

# CLIENT NEWS BRIEF

## The Required Employer "Intent" Element in Disability Discrimination Claims Under FEHA

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To prove a claim for disability discrimination under the California Fair Employment and Housing Act (FEHA), an employee must establish intent on the part of the employer. Recently, the Court of Appeal for the Fifth District held that the "intent" requirement is satisfied if the employee proves (1) the employer knew the employee had a disability or the employer perceived the employee as disabled, and (2) the employee's actual or perceived disability was a "substantial motivating reason" for the adverse employment action (e.g., termination, reassignment, demotion, unpaid leave etc.). (*Wallace v. County of Stanislaus* (Feb. 25, 2016, No. F068068) \_\_Cal.App.4th\_\_ [2016 Cal. App. LEXIS 148].)

In *Wallace*, the plaintiff, Sheriff's Deputy Dennis Wallace, sued the County and the Sheriff's Department for disability discrimination, failure to prevent discrimination, failure to accommodate, and failure to engage in the interactive process. While working as a Sheriff's Deputy, Mr. Wallace suffered work related injuries and was assigned to a bailiff position to accommodate his work restrictions. Later that year, Mr. Wallace was seen by a doctor. The doctor's report listed various different or additional work restrictions. On receiving the doctor's report, the County removed Mr. Wallace from his bailiff position because they believed he could not perform the essential functions of that position with or without accommodation. The County told Mr. Wallace there were no positions that could accommodate Mr. Wallace's work restrictions. They placed Mr. Wallace on unpaid leave.

Mr. Wallace sued the County. The jury ruled in the County's favor, finding that Mr. Wallace had not suffered disability discrimination. Mr. Wallace appealed, claiming the jury had not been properly instructed about the "intent" an employee needed to prove to support a disability discrimination claim against the employer.

On appeal, the Court held that an employee could satisfy the "intent" requirement, without proving the employer acted with "ill will" or "animus." The Court found the "intent" requirement was satisfied if the employee proved that his actual or perceived disability was a "substantial motivating" reason for an adverse employment action. In *Wallace*, the Court found that removing Mr. Wallace from his bailiff position following receipt of the new medical restrictions was improper.

The Court focused on the fact that the County removed Mr. Wallace from his bailiff position without thoroughly evaluating whether he could be reassigned to other positions. The Court expressed that the employer should have consulted with Mr. Wallace's supervisors to determine if he could indeed perform the functions of the bailiff position, instead of only relying solely on the doctor's report. This case is a reminder to employers about the importance of engaging in the interactive process and thoroughly evaluating all available accommodation options.

Should you have questions about the effect of this decision, please contact one



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*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*

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