



Wrongful Termination

by John D. Whitaker

My demented brother Terry claims that he enjoys firing employees. Having served stints on both sides of the fence, I must admit that I found the process nothing short of ghastly, even if I (or they) really deserved it. I suspect that most people who have been fired feel that the termination was wrongful no matter how deserved, but the legal question is not whether the termination was wrongful, but rather, whether it was actionable. There is a big difference.

Most wrongful termination cases are generally based upon either statute or contract.

Statutory violations are a common theory. Congress says that in most cases you can't discriminate against someone based upon race, age, sex, creed, national origin, or disability. They call these protected classifications and they cannot be a basis for a termination. These terminations are prohibited by both Federal and Wyoming Equal Employment Opportunity Laws. Employers generally defend these cases by showing that a protected classification had nothing to do with the termination. They may point to poor job performance or some other reason that would not be in violation of the law. Sometimes, however, the employers dream up excuses to cover up the real reason for the termination. This is sometimes called developing a pretext. An example of this would be where the employer fires the employee because he wants his work force to appear young and aggressive. Then he tries to say that the reason he fired the older worker is because of some trumped up performance issue. This is not a good idea because if a jury concludes that the employer is being dishonest they have a tendency to punish employer misbehavior severely.

Terminations which are in violation of express or implied contract between the employer and the employee may also be actionable. Express employment contracts are used in a variety of contexts like professional athletes. There, if one party breaches the express agreement the termination is



actionable. Implied employment contracts are a little more complicated. Where the employer provides an employment handbook or adopts policies and procedures which essentially make promises to the employee, the employer must honor these promises. If he doesn't, he may have breached an implied contract with the employee. An example of this would be where the employee handbook has a progressive discipline system, which identifies a series of warnings that will be given before someone is terminated for a specific infraction. If the employer then fires the employee without providing the warnings promised in the handbook, the termination may be a breach of the implied contract. If on the

other hand the employer has just cause to fire an employee, he may be able to fire the employee even if there is a valid enforceable contract of employment.

Wyoming is an employment at-will state. This means that absent some statutory or contractual basis, the employer may be free to terminate the employee at any time with or without a reason. These days most employment applications and employee handbooks expressly reserve this right to the employer. If this language was part of the employment agreement, the employer is free to fire anyone he wants, whenever he wants, as long as he does not do so on the basis of one of the protected classifications described above.

If an employee is wrongfully terminated he may be entitled to his back salary in damages as well as future lost wages, and in some cases attorneys fees and fees associated with expert witnesses. Also, if an employee is fired, but winds up quickly getting a better job, he may not have sufficient damages to make a lawsuit worthwhile.

This is a very dangerous process for an employer, and great care must be taken when terminating an employee. Employees should also be careful, because the best defense to a wrongful termination action is an employee that really needed firing.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.