

# VERDICT

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## PUBLIC POLICY IMPLICATIONS IN WRONGFUL DISCHARGE CASES

### ***Exceptions to the Employment At-Will Doctrine based on Public Policy Implications***



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Under the long standing employment at-will doctrine, Pennsylvania employees may be terminated “at any time, for any reason, or for no reason whatsoever.” *Henry v. Pittsburgh & Lake Erie R.R.*, 139 Pa. 289 (1891). An employer may discharge an employee with or without cause, so long as there exists no employment agreement or statutory restriction. In 1974, the Pennsylvania Supreme Court opened the door for employees to challenge job terminations by allowing “wrongful discharge” claims in certain limited situations where the termination of an employee violates a clear mandate of public policy of the Commonwealth of Pennsylvania.

In *McLaughlin v. Gastrointestinal Specialists, Inc.*, the Pennsylvania Supreme Court explained that public policy, for purposes of asserting a wrongful discharge claim, must originate either from Pennsylvania court precedent, Pennsylvania’s Constitution, or statutes promulgated by Pennsylvania’s legislature. 561 Pa. 307, 316 (2000). The *McLaughlin* court further specified that public policy cannot be based upon federal laws or policies. *Id.* at 317.

The following cases highlight several scenarios in which Pennsylvania courts have allowed wrongful discharge claims to proceed based upon alleged violations of Pennsylvania public policy. In *Reuther v. Fowler & Williams, Inc.*, the court recognized a cause of action for damages resulting when an employee is terminated for having performed his obligation of jury service. 386 A.2d 119, 120 (Pa. Super. 1978). The court acknowledged that the employee’s claim was predicated upon public policy articulated in the Pennsylvania Constitution,

namely an individual’s right to a trial by jury. The court reasoned, “In our view, the necessity of having citizens freely available for jury service is just the sort of ‘recognized facet of public policy’ alluded to by our Supreme Court in *Geary v. United States Steel Corp.*; an employer’s ‘intrusion into [this] area by virtue of [his] power of discharge’ should ‘give rise to a cause of action.’” *Reuther*, 386 A.2d at 121.

In *Perry v. Tioga County*, an important distinction is made in how one pleads one’s case. 649 A.2d 186, 189 (Pa. Commw. 1994). In *Perry*, the plaintiff asserted a wrongful termination cause of action against his former employer, arguing that his employment was terminated because he had reported illegal conduct by his employer. The court, in dismissing the plaintiff’s claim, held that the plaintiff had failed to implicate a public policy of the Commonwealth. The court further stated, “In Pennsylvania, the public policy exception to employment at-will recognizes a cause of action for wrongful

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discharge if the employee has been retaliated against for conduct actually required by law or refusing to participate in conduct actually prohibited by law." *Perry*, 649 A.2d at 189. Therefore, had the plaintiff alleged in his complaint that the employer discharged him for refusing to engage in illegal activity, his claim for wrongful discharge would have survived preliminary objections. This is demonstrated in *Brown v. Hammond*, where a paralegal brought a wrongful discharge claim, asserting that her employer discharged her for refusing to perform fraudulent billing as directed by a supervising attorney. 810 F. Supp. 644 (E.D. Pa. 1993). The court allowed the plaintiff's claim to proceed, finding that the Pennsylvania Rules of Professional Conduct, as adopted by the Pennsylvania Supreme Court, could provide the basis for a public policy exception to the employment at-will doctrine. *Brown*, 810 F. Supp. at 646-647. Significantly, the court distinguished between an employee's reporting of illegal workplace conduct, or whistleblowing, which would not give rise to a wrongful discharge cause of action, from an employee's refusal to engage in her employer's unlawful activities, which did in fact satisfy the necessary requirements for a wrongful discharge claim. *Id.* at 647-648. It is important to note that an

employee cannot bring a wrongful termination claim when he is terminated for refusing to engage in conduct he believes is unlawful, but in actuality is not.

In *Shick v. Shirey*, the Pennsylvania Supreme Court held that an at-will employee who alleged retaliatory termination for the filing of a workers' compensation claim had successfully asserted a cause of action for wrongful discharge. 716 A.2d 1231 (Pa. 1998). In so ruling, the court recognized the duty of employers to compensate employees for work-related injuries under the Pennsylvania Workers' Compensation Act. The court reasoned that in order for said public policy to be effectuated, an employee "must be able to exercise his right in an unfettered fashion without being subject to reprisal. If employers are permitted to penalize employees for filing workmen's compensation claims, a most important public policy will be undermined." *Shick*, 716 A.2d at 1237, quoting *Frampton v. Central Indiana Gas Co.*, 260 Ind. 249, 251-252 (1973).

Courts in the Commonwealth have also recognized a violation of public policy in a situation where an individual is denied employment due to a prior criminal conviction when the conviction is unrelated to the individual's fitness to perform the job at issue. *Hunter v. Port Authority of Allegheny County*, 419 A.2d 631

(Pa. Super. 1980). The court cited to Pennsylvania Supreme Court precedent for the public policy of the Commonwealth "to avoid unwarranted stigmatization of and unreasonable restrictions upon former offenders." *Id.* at 634.

The aforementioned case examples show that attorneys asserting claims for wrongful termination on behalf of aggrieved employees must be cognizant of the need to clearly identify the implicated public policy of the Commonwealth of Pennsylvania in order to successfully survive a case dispositive motion. Attorneys should also be mindful that wrongful discharge claims are only viable in situations where there are no available statutory remedies for the terminated employee. ♦

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