



Labor and Employment Law Update

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EMPLOYER MAY DISCIPLINE FOR MISCONDUCT DESPITE EMPLOYEE'S RELATED DISABILITY

In April, California's Fourth District Court of Appeal held in *Wills v. Superior Court* 192 Cal. App.4th 312 (2011) that the Fair Employment and Housing Act ("FEHA") allows employers to distinguish between an employee's disability and disability-caused misconduct when implementing employee discipline or potential termination.

Wills was a public employee working as a clerk at the Orange County Superior Court ("OCSS"). She suffered from a bipolar disorder which resulted in depressive and manic episodes. During one manic episode she repeatedly swore at co-workers, threatened to place co-workers on her "hit" list, made aggressive comments, forwarded an offensive and hostile ring tone, and sent erratic and emotionally-charged emails to co-workers. Subsequently Wills' doctor submitted a letter to OCSS advising that Wills suffered from bipolar disorder, but that she was never an *actual* threat to anyone. Nonetheless some of Wills' colleagues reported feeling afraid and threatened by her behavior. After an investigation, OCSS fired Wills for inappropriate communications with co-workers, threatening department personnel, misuse of court resources and exhibiting poor judgment. OCSS stated that Wills' behavior had violated employee policies against verbal threats, threatening behavior, and violence.

In response, Wills sent a letter to OCSS stating that OCSS had unlawfully discriminated against her due to her mental disability, that co-workers had been harassing her which triggered her manic episode, and that her termination was in retaliation for Wills having complained to her supervisors about the alleged harassment. OCSS hired an independent investigator to investigate Wills' claims, which were ultimately determined to be unfounded. Wills' termination was upheld.

Next Wills filed a discrimination claim with the Department of Fair Employment and Housing (“DFEH”) alleging that OCSS had violated FEHA by firing her because of her mental disability. DFEH issued her a right-to-sue letter. Wills then filed a civil claim in superior court. The trial court found in favor of OCSS and Wills appealed.

The Court of Appeal affirmed the trial court’s ruling in favor of OCSS. Although Wills argued that *all* conduct resulting from a disability is considered part of the disability, the Court held that in the very limited context of threats and/or violence against co-workers the FEHA allows an employer to distinguish between one’s disability and disability-caused misconduct. The Court found that Wills’ termination was legitimate and non-discriminatory because her conduct was in violation of OCSS’s employee policies against threats and violence. However the Court made a point to limit its ruling to situations where the disability-based misconduct involves threats and/or violence against other employees, and further noted that the Wills case was not one in which the disability-caused behavior impacted her job performance and could have been addressed through reasonable accommodation.

This decision may provide employers with more latitude to terminate employees who suffer from a disability that manifests in uncontrollable outbursts that threaten or harm other employees. However, the scope of Wills is *limited* to disability-caused conduct that is violent and/or threatening and does not address conduct that is not hostile or threatening to co-workers, per se. This case also distinguishes between disability-caused behavior that does not impact an employee’s job performance and which reasonable accommodations could not assist with, versus disability-caused behavior which impacts job performance and for which a reasonable accommodation could allow the employee to perform the essential functions of his or her job.

Successfully navigating employee discipline matters within the context of employee disabilities can be very difficult and can subject a district to significant liability if not correctly handled.

If you need further information on this topic, do not hesitate to contact our office.

— Tenielle E. Cooper

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