Retaliatory Discharge: Nurse Practitioner Not Protected As Whistleblower, Court Says.

A nurse practitioner signed on as the employee of a staffing agency. The staffing agency placed her in a long-term full-time position in the emergency room at a local hospital.

Eventually hospital management, weary of conflicting with the nurse practitioner, exercised its rights under its contract with the staffing agency by asking that she no longer be scheduled at the hospital. The agency complied and promptly terminated the nurse practitioner

The nurse practitioner turned around and sued the hospital and the staffing agency for retaliatory discharge.

Disagreement With Institutional Policies No Protection As Whistleblower

The crux of the matter was that the hospital reportedly instituted a written policy that nurse practitioners in the emergency department where not to contact the patients' own physicians but were to refer such contacts to the emergency room physician so that the emergency room physician could make such contacts.

The nurse practitioner objected on the grounds that the hospital's new policy created potential danger to her patients stemming from the time delay needed for the emergency room physician to get around to taking care of it.

The nurse practitioner asserted in her lawsuit that she was fired because she refused to remain silent about an illegal and ill-advised policy at the facility where she was placed and called the matter to the attention of facility management.

However, to claim protection as a whistleblower and to sue for wrongful discharge there must be evidence to back up such an assertion.

The nurse practitioner offered the court no proof the facility's policy was illegal or that it violated an established public policy.

A dispute between an employee and the employer over workplace policies and procedures is not enough to sue for retaliatory discharge.

COURT OF APPEALS OF TENNESSEE
January 14, 2009

The problem, from the standpoint of assessing the situation as the basis for an employment-law case, was that the nurse practitioner could point to no state or Federal statute or regulation, accreditation standard, etc., that forbade the hospital's policy, as the court pointed out.

As a general rule, an employee qualifies as a whistleblower and, if retaliated against, can sue for wrongful discharge, only if the crux of the matter is clear-cut illegality committed by the employer.

Mere differences of opinion on matters of policy and procedure between an employee and employer, the courts have repeatedly said, do not qualify the employee as a whistleblower, no matter how badly the difference of opinion turns out.

Employees may have rights under employment contracts or collective bargaining agreements, but the whistleblower laws themselves do not give any particular right to champion mere differences of opinion.

Further, an employee anticipating he or she might some day need legal protection as a whistleblower should expect to have to provide documentation proving that illegal activity was reported to specific persons up the institutional chain of command and to governmental regulatory authorities, with express references to the policies, procedures or conduct in question and citations to the laws, regulations, published standards, etc., allegedly being violated. **Gager v. River Park Hosp., 2009 WL 112544 (Tenn. App., January 14, 2009).**

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