Federal Title VII Retaliation

I. Retaliation Prohibited by Title VII

Title VII of the 1964 Civil Rights Act protects employees from discrimination and retaliation in the workplace. Specifically, Title VII makes it an unlawful employment practice for "an employer to discriminate against any of his employees . . . because he has opposed . . . an unlawful employment practice . . . or . . . made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this subchapter." 42 U.S.C. § 2000e-3(a). These unlawful employment practices include discrimination on the basis of race, color, religion, sex and national origin. § 2000-e2(a). The statute allows an "aggrieved" party to file a civil action if the EEOC opts not to sue the employer. § 2000e-5(b), (f)(1).

II. A Company’s Actions can be Challenged as retaliation under Title VII if the Plaintiff Can Show that “A reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.”


In *Burlington N. & S. F. R. Co. v. White*, the Court construed Title VII’s anti-retaliation provision to cover a broad range of employer conduct. Although Title VII doesn’t specify which employer acts are prohibited, the court in *Burlington* held the anti-retaliation provision of Title VII prevents any action by employers that are “materially adverse,” meaning the action “well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.”

Sheila White was the only woman working in the Maintenance Department of the Burlington Northern Santa Fe Railroad’s Tennessee Yard. After she complained of gender discrimination by her supervisor, White was moved from duties as a forklift operator to less desirable duties as a track laborer, though her job classification remained the same. She was also suspended for 37 days without pay, but was eventually reinstated and given full back pay. White filed suit in federal court, where a jury rejected her claims of sex discrimination but awarded her damages of $43,000 after finding that she had been retaliated against for her complaints, in violation of Title VII of the Civil Rights Act of 1964. On appeal, Burlington Northern argued that White had not suffered "adverse employment action," and therefore could not bring the suit, because she had not been fired, demoted, denied a promotion, or denied wages. The Supreme
Court unanimously agreed that White suffered retaliatory discrimination when she was reassigned to less desirable duties and suspended without pay.

III. The “Motivating Factor” test has been Overruled in favor of the Traditional “But For” Proof Standard


Dr. Naiel Nassar, a man of Middle Eastern dissent, was a faculty member of the University of Texas Southwestern Medical Center (UTSW). The university is affiliated with the nearby Parkland Hospital, and Nassar worked in Parkland’s HIV/AIDS clinic. Dr. Beth Levine, the doctor in charge of the entire clinic, began asking Dr. Phillip Keiser, Nassar’s supervisor, about Nassar’s work habits and billing practices. When talking with Keiser, Levine made a number of offensive comments, including remarks such as "Middle Easterners are lazy" and that the hospital had "hired another one," presumably referring to Nassar's race or ethnicity. Keiser told Nassar about these remarks and that Levine criticized the quality of Nassar's work and number of billing hours more than she did the rest of the doctors. On June 3, 2006, Nassar was officially offered a job in the Parkland clinic on Parkland's payroll, to start as of July 10, 2006. In the interim period, after being offered the job but before starting, Nassar resigned from the University. In his resignation letter, Nassar cited Dr. Levine's conduct, harassment, and discrimination as the primary reasons for his resignation. Dr. Gregory Fitz, Dr. Levine's supervisor blocked his employment at Parkland and asked Nassar to retract his letter criticizing Levine. Nassar sued the UTSW alleging that this denial of transfer was actually a termination of his original position and that UTSW retaliated against him for claiming discrimination. At trial, the jury agreed with Nassar, but UTSW went to the Fifth Circuit Court to challenge the jury's decision. While affirming the finding of retaliation, the Fifth Circuit reversed the judgment regarding his termination.

In a 5-4 decision, the court held that retaliation claims filed under Title VII are no longer governed by the “motivating factor” standard. Under the previous standard, it would suffice to show that retaliation was a motivating factor for the employer’s action against the employee even if the employer had other lawful motives which affected the decision. However, this lessened standard is no longer applicable. The Court conducted a statutory construction analysis and determined that Congress did not intend to make the motivating factor standard applicable to retaliation claims.

