

One Minute Memo®



For Reasonable Accommodation Claims, Employer Intent May Be Irrelevant to Liability

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Seyfarth Synopsis in a Second: Employer intent is not a required element in a disability discrimination claim alleging a failure to accommodate, and the employer bears the risk of mistaking the employee's abilities.

On February 25, 2016, in *Wallace v. County of Stanislaus*, the California Court of Appeal issued a ruling clarifying a jury instruction on an employer's intent to discriminate against an employee with an actual or perceived disability. The Court of Appeal held that *animus* was not relevant; nor was an employer's reasonable—but mistaken—good-faith belief that the employee was not capable of safely performing the job's essential functions.

The Facts:

Dennis Wallace was a Deputy Sheriff for the County of Stanislaus. When he injured his knee, he was placed on leave. Upon his return to work following surgery, he was assigned to light duty. He then took a leave of absence, exhausting his paid leave. The County, relying on a physician's report, then accommodated Wallace by placing him in a 12-month position as a bailiff. Wallace underwent another medical review six months later, which resulted in a medical report describing several written "preclusions" or limitations to Wallace's ability to work. The County interpreted these "preclusions" to mean that Wallace could not safely perform the essential functions of his position, and concluded that the only available accommodation was an unpaid leave.

Although Wallace stated in a meeting that he could, in fact, continue in his role as bailiff, the County stated that the report tied its hands and would not alter its decision to place Wallace on leave. Based on the evidence presented, the jury found that Wallace was able to perform the essential functions of a deputy sheriff. The County thus relied on a mistaken belief that the report *required* the County to remove Wallace from his bailiff position.

After more than a year, when Wallace passed a fitness-for-duty exam, he finally returned to full duty as a patrol officer.

Wallace, seeking damages for the delays in reinstating him, sued the County for disability discrimination, failure to prevent discrimination, failure to accommodate, and failure to engage in the interactive process. At trial, the jury was asked "Did the County of Stanislaus regard or treat Dennis Wallace as having a physical disability in order to discriminate?" Because the jury found no discriminatory intent, the jury found in favor of County.

The Appellate Court Decision

Wallace argued on appeal that the jury was not properly instructed. The Court of Appeal agreed, because disability discrimination claims fundamentally differ from other types of discrimination claims. The Court of Appeal explained that the traditional *McDonnell Douglas* burden-shifting test (shifting the burden of proof from employee to employer and back where there is *circumstantial* evidence of discrimination) does not apply in disability discrimination cases where there is *direct* evidence of the employer's motivation.

The Court of Appeal relied on the California Supreme Court ruling in *Harris v. City of Santa Monica*, 56 Cal. 4th 203 (2003), to conclude that an employer treats an employee differently "because of" a disability when the disability is a *substantial motivating factor* in the employer's decision to subject the employee to an adverse employment action.

The Court of Appeal held that the County was liable, as a matter of law, for disability discrimination, and remanded the case for further proceedings solely on the issue of damages.

What *Wallace* Means for Employers:

When it comes to accommodations or taking any adverse action because of an employee's actual or perceived disability, even when the disability's interference with essential job functions is confirmed by a physician's report, an employer should exercise caution. If an employee claims to be able to perform the essential functions of the job despite a contrary medical report, then the employer should consider re-visiting the issue. Here, the employer simply misunderstood the law. Had the employer engaged more fully in the interactive process and listened to its employee's concerns, the employer may have dug deeper and learned of its mistake prior to incurring liability.

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