Legal Matters®

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Mishandling whistleblowers can result in employer liability

Whistleblower laws make it illegal for employers to retaliate against workers who report wrongdoing they observe in the workplace.

For example, federal law protects workers who report violations related to consumer product and food safety, discrimination, workplace safety, environmental protection, financial issues, wage-and-hour protections, and child labor, among other things. In some cases, the federal government, in addition to punishing employers for firing or disciplining workers who report violations, will provide financial rewards to workers who blow the whistle.

Meanwhile, at the state level, although employers can typically fire at-will employees for any reason, most states do not allow firings for reasons that violates "public policy." For example, an employer may not fire an at-will employee for refusing to break the law or for seeking workers' compensation benefits after getting hurt on the job.

Although the specifics may vary from state to state, most jurisdictions recognize whistleblowing as an exception to at-will employment. It's prudent to consult with an employment lawyer to review your firing, demotion and discipline policies, as well as your procedures for handling employee complaints, to make sure you're not at risk of a whistleblower suit.

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Consider the case of Atrius, a Massachusetts-based healthcare organization that fired a doctor for refusing to comply with its order that she undergo assessment and potential counseling to address alleged interpersonal issues in the workplace.

Atrius asserted that Diana Rodriguez, who practiced maternal fetal medicine, had excellent clinical skills but was a difficult colleague who refused to accept feedback and clashed with sonographers and medical assistants, many of whom refused to work with her. After circulating

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What happens when a spouse dies during divorce proceedings?

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Political scion Robert F. Kennedy Jr. married his wife Mary in 1994 and filed for divorce in 2010. But the divorce dragged on, and two years later, with the divorce still pending and the parties headed for trial on custody issues, Mary died at age 52.

Mary's family wanted to take charge of funeral arrangements, but Kennedy won the rights to her remains because they were still married.

That's only the beginning of the types of issues that can arise when one spouse dies during a pending divorce. With so many Americans having died from COVID-19 over the past two years, it's more important than ever to talk to a family law attorney about how one spouse's death during a divorce could affect the proceedings.

In the meantime, here are some things to consider.

First, death dissolves the marriage, which ends the divorce proceeding. At that point, a court can no longer rule on issues not already decided, such as property rights, custody and support, but it can still enforce decisions it made before the spouse died.

Additionally, property owned in "joint tenancy" by both spouses carries a right to survivorship, meaning that the surviving spouse now owns the entire property. That means anyone else the non-surviving spouse might have wanted their interest to go to will have no right to it unless the couple severed their joint tenancy when they decided to get divorced. In that case, the non-surviving spouse's interest would likely pass to his or her heirs.

Another source of contention could arise regarding property in a will. If the spouses left their property to one another in their respective wills, and the non-surviving spouse did not make a new will before she died, her property would go to her surviving spouse regardless of what she would have wanted, even if they were in the process of splitting up. If she died "intestate" or without a will altogether, state inheritance laws would determine who gets her property. In most cases, the surviving spouse would inherit anywhere from half to all of her estate.

If the deceased spouse had debts, unless she contacted her creditors before she died to let them know a divorce was pending and that she and her spouse were separated, the spouse would most likely be responsible for any debt she accrued after separation.

It's important to talk to a family lawyer as soon as you think you may be getting divorced. He or she can help you take steps to carry out your wishes in the event of the unforeseen.

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an online "collegiality survey" about Rodriguez to other employees — an action that was not standard company procedure — Atrius ordered her to seek counseling through the state medical association.

Before the survey had been distributed, however, Rodriguez had come forward with concerns about a supervisor's clinical competence and Atrius's billing practices.

When Atrius fired her for noncompliance with its counseling directive, she brought a retaliation complaint under the state's healthcare whistleblower law alleging she was actually fired for raising safety and fraud concerns.

A Superior Court judge allowed the case to proceed, stating that the timing of the survey and the disciplinary action raised a legitimate question as to the true motivation behind her firing.

A Missouri car dealership learned a similar lesson when it fired an auto mechanic who had reported a co-worker for theft.

The worker told the employer he had witnessed employees steal a rear camera from a vehicle owned by the shop. He also claimed his supervisor told him to ignore it. He next told the owners and was fired by the supervisor a week later for "deficient work" on a vehicle.

A county judge dismissed the worker's retaliation suit under the state's new whistleblower law, reasoning that the law didn't allow suits based on the actions of an "individual employed by an employer" like the supervisor.

But the Missouri Court of Appeals reversed the decision, stating that while the law doesn't allow the individual to be held personally accountable, the employer can still be responsible for that person's actions.

Protections for private landowners: recreational immunity

As we head into the warm weather months, many people across the country will be putting on their hiking shoes, dusting off canoe paddles, and fueling their ATVs. Some of those outdoor explorers will be planning to travel across private land.

