
CASE LAW UPDATE

Mental Disabilities – Disability Discrimination

Wills v. Superior Court of Orange County (4th Appellate District, 4/13/2011)

Does the prohibition against disability discrimination in the Fair Employment and Housing Act (FEHA) protect an employee who makes threats against her co-workers where the conduct was caused by a mental disability? That was the principal issue decided in *Wills*. There, the Fourth District Court of Appeal (DCA) rejected a claim that the misconduct was protected by FEHA even though the misconduct was undisputedly caused by a mental disability.

Background of the Case

Plaintiff Linda Wills worked for the Orange County Superior Court (“OC Court”). During her tenure with the OC Court, Wills took numerous medical leaves to treat her bipolar disorder, but neither she nor her doctor informed the OC Court why Wills needed the time off. Wills, however, did tell some of her supervisors she suffered from depression.

In July of 2007, Wills was assigned as the OC Court representative to the Anaheim Police Department. Within a few days, Wills threatened two co-workers by stating that she would be adding them to her “Kill Bill” list. The co-workers understood the “Kill Bill” list comment to refer to a movie in which the main character made a list of people she intended to kill. Other employees who witnessed Wills’ outburst also viewed it as threatening.

Wills was unaware at the time, but the “Kill Bill” incident occurred during the early stages of a severe manic episode. A few days later, Wills’ doctor placed her on medical leave to treat her manic episode. While out on leave, Wills forwarded an angry and profane cell phone ringtone to several people, including a co-worker. Also while out on leave, Wills sent rambling email messages that some co-workers found irrational and violent.

Several weeks later, Wills’ manic episode ended and her doctor cleared her to return to work without restrictions. On the day of her scheduled return, however, the OC Court placed Wills on paid administrative leave to investigate the incident at the Anaheim Police Department and the complaints regarding the ringtone and e-mail messages. During this investigation, Wills’ doctor submitted a letter to the OC Court explaining Wills suffered from bipolar disorder which had caused the behavior exhibited in these incidents. Wills’ doctor further explained that Wills at no time posed a danger to anyone. After completing its investigation, the OC Court terminated Wills’ employment.

Why did the trial court grant summary judgment for the employer?

The trial court found that Wills’ FEHA claims failed as a matter of law because the OC Court terminated her employment for a legitimate, nondiscriminatory reason — Wills violated the OC Court’s written policies prohibiting threats and violence in the workplace.

What was the significance of the 4th DCA affirming the trial court's decision to reject the disability discrimination claim?

Wills is the first published California appellate decision to address the Ninth Circuit's decisions in *Humphreys*, *Dark* and *Gambini* as applied to an employee's threatening and violent behavior. In the Ninth Circuit cases, the court held that disability-caused misconduct is part of the disability itself without distinguishing those situations where the misconduct involves violent or threatening behavior.

Though the 4th DCA questioned the analysis in *Humphreys*, *Dark* and *Gambini*, it did not reject those decisions outright. Rather, it distinguished the federal decisions by stating that none of those cases dealt with threats of violence. Resting on that distinction, the 4th DCA rejected extending the federal decisions to cases where an employee engages in threatening or violent conduct even if the conduct was caused by a disability. As such, the Court affirmed the lower court ruling and held that FEHA authorizes an employer to distinguish between disability-caused misconduct and the disability itself in the narrow context of threats or violence against co-workers. This is true even if there is no evidence that the employee posed an actual threat of harm to her co-workers. The Court reasoned that to hold otherwise would place employers in a unfair and difficult dilemma: they may not discriminate against an employee based on a disability but, at the same time, must provide all employees with a safe work environment free from threats and violence.

Does the Wills decision extend to other types of employee misconduct?

The holding in the *Wills* case narrowly dealt with a situation where the employee's misconduct involved threats against coworkers. The decision expressly disclaims providing any opinion on whether the holding would extend to other types of less serious conduct that could be cured with the aid of a reasonable accommodation such as the negative effects a disability may have on attendance and productivity.

How does this case differ from cases where the employee poses a direct threat to self or others?

It is important to note that the employer in *Wills* terminated *Wills* because of the threats *Wills* made toward her co-workers and not because she posed an actual threat of harm to her co-workers. The latter is undoubtedly an affirmative defense under the FEHA but is much more difficult for employers to prove. Had the employer based its decision to terminate on this affirmative defense, there is good chance that the employer would not have succeeded on summary judgment given the evidence from her physician that she did not pose an actual threat of harm.

Lessons Learned

Generally speaking, an employer must treat disability-caused misconduct as part of the disability itself when it comes to making employment decisions. While this does not necessarily mean the employer is prohibited from taking adverse employment action based on the disability-caused misconduct, it must evaluate the situation as though it were taking action based directly on the disability. In most cases, this means having to evaluate accommodations which may assist the employee in preventing future misconduct caused by the disability (e.g., modifying a work schedule for an employee to enable the employee to meet the employer's schedule and attendance requirements). Only in very narrow circumstances involving threats or violence against coworkers is an employer allowed to take such adverse employment action against an employee without having to run through this analysis.