Risks Associated with “At-Will” Employment

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As you may recall, an at-will employee—one without a contract of employment, one not covered by a union bargaining agreement or one without another employment secured by a statute or a law—can be fired at the will of the employer for a good reason or no reason unless the firing is discriminatory or against public policy. An interesting, recent case decided by the Oklahoma Supreme Court[1] illustrates this legal rule.

The LPN in this case worked for his employer, a nursing home, for about 11 months prior to the time he suddenly became ill at work. His primary symptom at work was vomiting. Overhearing the vomiting, the LPN’s Director of Nursing (DON) told him he did not look well, that he must be suffering from a virus or the flu, and told him to go home. Continuing to throw up on his way home, the LPN went to his physician at the VA for treatment. The physician saw him, treated him, and gave him a written note stating he was not to work for three days due to his illness.[2]

The LPN followed the protocol required by his employer to inform the employer of his required three day absence and told the scheduler he would return the following Monday. In addition, when the DON called him at home, he gave her the same information he had given the on-call scheduler.

When he returned to work, the LPN noticed he had been crossed off the schedule for the week and was discharged from his position two days later. The LPN filed a lawsuit alleging that he was terminated for not being at work due to the flu and therefore the termination was “unlawful and wrongful as against public policy and the Oklahoma Workers Compensation Act”.[3]

The employer fought the case under various theories and legal procedures for three years that resulted in dismissals of the case, appeals of those dismissals, and re-filing of the case. In the last of these procedures, the trial court sustained the employer’s motion for summary judgment, stating there was no public policy to prevent the LPN’s termination nor was there a violation of public policy when he was terminated. The LPN appealed that decision. [4]

After analyzing the many legal procedures and decisions in the various courts, the Oklahoma Supreme Court held that granting the employer’s summary judgment motion was inappropriate. It went on to state that the LPN’s prior conduct *prior* to his illness and termination—spreading rumors, failure to complete tasks, and failing to follow his supervisor’s instruction—raised material issues of fact which required a trial in order to determine if the employee was terminated for this prior conduct or for his illness on the day he was told to go home from work.

The Court also carefully analyzed Oklahoma case and statutory law applicable to the current case. The Court acknowledged that there was no specific state or federal law that prohibits a nurse from being fired for missing work with a “serious illness that can be communicated to vulnerable patients”. [5]

It did hold, however, that many Oklahoma statutory rules and cases required good infection control procedures be followed in health care settings. It also opined that being fired for not working when experiencing the flu was a public policy exception to the at-will doctrine and the LPN’s termination was wrongful.

Therefore, the Court ruled, granting the summary judgment motion was not correct and reversed the trial court decision. The upcoming trial will determine whether the LPN’s or the employer’s position on this issue was the proper one.

This case highlights several points. First, working when ill, especially with a contagious disease, is never acceptable. If you do not feel well on any working day, you need to follow your employer’s policies and procedures and go home. If the illness continues after the day you leave work, report in at your workplace as required. See your physician or advanced practice nurse for an evaluation and a note indicating when you can return to work.

Second, review what your state says about exceptions to the at-will employment doctrine. Attending a workshop or CE program focusing on the doctrine and its exceptions would be a good idea. If not brought up during the program or CE, ask about your rights when ill and you need to leave work.

Although the case does not discuss the ethical ramifications of working while ill, as an LPN, RN, or APRN, exposing patients, other staff, and visitors to a potential illness is not approved by any of the codes of ethics for nurses.

Last, but by no means least, know that a right that you may have—not being terminated for leaving work due to an illness—can be clouded by your conduct prior to the illness itself.

Know your employer’s expectations of the position you hold and avoid improper conduct and disciplinary actions at all costs. They can come back to haunt you in many ways, one of which is when you exert a right you may have that protects you and that conduct becomes a central issue in challenging that right.

FOOTNOTES

1. Moore v. Warr Acres Nursing Center, 2016 OK 28 (Supreme Court of

Oklahoma, 2016). NOTE: The Supreme Court’s opinion carries the

caveat that because the opinion has not yet been released for

publication, it may be revised or withdrawn.

2. Id., at 1.

3. Id., at 2.

4. Id., at 3.

5. “Wrongful Termination: Nurse Can Refuse To Work While Infectious

With The Flu”, 24(4) Legal Eagle Eye Newsletter For The Nursing

For The Nursing Profession , 2016, 1.