If you're a landowner and someone has asked permission to hike, forage, camp, or even establish a motorized trail through your land, it's important to understand the risk and whether you could be held liable for personal injury, death, or property damage from the use of your property.

Fortunately, all 50 states have enacted statutes that confer some degree of protection to landowners who allow the public to use their land for recreational purposes. These are commonly referred to as "recreational use" or "recreational immunity" statutes.

These laws are particularly important to farmers, forest owners, and other rural landowners and are generally meant to encourage people to permit public use of their property. Most state statutes provide a significant, albeit not total, level of immunity.

While laws vary by state, landowners often do not have a duty to inspect their property or maintain it for safe recreational use. Deliberate actions, however, remove the immunity.

Wisconsin, for example, makes a distinction for landowners who "maliciously" fail to warn users of an unsafe condition. Likewise, in Maine plaintiffs must show "a willful or malicious failure to guard or warn against a dangerous condition."

Again, state laws on the issue vary, and recreational immunity may not extend to the landowner's own social guests or in cases where the landowner has expressly granted someone permission to use their land. Also, recreational immunity is typically removed when the landowner allows people to use their property in exchange for money or other compensation. However, some states have carved out exceptions or set dollar limits before immunity is lost.

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A landowner's obligation to post signs varies by state. In Washington, for example, a landowner must post a sign warning of a known danger. In other states, users can be liable for property damage if they ignore a sign indicating the property is closed to the public.

Further, each state varies in what it considers "recreational activity." Your state statutes may or may not address things like hunting and fishing, foraging, target shooting, rock climbing, horseback riding, caving, snowmobiling, or firewood harvesting.

Landowners should take comfort knowing that recreational immunity provides a significant hurdle to liability as long as they do not charge a fee. In some cases, allowing recreational use, particularly in partnership with local clubs, can benefit a landowner by creating usable trails and deterring other "bad actor" trespassers.

If you choose to allow recreational use of your property, know the laws of your state. Consult a qualified attorney to understand any obligations and ensure you don't inadvertently waive your rights under recreational immunity laws.

'Pressure cookers' cause safety concerns

Pressure cookers like the InstaPot, the Ninja pressure cooker/air fryer combo, the Crock-Pot multi-cooker and similar appliances have become popular in recent years. But the convenience of pressure cookers must be counterbalanced with the risks. That's because users of certain brands have suffered serious injuries — including severe burns, scarring, eye injuries and bone fractures — caused by design defects that allow the lid to come flying off or hot contents to come flying out while the unit is operating.

Recently, an Illinois woman filed suit arguing that her Aldi "Ambiano 6 in 1 Programmable Pressure Cooker" was defectively designed because it enabled her to remove the lid while contents were under pressure from steam and heat. Similar suits have been filed against Instant Pot, Crock-Pot, Ninja and other brands asserting unreasonably dangerous designs and defective safety features.

If you have been injured by a pressure cooker, air fryer or similar product that you believe was faulty, don't assume you can't do anything about it. An attorney who handles injuries from defective products can counsel you on the rights you may have.

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‘No poach’ agreements under scrutiny

The Department of Justice (DOJ) is targeting “no poach” and “no hire” agreements. The shift could have a lasting effect on how companies recruit and retain workers.


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In 2010, the DOJ brought civil charges against a number of Silicon Valley companies that were alleged to have a secret pact not to poach each other’s employees. In a civil settlement, Adobe, Apple, Google, Intel, and Intuit agreed to abandon their no poach practices.

By 2016, after additional years of investigation and enforcement, the DOJ warned that no poach activities could warrant criminal penalties.

In January of last year, the DOJ made good on its threat when a federal grand jury indicted Surgical Care Affiliates LLC for agreeing with competitors not to solicit each other’s senior-level team members.

A second company was indicted in March 2021 after a manager allegedly agreed not to recruit nurses from a competitor. In December, a jury returned another no-poach indictment, this time in the aerospace industry.

Meanwhile, several state attorneys general have been targeting similar violations. Previously, state actions have compelled fast food chains to eliminate no poach provisions from their franchise agreements. In September 2021, Old Republic National Title Insurance Co. agreed to pay $1 million in penalties after a New York state probe into no-poach activities.

Meanwhile, the Biden administration is reviewing the Federal Trade Commission’s (FTC) authority to curtail the use of non-competes and other clauses that limit workforce mobility. The DOJ and FTC held a joint workshop in December which, reportedly, placed some emphasis on issues of non-competes and no poach agreements.

Businesses should note that no poach agreements don’t just occur at the executive level. Managers and other mid-level leaders may be equally responsible, considering these informal agreements the polite way to do business with their peers in the industry. Businesses are advised to educate leaders at all levels, making sure team members are aware of growing federal scrutiny.