



One Minute Memo[®]

Discharging an Employee for Threats Or Violence Is Not Unlawful Disability Discrimination Even When The Employee's Actions Are Caused By A Disability

On April 13, 2011, in *Wills v. Superior Court of Orange County*, the California Court of Appeal upheld summary adjudication against a claim of disability discrimination. Using sound reasoning to trump sterile logic, the court concluded that an employer may discipline an employee for engaging in workplace misconduct, such as threats or violence against coworkers, even when that behavior is caused by the employee's disability.

Background

Linda Wills was diagnosed with bipolar disorder in 1997. She began working for the Orange County Superior Court in 1999. Although she took several medical leaves of absence from her work at the court to treat her bipolar disorder, neither she nor her doctor ever informed the court why she needed the time off.

Bipolar disorder manifests itself in mood swings between depressive and manic episodes. During a manic episode, a bipolar individual may become irritable, verbally and physically aggressive, and loud. The disorder also may cause inappropriate behavior such as shouting socially unacceptable and even threatening comments. A bipolar individual nonetheless can go extended periods without a depressive or manic episode if the condition is properly managed by psychiatric care and medicine.

In July 2007, Wills was assigned to the Anaheim Police Department's lockup facility, to help with the arraignment of criminal suspects. On July 3, after waiting for several minutes to be admitted into the secure facility, Wills swore angrily at two Anaheim Police Department employees, accusing them of intentionally leaving her outside in the summer heat. Wills informed the employees that she was adding them to her "Kill Bill" list for leaving her outside. Both employees felt threatened by the comment, understanding it to refer to a movie *Kill Bill*, in which the main character makes a list of people she intends to kill. Wills characterized her comment as "a joke." Wills was unaware of it at the time, but the events of July 3 occurred during the early stages of a severe manic episode due to her bipolar disorder. Shortly thereafter, she was placed on a medical leave of absence.

While on leave, Wills continued to behave inappropriately and act erratically. She sent inflammatory videos to a coworker who was disturbed and frightened by their content. In addition, Wills sent disturbing and threatening emails to several coworkers, rambling wildly and covering topics ranging from her conversations with God to trips she planned to take. These emails were reported to Wills's employer.

Several weeks after taking medical leave and after her manic episode passed, Wills was cleared to return to work without restrictions. The same day as her scheduled return, however, Wills was placed on paid administrative leave while the incident at the Anaheim Police Department and other complaints were investigated. During the investigation, Wills for the first time provided a letter from her doctor explaining that her bipolar disorder caused the behavior.

The employer concluded, upon investigation, to discharge Wills for making threats to Anaheim Police Department personnel, threatening and inappropriate communications with coworkers, misusing court resources, and exercising poor judgment. This conduct violated handbook provisions prohibiting verbal threats, threatening behavior, and violence. The employer also determined that Wills's attempts to downplay her conduct as a joke demonstrated bad judgment.

When Wills sued for disability discrimination under the California Fair Employment and Housing Act ("FEHA"), the trial court granted summary judgment against her, finding that her misconduct provided a legitimate, nondiscriminatory basis to discharge her.

The Appeal

The Court of Appeal acknowledged there was no dispute that bipolar disorder caused the behavior cited in Wills's termination notice, and that her employer learned about the disability before making the discharge decision. The primary issue on appeal was how the FEHA treats disability-caused misconduct.

Acknowledging a line of Ninth Circuit authority that equates disability-caused misconduct with the disability itself, the court rejected plaintiff's argument that her misconduct must be considered as part of her disability. The court reasoned that an employer can distinguish between a disability and misconduct caused by the disability when the disability is alcoholism or drug use. The court further explained that threats or violence in the workplace stemming from a disability present a unique situation where the employer is placed on a "razor's edge" – in jeopardy of violating the FEHA or ADA if it took adverse action against the employee, yet in jeopardy of being deemed negligent if it retained the employee and he or she caused harm to a coworker. "If employers are not permitted to make this distinction," the court concluded, "they are caught on the horns of a dilemma."

What *Wills* Means for Employers

Wills clarifies an aspect of California law that many employers have struggled with, and reduces the risk of a successful discrimination claim against responsible employers who are attempting to maintain a violence-free workplace. But *Wills* may be limited to those instances where an employee has actually threatened coworkers or engaged in workplace violence, and may not extend to situations where such activity merely is suspected. Accordingly, even after *Wills*, whenever adverse employment action relating to an employee's potential disability is contemplated, employers should proceed with caution.

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