

Employment Law Notes

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RETALIATION

Employer's Ethics Policy Leads to Liability

Division III of the Washington Court of Appeals ruled that employees can rely on a company ethics policy to sue their employer if relations with their manager sour after they complain about problems in the workplace.

Legal Background

This case involves the convergence of two legal threads. First, based on the *Thompson v. St. Regis Paper Co.* case, employers can be liable for breach of contract if their employee manuals promise specific treatment in specific situations, and they breach those promises. Second, employers can be liable if they retaliate against an employee who reports violations of certain statutes such as WISHA, the Industrial Insurance Act or the Law Against Discrimination. The twist here: the plaintiffs based their claim on an ethics policy rather than an employee manual, and they asserted a claim for retaliation for reporting violations of that ethics policy, not a statute.

The Case

Steven Korslund, Virginia Miller and John Acosta were employed by DynCorp at the Hanford Nuclear Reservation. They expressed concerns about possible fraud, abuse of overtime and mismanagement, although they had been only vaguely aware of DynCorp's ethics policy at the time. Eventually their list of allegations grew to 29 items. After investigation, almost all the allegations were determined to be unfounded. Their manager, who was

the subject of some of the allegations, saw the employees as being disloyal and lacking team spirit. He threatened one of them with termination, and took various adverse actions against all of them, such as changing their work hours and assignments. All three employees were treated for job-related stress. Korslund and Miller went on medical leave and never returned; Korslund eventually applied for unemployment benefits and Miller collected long term disability benefits.

The appeals court reinstated their suit for breach of contract, because DynCorp's ethics policy stated that supervisors would be subject to discipline if they retaliated against employees who filed reports. The court ruled that it was for a jury to decide if DynCorp's policy promised specific treatment in a specific situation, if plaintiffs relied on that promise and if DynCorp breached it. The court was not bothered that none of the employees had quit or been fired.

The case is *Korslund v. DynCorp Tri-Cities Services, Inc.*, decided on April 22, 2004 and available on www.dehnlaw.com.

Why it Matters

Ethics policies that have anti-retaliation provisions give special rights to employees who report violations. Employers need to take steps to guard against retaliation claims, such as training managers to avoid retaliation, documenting the legitimate reasons for adverse actions, waiting to take adverse actions, and involving managers who have no motive to retaliate when sensitive decisions need to be made regarding employees who have made reports. ☞

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