

When Bipolar Worker Makes Threats: Accommodate or Terminate?

In the past few weeks, several Hollywood celebrities—including Catherine Zeta-Jones and Demi Lovato—have publicly announced they suffer from bi-polar disorder, a mental illness defined by high and low mood swings. Even Charlie Sheen has dubbed himself “bi-winning.”

But what if a bipolar employee exhibits threatening behavior—can you discipline the action, or must you accommodate the disability? Do anti-violence policies trump employee disability rights? Here what one court said this month ...

Case in Point: Linda Wills worked as a court clerk in California. She suffered from bi-polar disorder, a disability that about 2.6% of Americans over age 18 suffer from, says the National Institute of Health.

From time to time, Wills took medical leave to take care of her condition. She never told her supervisors about her diagnosis.

One summer day, Wills had to wait outside of work for several minutes ringing the buzzer to get in. Once inside, she yelled and swore at co-workers. She told two co-workers she was adding them to her “Kill Bill” list, a reference to a movie in which the lead character kept a list of who she was going to kill.

A few days later, Wills’ doctors placed her on medical leave and called the incident the beginning of a manic phase. While on leave, Wills sent threatening emails and ringtones to co-workers.

Her doctors eventually gave her a green light to return to work. But her employer immediately placed her on administrative leave pending the outcome of the investigation over her multiple threats to co-workers. Eventually she was fired for violating the workplace violence policy.

Wills sued, claiming her behavior was protected under the disability laws.

Result: The court noted that while there was no uniformity of rulings, many courts consistently hold an employer may “distinguish between disability-caused misconduct and the disability itself when the misconduct includes threats or violence against coworkers.” The court also noted that is the view expressed in an Equal Employment Opportunity Commission (EEOC) enforcement guidance. (*Wills v. Superior Court of Orange Cnty.*, Cal. Ct. 4/13/11).

3 Lessons Learned ... Without Going to Court

1. Safety trumps. Employers have an obligation to keep their employees safe. Employers must also respect employee’s rights under the disability laws. That’s the tension of balancing rights. But, in the end, many of the courts are ruling safety trumps threatening misconduct even if it is due to a mental disorder.

2. Call counsel. When there’s an intersection of employee’s rights and employer’s obligations immediately get your lawyer involved in the process. These cases are tricky.

3. Act fast. Whenever there is a pending threat in the workplace you must act quickly to protect employees, all employees.