

Wrongful Discharge: Employee Refused To Commit An Illegal Act, Can Sue For Retaliation.

Investigators from the state department of health requested complete copies of the personnel files for six of the nurses who worked at the assisted-living facility.

The payroll clerk looked through the requested files and discovered that two of the nurses had been written up for suspicion of stealing patients' medications.

When she told the administrator what was in the personnel files the administrator told her simply to remove the write-ups in question before handing over the files.

The clerk refused. The administrator then allegedly took the files from her, removed the sensitive documents and turned the files over to the investigators herself.

The clerk reported it to other management-level employees, but that only seemed to raise the overall level of hostility toward her, until she was finally terminated.

Retaliation/Wrongful Discharge Lawsuit Upheld

The US District Court for the Southern District of Indiana validated the clerk's right to sue her former employer for retaliation and wrongful discharge.

The court looked at emerging case law from other US jurisdictions saying that employers, in healthcare and other fields, do not have the right to force their employees to choose between breaking the law or losing their jobs. Rodriguez v. Westside Ltd. Partnership, 2008 WL 5247340 (S.D. Ind., December 15, 2008).

Employment is a relationship presumed by the law to be at-will when there is no express employment contract or collective bargaining agreement.

At-will employment can be terminated by the employer at any time for any reason, as long as the employer's motivation does not violate a public policy.

It is a public policy that an employer has no right to force an employee to commit an illegal act to keep from being fired and no right to terminate anyone for refusing to commit an illegal act.

The clerk could have been prosecuted for obstruction of justice if she had gone ahead and removed documents from the files during a state investigation.

UNITED STATES DISTRICT COURT
INDIANA
December 15, 2008
