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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JONATHAN CRUZ,

Plaintiff and Appellant,

v.

CITY OF HERMOSA BEACH
et al.,

Defendants and
Respondents.

B343086

(Los Angeles County
Super. Ct. No.
22TRCV01015)

APPEAL from a summary judgment of the Superior Court
of Los Angeles County, Douglas W. Stern, Judge. Affirmed.

Corey W. Glave for Plaintiff and Appellant.

Buchalter, Jennifer M. Misetich and Adam P. Smith for
Defendants and Respondents.

* Pursuant to California Rules of Court, rule 8.1110, this
opinion is certified for publication with the exception of parts
III.C, III.D, and III.E.

I. INTRODUCTION

Defendants City of Hermosa Beach (the City) and the Hermosa Beach Police Department terminated plaintiff Jonathan Cruz from his employment after they implemented a COVID-19 vaccination requirement as an employment qualification and denied his request for a religious exemption. Plaintiff sued defendants for violating the procedural provisions of the Public Safety Officers Procedural Bill of Rights Act (POBRA; Gov. Code¹, § 3300 et seq.) and for unlawful retaliation in violation of Labor Code section 1102.5 and the Fair Employment and Housing Act (FEHA; § 12900 et seq.).²

Defendants moved for summary judgment, asserting that POBRA did not apply to plaintiff's termination. Defendants also argued that plaintiff had failed to demonstrate a triable issue of material fact as to the existence of a causal link between plaintiff's protected activity and the adverse employment action. The trial court granted summary judgment.

On appeal, plaintiff contends that the trial court erred because POBRA applied to his termination and he raised triable issues of material fact that defendants had a retaliatory motive when they terminated his employment. We affirm. In the published portion of this opinion, we conclude that POBRA does

¹ Further statutory references are to the Government Code unless otherwise indicated.

² Plaintiff filed a separate complaint in the United States District Court alleging unlawful discrimination and termination. The district court dismissed plaintiff's complaint. (*Cruz v. City of Hermosa Beach* (C.D. Cal., June 18, 2025, EDCV 23-2593 JGB (DTBx)) 2025 WL 3053136.)

not apply to a vaccination requirement imposed on all employees as an employment qualification.

II. BACKGROUND

A. *Facts*

In September 2021, the City Council implemented a policy requiring all City employees to be vaccinated against COVID-19 by November 12, 2021, as a condition of employment (the Policy). The Policy’s stated purpose was public safety: “The City ... must provide a safe environment and protect the health and safety of City staff and the public we serve. ... COVID-19 continues to pose a risk, especially to individuals who are not fully vaccinated. Vaccinations are an effective safety measure to decrease community transmission and COVID-19 hospitalizations and deaths. [¶] Unvaccinated individuals are at greater risk of contracting and spreading COVID-19 within the workplace and City facilities, and to the public that depends on City services.”

The Policy permitted employees to seek an exemption from the vaccination requirement based on religious or medical grounds, providing that the City would “review the request and engage in an interactive process^[3] with the individual to discuss

³ The interactive process was an informal meeting for the parties to identify potential accommodations for employees while balancing hardships for the employer. (Cf. *Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1013 [“The “interactive process” required by the FEHA is an informal process with the employee or the employee’s representative, to attempt to identify a reasonable accommodation that will enable the employee to perform the job effectively”].)

the reasonable accommodation. Human Resources will notify the requesting party if a religious [or medical] exemption is approved.” The Policy also advised that employees “in non-compliance will be subject to separation from employment with the City for failure to comply with this [P]olicy”

Plaintiff, a police officer, had been employed by the City since 2009. On October 1, 2021, he submitted a request for a religious exemption from the City’s vaccination requirement. After the City manager and human resources manager reviewed plaintiff’s request, they met with plaintiff on November 22, 2021, as part of the interactive process.

