Wrongful termination

Wrongful Termination Kenneth L. Mowery BUS670: LegalEnvironmentProf. Alexis Hooley August 20, 2012 Wrongful Termination " Over the past 20 to 25 years courts have been carving out common law exceptions to employment at will" (Mallor, Barnes, Bowers, & Langvardt, 2010, p. 1338). One of those exceptions is that of wrongful termination or unjust dismissal. In the past three years there have been five wrongful termination suits brought against Haywood Regional Medical Center.

Three cases ended positively for the plaintiffs, while the other two showed that the Medical Center had the stronger case and that the Medical Center had just cause to terminate the employee. . " The remedies in successful wrongful discharge suits depend heavily on whether the plaintiff's claim sounds in contract or in tort, with tort remedies being more advantageous for plaintiffs" (Mallor et al. , 2010, p. 1338). If the plaintiff can prove his or her case against the employer for wrongful discharge or termination, the employee can recover damages from the employer.

The burden of proof lies with the plaintiff to prove wrongful termination and remedies can be costly for the employer. The employer can avoid the liability of a wrongful termination suit by keeping up with the policies and procedures and performance evaluations of its employees. Employment at Will Let us look at different exceptions to the common-law doctrine of employment-at-will. " The rule says that either party can terminate an employment contract of indefinite duration. The termination can occur at any time; and can be for good cause or no cause" (Mallor et al. , 2010, p. 1338).

However, according to Hames and his evaluation of the Title VII of theCivil RightsAct, the AgeDiscriminationin Employment Act, the National Labor

Relations Act, and the Occupational Safety andHealthAct, there must be no formal employment contract for a specified period of time and there can be no statutory prohibitions to the contrary (1991, p. 122). Hospitals hire many individuals with different backgrounds, skills, and values, so it is difficult to, as Hames states, " devise personnel policies and practices that are perceived as fair and just by the majority of their employees" (1991, p. 22). With this in mind, the cause for termination may also be a morally wrong cause. What may seem right to the employer may be wrong, morally, for the employees. Because hospitals hire such a diverse population of employees, many are " at risk" for wrongful termination suits against them. In his research, Hames noted that in many cases there has been the implication that the courts have eroded the Employment-at-will doctrine, which leave employers with little discretion regarding who they can fire and under what circumstances (1991, p. 122).

This can leave employee at many hospitals little protection against wrongful termination. Exceptions to the Employment-at-will doctrine were mentioned earlier; we will first examine the Public Policy Exception. Public Policy Exception " The public policy exception to the doctrine of employment-at-will asserts that employees may not be terminated for refusing to perform an act that is contrary to a clearly mandated public policy nor for performing an act that is consistent with such a public policy" (Hames, 1991, p. 123). Employers may not terminate the employment of an employee for morally wrong causes.

This can be seen in Wagenseller v. Scottsdale Memorial Hospital (1985), where Wagenseller was fired from her job at the hospital for not engaging in

morally wrong activities; mooning an audience and bathing in public being two of them (Hames, 1991, p. 123). If the employee is discharged or fired from their job for not performing morally wrong activities, the employee will be able to win a wrongful termination suit against the employer. In her case against Scottsdale Memorial Hospital, “ the court concluded that firing someone for refusing to expose her buttocks violates public policy in Arizona” (Hames, 1991, p. 23). Adoctorat Miramichi Regional Hospital won his wrongful termination suit against the hospital because the board did not explain their reasons for dismissing him (Barry, 2005). Dr. Shaikh’s attorney argued “ that in the interest of fairness, Shaikh should have been given notice of his termination and a meeting to defend himself; instead of six months notice, the hospital was ordered to pay Shaikh six months’ salary” (Barry, 2005). This may not fall under public policy; however, it does fall under morality.

It was morally wrong for the hospital to dismiss the services of the doctor with no reason being given. It was also morally wrong for the hospital to dismiss the doctor without giving him the right to defend himself. Implied Contract Exception “ The implied contract exception to the at-will rule asserts that employers’ statements or actions regarding job security or termination procedures may constitute legally enforceable obligations if they are communicated to applicants/employees and if they are sufficiently specific to permit the courts to discern their intentions” (Hames, 1991, p. 25). An example given by Hames is that of Leikvold v. Valley View Community Hospital (1984). Leikvold was the director ofnursingand asked to be reassigned to an available operating room supervisor position. Her job

performance was exceptional if not satisfactory; however the CEO of the hospital fired her on the grounds that it was inappropriate to seek demotions (Hames, 1991, p. 125). Patient safety issues are implied at every hospital that I have worked for, and it would seem that this is implied at all hospitals.

