

CLAIM NORTH CAROLINA RETALIATORY EMPLOYMENT DISCRIMINATION ACT

95-241. Discrimination prohibited.

(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:

(b) It shall not be a violation of this Article for a person to discharge or take any other unfavorable action with respect to an employee who has engaged in protected activity as set forth under this Article if the person proves by the greater weight of the evidence that it would have taken the same unfavorable action in the absence of the protected activity of the employee.

Statutory Element	Relevant Facts	Elements satisfied? Additional facts needed? Additional research needed?
that the employee exercised his rights as listed under N.C. Gen.Stat. § 95-241(a)	<ul style="list-style-type: none"> Taylor made a complaint about the supervisor's, Brett's, securities violation. The filing of the "formal complaint" that was given in the book. 	Based off <i>Pierce Taylor's</i> oral complaint to Brett is not enough to satisfy the Statute. The formal complaint is not about Brett's Securities violation, but was about the so-called retaliation. Thus, this element is not satisfied.
that the employee suffered an adverse employment action <i>An adverse action includes "the discharge, suspension, demotion, retaliatory relocation of an employee, or other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment." N.C. Gen.Stat. § 95-240(2) (2011).</i>	<ul style="list-style-type: none"> Taylor's was taken of the Smart-Tek IPO that in which Taylor had done all the work for. Taylor was relocated to the basement 	Satisfied. This element seems to be the only one that is clearly met. Taylor was relocated to a basement office and was taken off the Smart-Tek IPO which is clearly an adverse action.

<p>The alleged retaliatory action was taken because the employee exercised his rights under N.C. Gen.Stat. § 95-241(a).</p>	<ul style="list-style-type: none">• The Smart-Tek IOP and Taylor's original office had been in Taylor's possession prior to the oral complaint made to Brett.• The principal wanted Brett to lead the project.• The office move was in relation to the Austrian team coming to visit	<p>Need to know more.</p> <p>This element could go either way. On its face it looks as though Taylor could have been retaliated against, but it may just be bad timing. There seems to be valid reasons as to why Taylor's was taken of the project. In the business world you must do what your investors want and if they want another person to lead the project then you get another person. Also, the moving of the office space only seems to be for a short time in order to accommodate the Austrian team. However, I would need more facts and to do more research to determine the validity of these facts.</p>
<p>***It seems as though the employer could possibly make a legitimate argument that they would have taken the above actions to in place a new leader to the Smart project and would have required Taylor to be relocated to the basement office regardless of the complaint that was made to Brett. Like I said above there is a valid claim that it was just bad timing and it only looks like something more.</p>		

A TORT CLAIM FOR WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

Rule

Employment at will doctrine, historically employers have been allowed to terminate contracts with employees at any time for any reason or for no reason. However, Court have created exceptions to this doctrine when the discharge violates an established public policy. Some public policy exceptions to the employee-at-will doctrine include:

- The whistle-blower defense that protects employees against discharge for reporting illegal conduct or conduct that violates public policy;
- Another protects employees who refuse to participate in illegal conduct.

- Federal law prohibits employees from retaliating against employees for reporting (internally to supervisors or externally to the SEC) information about securities law violations.

Elements:

(Without more facts I will have to assume that Taylor has no contract that states that there cannot be any “kind” of demotions or office changes and that Taylor is employed at will.)

Discharge: element is not met

In our case, I find it hard for Taylor to make a claim for wrongful discharge since there really was not discharge. Just because Taylor was removed from the smart project does not mean that Taylor was discharged. Taylor was not fired. Taylor is still employed with PCM and still holds the same position with the same pay. Taylor is only temporarily displaced from the upstairs office and is placed in the basement office while the other “team” is in town.

Public policy: element possibly met

Here the public policy argument to be made is related to the federal law that prohibits retaliating against employees for reporting information about securities law violations. Taylor should not be punished for calling Brett out on security violations. It is in the best interest of our society to allow people like Taylor to report these kinds of violations without retaliation by their employer. However, we have an issue with the report never being actually reported. Taylor only reported to Brett who is the accused and the supervisor. We would have a better chance if Taylor had made a report to the SEC or someone other than Brett.

Thus, without more facts and more research I can only say that employer ‘s potential liability for alleged retaliation against the employee could go either way. However, I would say that Taylor has a better chance at making a claim under the North Carolina Retaliatory Employment Discrimination Act than under the tort claim, but without more information about the situation I can’t say who would win.