On January 5, 2022, the City notified plaintiff that it was denying his request for a vaccination exemption because, among other things, plaintiff’s request was not based on a sincerely held religious belief. It alternatively found that the City would suffer “undue hardship” if it were to accommodate plaintiff. It advised plaintiff he was required to provide proof of vaccination by February 19, 2022.

On February 1, 2022, plaintiff emailed the human resources manager to request a delay in obtaining the vaccine. The human resources manager declined the request and responded that February 19, 2022, remained the deadline by which plaintiff must submit proof of vaccination. Plaintiff did not provide proof of vaccination.

On February 22, 2022, the City provided plaintiff with a Notice of Forfeiture of Employment (the Notice), and placed him on administrative leave with pay. The Notice indicated that the City initiated plaintiff’s separation from employment because he failed to satisfy a condition of employment and noted that, although his separation from employment was not disciplinary,

the City would provide him with the opportunity to request, within five days of his receipt of the Notice, a conference before a final decision was made on the proposed action. And, “[i]f the proposed separation remain[ed] unchanged following completion of any review and/or conference in this matter, [plaintiff’s] separation [from employment would] be effective immediately upon written notice from the City.”

On February 23, 2022, plaintiff requested a formal hearing with the City regarding his termination.

On or about February 25, 2022, the City learned that plaintiff had filed a complaint with the Equal Employment Opportunity Commission (EEOC) and the former Department of Fair Employment and Housing (DFEH).

On March 1, 2022, the City held an in-person conference to discuss plaintiff’s termination, during which plaintiff, who appeared with counsel, explained that he disagreed with the City’s determination that he had forfeited his employment. On March 9, 2022, the City terminated plaintiff’s employment.

On March 16, 2022, plaintiff’s attorney submitted a letter to the City requesting a post-termination administrative appeal hearing with the Los Angeles County Civil Service Commission, and alleging that the City violated plaintiff’s POBRA rights. On March 25, 2022, counsel for the City responded that plaintiff’s separation from employment was not governed by POBRA because the separation occurred following the interactive process, not a disciplinary proceeding. Counsel for the City requested that plaintiff set forth the legal authority for the administrative appeal. Plaintiff’s counsel again asserted that plaintiff’s employment termination was a “punitive action” and thus subject to POBRA. On April 14, 2022, the City denied the request for a

hearing, determining, among other things, that plaintiff's employment termination was a forfeiture of employment for non-disciplinary reasons and thus not within the scope of POBRA.

On April 7, 2022, plaintiff sent a letter to the mayor of the City, among others, to inform him of alleged violations by the City manager.

On April 19, 2022, the DFEH issued a right to sue letter.

On July 18, 2022, plaintiff filed a government tort claim, alleging that the City had wrongfully denied his request for an administrative appeal because he filed an EEOC/DFEH complaint.

B. *Procedural History*

On October 21, 2022, plaintiff filed a complaint against defendants and on April 13, 2023, following the trial court's sustaining of a demurrer with leave to amend, he filed the first amended complaint, the operative pleading.

In his first cause of action, for a violation of POBRA, plaintiff alleged that defendants violated section 3304, subdivision (a) by subjecting him to punitive action for the exercise of his right to seek an accommodation under the Policy. Plaintiff further alleged that defendants violated section 3304, subdivision (b) by subjecting him to punitive action without affording him an opportunity for an administrative appeal.

In his second cause of action, plaintiff sought a declaration that his POBRA rights were violated.

Plaintiff also alleged, as his third cause of action, that defendants retaliated against him in violation of Labor Code section 1102.5 after he disclosed a violation of law to a government agency or a person with authority.

For the fourth cause of action, plaintiff alleged that defendants violated FEHA by retaliating against him for filing the EEOC/DFEH complaint.

Finally, plaintiff requested mandamus relief under Code of Civil Procedure section 1085 to remedy the violations under POBRA, Labor Code section 1102.5, and FEHA. Plaintiff requested, among other things, reinstatement of his employment and no further retaliation.

