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Employment Law

Chapter 4- Smart-Tek IPO

1. Claim under NC Retaliatory Employment Discrimination Act

The North Carolina Retaliatory Employment Discrimination Act states that no person should discriminate or take retaliatory action against an employee because the employee in good faith filed a claim or complaint or initiated an inquiry.

Here, Taylor had told Brett that she though he was handling the account unethically. A few days after this communication Brett took Taylor off of the account and Taylor was informed that she needed to move to a basement office. Taylor did initiate an inquiry by speaking with Bret but did not file a formal claim until two days after the action. It could be argued that she needed to start some type of investigatory action with higher management, but it seems like she did try to do that by speaking with Bret. It seems like the statutory elements were met.

The next element under this act relating to complaints; investigation and conciliation states that an employee may file a written complaint within 180 days of the alleged violation. Taylor filed the complaint two days after the violation occurred.

Under the North Carolina Retaliatory Employment Discrimination Act it appears that Taylor would have a claim. She had a verbal complaint about the management of the Smart-Tek IPO to Brett, after making this complaint she was taken off of the account, and was also told she would be moved to a basement office. Further Taylor filed a written complaint two days after the event occurred.

In *Pierce v. Atlantic Group* the Plaintiff became aware that operators would need to be trained, and raised this issue to their supervisor. A few days after this conversation the plaintiff was asked to take a 28 day vacation, during this time he got a phone call sking him to assist at another plant. The plaintiff agreed and took action to ensure he would not loose his supervisory position and salary upon return. The plaintiff ended up being told upon his return that he would have a lower level position with lesser pay. The plaintiff was concerned about the certification and contacted the Duke Energy ethics hotline and explained that he had been treated with retaliatory treatment. The plaintiff’s work environment became hostile and they were eventually discharged. The court decided that since when the plaintiff called the ethics hotline it was to report retaliatory treatment and he only spoke with his supervisors about concerns relating to the operators training the plaintiff’s allegations did not constitute the initiation of an inquiry pursuant to the NC Retaliatory Employment Discrimination Act.

In the case at hand, Taylor filed a complaint about the retaliation and spoke with Bret about the handling of the account. While Taylor had not directly communicated with higher management, she did file a written complaint and speak with Brett. The actual filing of a written complaint about the retaliatory treatment is the main distinguishing factor between these two cases. Further, Taylor did research about her claim of Brett’s unethical action.

Through analysis of that statute and *Pierce v. Atlantic Group*, it appears that Taylor would have a claim under the NC Retaliatory Employment Discrimination Act. She filed a written claim and spoke with her manager about the actions. Taylor in good faith filed a claim after retaliatory treatment, but prior to the retaliatory action Taylor spoke with Brett about how she thought his handling of the work was unethical.

2. Tort Claim for Wrongful Discharge in Violation of Public Policy

In *Coman v. Thomas Mfg. Co,* the defendant required truck driver employees to violate rules created by the Department of Transportation. The defendant required its employees to drive for longer than permitted by the Department which created a threat to public safety. These employees were considered to be an employee at will and could be discharged without reason. The court concluded that the defendant’s actions violated both the regulations of the federal Department of Transportation as well as public policy of North Carolina. The court held that violations of federal public policy may form the basis for a wrongful discharge action in state courts.

In *Garner v. Rentenbach Constructors Incorporated*, the issue was whether the termination of plaintiff’s employment based on a positive drug test constitutes wrongful discharge because the drug test was not performed consistently with the state statute. The court concluded that this action did not constitute wrongful discharge. The plaintiff was unable to give any evidence that his discharge was for an unlawful reason or a reason that contravenes public policy. Due to the doctrine of employment at will and employer may terminate an employee for any reason, and in this instance, there was no public policy violated here.

In the current situation Taylor has not yet been discharged. Here, Taylor telling Brett that she thought Brett’s handling of the IPO was unethical. If company were to fire Taylor it does not seem that it would be an issue of public policy which would make it a wrongful discharge action. Since NC is an employment at will state Taylor could be fired whenever without implications. The NC Retaliatory Discrimination Act may make her being fired a public policy violation which could lead to a claim for wrongful discharge. Absent this act it does not appear any public policy would be violated.

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| Statutory Elements | Relevant Facts | Element satisfied? Need more facts? Need more Research? |
| No person shall discriminate or take retaliatory action against an employee | Taylor was moved to the basement and removed from the Smart-Tek IPO account | Would want to know if there were any other factors leading to this decision. Was she being moved to the basement for the purpose of accommodating the Smart-Tek team like Brett said?  Was she removed from the team for other reasons? |
| Because the employee in good faith does or threatens to do any of the following: | Taylor did file a complaint | Not clear if it is in good faith but appears to he |
| File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action | Taylor filed complaint 3 days after the incident  Taylor verbally complained to her manager | Would want to know how extensive her research was, and if she made any other complaints. |