

New Year, New Laws: Expanding California's Fair Employment And Housing Act

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Effective as of Jan. 1, 2016, an employee's request for an accommodation for a disability or for religious reasons will be considered to be "protected activity" for a retaliation claim under the Fair Employment and Housing Act (FEHA) – further muddying the employment waters in California.

Assembly Bill 987, which was signed into law by Governor Jerry Brown on July 16, amends the language of the FEHA to prohibit an employer from retaliating or otherwise discriminating against a person for requesting accommodation of his or her disability or religious beliefs, *regardless* of whether the accommodation request was granted. The new law came about following the California Court of Appeal's decision in the case of *Rope v. Auto-Chlor System of Washington, Inc.* Scott Rope, a branch manager for Auto-Chlor, requested 30 days of paid leave in order to recuperate from kidney donation surgery. He made the request after learning about the [Michelle Maykin Memorial Donation Protection Act \(DPA\)](#) Two days before the DPA became effective, Auto-Chlor terminated Rope. In its 2013 ruling, the appeals court allowed summary judgment in favor of Auto-Chlor to stand regarding the employee's claim that the employer impermissibly discriminated against Rope for *requesting* an accommodation. The court determined that there was nothing in the statutes that stated a "mere request—or even repeated requests—for an accommodation, without more, constitutes a protected activity sufficient to support a claim for retaliation in violation of FEHA." In sum, prior to the passing of Assembly Bill 987, the *Rope* holding provided that a mere request for leave as an accommodation did not qualify as a "protected activity" under the FEHA because such a request did not oppose any conduct forbidden by the FEHA. Therefore, a request for an accommodation alone, without more, is now considered a protected activity for the purposes of a retaliation or discrimination claim under the FEHA. Accordingly, with the new law in effect, employers will need to tread lightly when terminating or disciplining an employee who recently made a request for an accommodation based upon religion or disability.

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