

EMPLOYMENT LAW UPDATE

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An employer did not discriminate on the basis of disability or fail to accommodate a disability when it failed to reinstate plaintiff following a medical leave of absence.

Williams v. Genentech, Inc.; 06 C.D.O.S. 3848 (May 9, 2006, Cal.App.1st Dist.)

By Jason A. Geller

Plaintiff Rochelle Y. Williams worked for Genentech, Inc. as a receptionist. In October 2000, Genentech disciplined her for failing to comply with security protocol. Immediately thereafter, Williams commenced a medical leave of absence on the basis of “job related stress.” Shortly thereafter, Williams’ doctor diagnosed her with depression and anxiety and then continued to extend repeatedly her leave of absence from January 2001 through May 2001. During the latter part of her leave, Williams’ doctor diagnosed her as “totally incapacitated” and concluded that she could not return to work until May. In May, she was released to return without restrictions.

Genentech’s policies provided six months of paid medical leave in addition to 12 weeks of family medical leave as required by the law. The policy further provided that if an employee extended a medical leave beyond the 12 weeks required by the Family Medical Leave Act and the California Family Rights Act, it could not guarantee reinstatement. The policy provided, however, that if an employee’s position was filled during a leave, the employee

would be permitted 60 days following his or her release to work in which to locate another job within the company for which he or she was qualified. If the employee could not find such a position with the 60-day period, the employment would then terminate.

At the beginning of Williams’ leave, she complained that her manager “harassed” her and that she did not want to return to work under that manager’s supervision. Genentech investigated the “claim” of “harassment” and concluded that there was no improper conduct by the manager. Moreover, during the leave, Williams’ position was covered by several floater receptionists, which created a number of business problems, including inadequate coverage for absences, reduced lunch breaks and negative morale.

When Williams extended her leave from January 2001, Genentech then considered filling Williams’ position due to the hardships mentioned above. Genentech considered that having a temporary employee fill the receptionist position was not viable because of the extensive training required, the lack of

qualified persons and high turnover among temporary employees. Further, Genentech reasonably believed that, given the previous extensions of medical leave, Williams would not actually return to work in the foreseeable future. Based on the foregoing, Genentech decided to permanently fill Williams' position.

When Williams eventually returned to work in May 2001, without restrictions, she interviewed for various positions during the 60-day period, but was not hired for any of the positions because she was not qualified. Consequently, her employment was terminated in July 2001.

Williams then filed a lawsuit for race discrimination, disability discrimination, failure to accommodate disability, failure to engage in a timely interactive process regarding her alleged disability and a violation of the Unruh Act, among other claims. Genentech moved for, and was granted, summary judgment, from which Williams appealed.

The Court of Appeal affirmed summary judgment. The Court held that Williams failed to prove her prima facie case of disability discrimination on the grounds that she did not prove that she was "a qualified individual with a disability," defined as an individual who, with or without a reasonable accommodation, can perform the essential functions of her job. It was undisputed that, at the time Genentech decided to permanently fill Williams' position, her doctors deemed her "totally disabled" from doing any of her duties through May 2001.

The Court also held that the eventual termination was not discriminatory

because it was undisputed that Genentech had legitimate, non-discriminatory reasons for refusing to hire her for alternative positions. Williams was unqualified for them and failed to provide any evidence to suggest that Genentech's refusal to hire her in alternative positions was somehow motivated by disability discrimination.

As to the failure to accommodate claim, the Court rejected Williams' contentions that Genentech failed to accommodate her by 1) not granting her request to work under another manager, 2) not holding her position open, and 3) not placing her in a vacant position. The Court reiterated a general rule in disability accommodation cases that an employer is not required to choose the best accommodation or the accommodation that the employee seeks, but rather has the ultimate discretion to choose between effective accommodations, including those that are least expensive or easier to provide. Williams provided no evidence that she was ready and capable of returning to work at the time she requested a new manager and that the seven-month leave of absence was reasonable and effective, given that she was ultimately released to work without restrictions.

Moreover, the Court noted that the law does not require an employer to wait indefinitely for an employee's medical condition to be corrected before filling the employee's position. It was undisputed that Genentech had a reasonable basis to conclude that, given the extensions of leave, Williams would not return in early 2001 and it was a hardship for Genentech to continue using others to temporarily fill the position. The Court held that Williams failed to raise a triable issue as to the

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reasonableness of Genentech's decision to fill her position while continuing her medical leave. While Genentech was obligated to assign Williams to a position upon her return to the extent one existed for which she was qualified, it was undisputed that there were no such positions.

The Court rejected Williams' claims that Genentech failed to "engage in the interactive process" regarding potential accommodations of her mental disability. Employers must engage in a good-faith exploration of potential accommodations for an employee when the employer knows of a disability and a request by the employee for assistance in performing essential duties. The employer's duty to engage in the interactive process is continuing and extends beyond any first attempt at accommodation. Here, the Court held that Genentech had properly engaged in the interactive process by providing Williams with extended leaves of absence on each occasion when she requested them. There was no evidence that Genentech somehow failed to engage in the process or otherwise sabotaged it. Williams also did not present any evidence that the leave was an ineffective accommodation for her anxiety and depression.

Finally, the Court held that the Unruh Act did not apply to employer-employee relationships, but was intended to apply to discrimination of recipients of goods and services from businesses. While immaterial to the ultimate outcome of the case, the Court rejected Genentech's arguments that Williams failed to exhaust her administrative remedies as to certain claims.

This decision provides useful guidance to employers on their obligations under the laws prohibiting disability discrimination and requiring an interactive process and reasonable accommodations of disabled employees. It also provides a basis for an employer to claim certain hardships in holding a position open indefinitely for an employee who is on an extended leave of absence. Unfortunately, the Court did not provide any bright line rules regarding the appropriate length of a leave of absence when provided as a reasonable accommodation. The appropriate length will depend on the circumstances.