

## Clarity From The 9th Circuit: The ADA Does Not Require Employer To Keep A Potentially Violent Employee

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**Jeanine M. Gozdecki**  
Partner

A recent decision by the Ninth Circuit Court of Appeals affirms our faith in the federal courts on issues of workplace violence. In the case of *Mayo v. PCC Structural, Inc.*, the plaintiff/employee argued that he was a victim of disability discrimination under Oregon law after he was fired for threatening his co-workers. (The court notes Oregon's disability law is similar to and similarly analyzed as the Americans with Disabilities Act.) The employee had a history of major depressive disorder, and after making threats to "start shooting" co-workers, was suspended from work. The employee was committed to psychiatric care, and then took leave under the FMLA and Oregon's Family Leave Act. Before his leave expired, a treating psychologist released the employee to return to work because the employee was not a "violent person." His employer fired him instead. The employee sued, arguing that his threats were symptoms caused by his disability. The federal court rejected his claim, finding that the employee was no longer qualified to do his job once he made the violent threats. The employee appealed. The Ninth Circuit rejected the employee's appeal and found that "an essential function of almost every job is the ability to appropriately handle stress and interact with others," and further, that an employee is not qualified when stress "leads him to threaten to kill his co-workers in chilling detail and on multiple occasions . . . regardless of whether [his] threats stemmed from his major depressive disorder." The court in *Mayo*, often citing similar language from other circuits on workplace threats, emphasized that its decision is limited to the "extreme facts" in this case; that is, an employee who makes serious and credible threats of violence," and noted generally that employees who suffer from mental disabilities are protected under different circumstances. Workplace threats make us nervous on multiple levels, and mental illness makes the situation more complicated. There are several lessons from the *Mayo* case—one of which is that cases complicated by mental illness and the ADA may still end up in court. Another lesson is that an employer has a better chance at success when it responds promptly, yet appropriately: immediately addressing the threats, suspending the employee; getting the employee professional care and treatment; and protecting its workforce.

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