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Employer That "Mistakenly" Terminated Employee On Disability Leave May Be Liable For Discrimination

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Glynn v. Superior Court, 42 Cal. App. 5th 47 (2019)

John Glynn worked as a pharmaceutical sales representative before he commenced a medical leave of absence for a serious eye condition (myopic macular degeneration). Glynn's doctor provided a medical certification designating his work status as "no work" because Glynn "can't safely drive." Although the employer's reasonable accommodation policy lists "reassignment to a vacant position" as a potential accommodation for a disability, Glynn applied for but did not receive an offer of another position within the company that did not require driving. Approximately six months after Glynn's medical leave of absence began, his employment was terminated after a "temporary benefits department employee" determined (erroneously) that Glynn was no longer eligible to remain on "inactive status." Approximately nine months later (after Glynn had filed this lawsuit), the employer conceded the error and offered to reinstate Glynn unconditionally with full back pay, which Glynn rejected because no specific position was offered and because he did not believe the offer was "made in good faith."

The trial court granted summary adjudication against Glynn on his claims for disability discrimination; retaliation; failure to prevent discrimination and harassment; violation of the whistleblower statute; wrongful termination and intentional infliction of emotional distress. In this writ proceeding, the Court of Appeal issued a writ of mandate directing the trial court to vacate its order dismissing Glynn's claims for disability discrimination; retaliation; failure to prevent discrimination; wrongful termination in violation of public policy. The Court held that "even assuming the employer's mistakes were reasonable and made in good faith, a lack of animus does not preclude liability for a disability discrimination claim." Similarly, the Court held that four emails upon which Glynn relied demonstrated he engaged in "protected activity" by complaining he was not being accommodated for his disability. *See also Silbaugh v. Chao*, 942 F.3d 911 (9th Cir. 2019) (amended Title VII complaint filed by FAA employee related back to the timely filed original complaint, which had failed to name the proper defendant).

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