suggests that he or she needs an accommodation to tend to the needs of someone with a disability, employers may have an obligation to explore available options that would allow the employee to perform the essential functions of his or her job. For example, employers may need to modify work schedules to allow employees to attend doctors’ appointments with disabled family members or administer medical treatment to a family member who suffers from a protected medical condition, even if the employee does not qualify for a protected leave of absence under the Family Medical Leave Act or the California Family Rights Act.