The court redefined the proper standard of causation for Title VII claims stating that the traditional “but for” causation test is the correct standard. Under this analysis, the plaintiff has the burden of demonstrating that they would not have experienced the alleged harm but for the improper action of the employer. This standard is more demanding than the motivating factor standard. While, this decision makes it more difficult to prove workplace discrimination and will likely reduce the number of meritless retaliation claims, the dissent called on congress to act to correct this ruling.
IV. First Amendment protects speech on a matter of public concern by a public employee who provides truthful sworn testimony, compelled by subpoena, outside the scope of his ordinary job responsibilities


Edward Lane accepted a probationary position as Director of the Community Intensive Training for Youth (“CITY”) program at Central Alabama Community College (“CACC”). He subsequently terminated the employment of Suzanne Schmitz, a state representative who had not performed any work for the program despite being listed on CITY’s payroll. He had previously been warned he could face repercussions for firing Schmitz.

Lane, under subpoena, testified against Schmitz in two federal criminal trials between 2008 and 2009. In January 2009, Steve Franks, the president of CACC, sent termination letters to 29 CITY employees, including Lane, but rescinded the terminations of 27 of those employees within a few days.

Lane sued Franks in federal district court and alleged that his termination from the CITY program was in retaliation for his testimony against Schmitz and therefore violated his First Amendment right to free speech. The district court ruled that the doctrine of qualified immunity shielded Franks from liability and granted summary judgment in his favor. The federal appeals court in Atlanta said it was unnecessary to decide who was right because public employees have no First Amendment protections for statements they make as part of their official duties. The Supreme Court, in a unanimous opinion by Justice Sotomayor, that Lane’s testimony was as a citizen and a matter of public concern.

The opinion expressly did not address the question of whether the First Amendment should protect the truthful testimony of a public employee where that testimony is part of the employee’s job responsibilities. If the employee testifies falsely or misleadingly in such a situation, employer discipline is not barred by the First Amendment.

Despite the fate that the Court ruled in Lane’s favor, Franks was protected by Qualified Immunity. **Qualified Immunity** holds that Courts may not award damages against a government official in his personal capacity unless “the official violated a statutory of constitutional right” and “the right was clearly established at the time of the challenged conduct” – _Ashcroft v. al-Kidd_, 131 S.Ct. 2074, (2011)

V. **Thompson v. North American Stainless Expands Scope of Retaliation Claims**

The Supreme Court’s decision in *Thompson* dramatically expanded the scope of who could bring retaliation claims under Title VII, no longer limiting these causes of action to the individuals originally discriminated against or engaged in protected activities.

Plaintiff Eric Thompson was engaged to Miriam Regalado after the two met while working for Defendant Employer North American Stainless. Thompson’s fiancé filed a charge of sex discrimination against North American with the EEOC. Three weeks after the EEOC notified North American of the charge, Thompson was terminated for alleged “performance-based reasons.” After filing his own charges and receiving a right-to-sue letter from the EEOC, Thompson instituted a civil action against North American for discrimination and retaliatory termination.

The Supreme Court addressed two questions in *Thompson*: 1) whether Thompson’s firing constituted unlawful retaliation; and 2) whether Thompson had standing to bring a cause of action for retaliation under Title VII. Both questions were answered affirmatively.

**A. Third Party Retaliation Unlawful Under Title VII**

First, the Court found North American’s firing of Thompson was unlawful retaliation. Based on the broad range of employer conduct covered by Title VII under the standard set forth in *Burlington*, the Court said it was obvious that a reasonable worker “might be dissuaded from participating in a protected activity” if she knew her fiancé would be fired. North American argued about the difficult line-drawing issues in the future and which relationships would be entitled to protection if third party retaliation was prohibited. The Court declined to define a fixed class of relationships for which third party reprisals would be unlawful. However, the Court suggested that retaliation against close family members would almost always be unlawful, while retaliation against mere acquaintances almost never would. Ultimately, the Court held that whether retaliation against a third party was unlawful would depend on the particular circumstances. The alleged harm is to be judged on an objective standard regardless of the unusual, subjective feelings of individual plaintiffs.

