

San Diego Chapter American Payroll Association
Newsletter ~1st Quarter 2013



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“It is spring again. The earth is like a child that knows poems by heart.”

— Rainer Maria Rilke

Termination for Family Leave Abuse

By Christopher W. Olmsted

If you have reason to believe that an is employee working a side job while he's supposed to be on a medical leave, all bets are off and you can refuse reinstatement, right? Not right. In a recent California case titled *Richey v. AutoNation, Inc.*, the court set a fairly high standard for employers wishing to combat leave of absence abuse.

A Salesman with a Side Job

Avery Richey worked as a car salesman for a Toyota dealership. He was also part owner of a family business operating a seafood restaurant.

Mr. Richey took a medical leave for 2 1/2 months after he hurt his back at home. The dealership granted him time off under the California Family Rights Act (CFRA), which is similar to the federal FMLA.

During the leave, the company sent a letter to the employee reminding him that he was not allowed to accept other work, including self-employment, while on leave.

A company representative learned that Mr. Richey was working at his family restaurant during the leave. He was seen cleaning and repairing the restaurant. He was also seen taking orders and operating the cash register. Shortly after this discovery, the company terminated him for engaging in outside employment during the leave of absence.

Mr. Richey sued the dealership, alleging a violation of the family leave law. He alleged that it was illegal to terminate him, and not reinstate him, while he was on the leave. The company's defense was that Mr. Richey abused his leave rights. If he could work, he should have worked at the dealership.

Testifying at the arbitration hearing, Richey acknowledged he had taken orders, handled payment and answered the telephone while at the restaurant but claimed he had only engaged in limited, light-duty tasks authorized by his doctor.

The case went to arbitration and the dealership won by using its abuse defense. Mr. Richey appealed.

Family Leave Basics

CFRA, which was enacted in 1991 as a state counterpart to FMLA, permits employees to take time off for family/medial reasons without jeopardizing job security.

CFRA makes it an unlawful employment practice for an employer of 50 or more persons to refuse to grant a request by a qualified employee to take up to 12 weeks in any 12-month period for family care or medical leave. Grounds for the leave include family needs such as the birth or adoption of a child, serious illness of a family member, or when an employee's own serious health condition makes the employee unable to perform the functions of the position of that employee.

Honest Belief of Abuse Insufficient

The appellate court reviewed the arbitrator's ruling and determined that he misinterpreted the law. The arbitrator decided that where the company has an "honest belief" that the employee has engaged in medical leave abuse, it may terminate the employee. Whether or not the belief was correct is beside the point, according to the arbitrator, so long as the employer had a good faith honest belief of abuse.

The court evaluated prior cases in California and other jurisdictions. It decided that the leave law does not permit an employer to act merely on an honest belief.

The right to reinstatement is the "lynchpin" of family medical leave. Reinstatement should be automatic; it should be the default setting on any protected leave. If an employer wants to mess with that automatic result, a "belief" of abuse is not good enough. In a lawsuit the employer has the burden of producing evidence that the employee actually, in fact, abused his leave rights.

Thus the court rejected the dealer's contention that "an employer may simply rely on an imprecisely worded and inconsistently applied company policy to terminate an employee on CFRA leave without adequately investigating and developing sufficient facts to establish the employee had actually engaged in misconduct warranting dismissal."

The court explained that "the honest belief defense" is improper because it "relieves the employer of any obligation to establish its employee was, in fact, misusing authorized family leave and thus subverts the express statutory guarantee of the right to reinstatement, as well as the allocation of the burden of proof in an interference case.

Accordingly, the court vacated the arbitrator's ruling and sent the case back for further proceedings, including a new arbitration hearing.

Practical Tips:

Reinstate. Employers already know that employees on protected CFRA/FMLA leaves should be reinstated. This case reiterates why that is always the best practice.

Measure Twice, Cut Once. If a company must terminate an employee on leave, the utmost of care must be taken. Such a termination is not illegal if done for a legitimate reason, but it is risky. If the termination is for leave abuse, gather solid evidence and clarify doctor's restrictions where necessary. And by all means, call your attorney first. If the termination is for other reasons such as an inability to return to work, again be sure to gather the solid evidence such as a medical note.

Working Isn't Always Abuse Just because the employee on leave is working somewhere else, it does not necessarily mean that they are abusing the leave. It is possible that while the employee is medically unfit to work for your company, she is fit to work under different circumstances. Explore these nuances and gather hard evidence before taking action.

