

Employment Practices

UPDATE

Published by the
Glatfelter Insurance Group
York, Pennsylvania

SIDE 2

At-Will Employment Doctrine

UNLAWFUL DISCHARGE:

The Terminated Says, “I’ll Be Back!”

In the blockbuster series of “Terminator” movies, Arnold Schwarzenegger uttered the famous phrase, “I’ll be back!” Many emergency services organizations’ former employees/members are also saying, “I’ll be back, and I’ll see you in court.”

Just because an employee or member quits or is terminated by your organization, it doesn’t mean that person will not be heard from again. To the contrary, former members and their attorneys are driving costly and drawn out wrongful termination claims.

Wrongful termination or unlawful dismissal allegations present a tremendous exposure to emergency services organizations (ESOs). When a member quits or is terminated, your ESO’s exposure to an employment practices or management liability claim dramatically increases. This article examines some the common types of wrongful termination or dismissal allegations. In addition, risk management tips are provided for your ESO to properly address delicate personnel matters and avoid claims.

Emotions Fuel Wrongful Termination Claims

When involuntarily dismissed, employees or volunteers typically are angry and sometimes vengeful. Members have difficulty accepting their performance was sub par



and/or conduct warranted dismissal. Many wrongful termination claims are rooted in the former member’s belief that there must be some unlawful reason for the separation, as opposed to the reason offered by the ESO.

Facts generally will overcome emotional arguments. ESOs must take care to diligently document the legitimate business interests behind terminations. Written performance evaluations, counseling sessions, reprimands, suspensions, and performance improvement plans can all point to the lawful reasons for the dismissal. **Also, there is no substitute for an ESO seeking legal advice when making discipline and/or termination decisions. Consult with attorneys who primarily handle labor and employment matters. Consult with lawyers prior to taking any disciplinary or termination action.**

Wrongful Termination If a Member Quits?

“Constructive discharge” is a legal concept meaning that a member actually quit his or her position, but the resignation will actually be treated as a termination because the member was forced to quit. For example, an employee may argue she was forced to endure a hostile work environment based on sex or gender, and had no other option but to quit. Thus, because of the mistreatment, the member’s resignation was not really a voluntary choice.

Continued

We welcome comments, suggestions and questions from our readers.

Write to:
Editor
Employment Practices Update
183 Leader Heights Rd.
York, PA 17402

epupdate.opinion@vfis.com



Unlawful Discharge *(Continued)*

In facing a constructive discharge allegation, it is important for ESOs to demonstrate strict policies for workplace risk and wrongdoing were in place and followed. Also, the ESO should be able to prove that the complaining ex-member had every opportunity to report the alleged workplace wrongs during his or her employment or membership. Written policies should spell out various avenues of internal complaint and prompt investigation procedures. An ESO should reserve the right to bring in a neutral third party investigator to respond to allegations of workplace wrongdoing, in the event the complaining member suggests an investigation facilitated by ESO members would be unfair and biased.

Some ESOs may be particularly vulnerable to constructive discharge claims, because of allegations of hazing or traditional “rites of passage” that members must withstand before being accepted or completing probation. ESOs must keep watch for any tactics used to “force out” employees or volunteers.

Contractual Obligations

ESOs wrongful termination claims often involve complicated contractual issues. For instance, former employees will generally question whether discipline, grievance and/or appeal processes were followed as enumerated by a collective bargaining agreement or union contract. Similarly, terms of individual employment contracts should be strictly followed to avoid unlawful termination claims. Lastly, ESOs should ensure their employee handbooks or policy manuals do not create explicit or implicit contractual obligations.

Public Policy Cases

In some wrongful termination cases, the employee or member claims the ESO fired him or her for reasons that violate fundamental public policy. A wrongful termination may exist if the ESO’s alleged true motivation for firing someone (or forcing them to quit) is some form of *discrimination or retaliation*. For instance, an ex-employee may claim that she was dismissed not due to poor performance, but because she rejected a supervisor’s sexual advances. Another example would involve a member who argues he was ousted for complaining to the ESO about a problem with safety issues.

Wrongful termination allegations involving violations of public policy require the ESO to demonstrate it took every reasonable measure to prevent workplace wrongdoing and promptly respond to any known incidents. Examples of sound risk management measures include anti-harassment and retaliation education on a periodic basis for all members, and training for those responsible for conducting internal investigations of allegations of wrongdoing.

At-Will Employment

The employment at-will doctrine holds that an employer may terminate an employee / member at any time and for any reason, except for

an unlawful reason. If the employment at-will doctrine applies to your ESO, it does not mean that you will never have to account for the lawful reasons behind the termination decision. In fact, a member who is unclear as to why he or she was terminated may speculate as to the “real reasons” for the dismissal, such as discrimination or retaliation. It is smart risk management to assume every termination decision could one day be questioned by a judge or jury. Don’t fall into the trap of believing that the at-will doctrine will not require your ESO to produce written proof of the actual reasons for termination.



It is smart risk management to assume every termination decision could one day be questioned by a judge or jury.

Don't Be Caught Off Guard

We live in a hyper-litigious society. Running a search on the Internet using the phrase “wrongful termination” revealed over 63,000 resources. The very first Internet site points readers to an “employment trial attorney with 35 years of experience and over \$100 million collected for clients”. ESOs are not immune to wrongful termination claims and can take immediate steps to reduce their exposure to liability. Don’t be surprised when an ESO member says, “I’ll be back.” Instead, be prepared.

Employment Practices UPDATE

Photocopying or transferring this document is a violation of federal copyright law and is prohibited without the express written consent of VFIS. VFIS does not offer legal advice. Readers should seek the advice of an employment attorney regarding any legal questions.