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Doctor alleges wrongful termination, defamation

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A recent lawsuit alleges a doctor was fired after refusing to perform what he viewed as unnecessary surgeries. It contains some important reminders for employers.

Dr. Marcus is terminated and sues

Dr. Larry Marcus sued his former employer, Westwood Ear, Nose & Throat, P.C., and its owner and principal, Dr. Christopher Loughlin. In short, Marcus alleged Loughlin:

- Convinced him to join Westwood with an "illusory promise" he could buy in to become a co-owner of the practice;
- Attempted to get him to "guide" his patients toward what he viewed as "unnecessary surgeries" and "even encouraged [him] to manipulate his patients' records so their insurance companies would approve" unnecessary procedures;
- Terminated him when he allegedly "refused to assist with a patient emergency," which he claimed didn't happen; and

- Falsely told other doctors, including potentially ProHealth Physicians, where Marcus applied after he was terminated from Westwood, that he had “lost privileges” at a hospital where he performed operations.

An employee suing for wrongful termination is, unfortunately, an all-too-familiar story for employers. But certain points of Marcus’ lawsuit are somewhat unique and worthy of a reminder regarding potential risks for employers that must terminate employees.

Employment lawsuits can have broader impact

An important lesson is that, unfortunately for employers, employment cases can have a broader impact by, in the case of Westwood, alleging the employer was engaged in unscrupulous activity.

Employment cases can lead to reviews and investigations by government bodies or other types of claims, such as medical malpractice or fraud charges.

Get it in writing

A key part of Marcus’ lawsuit is the allegation Loughlin encouraged Marcus to join Westwood under false pretenses. Luckily for Loughlin and Westwood, it seems the employer had a written agreement outlining the terms of Marcus’ employment. Although not always foolproof, such documents (and written policies, etc.), if written correctly, can be invaluable in preventing a he-said/she-said situation about what was promised.

For example, to avoid a dispute later on about whether Jane was allowed to work from home one day a week, you should put the key (and lesser) terms of an employment relationship in writing.

Be careful what you say about former (and current) employees

The next important reminder from Marcus’ case is to be careful what you say about former (and current) employees. Employment discrimination and wrongful termination are, unfortunately, already too common for employers. You don’t want to run the risk of additional claims such as defamation based on things you say about former employees. That is particularly true because such claims can complicate cases and expose you to additional damages.

So, the moral of the story is, be careful what you say even after an employee leaves (and about current employees, who can leave voluntarily

or involuntarily at any time).

Qualified privilege for providing certain references

But employers aren't completely defenseless against claims based on things they say about current or former employees. Connecticut law recognizes a "qualified privilege for the employment references of current or former employers that were solicited with the employee's consent." Thus, if an employee asks a potential employer to contact her former employer, and the potential employer does so, the former employer has a "qualified privilege" for the reference it provides to the potential employer.

A "qualified privilege" generally means an employee cannot prevail unless he proves the employer was acting with malice when it made the statements. That means an employee can always make a claim the reference was false and malicious, so you should be very thoughtful about ever giving a negative reference.

Several other "qualified privileges" also may protect employers in some circumstances, such as when managers within a company discuss an employee's performance.

Potential liability doesn't end with termination

Remember, an employer's potential exposure doesn't necessarily end when an employee is terminated. Some risks extend beyond the employment itself. But with good judgment and some caution, as well as the qualified privilege, you can minimize the risk.

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