UPDATES FOR 2013

IRS Announces 2013 Transportation Fringes and More:

The IRS has released inflation-adjusted tables for 2013 reflecting increases in amounts for excludable transportation fringes, adoption assistance, the standard deduction, and personal exemption, among other changes [IR-2013-4, 1-11-13; www.irs.gov/uac/Newsroom/Annual-Inflation-Adjustments-for-2013 and Rev. Proc. 2013-15, 1-11-13; www.irs.gov/pub/irs-drop/rp-13-15.pdf].

Qualified transportation fringes:

The amounts that may be excluded from gross income for employer-provided "qualified transportation fringe benefits" for 2013 are as follows: \$245 per month for "qualified parking" (\$240 in 2012), and \$245 per month for "transportation in a commuter highway vehicle and any transit pass" (\$240 in 2012, retroactively increased by ATRA 2012 from the \$125 limit that had been in place). Note that parity between parking and mass transit benefits, which was extended by the American Taxpayer Relief Act of 2012 (ATRA 2012; Pub. L. No. 112-240), expires at the end of 2013.

Adoption assistance:

For 2013, the maximum amount that can be excluded from an employee's gross income for qualified adoption expenses under an employer's adoption assistance program is \$12,970 (\$12,650 in 2012). The maximum amount that can be excluded in connection with the adoption of a child with special needs is also \$12,970 (\$12,650 in 2012). The amount excludable from an employee's gross income begins to phase out for taxpayers with adjusted gross income of \$194,580 (\$189,710 in 2012) and is completely phased out for taxpayers with adjusted gross income of \$234,580 (\$229,710 in 2012).

Standard deduction:

The standard deduction amounts for 2013 increase to \$12,200 for married couples filing jointly or surviving spouses (\$11,900 in 2012), \$6,100 for single taxpayers and married taxpayers filing separately (\$5,950 in 2012), and \$8,950 for heads of household (\$8,700 in 2012). Note that under ATRA 2012, the standard deduction for married taxpayers filing jointly is permanently set at 200% of the standard deduction for single taxpayers.

Personal exemption:

The personal exemption amount for 2013 is \$3,900 (\$3,800 in 2012). Note that under ATRA 2012, the phase-out of the personal exemption for higher income taxpayers is reinstated and begins at \$250,000 of adjusted gross income for single taxpayers, at \$300,000 for married couples filing jointly or surviving spouses, at \$150,000 for married taxpayers filing separately, and at \$275,000 for heads of household.

State and Local News:

- California – San Jose minimum wage established
- Illinois – UI monthly wage reporting guidance issued
- Indiana – aggregate electronic filing threshold established
- Louisiana – frequency thresholds established for depositors
- Missouri – withholding tables and formula revised
- New Jersey – W-2 electronic filing specifications updated
- Oklahoma – withholding tables revised
- Pennsylvania – E-Verify use by public contractors mandated

State Tax Reciprocal Agreements

Compiled by Robert W. Ditmer, CPP

Almost all states that impose a personal income tax require that the tax be paid on all income earned in the state, including income earned by non-residents. Non-residents generally have to file a non-resident income tax return with the state, and if the state where they live also imposes a personal income tax, then the individual will also have to file an annual tax return for all income earned, regardless of where it was earned. Residents can usually take a credit on the return for their state of residence for taxes paid to other states.

However, in order to relieve taxpayers of this double burden, many states have entered into state tax reciprocal agreements. If two states have a reciprocal agreement and an individual lives in one of those states and works in the other, the individual will only be subject to the income tax in the state where he lives. All states with reciprocal agreements have provisions that exempt an employee from having the tax withheld for the state where he works, but employers are not required to withhold the tax for the state where the employee lives. On the other hand, even though it is not mandatory, a great many employers will establish an account with a reciprocal state and withhold the tax for the employee's state of residence. For instance, in Pennsylvania the form not only declares that the employee is exempt from PA income tax withholding, but it authorizes the employer to withhold the tax for the state where the employee lives.

So almost all states that have state tax reciprocal agreements have a form that an employee can complete that would make his income exempt from withholding of the income tax for the state where the employee works. (The exception is Michigan that does not have a specific form.) The chart below is a list of all states with reciprocal agreements, as well as a link to the state's form for claiming exemption from withholding. All of the forms are in Adobe Acrobat (pdf) format.

