

Employment Law

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NC Retaliatory Employment Discrimination Act

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 ...

Elements of Claim

- Plaintiff is an employee
- Plaintiff engaged in protected activity specified in the statute:
 - Filing claim or complaint, initiating inquiry, or exercising rights under specified NC statutes
- Defendant is a person as defined under the statute
 - Includes individuals and business entities
- Defendant discriminated or took retaliatory action against plaintiff
 - Includes discharge and other adverse employment actions
- Defendant did so because of plaintiff's protected activity

Application

- Kingsley is an employee of Smart-Tek (given in problem).
- Kingsley has not engaged in any protected activity under the Act
 - Kingsley criticised Bosworth's handling of the IPO, then filed internal written complaint.

- Not clear whether internal company complaints (verbal or written) are sufficient. More likely the employee must file claim or complaint, or initiate inquiry, with relevant government agency.
- But even if internal complaints would suffice, none of the specified NC statutes apply to securities or corporate finance.
- Smart-Tek & Bosworth (the manager) are both “persons” under the Act
- Taking Kingsley off the account and relocating her to the basement office could be retaliatory action under the Act.
 - Statutory definition includes “retaliatory relocation of an employee”.
 - * Not clear if this includes reassignment to a different office within the same facility. That’s a question you’d need to research (but I didn’t expect you to do so).
 - Even if “relocation” is limited to geographic moves, banishing an employee to the basement and taking them off an account would likely fall within “other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment.”
- Kingsley could probably satisfy the “because of” element for purposes of a motion to dismiss.
 - The sequence of events (Kingsley is taken off the account and moved to the basement after criticising Bosworth’s handling of the account), coupled with Bosworth’s statements (“don’t worry your pretty little head”; “grow a pair”) are almost certainly sufficient to support the inference of retaliatory motive.¹
 - Smart-Tek might assert that Kingsley would have been moved to the basement anyway, to accommodate the visiting Austrian team. Under the statute, that’s an affirmative defense, not a basis to dismiss at the pleadings stage.

Bottom line: Kingsley cannot state a claim under the statute, because she did not engage in protected activity under any of the relevant NC statutes.

¹These statements might also support a sex discrimination claim. But that’s beyond the scope of the problem.

Wrongful Discharge in Violation of Public Policy

Elements of Claim

- Defendant terminated plaintiff's employment
- Termination was contrary to establish NC public policy
 - Policy is embodied in NC statute, regulation, or other expression of state law
- Employer acted intentionally or willfully
 - i.e. termination was motivated by an unlawful purpose that contravenes public policy

Application

- Kingsley has not been discharged.
 - Conceivably, an employee might state a public policy retaliation claim based on some lesser adverse employment action. There don't appear to be any NC cases addressing that issue.
- There is no NC public policy at stake here.
 - Federal securities law prohibits retaliation against employees who report securities law violations.
 - * Dodd-Frank only protects employees who provide information to SEC, not internal complaints.
 - * Sarbanes-Oxley also protects (and sometimes requires) internal reports/complaints of suspected violations.
 - But NC courts have recognized claims only where the public policy is embodied in NC law.
 - * See, e.g. *Amos v. Oakdale Knitting Co.*, 331 N.C. 348 (1992) (allowing claim by employee fired for refusing to work for less than statutory minimum wage under both federal and NC law); *Coman v. Thomas Mfg.*, 325 N.C. 172 (1989) (allowing claim by truck driver fired in retaliation for refusing to alter log books in violation of federal and NC regulations).
- If the other elements were satisfied, Kingsley could likely satisfy the “unlawful motive” element for purposes of a motion to dismiss.

- Sequence of events, coupled with Bosworth's statements, is probably enough to support an inference that adverse treatment was motivated by an unlawful purpose (i.e. punishing an employee for reporting suspected illegal activity and deterring others from doing so).

Bottom line: Kingsley can't state a claim for wrongful discharge/retaliation in violation of public policy because there is no applicable policy embodied in NC state law.