On April 25, 2024, defendants filed a motion for summary judgment. They argued that the POBRA cause of action failed as a matter of law because defendants had terminated plaintiff for non-disciplinary and non-punitive reasons and the termination therefore was not subject to POBRA. Defendants also asserted that the third cause of action for whistleblower retaliation under Labor Code section 1102.5 failed as a matter of law because the complaint did not identify plaintiff's purported protected activity and, to the extent plaintiff claimed his filing of the EEOC/DFEH complaint constituted protected activity, plaintiff could not establish a causal link between the filing and any subsequent adverse employment action. Defendants further asserted that the FEHA retaliation cause of action failed because plaintiff could not establish a causal link between his filing of the EEOC/DFEH complaint and any adverse employment action. Defendants also argued that the causes of action for declaratory and mandamus relief were derivative of the other causes of action and thus failed as a matter of law.

Plaintiff opposed the motion, arguing, as to the first cause of action, that plaintiff's employment termination was subject to POBRA. For the Labor Code retaliation cause of action, plaintiff clarified that his protected activities were: his filing of the

EEOC/DFEH complaint, his submission of a letter to the mayor, his reporting of violations in the appeal letter, and his reporting of violations in the tort claim notice. Plaintiff further argued that defendants had engaged in an adverse employment action by terminating his employment and denying his request for an administrative appeal. As to the causal link for the Labor Code and FEHA causes of action, plaintiff contended that defendants learned of his EEOC/DFEH complaint prior to terminating his employment.

Following defendants' reply, the trial court conducted a hearing on the summary judgment motion on July 15, 2024. On September 17, 2024, the court issued its order granting the motion. On the POBRA cause of action, the court determined there was no triable issue of material fact because POBRA did not apply to plaintiff's termination, which was unrelated to any conduct by or discipline of plaintiff. On the Labor Code section 1102.5 cause of action, the court ruled there was no triable issue of material fact as to causation because defendants were unaware of plaintiff's filing of the EEOC/DFEH complaint until after February 19, 2022, when defendants initiated plaintiff's termination. For the same reasons, the court found there was no triable issue of material fact on the FEHA retaliation cause of action. Finally, the court determined that the declaratory and mandamus relief causes of action were derivative of the other causes of action and thus did not survive summary judgment. Defendants also argued, and the court found, as a separate ground for granting summary judgment on the retaliation claims, that plaintiff's employment termination occurred for independent, legitimate reasons.

On October 9, 2024, the trial court issued its judgment in favor of defendants. Plaintiff timely appealed.

III. DISCUSSION

A. *Legal Principles and Standard of Review*

The standards governing our review of an order granting summary judgment are well settled. “[T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact... . A prima facie showing is one that is sufficient to support the position of the party in question.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850–851, fns. omitted.) As the moving party, “[a] defendant bears the burden of persuasion that ‘one or more elements of the ‘cause of action’ in question ‘cannot be established,’ or that ‘there is a complete defense’ thereto.” (*Id.* at p. 850.)

“In reviewing a grant of summary judgment, we independently evaluate the record, liberally construing the evidence supporting the party opposing the motion, and resolving any doubts in his or her favor. [Citation.]” (*Patterson v. Domino’s Pizza, LLC* (2014) 60 Cal.4th 474, 499–500.) In conducting our de novo review, we consider “all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted

inferences the evidence reasonably supports.” (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

B. POBRA

“POBRA ‘codif[ies] ‘a list of basic rights and protections which must be afforded all peace officers ... by the public entities [that] employ them.’” [Citation.] POBRA’s goal is ‘to assure the “maintenance of stable employer-employee relations,” and thus to secure “effective law enforcement ... services” for “all people of the state.”’ [Citation.]” (*Conger v. County of Los Angeles* (2019) 36 Cal.App.5th 262, 269.)

