

04 | 20 | 2011

Court Says Okay to Terminate Bipolar Employee Who Threatened Coworkers

Before filing suit under the California Fair Employment and Housing Act ("FEHA"), an employee must exhaust her administrative remedies with the Department of Fair Employment and Housing ("DFEH"). In the recently decided case of *Wills v. Superior Court*, the court gave little leeway to an employee, finding that she failed to exhaust her administrative remedies because her DFEH complaint only alleged discrimination based on a denial of family/medical leave, while her lawsuit raised different allegations of disability discrimination, retaliation, harassment, and failure to accommodate. Wills was diagnosed with bipolar disorder prior to beginning employment with the Superior Court of Orange County (the "OC Court"). During her employment, she took numerous medical leaves of absences related to the treatment of her disorder, but neither she nor her doctor informed the OC Court of her medical condition.

On one occasion, when Wills was assigned to work at the Police Department, 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 both employees understood was a list of people she intended to kill. Both employees felt threatened.

These events allegedly occurred during the early stage of a severe manic episode. A few days later, Wills' doctor placed her on medical leave for treatment. While on leave, Wills forwarded a cell phone ringtone to a coworker, that stated: "I'm going to blow this b***ch up if you don't check your messages right now!...F*** you!" The coworker reported the incident and complained of being disturbed and frightened. Wills also sent numerous threatening emails to coworkers.

Upon her return to work, the OC Court placed Wills on a paid administrative leave pending an investigation into her behavior. It was during this investigation that Wills' doctor first submitted a letter explaining that Wills suffered from bipolar disorder.

After its investigation, the OC Court decided to terminate Wills' employment on four grounds: (1) threatening police personnel with physical harm; (2) inappropriate communications with co-workers; (3) misuse of Court resources; and (4) poor judgment.

In response to the termination, Wills responded in a letter asserting that the OC Court

had unlawfully discriminated against her based upon her disability and that the 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. Finally, she 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. Thereafter, the OC Court terminated Wills' employment. She then filed her discrimination complaint with the DFEH, alleging **only** discrimination based on a denial of family and medical leave. In its response letter, the OC Court not only responded to Wills' discrimination claim based on a denial of leave, but also explained why her termination did not constitute disability discrimination.

After Wills received a right-to-sue notice from the DFEH, she filed her lawsuit. The OC Court moved for dismissal on grounds that Wills had failed to exhaust her administrative remedies and that she could not otherwise establish an essential element of each claim. The trial court agreed and granted the motion.

On appeal, Wills made the following two arguments: (1) the exhaustion of administrative remedies doctrine did not require her to use any particular words in her DFEH complaint; rather, she satisfied the exhaustion requirement because a reasonable investigation of the allegations in her complaint would have uncovered the discrimination and harassment claims she later added to her lawsuit; and (2) the OC Court improperly terminated her based on a disability because the FEHA treats disability-caused misconduct as part of the disability.

As to her first argument, Wills argued that the OC Court's letter to the DFEH demonstrated that the OC Court knew that Wills was claiming discrimination based on her bipolar disorder. The Court distinguished this situation from a prior case, *Nazir v. United Airlines, Inc.*, 178 Cal. App. 4th 243 (2009), which Wills relied upon. The Court distinguished the complaint letter involved in *Nazir*, which was sent **by the employee**, from the situation presented here, where the letter was submitted **by an employer** defending itself against potential claims. The Court stated that a rule "permitting an employee to satisfy the exhaustion requirement based on information the employer voluntarily provided on an uncharged claim may discourage employers from providing a comprehensive response to DFEH's investigation...." Moreover, the Court found that – even taking the OC Court's response letter into consideration – Wills had failed to exhaust her administrative remedies as to her causes of action for retaliation, hostile work environment, failure to prevent harassment, failure to engage in the interactive process, and failure to make reasonable accommodations because neither her DFEH complaint nor the responding letter mentioned these claims.

As to her second argument, Wills contended that all conduct resulting from a disability is considered part of the disability and, thus, protected. In analyzing analogous federal

authorities under the ADA, the 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." (Emphasis added.) The Court explained that this interpretation strikes a balance between protecting employees who suffer from a disability and allowing employers to protect their coworkers from threats of violence.

Although the holding in this case is heavily reliant on its particular facts, it still offers important general takeaways for employers. First, for employers which have a policy against threats of violence against coworkers, this case affirms the employer's ability to legitimately terminate an employee who violates that policy, even if the misconduct arises out of the employee's disability. The Court logically recognized that employers must be allowed to balance their obligation to protect their employees who suffer from a disability and their obligation to provide all employees with a safe work environment. Second, the Court's discussion of the exhaustion requirements under FEHA indicates that employers can address all claims actually raised and all claims potentially raised in an employee's DFEH complaint without fear that the employee will later claim that she exhausted her administrative remedies based on the employer's acknowledgment of her potential claims.

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