

LIMITATIONS ON THE RIGHT TO DISCHARGE EMPLOYEES

Ohio is an “employment-at-will” state. What that means to your business varies. Generally, with notable exceptions, employees in Ohio are employees at will and can be terminated at any time and for any reason. However, some of the most notable exceptions to this rule which abrogate the employer’s right to discharge at will are employment contracts, discrimination laws, and certain public policy exceptions.

If all of your employees are under contract, these exceptions will probably not apply since your ability to terminate contract employees is limited by the terms of the contract. Furthermore, employees cannot be terminated based upon race, gender, age, disability, religion and the like. This article, however, dicusses various limitations imposed on employers which limit the right to terminate employees.

Public Policy Exceptions.

Basically, the public policy exceptions to the “employment-at-will” doctrine provide a discharged employee the right to sue his former employer for the tort of wrongful termination. These exceptions arise out of rights, protections or goals found in the state and federal laws and constitutions.

Ohio courts have allowed lawsuits by discharged employees who were terminated (1) due to court-ordered child support deductions from his wages; (2) for reporting a boss for attempting to drive while drunk; (3) for seeking legal advice regarding a work-related disciplinary action; and (4) for seeking unemployment compensation during a temporary lay-off. Furthermore, some courts have permitted discharged employees to “piggy-back” a public policy tort claim with a claim under a statute which provides a specific remedy, such as the Ohio statute that allows a discharged employee to sue for termination because of prohibited discrimination.

Retaliatory Discharge Claims Increasing

There has also been a noticeable rise in the number of retaliatory discharge claims that are being asserted by plaintiffs throughout the area. Ohio courts have determined that this type of claim has three elements: (1) that the plaintiff engaged in “protected activity;” (2) that the plaintiff was the subject of adverse employment actions; and (3) that a causal link existed between the protected activity and the adverse action. If these three elements are shown, the burden shifts to the employer to show that its stated reason for the adverse employment action was not merely a pretext.

Court decisions have made it clear that “protected activity” includes any complaints made to the Ohio Civil Rights Commission. It also encompasses other federal or state agencies whose activities impact upon employee rights, such as the EEOC, OSHA, or the Department of Labor. Generally, contact with any state or federal agency which considers legislation affecting the workplace will be considered to be “protected activity.” To understand how broadly the concept of “protected activity” might be construed, it should be noted that at least one Ohio court has

held that it is protected activity for an employee to consult with an attorney because attorneys are licensed by the state.

A 1994 case is typical of the analysis by a court in evaluating a claim of retaliatory discharge. In *Chandler v. Empire Chemical, Inc.*, 99 Oh. F 3d 396 (1994), an employee filed a charge with the Ohio Civil Rights Commission that the employer had engaged in discrimination by firing her because of her sex. She also alleged that she was fired in retaliation for making an inquiry to the Ohio Civil Rights Commission about what she perceived to be wage discrimination. The Court of Appeals affirmed a finding in favor of the employee and held that her contact with the Ohio Civil Rights Commission was clearly protected activity. Further, it found that the facts supported the lower court's determination that her discharge was linked to her protected activity and rejected the reasons the employer put forth to justify its discharge of the plaintiff.

When an employer learns that an employee has filed a complaint against the business or is considering bringing an action against the business, it is an understandable reaction to discipline the employee or sever the employment relationship. This is particularly true when the employee's charge lacks a good faith basis in fact or when the employee has failed to first raise the perceived difficulty with the employer and has simply proceeded to file a complaint. In light of the potential for a retaliatory discharge claim, however, it is important to not take any retaliatory action against the employee because the business will then be in the unenviable position of both addressing the administrative complaint as well as defending the retaliatory discharge lawsuit.

It should also be noted that some savvy employees who sense that their job position is precarious may look for an opportunity to file an administrative complaint against their employer. This action will create a potential retaliatory discharge claim if the employee is later disciplined or discharged. It is obviously critical, therefore, for employers to carefully document all legitimate reasons which exist for disciplinary action or discharge so that a court may be persuaded that there is no "causal link" between the protected activity and the adverse action. It must be clear that the reasons given by the employee for the adverse employment action are not merely a pretext to mask retaliation against the employee.

There is much gray-area in this area of the law. Any employment termination that appears to violate a right, protection or goal found in any state or federal law or constitution could be the basis for these types of lawsuits.