Section 3304, subdivision (a) of POBRA provides: “No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.” Subdivision (b) provides in pertinent part: “No punitive action ... shall be undertaken by any public agency against any public safety officer ... without providing the public safety officer with an opportunity for administrative appeal.” And, “[f]or the purpose of this chapter [POBRA], punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.” (§ 3303, subd. (b).)

Whether a public agency’s action constitutes “punitive action” within the meaning of POBRA protection is a question of statutory construction that we review de novo. (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 679 (*White*).) In interpreting

POBRA, “we apply basic principles that apply in all statutory construction cases. We seek to ascertain the Legislature’s intent so that we may effectuate the law’s purpose. Our goal is to interpret the language of the statute—not to insert what has been omitted or omit what has been inserted. We look first to the language of the statute itself, read as a whole, seeking to harmonize all parts of the statutory scheme. If the words contained in the statute are reasonably free from ambiguity and uncertainty, we look no further than those words to ascertain the provision’s meaning. [Citations.] Only if the words are ambiguous or unclear may we turn to extrinsic aids to help us determine the Legislature’s intent. [Citation.]” (*Daugherty v. City and County of San Francisco* (2018) 24 Cal.App.5th 928, 949.)

On POBRA’s “punitive action” requirement, our Supreme Court’s opinion in *White, supra*, 31 Cal.3d 676 is instructive. There, a deputy sheriff, after being advised that his performance was deficient, was reassigned from a detective division to a patrol division, which resulted in a loss of rank and pay. The court considered whether the deputy had been subjected to a “punitive action” such that he was entitled to an administrative appeal under POBRA. (*Id.* at pp. 678–679.) The sheriff’s department denied the plaintiff an administrative appeal on the grounds that his reassignment was not a “punishment,” and the trial court denied the plaintiff’s subsequent writ petition. (*Id.* at pp. 679–680.)

The Supreme Court concluded the trial court erred. (*White, supra*, 31 Cal.3d at p. 684.) It rejected the department’s contention that a dismissal, demotion, suspension, reduction in salary, or written reprimand did not constitute a punitive action

unless such action was taken “for purposes of punishment.” (*Id.* at p. 680.) The court instead concluded that those actions, which, “by definition result in disadvantage, loss or hardship ... are by nature penalties, no matter for what reason imposed.” (*Id.* at pp. 681–682.)

In reaching its conclusion, the court in *White, supra*, 31 Cal.3d 676 considered by analogy the State Civil Service Act (§ 18500 et seq.), which similarly “[invests] [civil service] employees with substantive and procedural protections against punitive actions by their superiors.’ (*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 202)” (*White, supra*, 31 Cal.3d at p. 682.) That act defined “punitive action” as “dismissal, demotion, suspension, or *other disciplinary action.*’ (Italics added.)” (*Id.* at p. 682.) And, an employee receiving a disciplinary action was entitled to an administrative appeal regardless of “whether the reason for the punitive action is misconduct ... , or ‘incompetency,’ or ‘inefficiency’” (*Ibid.*) The court reasoned, “the provisions of the State Civil Service Act strongly support the conclusion that the Legislature intended, in [POBRA], to provide the right of administrative appeal to a peace officer against whom disciplinary action is taken, and that the Legislature viewed ‘dismissals,’ ‘demotions,’ ‘suspensions,’ ‘reductions in salary’ and ‘written reprimands’ to be per se disciplinary in nature.” (*Id.* at pp. 682–683.) The court stressed, however, that “this case deals only with the availability of an administrative appeal where ‘punitive action’ is taken against an individual officer. This case does not concern, for example, mass layoffs occasioned by a reduction of personnel due to budgetary constraints.” (*Id.* at p. 679, fn. 3.)