**B. Third Party May Sue for Retaliation under Title VII: “Zone of Interests” Test**

The Court further held Thompson had standing to sue North American for retaliation under Title VII. Civil actions may be brought under Title VII “by the person claiming to be aggrieved.” This language was interpreted to permit suit by the plaintiff only if he “falls within the ‘zone of interests’” the underlying statute is trying to protect. Under the “zone of interests” test, any plaintiff who has an interest “arguably [sought] to be protected by the statutes” is considered “aggrieved” and may sue. Specifically, Thompson was deemed to have met the “zone of interests” test and considered an “aggrieved” person based on his employment with North American, the purpose of Title VII and the fact that Thompson wasn’t an accidental victim of retaliation but an intentional victim targeted to hurt his fiancé who filed the original discrimination claim. The Decision was unanimous 8-0 with Justice Kagan recusing herself.
Outlining the scope, the Court said “We also decline to identify a fixed class of relationships for which third-party reprisals are unlawful. We expect that firing a close family member will almost always meet the Burlington standard, and inflicting a milder reprisal on a mere acquaintance will almost never do so, but beyond that we are reluctant to generalize.”

VI. Oral and Written complaints are protected under FLSA


The petitioner, Kevin Kasten, brought an anti-retaliation lawsuit against his former employer, Saint–Gobain Performance Plastics Corporation. Kasten says that Saint–Gobain located its timeclocks between the area where Kasten and other workers put on (and take off) their work-related protective gear and the area where they carry out their assigned tasks. That location prevented workers from receiving credit for the time they spent putting on and taking off their work clothes—contrary to the Act’s requirements.

Kasten says that he repeatedly called the unlawful timeclock location to Saint–Gobain’s attention, in accordance with Saint–Gobain’s internal grievance-resolution procedure, which was to immediately report unlawful practices to his supervisor and his supervisors’ supervisor. Saint–Gobain denies that Kasten made any significant complaint about the timeclock location. And it says that it dismissed Kasten simply because Kasten, after being repeatedly warned, failed to record his comings and goings on the timeclock.

The district court entered summary judgment for Saint–Gobain, believing that the Act did not protect oral complaints. On appeal, the Seventh Circuit agreed with the District Court that the Act’s anti-retaliation provision does not cover oral complaints. The Supreme Court granted certiorari because of conflict among the Circuits as to whether an oral complaint is protected.

Breyer wrote the winning opinion 6-2 with Scalia and Thomas dissenting and Kagan recusing herself. The Supreme Court held that anti-retaliation provision of FLSA protects oral as well as written complaints of violation of the Act. The Court officially defined “filed any complaint,” as something that contemplates some degree of formality, certainly to the point where the recipient has been given fair notice that a grievance has been lodged and does, or should, reasonably understand the matter as part of its business concerns. Fair Labor Standards Act of 1938, § 15(a)(3), 29 U.S.C.A. § 215(a)(3).

VII. Defining a “Supervisor” under Title VII

In a 5-4 decision the Supreme Court created a bright line rule articulating who is considered a “supervisor” for purposes of vicarious liability under Title VII. The majority narrowed the definition of “supervisor” stating that an employee is a supervisor “if he or she is empowered by the employer to take tangible employment actions against the victim.” This includes actions which effect a significant change in employment status such as the power to hire, fire, demote, promote, transfer, and discipline.

Generally, supervisor status can be readily determined by written documentation. Therefore, this decision provides employers with greater certainty and a clear workable definition of who qualifies as a “supervisor”. As a result, parties can assess the strengths and weaknesses of their case and resolve disputes prior to the commencement of litigation.

It is important to note that this holding does not shield employers completely from vicarious liability. The analysis is contingent upon whether the harasser is a supervisor or merely a co-worker. In the circumstance where the harassing employee is the victim’s co-worker, the employer is held liable if it was negligent in controlling workplace conditions leading to the creation or continuation of a hostile work environment. Therefore, under this circumstance, a victim can prevail provided that the employer was negligent in failing to prevent the harassment from occurring. Furthermore, in the event that the harasser is a supervisor, the employer can escape liability by asserting affirmative defenses. This decision drastically narrows the scope of vicarious liability in harassment cases.
MISSOURI RETALIATORY DISCHARGE

I. An Employee Must ONLY Demonstrate his or her Filing of a Workers' Compensation Claim was a CONTRIBUTING FACTOR to the Employer's Discrimination or the Employee's Discharge

Templemire v. W&M Welding, Inc., Supreme Court of Missouri, En Banc. (Decided April 15, 2014)

John Templemire suffered a work injury in 2006 when a large metal beam crushed his foot. He returned to work on “light duty” and received workers' compensation benefits, but was later fired for failing to perform assigned work tasks. Notably, Templemire was on break and resting his foot at the time of his discharge.

