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### **When Does An Employee Suffer From A "Serious Health Condition" Under CFRA?**

The California Family Rights Act ("CFRA") provides a qualified employee with up to 12 workweeks of protected "family care and medical leave." CFRA defines "medical leave" to include an employee's own serious health condition that makes the employee unable to perform the functions of the employee's job.

In *Lonicki v. Sutter Health Central*, the Court of Appeal recently held that the CFRA's statutory definition of a "serious health condition that makes an employee unable to perform the functions" of his/her job must be construed to mean an "inability to perform the essential job functions generally, rather than for a specific employer." Thus, an employee who can successfully perform the essential functions of a job for one employer cannot, at the same time, establish he or she was incapable of doing so for any other employer.

In *Lonicki*, Plaintiff worked for both Sutter and Kaiser as a technician in the sterile processing department. Plaintiff confirmed that she performed the same duties for both Kaiser and Sutter. However, Plaintiff claims that working in Sutter's sterile processing department was extremely stressful because she was overworked. Plaintiff was also upset by Sutter unilaterally changing her work schedule.

Plaintiff then requested a medical leave of absence from Sutter because she was "too emotionally upset to work." However, Plaintiff continued her employment with Kaiser. Sutter denied Plaintiff's request for medical leave because, among other reasons, Sutter was aware that she was continuing to work for Kaiser. Plaintiff was then terminated because she did not return to work by the date required by the company.

Thereafter, Plaintiff filed a civil complaint against Sutter asserting violations of CFRA. The trial court dismissed Plaintiff's complaint, finding that she was not entitled to CFRA leave because the undisputed evidence demonstrated that at the same time she was demanding a medical leave from Sutter, she was performing the same functions of her job for Kaiser. Thus, Plaintiff did not suffer from a serious health condition that prevented her from performing the essential functions of her job, and was not entitled to CFRA leave.

In upholding the trial court's decision, the Court of Appeal referred to Plaintiff's condition as "selective disability" and specifically found that Plaintiff "was not unable to perform the essential functions of her job; rather, she was unwilling to do so for Sutter." The Court of Appeal pointed out that CFRA "was intended to balance the demands of the workplace with the needs of employees. It was not intended to shift the balance of power to a capable but unwilling employee."

This decision represents a small victory for employers in their ability to manage and respond to requests for CFRA leave. However, all leave requests must be properly evaluated on an individual basis. Moreover, an employee's right to take time off from work is governed by numerous different state and federal leave statutes, including the federal Family Medical Leave Act (FMLA), which may lead to a different result. Thus, before denying any request for a medical leave, employers must examine each applicable statute and situation.

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