



May 12, 2011

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Rare Victory for Employers in Disability Discrimination Claim: Employee's Disability-Caused Workplace Threat or Violence Does Not Support an Unlawful Disability Discrimination

On April 13, 2011, the Fourth Appellate District in *Wills v. Superior Court of Orange County*, ruled in favor of the employer, defendant Superior Court of the State of California, County of Orange ("OC Court"), in affirmed summary judgment in a disability discrimination claim by plaintiff Linda Wills. In so doing, the Appellate Court ruled that an employer may discipline an employee for engaging in threats or violence against coworkers, even when that behavior is caused by the employee's disability.

Plaintiff Linda Wills was diagnosed with bipolar disorder in 1997 and began working for the OC Court in 1999. During her employment, she took numerous medical leaves of absence related to the treatment of her disorder, but neither she nor her doctor informed the OC Court of her medical condition.

In July 2007, Wills was assigned to work at the Anaheim Police Department's lockup facility. On one occasion, she had to wait outside for several minutes before she was admitted into the building. After being admitted, Wills angrily swore at police department employees and accused them of intentionally leaving her outside. Wills further told one officer that she had added him and another employee to her "Kill Bill" list, which the employees understood was a list of people Wills intended to kill. Both employees felt threatened by Wills' demeanor and statement. Other employees found Wills' conduct as threatening to the subject employees as well.

The incident allegedly occurred during the early stage of a severe manic episode. A few days later, Wills' doctor placed her on medical leave of absence. While on leave, Wills forwarded a video and cell phone ringtone to several people including a coworker, that stated: "I'm going to blow this [expletive] up if you don't check your messages right now!...[expletive] you!" The coworker reported the incident and complained of being disturbed and threatened by the ringtone. Also while on leave, Wills sent numerous rambling and threatening emails to friends, family members and coworkers. The co-workers reported the emails to the OC Court indicating that they felt the emails were angry, irrational and alarming.

Several weeks later, Wills' manic episode ended and she was allowed to return to work by her doctor without restrictions. Upon her return to work, the OC Court placed Wills on a paid administrative leave pending an investigation into her behavior. During the investigation, Wills' doctor submitted a letter explaining that Wills suffered from bipolar disorder and that at no time did she pose a danger. After its investigation, the OC Court decided to terminate Wills' employment on four grounds: (1) threatening police personnel with physical harm while conducting official business; (2) threatening and inappropriate

communications with co-workers; (3) misuse of court resources; and (4) poor judgment. The OC Court further determined that Wills' conduct violated handbook provisions prohibiting verbal threats, threatening behavior, and violence. The employer also determined that Wills' attempts to downplay her conduct as a joke demonstrated bad judgment.

Wills responded in a letter to the OC Court asserting that it had unlawfully discriminated against her based upon her disability and that her conduct occurred while she was experiencing a severe manic episode. She also alleged that a group of coworkers had triggered the manic episode by harassing her and claimed that the OC Court fired her in retaliation for complaining to her supervisors about the harassment.

After receiving Wills' letter, the OC Court delayed her termination and hired an independent investigator to review her claims. The investigator concluded that the alleged harassment did not amount to a credible threat of physical harm, but was offensive and inappropriate. However, the OC Court went forward with Wills' termination.

Wills filed a discrimination complaint with the Department of Fair Employment and Housing ("DFEH") and obtained her right to sue letter. She subsequently sued for disability discrimination under the California Fair Employment and Housing Act ("FEHA"). The trial court granted summary judgment in favor of the OC Court finding that Wills' misconduct was a legitimate, nondiscriminatory basis for her termination.

Wills appealed the trial court decision to the Fourth Appellate District. On appeal, Wills argued that the OC Court improperly terminated her based on her disability (bipolar disorder) because the FEHA treats disability caused misconduct as part of the disability. The Appellate Court acknowledged that the OC Court was aware that the bipolar disorder caused the behavior cited in Wills' termination notice. However, in reviewing federal authorities under the Americans With Disability Act ("ADA"), the Appellate Court interpreted the FEHA as "authorizing an employer to distinguish between disability-caused misconduct and the disability itself in the narrow context of threats or violence against coworkers." The Appellate Court concluded that this interpretation balances protecting employees who suffer from a disability and allowing employers to protect their coworkers from threats of violence. In so finding, the Appellate Court ruled that the basis for the OC Court's termination of Wills served as a legitimate, non-discriminatory business decision and affirmed the summary judgment.

What should employers do?

Although the holding in this case is fact-specific, it is still instructive for employers. First, the case supports the need for a clear zero tolerance policy against workplace violence. Second, for employers with such a policy, this case affirms the employer's ability to terminate an employee who violates that policy, even if the misconduct is due to an employee's disability. However, as *Wills* is fact-specific, employers should still proceed cautiously when taking adverse employment action regarding an employee's disability.