

EMPLOYMENT LAW UPDATE

December 16, 2004

Issue No. 123

Juan C. Araneda

Jennifer A. Becker

David P. Borovsky

Robert J. Buccieri

Chip B. Cox

Kim O. Dincel

Edward F. Donohue, III

Kathleen M. Ewins

Howard M. Garfield

Jason A. Geller

J. Michael Higginbotham

John B. Hook

Joseph P. McMonigle

Douglas J. Melton

Jordan Rojas

Jessica B. Rudin

Steven Sharafian

Ann L. Strayer

Jennifer W. Suzuki

Jeanette Traverso

Karen L. Uno

Seth E. Watkins

Gerald G. Weisbach

Kevin Whittaker

Irene K. Yesowitch

California Law

An employee is not entitled to family medical leave for a “serious health condition” because her work shift created stress.

Lonicki v. Sutter Health Hospital 04 C.D.O.S. 10914 (December 13, 2004, Cal.App.3 Dist.)

By Jason A. Geller

Plaintiff Antonina Lonicki worked for employer Sutter Health Central as a technician. As a result of budget constraints and an increased workload, Lonicki’s responsibilities increased and she experienced stress. At the same time, Lonicki obtained a job for another hospital, Kaiser. She was performing the same duties at Kaiser that she was simultaneously performing at Sutter. Lonicki maintained her employment at Kaiser throughout the events that formed the basis of her lawsuit against Sutter.

Thereafter, Sutter changed Lonicki’s work shift about which she complained. She subsequently provided a doctor’s note, requesting a medical leave of absence because she was “too emotionally upset” to work. She then went on a leave of absence.

After Lonicki had submitted the doctor’s note, Sutter requested that she see another doctor who concluded that she was fit to return to work. Nevertheless, Lonicki requested an extension of her leave. Sutter rejected the request and advised her to return on a date certain.

Lonicki failed to do so for which Sutter terminated her.

Lonicki filed a complaint against Sutter alleging a violation of the California Family Rights Act (“CFRA”) on the basis that Sutter denied her request to extend her leave of absence for a “serious health condition.” Lonicki’s claim was dismissed on summary judgment on the basis that Lonicki was not eligible for a CFRA medical leave because she did not suffer from a “serious health condition,” which would have entitled her to the medical leave of absence. Lonicki was performing the same duties at Kaiser that she was performing at Sutter and therefore her “stress” did not prevent her from performing the “essential functions” of her job, a requirement for the leave. Lonicki appealed.

The Court of Appeal affirmed the trial court’s decision. Lonicki was not eligible for medical leave under CFRA because she admitted that she was able to perform the essential functions of the job. She was able to perform the same

duties at Kaiser that she was performing at Sutter.

DOCS\Z9906-602\490500.V1

The Court of Appeal rejected Lonicki's argument that she needed only to show that she was unable to perform the "essential functions" at her "specific" employer, Sutter. It did not matter that she was performing the same duties for another employer. The Court inferred that California regulations regarding "disability and medical leaves" were intended to prevent employees from abusing the right to medical leave by asserting some broad, subjective need for leave, such as an undesirable shift schedule or work-related stress. The Court noted that if an employee was entitled to make legal demands on an employer solely because the job created stress, "entire offices might go un-staffed".

Finally, the Court of Appeal rejected Lonicki's argument that Sutter had waived its right to contest the issue of whether she had a "serious health condition" because it did not seek a third medical opinion. The Court noted that Lonicki's first doctor's note from a nurse practitioner stated only, "Plan return to work 8/27/99. Medical reasons." The Court held that this doctor's note was "manifestly insufficient" to establish a qualifying medical condition under CFRA.

California employers should recognize the importance of obtaining adequate medical certifications from employees who request medical leave and be aware of the procedures under California law for requesting second or third medical opinions. This decision provides useful guidance regarding the eligibility requirements for medical leave under CFRA.