

Always consult attorney before terminating employee who filed whistleblower complaint

If they can show they were fired in violation of public policy, even at-will employees in California are protected from discharge. Internally reporting illegal activity may amount to whistleblowing and may protect the worker from discharge, even if the employer has seemingly legitimate reasons for otherwise firing the worker.

That's one good reason to consult your attorney before terminating a worker who may be a whistleblower. Although you may be confident about your rationale, it's best to check with a legal expert.

Recent case: Diane worked for a large medical group, supervising several clinics including a neurosurgery clinic. She received generally good reviews, but they noted she did have difficulty getting along with some of her co-workers and subordinates. She was told to work on her communication skills.

The neurosurgery group began using new software for doctors to dictate clinical notes. They reviewed the notes via an internet connection and digitally approved the notes when they were finished. Reports on the notes would then be automatically delivered to referring physicians.

However, doctors soon got behind in reviewing their dictated notes. That meant the reports weren't being returned in a timely fashion.

That's when an administrative employee came up with a work-around. She entered the doctors' usernames and passwords and printed a copy of each dictated report with the aim of providing hard copies for review. However, a software feature apparently resulted in reports then being automatically forwarded to the referring doctor.

When Diane discovered this was happening, she berated the employee and told her this amounted to fraud, since in effect the doctors weren't reviewing their dictated notes before they were sent on.

Soon after, Diane was terminated for poor performance. She sued, arguing that she had been fired for internally reporting alleged forgery and fraud involving the clinical notes. She said that amounted to a violation of California public policy. She argued that if employers can fire workers who attempt to internally report criminal activity, that would discourage other workers from doing so, too.

The medical group argued it had independent, legitimate reasons for firing Diane.

The court said Diane should have her day in court, despite the apparent independent and otherwise valid reasons for her termination. She will have to prove that her report was a substantial motivating reason for her discharge. (*Scott v. CCF Medical Group*, Court of Appeal of California, 2018)

Final note: Take all internal reports of wrongdoing seriously and investigate.

Remember that a number of laws protect whistleblowers beyond a public policy claim. For example, allegations that a medical practice is defrauding insurers or federal programs like Medicaid or Medicare may be protected under federal laws.

Some of those laws provide for additional payments—sometimes referred to as whistleblowing “bounties”—to the reporting employee. Bounties can amount to millions of dollars that have been recouped from the employer.

Any time you investigate internal allegations of fraud or criminal activity, contact your attorney. He or she can guide your investigation and also review any discipline you may consider imposing on a whistleblower for other, unrelated reasons.