A nurse filed a wrongful termination suit against the Youville HealthCare Center alleging that he was released because of pointing out " serious patient safety issues. " (Pham, 1997). Barry Adams, the RN, stated that he had noted many medication errors, patients left in unclean situations, and patient that had fall precautions that were being left alone, many of these falling. " Adams said in his lawsuit that Youville administrators fired him in October after he wrote several memos to hospital officials documenting unsafe patient conditions and requesting help" (Pham, 1997).

It was Adams' implied contract of patient safety that won his wrongful termination lawsuit against the Youville HealthCare Center. One of the cases against Haywood Regional Medical Center, mentioned in the outset, was when a nurse was fired for refusing to administer a medication, which the doctor ordered, to a patient. The nurse stated that the medication consisted of an ingredient that the patient was allergic to, and this was noted in the patient's chart. The nurse was dismissed due to insubordination; however, she won the wrongful termination lawsuit against the hospital because she was doing the ob that she was hired to do; taking care of her patient. Taking safe care of patients is an implied contract by this hospital. All employees are to safely care for their patients even if it means going against a higher authority's order. Good Faith and Fair Dealing Exception " The good faith and fair dealing exception to the at-will rule generally provides that employers

may not terminate their employees in bad faith or for bad cause if doing so deprives them of the benefits of their agreement" (Hames, 1991, p. 128).

For example, Hames explains, " A Bozeman Deaconess Hospital employee was fired during her probationary period for insubordination, disrupting patient care, disorderly conduct, unsatisfactory performance, violating safety and health rules, and breaching confidentiality, each of which were disputed" (Hames, 1991, p. 128). The employee sued the hospital on the grounds that her release breached the implied covenant of good faith and fair dealing. The administrator had told her that he would investigate the situations that had caused her termination, but he had only interviewed two individuals that had apparently seen the incidents.

This employee " was allowed to join various benefit plans for which only permanent employees were eligible, her employment was not evaluated at the end of 500 hours as required by hospital policy, and there was no reference to her probationary status included in any of the hospital's correspondence regarding her discharge" (Hames, 1991, p. 129). She had good faith that she would be an employee at the hospital for the length of her contract. She was not dealt with in a fair manner when it came to investigating the situations that resulted in her discharge from the hospital.

Hospitals must be cautious of releasing their employees without rhyme or reason. Investigations should be thoroughly done in order to avoid wrongful termination suits. Investigative Procedures In order to prevent a wrongful termination suit, an employer must investigate the situation thoroughly. Another case from Haywood Regional Hospital that ended in a wrongful termination suit was when the Director of Nursing had a nurse fired due to

inadequate care given to a patient that had undergone respiratory distress during the night and later that morning was being transferred to another facility to deal with her problems.

The Director of Nursing based her decision to fire the nurse based on what the CNA and another nurse had said. The CNA was caring for the said patient and the nurse that was fired was over the CNA. The CNA stated that she had mentioned to the nurse that her patient was having trouble breathing, but the nurse stated that the patient always does that to get attention. Another nurse corroborated the CNA's statement. Upon further investigation, it was found that the CNA and the other nurse had lied to the nurse that was fired and had lied about the situation to the Director of Nursing.

The nurse that was fired won her wrongful termination suit. Janet Michael, of Nursing Management Personnel at Mountain View Healthcare states that " when doing an investigation, one must not rely on just one or two individual's statements; a complete investigation when firing an individual would entail aninterviewwith all that were present on the day of the said accusation" (2004, p. 20). This is a very important step when wanting to avoid a wrongful termination suit.