Plaintiff contends that his termination for failing to comply with the vaccination mandate set forth in the Policy was a “per se dismissal.” We disagree. As explained by the court in *White, supra*, 31 Cal.3d 676, not all employment terminations are dismissals for purposes of POBRA. Because POBRA does not specify what constitutes a “punitive action,” we turn to extrinsic aids to discern the Legislature’s intent.

The Legislative Counsel’s Digest describes POBRA as “prescrib[ing] various rights of public safety officers under investigation with respect to the time of interrogation, nature of the interrogation, length of the interrogation session, transcription of the interrogation, and representation and specify[ing] other rights of such public safety officers with regard to discrimination and discipline.”⁴ (Legis. Counsel’s Dig., Assem. Bill No. 301, 4 Stats. 1976 (1975–1976 Reg. Sess.), Summary Dig., p. 120.) The Legislature thus intended for POBRA to apply to public safety officers “under investigation” and facing “discipline.”

As our Supreme Court has observed, “[s]ection 3304 provides a number of procedural rights for public safety officers who may be *accused of misconduct in the course of their employment.*” (*Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 320, *italics added*; see *White, supra*, 31 Cal.3d at p. 681 [“[t]here

⁴ The Legislative Counsel’s Digest’s inclusion of “discrimination,” which does not appear in the statute, may be a reference to a prior version of section 3304, which protected public safety officers from being “discharged, disciplined, demoted, transferred, or denied promotion or reassignment or otherwise discriminated against in regard to his employment” for the lawful exercise of rights. (See Conf. Amend. to Assem. Bill No. 301 (1975–1976 Reg. Sess.) Aug. 12, 1976.)

can be no doubt that [POBRA] is concerned primarily with affording individual police officers certain procedural rights during the course of proceedings which might lead to the imposition of penalties against them”].) Indeed, an examination of the cases cited by plaintiff and others found by this court supports the conclusion that POBRA provides procedural safeguards for officers facing punitive actions because of an investigation into their ability to perform their duties. (See, e.g., *Ochoa v. County of Kern* (2018) 22 Cal.App.5th 235, 248 [considering whether plaintiff’s termination following an investigation of an allegation that he had engaged in harassment was time barred by POBRA’s one-year statute of limitations]; *Riverside Sheriffs’ Assn. v. County of Riverside (Sanchez)* (2011) 193 Cal.App.4th 20, 24, 30 [officer who was terminated after her employer “determined [she had a medical condition that prevented her from performing] the essential functions of her position, with or without reasonable accommodation,” was entitled to POBRA rights]; *Riverside Sheriffs’ Assn. v. County of Riverside (Fauth)* (2009) 173 Cal.App.4th 1410, 1415, 1426 [investigator’s termination for cause after she was determined to pose a threat to other employees and not to be psychologically fit to carry a gun or perform investigator duties, was entitled to administrative appeal of her termination under POBRA]; *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1802–1803 (*Binkley*) [following full review of performance, officer who was removed from position of police chief after exercising questionable judgment, being criticized for his leadership, and subjecting himself to criticism from city management, was entitled to protections under POBRA].)

Moreover, the Policy here specifically affected the qualifications for employment, which are not regulated by POBRA. As our Supreme Court has noted, “[POBRA] is not intended to regulate or restrict the appointment of police officers by local law enforcement agencies.” (*Burden v. Snowden* (1992) 2 Cal.4th 556, 566, citing *Baggett v. Gates* (1982) 32 Cal.3d 128, 138; see also *Binkley, supra*, 16 Cal.App.4th at p. 1806 [POBRA not intended to interfere with “right to regulate peace officers’ qualifications for employment”].) The record demonstrates the City did not terminate plaintiff because he engaged in any workplace misconduct or performed poorly; it terminated him because he did not meet the Policy’s minimum job qualifications, one of which was to provide proof of vaccination or demonstrate that he qualified for a religious or medical exemption.⁵

Because plaintiff’s employment termination did not fall within the meaning of a “punitive action” pursuant to POBRA, defendants met their initial burden to demonstrate that the first cause of action lacked merit. And, plaintiff failed to demonstrate a triable issue of material fact on that claim.

