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Employment Law

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Assignment 4: Whistleblower

1. North Carolina Retaliatory Employment Discrimination Act
   1. Claim
      1. Retaliation
   2. Statutory Elements
      1. Exercised Rights Under § 95-241(a)
         1. Facts
            1. No facts available suggest that Kingsley exercised any rights listed under § 95-241(a). Kingsley only seems to have acted after being told to move offices, but there does not appear to be any facts showing that he took some kind of action or threatened to act as enumerated in the statute.
         2. Satisfied?
            1. No.
         3. Needed?
            1. For this element to be satisfied, we would need to know whether Kingsley took any actions between the time he spoke with Bosworth and when he was taken off the assignment. The only action Kingsley has filed is the present one and the alleged retaliation occurred prior to this filing, not as a result of the filing.
      2. Suffered An Adverse Employment Action
         1. Facts
            1. The only adverse employment action gleaned from the facts is taking Kingsley off the assignment after his disagreement with Bosworth’s handling, in addition to being told to move offices.
         2. Satisfied?
            1. Possibly.
         3. Needed?
            1. We would need to research to see if this is considered an adverse employment action as held in North Carolina case law. What qualifies as adverse employment action?
      3. Alleged Retaliatory Action Was Taken Because Employee Exercised Right Under § 95-241(a)
         1. Facts
            1. The temporal proximity between Kingsley’s concerns and Bosworth and the Partner taking over the assignment from Kingsley. However, there is not much else suggesting that the action was taken directly because of Kingsley’s concerns. Moreover, none of the actions Kingsley took appear to fall within those covered by the statute.
         2. Satisfied?
            1. No.
         3. Needed?
            1. Need to know what rights were exercised, if any, under the statute as none of the facts suggest one. Temporal proximity may be a factor weighing in Kingsley’s favor, but need to look at case law to see how courts in North Carolina have treated this factor.
2. Public Policy (Tort)
   1. Claim
      1. Wrongful Discharge
   2. Elements
      1. Unlawful Reason or Purpose In Violation of Public Policy
         1. Facts
            1. Kingsley brought up concerns that Bosworth’s handling of the assignment was unethical; Kingsley was asked to mislead potential investors; Kingsley was treated quite condescendingly by Bosworth.
         2. Satisfied?
            1. Possibly.
         3. Needed?
            1. Even if Bosworth, and the Partner, violated federal securities law, according to NC case law, Kingsley may not have an actionable claim for wrongful discharge. See Garner v. Rentenbach Constructors Inc., 515 S.E.2d 438 (1999). Moreover, we would need to see whether courts have acknowledged a public policy exception specifically in regards to the kinds of actions taken by Bosworth and the Partner.