

EMPLOYMENT LAW UPDATE

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***Under the California Family Rights Act, a Legitimate Nondiscriminatory Reason for Terminating an Employee Eliminates any Obligation to Reinstatement the Employee.***

***Neisendorf v. Levi Straus & Co.***, (August 29, 2006, Cal.App.4th) A109826

*By Jason A. Geller and Kevin Whittaker*

Following 14 weeks of medical leave for panic disorder and muscle spasms, appellant Barbara Neisendorf (“Neisendorf”) at-will employment was terminated by respondent Levi Strauss & Co. (Levi’s). She filed suit claiming, among other things, that the termination of her employment violated the California Family Rights Act (“CFRA”) and the Fair Employment and Housing Act (“FEHA”).

After most of Neisendorf’s case was dismissed on summary adjudication, including her claims of gender and age discrimination, her remaining claims for disability discrimination in violation of FEHA and retaliation for taking a medical leave under CFRA proceeded to trial. The jury returned a verdict in favor of Levi’s, finding that Neisendorf was not terminated in retaliation for having taken medical leave under the CFRA and that she was not a “disabled person” entitled to FEHA’s protection. Neisendorf appealed, claiming: (1) the trial court erred in dismissing her cause of action for violation of CFRA after the court found that the undisputed facts established that Levi’s fulfilled all of its

affirmative obligations to Neisendorf in conjunction with her CFRA medical leave; and (2) the court erred in ruling that she was not entitled to certain bonus payments from Levi’s because Neisendorf’s employment with Levi’s was terminated before she became eligible for any of the bonus payments.

The court of appeal affirmed the trial court’s ruling. The court explained that under CFRA, employees are entitled to take up to 12 weeks of unpaid medical leave during a 12-month period for certain personal or family medical conditions. In this case, Neisendorf exercised her right to leave, but failed to return after the expiration of 12 weeks. When she returned two-weeks later, she was terminated because of ongoing poor performance. On appeal, Neisendorf argued that Levi’s should have reinstated her and provided reasonable accommodations for her condition. The court of appeal disagreed and stated that an employee who requests CFRA leave has no greater right of reinstatement or to other benefits and conditions of employment than an employee who remains at work. Here, the evidence

presented at trial proved that Neisendorf was terminated on the basis of poor performance, not for attempting to exercise her rights under CFRA. The unchallenged non-discriminatory reason to discharge Neisendorf, which had nothing to do with her CFRA leave, barred her cause of action.

Further, to be eligible for a bonus under Levi's annual bonus plan, the employee must meet the plan's requirements. The plan provided, "Unless termination is due to retirement, layoff, long-term disability or death, a participant must be an active employee of the company on the payment date in order to receive a [bonus]." Bonuses are made in February following the close of the fiscal year. The plan also states, "If an employee is involuntarily discharged (e.g. poor performance or misconduct) prior to the [payment] date, that employee will have no right to a [bonus]." Here, the court of appeal found that because Neisendorf was terminated on November 26, 2003, she was not entitled to any bonus.