Wrongful Termination of Public Human Services Employees

The United States Supreme Court has held that “[a] State may not condition public employment on an employee’s exercise of his or her First Amendment rights.”1 Moreover, “[t]he First Amendment prevents the government, except in the most compelling circumstances, from wielding its power to interfere with its employees’ freedom to believe and associate, or to not believe and not associate.”2

While public employees generally have increased job protections compared to many employees in the private sector, they can be fired. A public human services employee who is fired illegally is said to be wrongfully discharged or unlawfully terminated and may have a good cause of action to file a lawsuit. Fortunately, there are laws to protect employees from a wide variety of adverse workplace actions. If it is determined that the employee was improperly terminated, monetary damages for lost wages and emotional distress may be recovered. If the agency’s behavior was sufficiently egregious, the employee may also be entitled to punitive damages.

Determining if the employee was improperly terminated depends on the situation and the precise circumstances. Numerous high profile examples across the country have made the headlines: in Arizona, “Fired child safety workers want wrongful firing suit revived”;3 in Oregon, “Child welfare draws lawsuit”4; in Montana, “County pays $65,000 to settle wrongful discharge suit.”5

Not every “unfair” discharge may result in a lawsuit for wrongful termination. Although an unfair termination may lead to an unemployment claim, only certain types of unfair terminations yield a civil legal claim. A wrongful termination lawsuit may arise from issues related to job performance, racial or national origin discrimination, sexual harassment, retaliation, reprimands, whistleblowing, military status or service, demotion or denial of promotion, Family and Medical Leave Act matters, wage, hour, and overtime disputes, and other personnel concerns. Such cases can be heard in federal and state courts, and in administrative agencies at all levels.

According to New Jersey attorney Michael Lesher, “Actions challenging wrongful terminations face a complicated network of legal obstacles. Potential defendants need to be aware...”

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that these actions can be pleaded under several different theories. For instance, individual employees, including supervisors, are not subject to liability under Title VII of the Civil Rights Act of 1964 (See Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1078 (3d Cir., 1996)). However, those same individuals may be sued under state-law parallels to Title VII, such as New Jersey’s Law Against Discrimination (N.J.S.A. § 10:5-3 et seq.). Similarly, even where plaintiffs cannot claim membership in a ‘protected’ class, they may be able to assert a discrimination claim on the basis of ‘retaliation’ for opposing an employment policy or engaging in some other sort of protected ‘whistleblower’ activities. In short, both the employee and the employer in such actions need to be aware of many wrinkles in the applicable laws.

Avoiding a Lawsuit

In today’s litigious world, the best solution to a wrongful termination lawsuit is to avoid it at the outset. With mutual open communication—in writing and verbally—these lawsuits can be averted. Here are a few basic preventive measures that will benefit both agencies and employees:

- Administrators, managers, and supervisors should receive regular, practical training in fair employment policies and practices.
- All employees should acknowledge, in writing, that they have read and understood the agency’s personnel policies.
- Administrators must be keenly aware of leadership employees who may need guidance or coaching in certain management areas.
- Agencies should be proactive rather than reactive regarding personnel matters that may harm the employment environment.

Preparing a Case

A public human services employee might visualize themselves as a heroic whistleblower; the agency may see that same employee as insubordinate. The laws involving public employees can be complex and confusing. Employees facing a wrongful discharge situation are often left in a state of shock and anxiety about the steps they should take to move forward. A key factor in a wrongful termination case is time. When an employee has a potential wrongful termination lawsuit, the employee should immediately consult a trustworthy attorney to become knowledgeable about the various remedies and alternatives. Failing to do so can jeopardize future claims for damages.

Reference Notes


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