State	States with State Tax Reciprocal Agreements	Exemption Form
District of Columbia	All non-residents who work in DC can claim exemption from withholding for the DC income tax.	D-4A
Illinois	Iowa, Kentucky, Michigan, Wisconsin	IL-W-5-NR
Indiana	Kentucky, Michigan, Ohio, Pennsylvania, Wisconsin	WH-47
Iowa	Illinois	44-016
Kentucky	Illinois, Indiana, Michigan, Ohio, West Virginia, Wisconsin, Virginia	42A809

Maryland	District of Columbia, Pennsylvania, Virginia, West Virginia	MW 507
Michigan	Illinois, Indiana, Kentucky, Minnesota, Ohio, Wisconsin - Employers may create their own exemption form or use the line on MI-W4 for claiming exemption from withholding. Employee should write "Reciprocal Agreement" and the state name on that line.	MI-W4
Minnesota	Michigan, North Dakota	MWR
Montana	North Dakota	NR-2
New Jersey	Pennsylvania	NJ-165
North Dakota	Minnesota, Montana	NDW-R
Ohio	Indiana, Kentucky, Michigan, Pennsylvania, West Virginia	IT-4NR
Pennsylvania	Indiana, Maryland, New Jersey, Ohio, Virginia, West Virginia	REV-420
Virginia	Kentucky, Maryland, District of Columbia, Pennsylvania, West Virginia	VA-4
West Virginia	Kentucky, Maryland, Ohio, Pennsylvania, Virginia	WV/IT-104
Wisconsin	Illinois, Indiana, Kentucky, Michigan	W-220





The American Payroll Association's annual educational and networking event will be held at the Gaylord Texan in Grapevine, Texas, on May, 7th thru May 11th this year. This will be the 31st annual Congress event and will surely be spectacular while being informative, educational and fun. For those of us unable to attend, I want to remind you that you can still participate with Virtual Congress. Attend sessions (6 offered with RCH credits), network, ask and answer questions and participate in fun activities. Please check out the American Payroll Association's web page for more details.

News:



The CPP and FPC classes are already underway but did you know that this year the SDAPA is offering a BOOT CAMP for certification? On Saturday, March 23rd for CPP, Saturday, March 30th for FPC. Each boot camp will run from 8am to 2pm. Please visit the SDAPA website for more details and information about signing up!

Spring Awakenings!

Spring time brings us a renewal of warmth and optimism, below are a couple of enticing recipes to start the season off right:

Asparagus-Fennel Pasta Salad ~



Ingredients

- 1 pound *fresh asparagus, trimmed and cut into 3/4-inch pieces*
- 2 *medium onions, halved and thinly sliced*
- 1 *small fennel bulb, sliced*
- 2 *tablespoons olive oil*
- 8 *ounces uncooked penne pasta*
- 4 *medium tomatoes, seeded and diced*
- 12 *pitted Greek olives, sliced*
- 1 *cup minced fresh parsley*
- **VINAIGRETTE:**
- 1/4 *cup olive oil*
- 1/4 *cup lemon juice*
- 2 *garlic cloves, minced*
- 1/2 *teaspoon Dijon mustard*
- 1/2 *teaspoon salt*
- 1/4 *teaspoon pepper*
- 1 *cup (4 ounces) crumbled feta cheese*

Directions

- Place asparagus, onions and fennel in a 15-in. x 10-in. x 1-in. baking pan. Drizzle with oil; toss to coat. Bake at 400° for 20-25 minutes or until lightly browned and crisp-tender, stirring occasionally.
- Meanwhile, cook pasta according to package directions. Drain and place in a large serving bowl. Add the tomatoes, olives, parsley and roasted vegetables.
- In a small bowl, whisk the oil, lemon juice, garlic, mustard, salt and pepper. Drizzle over salad and toss to coat. Sprinkle with feta cheese.

ROASTED VEGETABLES WITH DIJON MUSTARD



Spring vegetables are so tasty seasoned with a Dijon mustard sauce- especially tender new potatoes and onions. Throw in some sausage and you have a one pan dinner.

For the Dijon roasting sauce:

4 tablespoons olive oil
1/2 cup Dijon mustard
4-5 cloves garlic, chopped
1 tablespoon fresh chopped dill, marjoram, parsley or mint

Cut up:

2 cups sliced young potatoes- try a mix of blue, red and gold
1 medium sweet or red onion, cut up
4 carrots, sliced into thin diagonal coins or matchsticks
1 bunch of broccoli, cut up
1 yellow squash, sliced into half-moons
1 zucchini squash, sliced into half-moons
1 small cabbage, sliced
Sea salt and fresh ground pepper

4 Italian style sausages, sliced- optional

Preheat the oven to 400°F.

Toss the cut vegetables into a large roasting pan. Season with sea salt and ground pepper.

Whisk together the Dijon sauce and pour over the veggies. Stir to coat.

Roast for an hour, until fork tender.

Add in sliced cooked sausage during the last twenty minutes of roasting time, if desired.

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Email the Chapter if you or someone you know might be interested in either of the open positions!

SDAPA SPONSORS:

