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MCLE SELF-STUDY

ASSOCIATIONAL DISABILITY CASES: A TRILOGY SIGNALS CONSENSUS?

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Perhaps the last significant remaining open question of interpretation of the Fair Employment and Housing Act (FEHA)[1] provisions related to disability discrimination appears to be on the verge of being answered. Whether the FEHA places a duty on employers to engage in the interactive process and provide reasonable accommodations in the workplace to employees not for their own disability, but as a result of their association with a person with a disability, has perplexed employees, employers, and their advocates for some time.

Many believe the statute requires it; still others believe the statute says otherwise. Contributing to this confusion is the fact that the California appellate courts and the California Civil Rights Council (CRC) have not weighed in directly

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> THE CRC'S ABANDONMENT OF THE ISSUE HAS LEFT STAKEHOLDERS TO DEAL WITH IT IN A PIECEMEAL FASHION.

on the topic, either with precedential court decision or rulemaking resulting in explanatory regulations.

In 2016, the California Court of Appeal in *Castro-Ramirez v. Dependable Highway Express, Inc*,.[2] while reciting that the "FEHA provides a cause of action for associational disability discrimination, although it is a seldom-litigated cause of action," nonetheless determined the question was not squarely before it. Since that time, the state and federal courts have grappled with the question, coming to differing and unpredictable conclusions. The CRC's apparent abandonment of the issue has left stakeholders to deal with it in a piecemeal fashion.

This past year, however, three federal district courts have squarely faced the question, and each answered in the affirmative—holding that the FEHA *does* provide for such a duty. And this trilogy of decisions appears to indicate a developing trend.

CRUX OF THE ISSUE: ADA V. FEHA

The difficulty in answering the fundamental question here arises from the manner in which the FEHA's disability discrimination provisions differ from provisions of the Americans with Disabilities Act (ADA).[3] Typically, California courts will look to the ADA for guidance when the FEHA and ADA are in alignment.[4] But the structural differences in the statutes preclude that option on this issue.

The ADA's Structure. There is no mention of "association" within the ADA's general definition of disability.[5] Title I of the statute, however, mentions "association" within its unlawful practices section.[6] It defines the term "discriminate against a qualified individual on the basis of disability" as: "excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association."

The inclusion of the word "association" in this subsection protects non-disabled employees from being subjected to adverse job actions because of their association with a person with a disability. The ADA further defines discrimination as failing to provide reasonable accommodation to an otherwise qualified individual absent undue hardship.[7] This subsection makes no reference to association. Based on this statutory structure, the federal courts have generally found that Title I of the ADA does not require employers to consider accommodations for non-disabled employees based on their association with a person with a disability.[8]

FEHA's Structure. The FEHA is structured quite differently. Its definitional section—section 12926—spells out specific definitions for each of the protected characteristics listed in the statute's unlawful practices sections—including "mental disability" and "physical disability." It also sets forth one additional definition that includes *all* of the various protected categories:

> Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, sexual orientation, reproductive health decisionmaking, or veteran or military status" includes any of the following: . . .
>
> (3) A perception that the person is associated with a person who has, or is perceived to have, any of those characteristics or any combination of those characteristics.

The debate over the proper interpretation and application of these definitions to the unlawful practices section, section 12940, forms the core of the discussion around the duty to engage in the interactive process and to provide reasonable accommodations involving associational disability.

Statutory Development. Understanding the varying provisions of the statutes requires having a grasp on the legislative actions that resulted in the current distinctions. The ADA's associational protections were included in the original statute as enacted in 1990. The first time association language appeared in section 12926 was due to the 1999 legislative action of AB 1670.[9] In 2000, the California Legislature engaged in a significant overhaul of the FEHA's disability provisions in AB 2222, known as the Poppink Act.[10] One of the stated purposes of that legislation was to ensure that the FEHA's broad disability protections for applicants and employees were not constricted by the ADA.