In a 5-2 decision, the Missouri Supreme Court reversed the lower courts and effectively overturned three decades of case law. The court held that to make an actionable case for retaliatory discharge under section 287.780, an employee must demonstrate that his or her filing of a workers' compensation claim was a contributing factor to the employer’s discrimination or the employee’s discharge rather than meeting the more traditional “but for” proof standard.

V.A.M.S. already prohibited an employer from discharging or in any way discriminating against an employee for exercising his or her workers’ compensation rights, but this holding makes it inappropriate for an employer to give any consideration to the fact that an employee filed a workers’ compensation claim when making employment decisions.

II. Missouri recognizes a public policy exception to the at-will employment doctrine, making it illegal for an employer to fire an employee for a reason that is contrary to the public policy of Missouri.

A. For an Employee to Prevail on a claim of Wrongful Discharge in Violation of Public Policy she must only show her protected action were a “contributing factor” in the employment decision

Fleshner v. Pepose Vision Center, P.C., 304 S.W.3d 81, (Mo. 2013).

In this case an employee who worked for a surgery clinic reported to her employer that she has received a call from the U.S. Department of Labor (DOL) about the employer's pay practices and had spoken to the DOL investigator about the hours worked by the employees. The employee was terminated the day after she reported the telephone conversation to the employer.

The case made it to Missouri’s Supreme Court over appeals over jury instructions. Prior to this case the Court of Appeals had applied the “exclusive causation” standard to wrongful discharge claims under the public policy exception. This changed here when
the court held an employee claiming wrongful discharge in violation of public policy based on reporting of illegal conduct or refusing to perform wrongful conduct must show that the reporting or refusal was a “contributing factor” in the employment decision.

B. An employee must still specifically identify a provision or law violated by the employer.


In this case an employee was fired in 2007 after he had a violent outburst as work and then sued the hospital he had worked at alleging that it had terminated his employment because of his internal complaints or safety hazards made on three occasions in 2005. The trial court dismissed the suit.

The Missouri Supreme Court held that to prevail on a whistleblower wrongful discharge claim, the employee must show that he reported to superiors or to public authorities serious misconduct that constitutes a violation of the law and of well established and clearly mandated public policy. Merely citing a statute or regulations is not sufficient; the statute or regulation must not be vague or general because it would require a court to decide on its own what public policy is.

In the Court’s own words: “What [Plaintiff] asks this Court to do is to grant him protected status for making complaints about acts or omission he merely believes to be violations of law or public policy. The public policy exception to the at-will doctrine is not so broad.”

C. Contract Employees now have the right to sue their Employers for Wrongful Discharge

In 1995 the Missouri Supreme Court decided en banc that only at-will employees could sue their employers for wrongful discharge and the contract employees only could sue for breach of contract. This was overturned in 2012 with:

Keveney v. Missouri Military Acad., 304 S.W.3d 98, 100 (Mo. 2010)

Keveney was a teacher under a written employment agreement at a military boarding school. The teacher noticed unusual bruising on a student and suspected that student was suffering from physical abuse. Keveney reported the suspected abuse to three of his supervisors. They warned him that if he reported the suspected abuse of the student to the Missouri division of Family Services he would lose his job. After maintaining that the law required the student's abuse to be reported Keveney was terminated.

Keveney sued the employer for both breach of the employment agreement and wrongful discharge in violation of public policy. He identified the public policy as Mo. Rev. Stat. 210.115 which mandated that all doctors, nurses, teachers etc. immediately report any suspected abuse of a child to the Department of Family Services.
The trial court permitted the breach of contract claim but dismissed his wrongful discharge claim. The Missouri Supreme Court reversed the dismissal and sent the wrongful discharge case back to the trial court, thus holding that a contract employee could sue their employer for wrongful discharge.

