

Regardless of prior leave, prepare to offer more time off as a reasonable accommodation

Under the disability discrimination provisions of California's Fair Employment and Housing Act, employers are required to offer extended leave as a reasonable accommodation for disabled employees—as long as the employee provides an estimated return date.

Unless the employer can show that providing extended leave would be an undue hardship, an employee who has used up all other available leave is still entitled to extra time off.

Recent case: Ralph had worked as a direct sales representative for more than 24 years when he was terminated. He had taken a series of leaves for anxiety, depression and insomnia. His employer said it could no longer work around his "repeated, prolonged leaves of absence which rendered him unable or unwilling to work."

Ralph sued, alleging that several other sales reps had been allowed to take more time off, including one co-worker who took an 18-month leave and was not replaced.

The court sided with Ralph, reasoning that under FEHA, as long as a worker has a tentative return date, more time off can be a reasonable accommodation.

In Ralph's case, it was clear that the employer had not experienced undue hardship when it approved other extended leaves of absence. Therefore, it couldn't argue that was the case when Ralph needed more time off. (*Villalobos v. TWC Administration*, 9th Cir., 2017)