This purpose was important enough for the legislature to codify it:

> The law of this state in the area of disabilities provides protections independent from those in

the federal Americans with Disabilities Act of 1990 (P.L. 101-336). Although the federal act provides a floor of protection, this state's law has always, even prior to passage of the federal act, afforded additional protections.[11]

Thus, the Poppink Act made a clear statement of the legislature's intent to clarify that the FEHA had always provided broader protections than the ADA, and to emphasize those additional protections through statutory structure. The Poppink Act restructured the definition section of the FEHA to ensure that the definitions of mental disability and physical disability reflected this broader protection over the ADA.

The Poppink Act also added a specific section requiring covered entities to engage in the interactive process.[12] This addition is notable because it reflected a divergence from ADA jurisprudence. When the Poppink Act was passed, the Ninth Circuit had reaffirmed the widely-accepted interpretation of the ADA that the interactive process was subsumed within its reasonable accommodation analysis and was not, standing alone, the basis for a separate claim.[13] The legislature saw things differently. By adding a new, separate provision, it indicated an intent that the FEHA must provide broader protection than the ADA.[14]

All this is to underscore that it is not uncommon for the FEHA and ADA to have divergent applications resulting in broader coverage under California law—and that the areas of divergence arise from the comparative statutory language and structure.

THE *CASTRO-RAMIREZ* DECISION

In 2016, the Second District Court of Appeal decided *Castro-Ramirez v. Dependable Highway Express, Inc.*[15] The plaintiff, Luis Castro-Ramirez, was a truck driver responsible for administering daily dialysis to his son. The trucking company, Dependable Highway, initially granted Castro-Ramirez's request to modify his schedule to attend to his son's dialysis needs—that is, it provided a reasonable accommodation. Three years later, a new supervisor changed the schedule. When Castro-Ramirez objected to the change because of its impact on his ability to provide care, he was terminated.

Castro-Ramirez sued Dependable Highway on several theories of liability sounding in disability discrimination under the FEHA, including:

- That the trucking company's decision to terminate him was substantially motivated by his association with his son who is a person with a disability, and
- Failure to provide reasonable accommodation that would permit him to provide care for his son.

Dependable Highway filed a motion for summary judgment, which was granted in full by the trial court. Castro-Ramirez appealed.

The April 4, 2016 Opinion. On April 4, 2016, the court of appeal published its initial opinion in the case.[16] In a 2-1 decision, it reversed in part. On appeal, Dependable Highway had argued that the case was not a discrimination case, but a reasonable accommodation case, and because the FEHA provided no explicit right to reasonable accommodation under an association theory, the trial court's judgment should be affirmed. The trucking company further noted the plaintiff had abandoned any claim based on a reasonable accommodation theory. Acknowledging the abandonment, the majority still found the duty to accommodate issue relevant to the discrimination cause of action.

After noting that no California court had opined on the issue, it held the FEHA creates a duty to accommodate "according to the plain language of the Act." The majority reached this conclusion after engaging in a statutory interpretation exercise focused on the interplay between the FEHA definitional provision in section 12926(o) and the reasonable accommodation provision in section 12940(m). It determined that the two sections complement one another and must be read to provide a duty to accommodate employees who need workplace modifications as a result of their association with a person with a disability.

Dependable Highway had urged the court to rely on federal case law under the ADA to hold no such obligation exists. The court declined, relying on the policy language drawn from the Poppink Act in addition to the structural differences between the statutes.

This conclusion prompted a colorful dissent by Justice Elizabeth A. Grimes. After declaring: "I am not prepared to go where no one has gone before," the dissenting opinion took the majority to task on two points. First, it noted that the plaintiff repeatedly affirmed he was not proceeding on

IN 2000, THE CALIFORNIA LEGISLATURE SIGNIFICANTLY OVERHAULED THE FEHA'S DISABILITY PROVISIONS IN THE POPPINK ACT.

a reasonable accommodation theory. Grimes then engaged in an exercise in statutory interpretation to reach the opposite conclusion to the majority, concluding that the association language applied only to discrimination claims under section 12940(a), and not to accommodation-related claims under section 12940(m). Finally, the dissent argued there was no indication that the legislature had intended to diverge from the ADA's approach to the issue. Completing the Star Trek allusion, the dissent concluded: "The majority has indeed boldly gone into a new frontier, fraught with danger for California employers, a mission best left to the legislature."

The August 29, 2016 Opinion. The April 4 opinion caused quite a stir. Firm news advisories went out, listservs blew up, seminars were scheduled. All that activity was put on hold, however, when just three weeks later, the court granted the trucking company's request for rehearing.

After additional briefing and rehearing, the court issued a superseding opinion on August 29, 2016, vacating the original decision.[17] The court immediately drew back from its prior holding, stating that because the plaintiff abandoned the theory, "we do not decide whether FEHA establishes a separate duty to reasonably accommodate employees who associate with a disabled person." Regardless, the majority determined that accommodation was relevant to the discrimination cause of action, and proceeded to analyze the question anew. The majority first acknowledged the aspect of the April 4 dissent observing that section 12940(m) "does not expressly refer to persons other than an applicant or employee." It again engaged in a statutory interpretation exercise and concluded—as it had in the earlier opinion—that "read in conjunction with other relevant provisions, subdivision (m) may reasonably be interpreted to require accommodation based on an employee's association with a physically disabled person."

The majority's recasting of its reasoning did not satisfy Justice Grimes, who again dissented. Though choosing to forego the inter-galactical allusions last expressed, her dissent was no less strident. Despite "the literal differences in wording," Grimes concluded that there is "no material difference in the purpose or effect" of the ADA and FEHA. She acknowledged that the "FEHA, of course, is broader than the ADA," but concluded that the lack of explicit legislative intent weighed in favor of endorsing a rule providing the statutes were similar on this point.

AFTER *CASTRO-RAMIREZ:* INTO THE UNKNOWN

There has not been a published California appellate opinion on the issue of the accommodation obligation since the *Castro-Ramirez* decision, nor has the Ninth Circuit weighed

> IT IS NOT UNCOMMON FOR THE FEHA AND ADA TO HAVE DIVERGENT APPLICATIONS RESULTING IN BROADER COVERAGE UNDER CALIFORNIA LAW.

in. In 2022 and 2023, however, two separate divisions of the Second District Court of Appeal did issue decisions addressing the question, though neither panel published their opinions.

The courts in *Monterroso v. Hydraulics International, Inc.*[18] and *Shahin v. Kaiser Foundation Health Plan, Inc.*[19] analyzed the same statutory provisions as the panel in *Castro-Ramirez*, and each came to the opposite conclusion. Though the *Castro-Ramirez* court determined that the association language in section 12926(o) applied universally to all instances in section 12940 where any of the statute's protected characteristics were mentioned, the *Monterroso* and *Shahin* panels concluded that it applied only where section 12940 listed *all* the protected characteristics serially. In other words, where section 12940 listed all of the protected characteristics—subsections 12940(a), (b), (c), (d), and (j)—those subsections incorporated the association language from section 12926(o). But other subsections that listed only a single protected characteristic—12940(e), (f), (*l*), (m), and (n)—did not incorporate the association language. Both courts read AB 1670 as evidence of the legislative intent to limit the association language to the anti-discrimination sections of section 12940.

At the same time, the federal district courts in California have issued a number of decisions addressing the question. In 2020, the court in *Castro v. Classy*[20] was presented with the same statutory interpretation argument later adopted in the *Monterroso* and *Shahin* cases, but rejected it.

Next came the 2022 case of *McVay v. DXP Enterprises, Inc.*[21] Noting that federal courts should not ignore well-considered dicta of the state courts, that court relied upon *Castro-Ramirez* to hold that the obligation to engage in the interactive process and provide reasonable accommodations did exist under the FEHA.

FEHC STEPS IN, THEN PAUSES

In 2013, the now-defunct Fair Employment and Housing Commission (FEHC) promulgated a complete overhaul of the FEHA's disability discrimination regulations. That

overhaul was silent on the question of accommodation for associational disabilities.

