

Public Entity Labor and Employment

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AALRR Alert



Court Holds that Proof of “Animus” or Ill Will is not Required for Disability Discrimination Claim

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On February 25, 2016, in *Wallace v. County of Stanislaus*, the Court of Appeal for the Fifth Appellate District certified for partial publication addressed the role “animus” plays in establishing an employer’s intent to discriminate against a disabled employee. Ultimately, the court found that the law does not require an employee with an actual or perceived disability to prove that the employer’s adverse employment action was motivated by animosity or ill will. Moreover, the court noted that even if the employer has a good faith mistaken belief that an employee cannot perform essential job functions, the financial consequence of that mistake should be borne by the employer.

In the *Wallace* decision, County of Stanislaus Sheriff’s Deputy Dennis Wallace (“Wallace”) claimed that the County of Stanislaus and the Sheriff’s Department incorrectly determined that he could not safely perform his duties as a bailiff, even with reasonable accommodation. This determination led to Wallace being placed on unpaid leave. Following this determination Wallace filed a complaint

alleging causes of action under the California Fair Employment and Housing Act (“FEHA”) for 1) disability discrimination, 2) failure to accommodate his disability, 3) failure to engage in the interactive process, and 4) failure to prevent discrimination.

Prior to the litigation, Wallace had a history of work related injuries beginning in 2007. Due to the injuries Wallace had taken leave, and was also provided modified work within his restrictions. In 2010 Wallace accepted assignment as a bailiff for at least 12 months at his pre-injury rate of pay.

Later that same year Wallace underwent a workers’ compensation agreed medical examination with an orthopedic surgeon. That physician listed preclusions (meaning something to be avoided 90 to 100 percent of the time) including a 50 pound lifting limitation, no bilateral overhead work or repetitive right shoulder work, no forceful pushing or pulling with the right upper extremity, no weight bearing more than 75 percent of the time, only occasional climbing, squatting,

kneeling, crouching, crawling or pivoting, and no walking on uneven ground more than 75 percent of the day.

After the agreed medical examination report was received by the employer, Wallace was removed from his bailiff position on the grounds that he could not perform that job with those preclusions. When the decision was made to remove Wallace, his supervisors were not asked if he was able to perform his job duties. A meeting was held with Wallace advising him that he was to be removed from his bailiff position that day, and that the department had not identified any assignment as deputy sheriff

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that could accommodate his work preclusions.

After more than a year had passed, and just prior to the first trial in this matter, Wallace was sent to a fitness-for-duty examination. Following that examination and prior to the second trial in this matter, Wallace was returned to full duty as a patrol officer.

The first trial concluded in August of 2012. The jury concluded its deliberations after having resolved the first cause of action (disability discrimination) but deadlocking on the other three. On appeal Wallace argued that the trial jury found in favor of the County as to the first cause of action for disability discrimination due to an instructional error, which required a finding of discriminatory intent. Ultimately, the jury answered “no” to the fourth question of the special verdict which asked, “Did the County of Stanislaus regard or treat Dennis Wallace as having a physical disability in order to discriminate.”

The court held that when an employee “is found to be able to safely perform the essential duties of the job, a plaintiff alleging disability discrimination can establish the requisite employer intent to discriminate by proving (1) the employer knew that plaintiff had a physical condition that limited a major life activity, or perceived him to have such a condition, and (2) the plaintiff’s actual or perceived physical condition was a substantial motivating reason for the defendant’s decision to subject the plaintiff to an

adverse employment action.” The court rejected the argument of the County that “animus” or intention exceeding a substantial motivating factor was an essential element for disability discrimination.

Interestingly, the court expressly stated that it published its discussion of motive and animus to alert practitioners and other courts that ‘animus’ is an imprecise term that can cause confusion when used in disability discrimination cases. The court offered that this confusion can be avoided if the terms “animus” and “ill will” are limited to those employment discrimination cases involving proof of an illegitimate motive by circumstantial evidence.

Although the court’s “alert” is targeted toward practitioners and the courts, this alert should caution employers against the pitfalls of simply relying upon the preclusions listed in a doctor’s report rather than participating fully in the interactive process with the employee. As the court noted, it believes that that employer should ultimately bear the financial consequences of even a good faith mistake that the employee is unable to safely perform his job duties.