

# Employment Law Notes

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## TERMINATION

### COURT RECOGNIZES ANOTHER PUBLIC POLICY EXCEPTION TO AT-WILL EMPLOYMENT

*The Washington Court of Appeals recently ruled that an employee who is fired for cooperating with law enforcement personnel may have a legal claim for wrongful discharge in violation of public policy. The case is Gaspar v. Peshastin Hi-Up Growers, decided February 14, 2006, available at [www.dehnlaw.com](http://www.dehnlaw.com).*

#### Background

One of the exceptions to Washington's general rule of at-will employment is that employers may not terminate an employee in violation of public policy. To establish a claim, an employee must prove (1) the existence of a clearly mandated public policy (the "clarity" element); (2) that discouraging the employee's conduct would jeopardize that public policy; and (3) the employee's public policy-linked conduct was the reason for the dismissal. If these three elements are satisfied, the burden shifts to the employer to prove an overriding justification for the dismissal.

#### The Case

Daniel Gaspar was the general manager of Peshastin Hi-Up Growers, a Washington cooperative. He was contacted by a detective from the Chelan County Sheriff about Jean Dennis, a co-op employee who was suspected of having taken postage stamps from a malfunctioning post office machine without paying the full price. When Mr. Gaspar confronted her, she admitted taking the stamps, and although she later

repaid the post office, she did so with a check she had altered. Gaspar met with the detective and a county prosecutor about the matter six times in the following weeks. Gaspar brought the matter to the co-op's board of directors, which voted to place Ms. Dennis on administrative leave. Two days later, without any warning, the co-op fired Gaspar.

Gaspar filed suit against the co-op for wrongful termination in violation of public policy. He claimed he was fired because of his meetings with police and prosecutors. The trial court dismissed his suit on grounds that he had failed to satisfy the clarity element: he had not established that there is a clearly-mandated public policy for helping law enforcement officers. On appeal, the only issue was whether Gaspar had satisfied the clarity element. The Washington Court of Appeals reversed.

In support of his case Gaspar cited RCW 7.69.010, which recites that witnesses and victims of crimes have a civic and moral duty to cooperate fully with law enforcement. The court accepted Gaspar's argument, and held that the statute clearly reflects a public policy to encourage citizens to help law enforcement officers when they request it.

#### Conclusion

Few employers would fire an employee for cooperating with police or prosecutors. The important lesson of this case is that if an employer plans to terminate an employee who recently cooperated with law enforcement, the employer had better be able to document that the termination has nothing to do with the law enforcement matter. ✍

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