Plaintiff’s second cause of action for a declaration of rights under POBRA also fails as a matter of law because it is derivative of the first cause of action under POBRA. (See *Smyth v. Berman* (2019) 31 Cal.App.5th 183, 191–192 [declaratory relief claim fails as a matter of law if wholly derivative of other failed claims].)

⁵ Plaintiff’s complaint does not allege that the City acted unlawfully or with a discriminatory motive when it denied his religious exemption, and we express no opinion on those matters.

C. *Labor Code section 1102.5*

“As relevant here, [Labor Code] section 1102.5 prohibits an employer from retaliating against an employee for sharing information the employee ‘has reasonable cause to believe ... discloses a violation of state or federal statute’ or of ‘a local, state, or federal rule or regulation’ with a government agency, with a person with authority over the employee, or with another employee who has authority to investigate or correct the violation. ([Lab. Code,]§ 1102.5, subd. (b).)” (*Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 709 (*Lawson*).) ““To establish a prima facie case of retaliation, a plaintiff must show that she engaged in protected activity, that she was thereafter subjected to adverse employment action by her employer, and there was a causal link between the two.” [Citations.] ‘The retaliatory motive is “proved by showing that plaintiff engaged in protected activities, that his employer was aware of the protected activities, and that the adverse action followed within a relatively short time thereafter.”’” (*Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52, 69.)

Plaintiff contends that he engaged in protected activity when he filed the EEOC/DFEH complaint and that defendants were aware of the complaint by February 25, 2022.⁶ He identifies

⁶ Plaintiff also “contends he was subjected to retaliation for engaging in protected activity such as reporting unlawful conduct by [the City] (Lab. Code, § 1102.5)” (Fn. omitted.) To the extent plaintiff suggests that he engaged in protected conduct when he made a request for a post-termination administrative appeal on March 16, 2022, and submitted a letter to the mayor on April 7, 2022, plaintiff fails to demonstrate a causal link between those acts and the adverse action taken on March 9, 2022. (See

the adverse employment action taken against him as his employment termination on March 9, 2022.⁷

Defendants counter that the undisputed facts demonstrate they would have made the same decision to terminate plaintiff's employment regardless of his filing of the EEOC/DFEH complaint and that plaintiff therefore could not demonstrate a causal link between the protected activity and the adverse action. According to defendants, those facts establish the so-called "same-decision defense" recognized in *Lawson, supra*, 12 Cal.5th

Kourounian v. California Dept. of Tax & Fee Administration (2023) 91 Cal.App.5th 1100, 1113 ["As a matter of both logic and law, acts of retaliation must occur after the protected activity"].)

⁷ Plaintiff also alleged that the denial of an administrative appeal pursuant to POBRA was an adverse employment action. As discussed above, plaintiff had no right to an administrative appeal under POBRA, and therefore plaintiff did not suffer an adverse employment action as a matter of law. (See *Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1387 (*Patten*), disapproved on other grounds by *Lawson, supra*, 12 Cal.5th at p. 718, fn. 2 [for retaliation under FEHA and Lab. Code, § 1102.5, the adverse action must "materially affect[] the terms and conditions of employment"].) Moreover, a prerequisite for a claim under Labor Code section 1102.5 is that there must be an employer-employee relationship at the time the retaliatory act occurred. (*Hansen v. California Department of Corrections & Rehabilitation* (2008) 171 Cal.App.4th 1537, 1546.) The undisputed material facts show that plaintiff's employment was terminated on March 9, 2022, and he was denied an administrative appeal on April 14, 2022. Thus, the alleged retaliatory act occurred after the employer-employee relationship had ended and the denial of the administrative appeal cannot be an adverse employment action under Labor Code section 1102.5 as a matter of law.

at page 663 and codified in Labor Code section 1102.6, which provides: “In a civil action or administrative proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged prohibited action against the employee, the employer shall have the burden of proof to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by Section 1102.5.” (See *Veverka v. Department of Veterans Affairs* (2024) 102 Cal.App.5th 162, 172 (*Veverka*) [same decision is complete defense to Lab. Code, § 1102.5 claim].)

