



Retaliation / Free Speech / Whistle Blowing / Wrongful Termination

Many laws protecting employees allow them to bring retaliation claims if their employers interfere with the exercise of their legal rights.

Retaliation generally takes the form of discipline, demotion, harassment or termination of employment. An employer may not retaliate against an employee who engages in conduct protected by law. Protected conduct includes opposing workplace discrimination against yourself or another employee, assisting an investigation of discrimination and refusing to engage in conduct you believe to be unlawful. Employees also have the right to attempt to form a union and are protected against employer retaliation on that basis. Some public employees may have additional protections, such as the right to be fired only for a good reason and the right to engage in free speech and political activities.

Whistleblower Claims: In New Jersey, an employer may not discipline or discharge an employee who exposes activities that the employee reasonably believes to be illegal. This rule applies whether the employee reports the activity to a government body or simply reports it to higher management within the company. An employee may not be protected, however, if the report is made in an inappropriate forum like a newspaper or the Internet. The types of illegal activities that an employee might be protected in reporting include violations of criminal law, tax evasion, governmental waste, kickbacks or corruption and violations of federal food and drug laws. If you believe that you should report unlawful activity, you should consult with an employment attorney to be sure that you will be protected from retaliation by your employer.

Pennsylvania offers similar “whistleblower” protection against retaliation for reporting waste and fraud. Pennsylvania does not have a whistleblower statute that protects private-sector employees, although the courts have recognized certain types of wrongful terminations that are against public policy. Some examples of wrongful discharges recognized by law in Pennsylvania include terminations based on an employee’s exercise of his/her rights to workers’ compensation, the refusal of an employee to commit a crime (such as a bartender refusing to serve an obviously intoxicated patron) and refusal to take a polygraph examination.

Sarbanes-Oxley Whistleblower Claims: Federal law prevents publicly owned companies (companies that trade on stock exchanges), as well as their subcontractors and agents, from retaliating against employees who report fraudulent activities, such as falsifying financial statements. The employee must have a reasonable belief that the activities are in fact fraudulent and must report them to the government, the employer or



someone conducting an investigation on the employer's behalf. Employees may also be protected if they assist an investigation or if they oppose fraud in the workplace.

If you work for a publicly owned company and you believe you should report an illegal activity, you should check employer policies and consult with an employment attorney to be sure that you report the activity in a manner that will protect you against retaliation. Such matters fall within The Sarbanes – Oxley Act of 2002.

Wrongful Termination: Claims for wrongful terminations that are against public policy are sometimes available to employees who have been unjustly terminated. However, these types of lawsuits are not generally available simply because an employer has acted in an unfair or arbitrary manner. Typically, wrongful termination cases arise when an employer violates a specific and clearly articulated public policy in terminating an employee. For instance, it is a violation of public policy to fire an employee solely because she has exercised her right to workers' compensation or refused to take a polygraph on demand by a private employer.

If you believe that you or someone you know has been wrongfully terminated, you should consult with a Willig, Williams & Davidson labor and employment law attorney to determine what legal options may be available.