



DISABILITY DISCRIMINATION: IT'S (NOW) A FAMILY AFFAIR



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Background of Associational Disability Discrimination



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General Statutory Prohibitions of Disability Discrimination

- ❑ ADA – 42 U.S.C. §§12012, 12101, et seq.
- ❑ FEHA – California Government Code §12940, et seq.



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Protection against discrimination extends to “the known disability of an individual with whom the qualified individual is known to have a relationship or association.”

ADA: 42 U.S.C. §12112(b)(4)



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Protection against discrimination
“includes a perception that the person...is
associated with a person who has, or is
perceived to have” a protected status
under the law.

FEHA: Cal. Government Code §12926(o)



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Castro-Ramirez No. 1 (April 2016)
DECISION VACATED



“[A]n employer does not have to accommodate an employee because of her association with a disabled person...”

Magnus v. St. Mark (2012)



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“We only observe that the accommodation issue is not settled and that it appears significantly intertwined with the statutory prohibition against disability discrimination.”

Castro-Ramirez No. 2 (August 2016)



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Intermittent Leave

“Eligible employees may take FMLA leave on an intermittent basis...due to the serious health condition of a covered family member...”

29 C.F.R. 825.203



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Possibly Covered Associations/Disabilities

Parent-Child Needing Kidney Dialysis

- *Castro-Ramirez*

Parent-Prematurely Born Twins

- *Larimer v. IBM*

Brother-Sister Needing Kidney Transplant

- *Rope v. Auto-Chlor*

Husband-Wife Requiring In Vitro Fertilization

- *Knight v. Hayward*



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Possibly Covered Associations/Disabilities (continued)

Parent-Child with Down's Syndrome

- *Erdman v. Nationwide*

Parent-Child with Bi-Polar Affective Disorder

- *Den Hertog v. Wasatch*

Parent-Child with Gastro-Esophageal Reflux

- *Tyndal v. National*

Husband-Wife with Auto-Immune Disorder

- *Stansberry v. Air Wisconsin*



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Possibly Covered Associations/Disabilities (continued)

Husband-Wife with Insulin-Dependent Diabetes

- *Barker v. International*

Parent-Child with Mental Disabilities

- *Magnus v. St. Mark*

Parent-Child with Terminal Brain Cancer

- *Trujillo v. PacificCorp.*



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Liability For Retaliation

- ❑ ADA – 42 U.S.C. §12203(a)
- ❑ FEHA – California Government Code §12940(h)



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CASTRO-RAMIREZ v. DEPENDABLE HIGHWAY EXPRESS, INC.

2nd District Court of Appeal
April 4, 2016



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(Before) Castro-Ramirez v. Dependable Highway Express, Inc.

3 Types of Associational Discrimination

Larimer v. IBM (2004)

Rope v. Auto-Chlor System of Washington. Inc. (2004)

Expense

Discrimination
because of a
covered relative's
health care expense

Disability by Association

Discrimination
because of a
relative's disease
which has a genetic
component

Distraction

Discrimination
based on a
relative's disability
which causes the
employee to be
distracted at work



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Castro-Ramirez v. Dependable Highway Express, Inc. (continued)

Facts

- Employee's son required daily kidney dialysis;
- Employer initially accommodated employee's schedule;
- Employee's new supervisor refused to adjust employee's schedule;
- Employee was terminated when he refused to work scheduled shift.



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Castro-Ramirez v. Dependable Highway
Express, Inc. (continued)

Facts

- Court held that employee had presented a “distraction” claim;
- Disclaimed deciding duty to accommodate issue;
- Employer was “avoiding the nuisance” of schedule accommodation.



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Castro-Ramirez v. Dependable Highway Express, Inc. (continued)

“Non-Exhaustive List”

“We agree with *Rope* that *Larimer* provides an illustrative, rather than an exhaustive, list of the kinds of circumstances in which we might find associational disability discrimination.”



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Gonzalez v. Kaiser Foundation Health Plan Inc.

San Diego County Superior Court
March, 2017



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Gonzalez V. Kaiser Foundation Health Plan Inc.

Facts

- Plaintiff was a 12-year Medical Assistant working in a Kaiser pain clinic.
- Her 24-year old son was a patient at the pain clinic that she worked at.
- Plaintiff had access to patients' electronic medical records (including her son's).
- Necessary to access records when checking patients in.



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Gonzalez v. Kaiser Foundation Health Plan Inc. (continued)

Facts

- Accessing patients' records without medical justification is a HIPPA violation.
- Multiple accessions without medical need.
- Including from other facilities where he didn't treat.
- Plaintiff terminated for HIPPA violation.



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Gonzalez v. Kaiser Foundation Health Plan Inc. (continued)

Allegations

- Medical Assistant terminated because son had been treating with Kaiser;
- Medical Assistant terminated in retaliation for complaints about her son's medical care.
- Did Kaiser discharge Maria Gonzalez because her son's disability was costly to Kaiser?
- Did Kaiser discharge Maria Gonzalez because it wanted to avoid the nuisance that her association with her son caused Kaiser?



Gonzalez v. Kaiser Foundation Health Plan Inc. (continued)

Jury Verdict

- Was termination because of the cost of son's health care?
 - Jurors – 11-0 No
- Was termination to rid Kaiser of a nuisance?
 - Jurors – 11-3 Yes



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Castro-Ramirez/Gonzalez

Takeaways

- The three prohibited forms of associational discrimination remain:
 - Expense;
 - Disability by Association; and
 - Distraction.



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Castro-Ramirez/Gonzalez

Distraction

- Employee who is often dealing with a disabled close relative's health issues;
- Employee who needs a schedule accommodation to care for disabled close relative;
- And maybe...



Case Study

- Muscle Max has worked for County agency for six months. His wife had breast augmentation surgery a few months ago. Everyone knows about it because he has bragged about it and took a couple of days off when she had the surgery. She had complications and he had to take another week off to take care of her.
- Now he says he has to leave early every Monday and Thursday to take his wife to her phlebotomy appointment to treat hemochromatosis. Muscle Max's supervisor, Sally, is fed up. She says his performance is not very good, and she wants to release him on probation. Sally knows she can't fire him without talking to HR first. She has come to you to for help.



FIRST THINGS FIRST

Pause



Breathe



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FRAME OF MIND

Stellar Employee



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PROTECTED LEAVES

- ☐ CFRA
- ☐ FMLA
- ☐ PFL



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BE CURIOUS



- ☐ Who is involved?
- ☐ What are the issues?
- ☐ What's the rest of the story?



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WE'RE *HUMAN* RESOURCES

Don't forget the Human



Both for Employee and
Manager/Supervisor



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COMMUNICATE BRAINSTORM



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If All Else Fails...

USE FORCE



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