

Employment Law 101: What is a “Wrongful Termination?”

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By Gregory R. Fidlton, Esq.

Call it what you will—layoff, reduction in force, downsizing, headcount reduction—the global economic situation has resulted in more job losses and unemployment than the United States has seen in generations. As an employment lawyer, I am asked on a daily basis how one can determine whether he/she has a claim for “wrongful termination.”

At-will Employment

You may be aware that Georgia, like almost all states, is an “at-will” employment state. At-will employment means that, unless you have an employment agreement for a specified term providing that you can only be terminated for “cause,” you can be terminated for any reason or no reason at all, so long as no law is violated. Your employer does not need to justify its actions, utilize progressive discipline, or allow you an opportunity to present your side of the story. In other words, it is not illegal for an employer to be unfair or wrong when it fires an “at-will” employee.

The Exceptions

The main exception is where the termination decision was based on the employee’s race, color, gender, age, religion, national origin, pregnancy, disability or veteran status. If you can show that you were treated less favorably than other similarly-situated employees outside of your “protected class,” you may have a claim for unlawful discrimination.

Another exception is where you have complained to your employer about discrimination or some other unlawful act, or filed or participated in a discrimination claim, and your employer terminates you in retaliation for these activities.

If you are a union member or a government employee, you may have additional rights.

Do I Have a Case?

So, what if you believe that the decision to lay you off was based on your race, color, gender, age, etc.? To successfully pursue a claim for discriminatory discharge, you must have *evidence* that the decision was based on your membership in one or more of these protected classes. Certainly, it can be harder to prove that your termination was discriminatory or retaliatory when many others are suffering the same fate as you are. But ask yourself this: was the layoff legitimately based upon financial reasons, and if so, why were you chosen? If you were chosen for layoff over someone outside of your protected class who was less qualified, then you may have a viable claim. Comments or jokes evidencing bias against certain workers can often be circumstantial evidence of discrimination. For example, comments by a decision-maker about wanting to have a more “youthful, aggressive sales team” may be evidence of age discrimination. Jokes about a Pakistani employee’s accent may be evidence of national origin-based discrimination.

In addition, a reduction in force that is based on non-discriminatory factors (e.g., cost-cutting) may be unlawful if it has a discriminatory impact on a protected class. For example, a plan that focuses on eliminating higher paying positions may have a disparate impact on older workers since they tend to earn more than younger workers.

The biggest part of any case is discovery—the process in which either party can request documents and information from the other side to prove their case or mount their defense. Once it appears that an employment dispute is likely to lead to litigation, the employer is obligated to preserve all relevant documents (including emails, computer files, Blackberry data, etc.) that may become discoverable in the case. Emails tend to be a treasure trove of helpful evidence in employment cases. People who wouldn’t dream of committing certain thoughts, opinions, or feelings to paper think nothing of firing off a quick email with those same sentiments.

What Should I Do To Pursue It?

If you have not yet been laid off, but believe that you will be, this would be an excellent time to consult with an attorney specializing in employment law. Your attorney may be able to help you avoid layoff by having your employer consider you for a transfer within the organization, or help position you to negotiate for a favorable severance package in the event that you are terminated. If you have already been terminated and you believe the decision was discriminatory or retaliatory, it is also a good idea to consult with an employment law attorney. Your attorney can negotiate with your former employer on your behalf or present a strong case to the Equal Employment Opportunity Commission—the federal agency that investigates employment discrimination claims—and, if necessary, file a lawsuit on your behalf.

Greg Fidlton has over eleven years of experience representing employers and employees in individual and class action litigation, and advising clients on all aspects of the employment relationship. He can be reached at greg@fidltonlegal.com or 770-807-0083.