

Employment Law

Assignment 4

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Problem: The Smart-Tek IPO

Developing Professional Skills: Workplace Law, chapter 4.

Instructions

This problem asks you to assess the employer's potential liability for alleged retaliation against the employee (Kingsley). Specifically, you should analyze two potential claims by the employee under North Carolina law:

1. A claim under the [North Carolina Retaliatory Employment Discrimination Act](#), N.C.G.S. § 95-240 et seq.; [Pierce v. Atlantic Group, Inc.](#), 724 SE 2d 568 (N.C. App. 2012).
2. A tort claim for wrongful discharge in violation of public policy. [Coman v Thomas Mfg. Co.](#), 325 N.C. 172 (1989); [Garner v. Rentenbach Constructors Inc.](#), 515 S.E.2d 438 (N.C. 1999).

In assessing the employee's potential claims under NC law, you should consider the possible significance of federal securities law. Assume that the manager's conduct (as alleged in the Employee Complaint Form, pp. 27-28) would violate federal securities law.¹ Federal law prohibits employees from retaliating against employees for reporting (either internally to supervisors or externally to the SEC) information about securities law violations.² Disregarding potential liability for whistleblower retaliation under federal law itself,³ consider whether the employee can rely on these provisions of federal securities law to support the statutory and tort claims under NC law.

Your submission should provide the information indicated in the "Statutory Elements Chart" (page 29), i.e. identify the requisite elements, identify the relevant facts (from the Employee Complaint Form) for each element, and assess whether these facts are sufficient to satisfy the element (indicating any additional facts you believe would be needed). Do this for both the statutory retaliation claim and the public policy tort claim under NC law.⁴

The choice of format (a chart as in the problem workbook, an outline, or a memo) is up to you.

¹See Securities Exchange Act of 1934, 15 U.S. Code § 78j (prohibiting "manipulative and deceptive" practices "in connection with the purchase or sale of any security").

²18 U.S.C. § 1514A (Sarbanes-Oxley Act); 15 U.S. Code § 78u-6(h)(1)(A) (Dodd-Frank Act).

³Dodd-Frank permits suits by employees for whistleblower retaliation, but only if the employee has provided information about suspected violations to the SEC. See *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767, 778 (2018). Sarbanes-Oxley requires employees to exhaust administrative remedies before bringing a suit in federal court. See *id.* at 773.

⁴You don't need to discuss the "Points to Consider" (pp. 24-25), but they are worth reviewing for your edification.