The undisputed facts demonstrate that on January 5, 2022, the City rejected plaintiff’s request for a religious exemption because it found that he did not qualify for the exemption. And, when plaintiff failed to comply with the Policy, which required that he submit proof of vaccination, the City, on February 22, 2022, placed him on administrative leave and advised him that it had initiated his separation from employment. On this record, we conclude that defendants met their burden to demonstrate by clear and convincing evidence that the same-decision defense applied. (*Lawson, supra*, 12 Cal.5th at p. 718.)

Plaintiff asserts that there are triable issues of material fact that defendants did not have a legitimate reason to terminate his employment. He challenges the City’s denial of his exemption on January 5, 2022, on the alternative ground that granting him an exemption would be an “undue hardship,” because, in his view, there was no evidence of any such hardship. The City’s reference to an undue hardship does not raise a triable issue of material fact because the City proffered another

legitimate, independent reason to reject his exemption, namely that it did not find he qualified for one. (See *Veverka*, *supra*, 102 Cal.App.5th at p. 174 [under “a straightforward reading” of Lab. Code, § 1102.6, if “the employer satisfies its second-step burden in a civil case, a plaintiff is barred from all relief”].) Plaintiff presented no evidence raising a triable issue of material fact that would undermine the legitimacy of the City’s finding, such as evidence showing that the City believed he did qualify for a religious exemption. Accordingly, plaintiff failed to show a triable issue of material fact as to his retaliation cause of action under Labor Code section 1102.5.

D. *FEHA Retaliation*

“To establish a prima facie case of retaliation under FEHA, an employee must show that (1) she engaged in a ‘protected activity,’ (2) the employer subjected her to an adverse employment action, and (3) a causal link existed between the protected activity and the employer’s action. [Citation.]” (*Bailey v. San Francisco Dist. Attorney’s Office* (2024) 16 Cal.5th 611, 636.)

In the fourth cause of action, plaintiff alleged defendants retaliated against him by denying his request for an administrative appeal. As we explained above, plaintiff was not entitled, as a matter of law, to an administrative appeal under POBRA. Because the denial of an administrative appeal to which plaintiff was not entitled could not have materially affected the terms and conditions of his employment, it was not an “adverse employment action” under FEHA. (See *Patten*, *supra*, 134 Cal.App.4th at p. 1387.) Accordingly, defendants likewise met

their burden to demonstrate that there were no triable issues of material fact as to plaintiff's FEHA cause of action and they were entitled to judgment as a matter of law.⁸

E. *Mandamus Relief*

Plaintiff requested mandamus relief for his fifth cause of action to remedy violations pursuant to POBRA, Labor Code section 1102.5, and FEHA. "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person ... to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person." (Code Civ. Proc., § 1085, subd. (a).) Because plaintiff's mandamus relief claim was entirely premised on other claims, which failed as a matter of law, it also fails as a matter of law. Accordingly, there are no triable issues of material fact for the fifth cause of action for mandamus relief, and defendants are entitled to judgment as a matter of law.

⁸ Pursuant to section 12965, subdivision (c)(6) of FEHA, "a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so." Because the trial court made no such finding, and defendants make no such assertion on appeal, defendants will not be awarded costs allocated to the FEHA claim. (*Pollock v. Tri-Modal Distribution Services, Inc.* (2021) 11 Cal.5th 918, 950–951.)

IV. DISPOSITION

The summary judgment is affirmed. Defendants are awarded costs on appeal that are allocated to the non-FEHA claims.

KIM (D.), J.

We concur:

BAKER, Acting P. J.

MOOR, J.