

LOS ANGELES

Daily Journal

www.dailyjournal.com

VOL. 124 NO. 58

FRIDAY, MARCH 25, 2011



Juliane Backmann / For the Daily Journal

Roland Gonzalez and his attorney Bruce Kokozyan at the Kokozyan offices in Los Angeles.

Weak Economy Drives Jump In Disability Discrimination Claims

Medical Leave Cases Push Courts to Weigh Employers' Efforts To Retain Workers

By Catherine Ho
Daily Journal Staff Writer

Workers with physical and mental disabilities are filing workplace complaints in record numbers, drawing increased attention to company policies for accommodating disabled employees' needs.

Though disability claims can run the gamut — treating a person differently in hiring, firing, pay, promotions and layoffs because of a disability — more and more cases are hinging on medical leave, legal experts say.

While state and federal laws are relatively clear about the length of leave time employers must give a worker, plaintiffs' cases are homing in on whether bosses honestly tried to accommodate an ill or disabled team member before terminating them.

The economic downturn is driving more of these disputes into the courts as employers shed weaker, older employees and replace them with cheaper workers, said Bruce Kokozyan of the Kokozyan Law Firm.

"The [disability discrimination] lawsuits are on the rise because it occurs more, and the public is more aware of it," Kokozyan said. "The prevalence of these types of terminations is because employers have a greater opportunity to terminate now."

Kokozyan represents Roland Gonzalez, a tax accountant who was fired after asking for extended time off following major heart surgery, and sued his former employer. The case, *Gonzalez v. ATI Systems International, Inc. 2nd Civil No. B223779*, was argued before the 2nd District Court of Appeal earlier this month and is awaiting a decision.

The case does not address whether the company violated the law with respect to the time off it gave Gonzalez — he received the 12 weeks required by law — but rather what kind of interaction should have happened between Gonzalez and his bosses after they found out he needed extra time to recover.

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Disability discrimination is the fastest growing type of employment discrimination, according to the U.S. Equal Employment Opportunity Commission, which enforces federal anti-discrimination laws. Complaints alleging disability discrimination hit an all-time high last year with 25,165 claims — up 17 percent from 2009 and 53 higher compared to a decade ago. Employment discrimination overall, including claims of age, sex, religion and national origin discrimination, climbed

just 7 percent between 2009 and 2010.

The prolonged recession and high unemployment prompted terminated workers to go after their former employers in higher numbers, because they have a harder time finding new jobs after getting fired or laid off. Meanwhile, employers are under pressure to run leaner, more cost-efficient operations, which sometimes means cutting off workers who request prolonged leave to treat medical conditions.

Under the federal Americans with Disabilities Act, an employer must engage in an "interactive process" to reasonably accommodate employees with disabilities, and make those accommodations unless it is an "undue hardship" for the business to do so.

Gonzalez worked at ATI Systems, a Pasadena-based armored car service, for more than 20 years when he underwent surgery for an aortic aneurysm in 2008. He took 12 weeks of medical leave, the time allotted by the California Family Rights Act, then requested another six months, sending his bosses a doctor's note saying he needed the time to recover.

Less than two weeks later, ATI terminated him. Gonzalez and his lawyer claim the company didn't engage in the required "interactive process" by contacting him to discuss part-time work or other accommodations.

One point of contention in the lawsuit is whether the doctor's note was an estimated time frame for how long Gonzalez needed to recover, as his lawyer argued, or if it was a statement that he would be out indefinitely, as the company said.

Even if the doctor's note did mean Gonzala-

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lez would be out six months and not indefinitely, that was not something the company could accommodate because it needed to fill the position, said Travis Gemoets, a partner at Jeffrey Mangels Butler & Mitchell LLP who represents ATI Systems.

Los Angeles County Superior Court judge dismissed the lawsuit last year, saying an employer has no obligation to keep an employee's position open during indefinite leave of absence, nor does an employer have to offer part-time work if they don't know whether the employee is capable of doing the work. The appellate decision on whether the lower court was correct is due soon.

The issue of proper accommodation is a growing focus in disability discrimination cases, said Gemoets, who defends companies in employment litigation.

"We've definitely seen more cases of the accommodation nature," he

said. "There are very few cases these days that talk about the type of discrimination where an employer says, 'We don't want to hire you,' or 'We're going to let you go' because of a disability. What plaintiffs' lawyers have focused on is this somewhat nebulous area: What are the reasonable accommodations that need to be made? And what kind of process do they need to engage in before an employer makes a decision?"

That question is the central issue in another disability discrimination suit against American Apparel that was ordered into settlement talks by a federal judge this week. The Los Angeles-based clothing manufacturer was accused of firing a garment worker after he returned from medical leave for cancer treatment. Jose De Los Santos took time off for chemotherapy. When he returned, he was told the company no longer had a position for him, according to the lawsuit filed last September in U.S. District Court for the Central District of California.

U.S. Equal Employment Opportunity Commission v. American Apparel, CV 10-7280 American Apparel denied discriminating against De Los Santos based on his disability, and denied allegations that they failed to provide reasonable accommodation. The parties are in settlement talks, said Peter Schey, the attorney for American Apparel.

Anna Park, the EEOC attorney for De Los Santos, said litigation over disability discrimination likely will continue growing because of recent amendments to the Americans with Disabilities Act that broaden the definition of a disability. The aging workforce also may be factor.

"We expect an upward trend on charges leading to litigation," she said. "And as people get older, they get sicker and have to care for others and care for themselves. That is all covered as under disability discrimination as well."

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