

## DEATH THREATS LEAD TO EMPLOYER'S ADA VICTORY

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It is rare that the most employee-friendly of all federal appellate courts cites "common sense" in support of one of its decisions. The 9th Circuit Court of Appeals recently did just that, however, dismissing a disability discrimination claim filed by an employee who was fired for making death threats against company managers. In *Mayo v. PCC Structural, Inc.*, the Court ruled that the worker was not a "qualified individual with a disability," and therefore could not sustain an Americans with Disabilities Act (ADA) lawsuit.

### Chilling And Disturbing Death Threats

Timothy James Mayo worked as a welder. He had been diagnosed with major depressive disorder, but was able to work at Portland-based PCC Structural for years without incident. Things took a turn for the worse, however, when Mayo and some coworkers felt a supervisor was bullying them and met with the human resources director to discuss the behavior.

After the meeting, Mayo told one coworker that he felt like coming to work with a shotgun and "blowing off" the heads of the supervisor and another manager. He told a second coworker that he planned to show up on the day shift to "take out" management. He told a third that he wanted to bring a gun to the company and "start shooting people" and that he could shoot supervisors during their daily plant walk-through at 1:30 p.m.

Naturally concerned, the coworkers reported the threats to management. A human resources manager called Mayo and asked if he planned to carry out his threats. He said he

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“couldn’t guarantee” that he wouldn’t do that, and the HR manager immediately suspended him from work.

Mayo went on a medical leave which included six days in custody at a hospital. At the end of his leave, his psychologist cleared him to return to work but the employer terminated his employment. Mayo sued under Oregon’s counterpart to the ADA, claiming that his threats were caused by his disability and that his termination amounted to disability discrimination.

### **“My Disability Made Me Do It!”**

Strange as it sounds, Mayo’s argument was in line with several prior decisions of the 9th and 10th Circuits which had held that employers that terminated an employee for misconduct caused by a disability committed a form of disability discrimination. The first such case involved a medical transcriptionist with Obsessive-Compulsive Disorder who was fired for poor attendance. The second involved an epileptic truck driver who passed out at the wheel of a county truck after he felt that a seizure might be imminent. The third involved an employee with Bipolar Disorder who threw a temper tantrum after receiving a negative performance review.

In each of these cases, the 9th Circuit found that the employers committed ADA violations. The court concluded that the employees were discriminated against on account of their disability because they were terminated for misconduct purportedly caused by their disabilities.

The court did create a narrow exception for employers who proved that an employee posed an imminent danger of harm to self or others, but that case involved an employee who tried to shoot patrons of a bar with an assault rifle. Not only was the standard a high one, but the burden of proof was on the employer.

### **Handling Stress Is An Essential Function Of Almost Every Job**

Luckily for employers, common sense prevailed in the Mayo case and the 9th Circuit reached a different conclusion. The court noted that “an essential function of almost every job is the ability to appropriately handle stress and interact with others.” Therefore, reasoned the court, even if Mayo was disabled, he could not meet his burden of showing that he was qualified for his job at the time he was fired. Citing

common sense, the court maintained that Mayo became disqualified when he threatened to kill his coworkers regardless of whether the threats stemmed from his mental disorder.

A contrary rule, the court recognized, would have placed employers in an impossible position. The court disagreed that employers “must simply cross their fingers and hope that violent threats ring hollow. All too often Americans suffer the tragic consequences of disgruntled employees targeting and killing their coworkers.” The court continued: “While the ADA and Oregon disability law protect important individual rights, they do not require employers to play dice with the lives of their workforce.”

### **Are Death Threats The Only Disqualification?**

The Mayo case is a refreshing departure from the 9th Circuit’s usual approach of finding miscreant but ill employees to be victims of disability discrimination after receiving employer discipline. Yet it is difficult to imagine that even the 9th Circuit could have reached a different result.

The court emphasized that its holding should be read only to address the “extreme facts” in the case of an employee making serious and credible threats of violence. It specifically stated that off-handed expressions of frustration or inappropriate jokes will not necessarily render an employee not qualified. It also stated that employees who are simply rude, gruff, or unpleasant do not automatically fall into the same category as Mayo.

On the other hand, the court’s finding that the ability to handle stress and interact with others is an essential function of almost all jobs is significant. It may be that employers can apply this principle to situations involving some form of serious misconduct not involving death threats. For example, a good argument can be made that ADA victories may be had for employers in cases where an employee entrusted with finances steals company funds, or if an employee harms someone he is charged with protecting.

### **Bottom Line: Put It In The Job Description**

We recommend that you amend your job descriptions to include the ability to handle job stress and interact effectively with others in the workplace as essential

functions of the job. This could provide a helpful defense should an ADA lawsuit result from worker misconduct. While the Mayo decision is restricted to employers who operate in the 9th Circuit's jurisdiction (which covers most Western states, including California, Washington, Oregon, Arizona, and Nevada), the ruling is consistent with cases from other jurisdictions, so employers across the country should feel comfortable following this guidance.

You should also include other intangible requirements in your job descriptions, particularly where certain types of traits or behavior (such as honesty or maintaining one's composure in public) are important aspects of the job. Overall, you should review your current job descriptions to ensure your bases are covered.

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