D. The Missouri Court of Appeals has Broadened the Scope of Public Policy

*Delaney v. Signature Health Care Found.*, 376 S.W.3d 55, 56 (Mo. Ct. App. 2012)

Phyllis Delaney worked as a data-entry clerk at a nonprofit physical therapy center run by Signature Health Care Foundation. Shortly after her employment began, she learned that her brother had been diagnosed with kidney failure and would require a transplant. Once it was determined that she would be a viable donor, she informed her employer that she was going to donate a kidney to her brother and would have to miss four weeks of work after the surgery.

Although Signature Health initially approved Delaney's request for time off, three days before the surgery, the company informed her that it couldn't hold her position open for four weeks and discharged her instead.

There is no specific law in Missouri that requires a private employer to grant an employee time off to donate an organ. However, after filing suit for wrongful discharge, Delaney cited multiple Missouri statutes that support organ donation, including 105.266.1 which states that any employee of the State of Missouri shall be granted a paid leave of thirty workdays to serve as a human organ donor. The court held that collectively these statutes reflect a clear mandate of public policy in Missouri encouraging organ donation and remanded the case for a new trial.

E. A municipality has Sovereign Immunity from actions at common law tort for those actions they undertake as part of the municipality's governmental functions

*Brooks v. City of Sugar Creek*, 340 S.W.3d 201 (Mo. Ct. App. 2011)

Brooks, a police officer, arrested a woman for a DUI. The suspect subsequently refused a breathalyzer test, and made threats to Brooks that she had a “close relationship with the Police Department of the City of Sugar Creek” and that “she could arrange to have the Plaintiff terminated by the Police Department.”

Sergeant Jonathan Fields, who was Brooks's superior in the Police Department, was then informed by Brooks that he had arrested this specific suspect. Fields responded by saying, “Do you know who you have in there?” and “Fields then informed Plaintiff that the suspect was the owner of a well known business in Sugar Creek and was then
instructed by his superior to ‘Make it go away!’” Fields further instructed Brooks “to shred all records relating to the detention, field testing, and arrest of the suspect.”

Brooks did what he was told and shredded the file. Nevertheless, the next day Brooks was summoned to Police Headquarters by Police Chief Herbert Soule and was terminated. Brooks sued for wrongful discharge but the City of Sugar Creek won on summary judgment based on government immunity.

A municipality has sovereign immunity from actions at common law tort if “those actions they undertake as a part of the municipality's governmental functions-actions benefiting the general public.” The Missouri Supreme Court has repeatedly held that termination of a city employee is a governmental function; therefore, the city was protected by governmental immunity unless some exception applied.

The case made sure to point out that “municipalities have no immunity for torts while performing proprietary functions-actions benefiting or profiting the municipality in its corporate capacity.”

Brooks appealed the trial courts dismissal and argued that public policy prevents the City from enjoying sovereign immunity from his wrongful termination lawsuit in that “logic cannot support a doctrine that terminating a police officer for arresting a drunk driver because that drunken driver is a personal friend of the police supervisors or chief of police is in anyway a benefit to the general public.”

Though sympathetic to Brooks, the Court felt bound by precedent and that it had to dismiss the case and find Sugar Creek protected by Immunity.

The Court of Appeals specifically said “this case presents important issues on which guidance from our Supreme Court would be helpful.” But the Supreme Court declined to hear the case.
KANSAS RETALIATORY DISCHARGE

I. A Kansas Employee will have two years to file suit for Retaliatory Discharge, Regardless of a Contractual Agreement

*Pfeifer v Federal Express Corporation*, 297 Kan. 547, (June 7, 2013)

One of the exceptions to the Kansas employment at will doctrine occurs when an employer discharges an employee in retaliation for the employee's exercise of his rights under the Workers Compensation Act. This is a common law civil action governed by the two year statute of limitations set out in K.S.A. 60-513(a)(4). In *Pfeifer* the Court was asked on certification by the United States Court of Appeals for the Tenth Circuit to decide whether an employment contract requiring an employee to file suit within six months of her termination is valid and enforceable in a retaliatory discharge case.