In December 2020, the renamed Fair Employment and Housing Council issued a "Request for Public Input Regarding Reasonable Accommodations for Associational Disabilities Under the Fair Employment and Housing Act" (RPI) posing seven questions. The first question asked whether existing law required employers to engage in the interactive process and provide reasonable accommodations for associational disabilities. The remaining six sought feedback as to the various practical considerations should the answer to the initial question be in the affirmative. Issues raised in the follow up questions included how broadly or closely held any qualifying "association" needed to be, what types of documentation could be required from the employee or associated person, and how privacy concerns should be addressed. The council received input from more than 50 stakeholder organizations, closely split on the core question.

Given the amount of interest among stakeholders and the lack of clear guidance from the courts, it would appear that the "necessity" and "clarity" standards of the Administrative Procedure Act[22] are met, indicating that rulemaking action would be welcomed by stakeholders. But the rulemaking effort died without public explanation before it ever got started and, to date, the council has not taken any further action.

THE 2025 TRILOGY

Things remained quiet on this front, with little activity from any court. But in 2025, everything changed. Over the course of just four months, three separate federal district courts were called upon to address the issue head-on. Each court observed the split before delving in and independently evaluating the question. And each of the courts came to the identical conclusion: The FEHA mandated employers to consider reasonable accommodations for non-disabled employees who were associated with a person with a disability. The relative quickfire nature of these cases opened many eyes and has driven the topic back to the top of mind of stakeholders.

The first case, *Acosta v. NAS Insurance Services, LLC*,[23] held that the combined persuasive nature of the *Castro-Ramirez* dicta and the holdings in *McVay* and *Castro*, along with the court's independent statutory analysis, led to the conclusion that the obligation did exist. The *Acosta* court noted that the defendant had failed to "present any compelling reason why" the court should not read the language of section 12926(o) into sections 12940(m) and (n). The court further rejected the defendant's invitation

> THE APRIL 4 OPINION IN *CASTRO-RAMIREZ* CAUSED QUITE A STIR.

to rely on the ADA, noting the structural differences in the two statutes.

Second came the most thorough recent treatment of the question, in *Head v. Costco Wholesale Corporation*.[24] The defendant, Costco, had moved for summary judgment, arguing that the plaintiff's causes of action for failure to engage in the interactive process and provide reasonable accommodations based on his need to provide assistive care for his wife who had cancer was not viable under the FEHA. In support of its argument, Costco relied heavily on the unpublished *Monterroso* and *Shahin* opinions. The court evaluated each of those opinions and then engaged in its own independent exercise of statutory interpretation. The *Head* court then concluded that the panels in *Monterroso* and *Shahin* had it wrong: The statute did allow for such claims.

Relying on four aspects of the FEHA, the *Head* court concluded that a broader reading was appropriate because:

1. Section 12926 states that all definitions are to apply to all instances where the defined terms appear within the FEHA;

2. All such definitions are to be used "unless a different meaning clearly appears from the context;"

3. The more specific definitions of mental and physical disability do not use the word "association," but are written to be non-exclusive; and

4. The FEHA is a remedial statute intended to be construed liberally.

Rounding out the trilogy, *DeWit v. Amazon.com Services, LLC*[25] cited both the *Acosta* and *Head* courts as persuasive, finding the accommodation obligation exists under the FEHA. What is most notable about the *DeWit* decision is the conclusive nature of its treatment of the reasoning in *Acosta* and *Head*—leaving the impression that the trend toward finding the existence of the duty finally has approached a conclusion.

THE COUNCIL RECEIVED INPUT FROM MORE THAN 50 STAKEHOLDER ORGANIZATIONS, CLOSELY SPLIT.

WHAT'S NEXT?

It is a fool's errand to try to predict a jury's verdict. It is no different to try to predict future court decisions. But it certainly seems reasonable to look at the existence of the 2025 trilogy—particularly the consistency and thoroughness of the reasoning in those combined decisions, including the *DeWit* court's wholesale adoption of the conclusions in *Acosta* and *Head*—and venture a guess that a genuine trend has developed and the courts soon will be reaching consensus.