Michael also states that " before deciding to terminate a nurse, you must perform a complete investigation of the situation; talk to all potential witnesses and appropriately gather the necessary evidence to support your termination decision" (2004, p. 20). The Director of Nursing at Haywood Regional failed to do this and terminated the employment of a great worker and cost the hospitalmoneyon the suit that followed. Janet Michael also states that risk management, the facility's attorney, human resources, and

any person with the expertise dealing with the situation should be consulted (2004, p. 0). Policies and procedures should be reviewed as well as the state and federal laws that might affect the circumstances. Costs of Wrongful Termination “ Second only to shareholder suits, wrongful termination lawsuits account for 13% of all lawsuits; further, there are strong indications that the penchant for disgruntled former employees litigating the discharge decision is on the rise, including a recent study revealing that such employees in 1997 filed more than 24, 000 wrongful termination lawsuits in federal court, up 77% from 1993” (Gardner, Gomes, & Morgan, 2000, p. 8) It is going to cost an employer a great deal of funds if said employer loses a wrongful termination suit. “ Successful plaintiffs are securing ever-increasing awards from judges and juries . . . the median jury award for a wrongful discharged employee rose from $120, 736 in 1992 to $205, 794 in 1996; a 70% increase in only four years” (Gardner et al. , 2000, p. 39). Imagine what the increase would be now in 2012. Remedies to avoid wrongful termination suits can be as simple as having a written and up-to-date policies and procedure manual on hand.

If this is available, directors, managers, and supervisors will have the tools necessary to avoid a wrongful termination liability. Gardner mentions that aggressive performance management is a must; in doing so, companies provide a vehicle to: (1) inform employees of management’s expectations, (2) identify problem areas, and (3) provide opportunities for improvement (2000, p. 40). Avoiding Liability for Wrongful Termination In my experience, employers have seemed to always have the upper hand when it came to the termination of an employee.

I have seen people fired for good reasons, bad reasons, and for no reason, and nothing ever came of the situation. Now days, an employer must “ be on their toes” in order to avoid the liability for wrongful termination. As was stated earlier, the Employment-at-Will doctrine has been eroding over a period of time. “ Over time, however, court and legislators began recognizing the inequality of bargaining power between employer and employee and that the inability of employees to protect themselves from unjust actions by their employers had not just economic ramifications, but also emotional and social ramifications” (Ballam, 2000, p. 57). Tomlinson and Bockanic state that an employer’s “ first line of defense is to communicate at-will employment status periodically throughout the employee’s tenure, noting such critical disclaimers in the employment application, the offer letter, and the employee handbook” (2009, p. 82). The employer must be sure to communicate, at least yearly, the at-will status of the employee. Employers must not send the message to their employees that as long as they do good work, they will be employees with the company forever.

Situations may arise in which the employer must cut back on a number of employees in order to make the budget or to break even. There is always a possibility of one losing their job, whether it is for a good reason, a bad reason, or for no reason. If these items are communicated with the employee on a regular basis, the employer may be able to avoid the liability of a wrongful termination suit against them. Disciplinary policies should also be included in thecommunicationto employees.

One of the lawsuits filed against Haywood Regional Medical Center dealt with the employee stating that he had no idea of the disciplinary policies of the

hospital, however after further investigation, it was noted that he had in fact received these policies on the date of hire, as well as each year of the two years that he was employed with the hospital. Fortunately for the hospital, this wrongful termination suit was not won by the plaintiff.

Tomlinson and Bockanic also note that " performance appraisals should be conducted on a regular basis, with careful and accurate evaluations based on the essential requirements of the position as specified in the job description" (Tomlinson & Bockanic, 2009, p. 83). If an employer keeps up with the performance evaluations of their employees then if the time comes to terminate the employee, the employer will have the employee's evaluations there for back-up as well as something to fall back on, especially if the employee's performance had been declining throughout the years.

A proper performance evaluation will let the employer know which employees are improving and which ones are declining in the duties that they are supposed to perform. Wrongful termination suits can be seen to plague employers from all over the globe. Many employers terminate their employees for good reasons, for bad reasons, and for no reason at all. Employers also may tend to fire their employees under immoral pretenses. However, what is right for one individual may not be right for another. When filing a wrongful termination suit, it is up to the plaintiff.

If the plaintiff can prove his or her case against the employer for wrongful discharge or termination, the employee can recover damages from the employer. The burden of proof lies with the plaintiff to prove wrongful termination and remedies can be costly for the employer. The employer can avoid the liability of a wrongful termination suit by keeping up with the

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