

The San Diego Union-Tribune

Employer must know of disability to be liable for disability discrimination

Without such employer knowledge, an employee cannot show that he was terminated because of his disability

By [Dan Eaton](#) PUBLISHED: June 1, 2026 at 6:00 AM PDT

A California employer cannot be liable for unlawful disability discrimination when it fires an employee for disturbing behavior the employee later attributes to a mental disability never previously disclosed to the employer and that was not the only possible explanation for the employee's behavior. Without such employer knowledge, ruled the court of appeal recently in *Husband v. Target Corporation*, the employee cannot show he was terminated because of his disability.

Background

Daniel Husband worked for 20 months at a Burbank Target as a fulfillment expert without incident. One day, Husband became highly emotional and visibly upset, pointing fingers and yelling at a coworker. At Husband's request, his supervisor, Daniel Abts, sent him home. Abts sent an email to his superiors, and a human resources supervisor, about Husband's disturbing, uncharacteristic behavior. Abts expressed concern in his email about Husband's mental state.

The next night, Husband arrived for his shift looking shaky and distraught and breathing heavily. Husband made bizarre statements to Abts about whether Husband had killed his stepmother by speaking a word and asked Abts and other employees whether he had killed anyone at the store, frightening other employees. Believing that "a hospital would be better than the police," Abts sent Husband home with a recommendation that he "get examined by a doctor/psych professional."

Abts sent an email detailing these events to the same higher-ups to whom he sent the email about the previous day's events. The following day, store officials decided to terminate Husband's employment for violation of Target's workplace violence policy. Before his termination, Husband had not informed Target that he suffered from bipolar disorder and had not requested any accommodation for that disability.

Employee's disability discrimination lawsuit

Husband sued Target for disability discrimination under California's Fair Employment and Housing Act (FEHA), claiming his statements and conduct stemmed from his mental disability. He asserted additional claims that Target failed to provide a reasonable accommodation for his disability and failed to engage in the interactive process FEHA requires to determine whether the employee's disability may be reasonably accommodated.

No liability for discrimination based on employee's unknown mental disability

A plaintiff-employee can only show he was subjected to a disability-related adverse employment action, such as termination, only if the employee shows the employer knew of the disability at the time of the adverse action. The employer may learn of a disability from (1) the employee disclosing it to a managerial employee (not just a coworker); (2) a third party disclosing the condition; or (3) the employer observing the employee.

But for purposes of claims for disability discrimination and claims for failure to accommodate and failure to engage in the interactive process, an employer will be deemed to have knowledge of the disability by observation alone only if the fact of the disability is the only — not just a possible or probable — reasonable interpretation of the observed symptoms.

The court of appeal concluded Husband could not make that showing. Emotional and erratic conduct is a symptom of bipolar disorder, but mental disability is not the only reasonable interpretation of that behavior. Such behavior also could be a side effect of taking illegal drugs or result from taking a combination of prescribed medications or sleep deprivation.

While relevant, Abts's non-expert speculation that Husband may have been suffering from an unknown medical issue and may benefit from seeing a mental health professional did not mean the only reasonable explanation for Husband's behavior was a mental disability.

The court also rejected Husband's contention that an employer's awareness of conduct associated with bipolar disorder amounts to awareness of the disability itself. That would replace the governing test, focused on whether mental disability is the only explanation for all the observed symptoms, with a test that "equates observation of any single symptom of a mental disability with knowledge of the mental disability."

Takeaway

The bottom line, said the court in a footnote, is that "an employee who wishes to avail himself of FEHA's protections (against disability discrimination) must put the employer on notice of his entitlement to those protections." Absent disclosure of the condition by the

employee or a third party to the employer, the employee may find it challenging to prove an employer's knowledge of a mental disability based exclusively on the employer's observation of the employee's troubling, even bizarre, statements or behavior.

Eaton is a partner with the San Diego law firm of Seltzer Caplan McMahon Vitek where his practice focuses on defending and advising employers. He also is an instructor at the San Diego State University Fowler College of Business where he teaches classes in business ethics and employment law. He may be reached at eaton@scmv.com.