While a clear precedential holding from a California appellate court would bring some certainty to the central issue, a renewed regulatory effort by the CRC would provide the most comprehensive answer. The fundamental question at issue—whether or not the duty exists—is only the tip of the iceberg. The council's RPI asked not only that fundamental question, but also six important follow-up questions addressing other issues that are certain to arise, many of the ones that most perplex stakeholders. Questions such as who qualifies as an "associated person," and how to handle medical documentation of the non-employee—both how much to request and how to appropriately maintain such information—are particular and practical issues that stakeholders face daily.

The lack of clarity about these questions can lead to adversarial positioning and negative outcomes. Even when parties are trying their best to comply with the law, they may end up in litigation because of the lack of formal guidance.

Formal rulemaking requires the CRC to hold public hearings and take comments and testimony from any stakeholder who wishes to be heard. As noted, the original RPI on the question garnered a significant number of detailed, substantive responses from those stakeholders. Given the attention this issue has generated, it is highly likely that a fulsome rulemaking effort will permit a full vetting of the underlying question and a full exploration of any collateral issues. This effort will allow all stakeholders to be heard and result in a set of rules for all to use as guideposts when navigating these situations. The result will be less adversarial positioning, less litigation—and more satisfactory outcomes.

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ENDNOTES

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1. Cal. Gov't Code §§ 12900-12996.
2. *Castro-Ramirez v. Dependable Highway Express, Inc.*, 2 Cal. App. 5th 1028 (2016).
3. 42 U.S.C. §§ 12101-12213.
4. *See*, *Gelfo v. Lockheed Martin Corp.*, 140 Cal. App. 4th 34, 57 (2006).
5. 42 U.S.C. § 12102.
6. 42 U.S.C. § 12112(b)(4).
7. 42 U.S.C. § 12112(b)(5)(A).
8. *Den Hartog v. Wasatch Academy*, 129 F. 3d 1076, 1083-85 (10th Cir. 1997). *But see*, *Cortez v. City of Porterville*, 5 F. Supp. 3d 1160 (allowing an associational disability claim to proceed under Title II of the ADA).
9. AB 1670, 1999-2000 Reg. Sess. (Cal. 1999); codified at § 12926(m).
10. AB 2222, 1999-2000 Reg. Sess. (Cal. 2000).
11. Cal. Gov. Code § 12926.1(a).
12. Codified at Cal. Gov. Code § 12940(n).

13. *See*, *Barnett v. U.S. Airways*, 228 F.3d 1105, 1115-16 (9th Cir. 2000) (en banc) (*vacated on other grounds*, *sub nom U.S. Airways v. Barnett*, 535 U.S. 391 (2000)).

14. *See*, *Claudio v U.C. Regents*, 134 Cal. App. 4th 224, 243 (2005).

15. *Supra*, note 2 at 1032.

16. *Castro-Ramirez v. Dependable Highway Express, Inc.*, 246 Cal. App. 4th 180 (2016) (vacated after reh'g).

17. *Castro-Ramirez v. Dependable Highway Express, Inc.*, 2 Cal. App. 5th 1028 (2016).

18. *Monterroso v. Hydraulics Int'l, Inc.*, 2022 Cal. App. Unpub. LEXIS 54.

19. *Shahin v. Kaiser Foundation Health Plan, Inc.*, 2023 Cal. App. Unpub LEXIS 2513.

20. *Castro v. Classy*, 2020 U.S. Dist. LEXIS 35556.

21. *McVay v. DXP Enterprises, Inc.*, 645 F. Supp. 3d 971 (C.D. Cal., 2022).

22. Cal. Gov't Code §§ 11340-11361.

23. *Acosta v. NAS Ins. Serv., LLC*, No. 2:25-CV-00656 (C.D. Cal., March 31, 2025).

24. *Head v. Costco Wholesale Corp.*, No. 24-cv-01203-EMC (N.D. Cal., June 5, 2025).

25. *DeWit v. Amazon.com Serv.*, No. 5:24-cv-01185 (C.D. Cal., July 17, 2025).