The Court held that although K.S.A. 60-501 contains no express or implied prohibition against contractual agreements limiting the time in which to sue, the public policy recognizing that injured workers should be protected from retaliation when exercising rights under the Workers Compensation Act "invalidates the contractual provision at issue because it impairs enforcement of that protection." Kansas has a thoroughly established public policy supporting injured workers' rights to pursue remedies for their on-the-job injuries and opposing retaliation against them for exercising their rights. The retaliatory discharge cause of action is intended to deter employer reprisal for an employee's exercise of a legal right. "There is little question that restricting an employee's time to bring a retaliatory discharge claim for a job termination suffered following that employee's exercise of a statutory right necessarily impedes the enforcement of that right and the public policy underlying it."

Regardless of the terms of the employment contract, the employee has 2 years in which to sue for retaliatory discharge. The Court's holding "is limited to the circumstances in which there is a strongly held public policy interest at issue."

II. Kansas law does not recognize a tort of retaliatory discharge when an employee is terminated in an attempt to avoid paying the employee a commission, even if the commission has already been earned.


Deeds was fired from his position as a sales marketing executive at Waddell & Reed in 2007. A year later in 2008, Deeds filed a claim under the Kansas Wage Payment Act with the Kansas Department of Labor seeking more than $1 million in commissions he said he had earned that had not been paid to him. In 2009, he sued his former employer claiming that they fired him in retaliation for exercising his rights under the Kansas Wage Payment Act.
The court found that Deeds complained about changes in the compensation system but that he was personally oblivious of the Kansas Wage Payment Act and never actually made a claim under its provisions during his employment. Consequently, the court held that Deeds could not maintain a lawsuit alleging that he was terminated for exercising rights under the Kansas Wage Payment Act.

The Court further outlined that even if Jimmy had filed the complaint while employed he had not cited any Kansas constitutional provision, statute, or court opinion noting a strong public policy forbidding the firing of an employee for the purpose of avoiding the payment of commissions already earned. They said that if the commissions truly have been earned, the employee could make a claim for them either under the Kansas Wage Payment Act or in a breach-of-contract action.

III. Kansas law recognizes the tort of retaliatory discharge when an employee is terminated for filing a wage claim under the Kansas Wage Payment Act


Campbell was an at-will employee with Husky Hogs, L.L.C., for about 1 year when he filed a complaint with the Kansas Department of Labor (KDOL) alleging Husky Hogs was not paying him as required by the KWPA. Campbell was fired 1 business day after KDOL acknowledged receiving his claim.

The district court granted Husky Hogs' motion for judgment on the pleadings and held Campbell's termination did not violate Kansas public policy, even though it was required to assume the discharge resulted from filing the disputed wage claim. And the district court _sua sponte_ determined that even if Campbell had stated a valid common-law retaliatory discharge claim, it was supplanted by the KWPA because that Act provides Campbell an adequate substitute remedy.

The Kansas Supreme Court found that the case law makes it obvious that Kansas courts permit the common-law tort of retaliatory discharge as a limited exception to the at-will employment doctrine when it is necessary to protect a strongly held state public policy from being undermined.

They further held that the KWPA embeds within its provisions a public policy of protecting wage earners' rights to their unpaid wages and benefits. Mirroring how the Court found a common-law retaliatory discharge claim when an injured worker is terminated for exercising rights under the Workers Compensation Act, they found a cause of action is necessary when an employer fires a worker who seeks to exercise KWPA rights by filing a wage claim.

Anticipating the Court might rule this way, Husky Hogs argued that the statutory remedy under KWPA was adequate and thereby precluding the common-law remedy sought by Campbell. They cited _Hysten v. Burlington Northern Santa Fe Ry. Co., 277 Kan. 551_, (2011)
(2004) which says, “Under the alternative remedies doctrine, a state or federal statute could be substituted for a state retaliation claim—if the substituted statute provides an adequate alternative remedy”

_Hysten_ had previously recognized a tort for retaliatory discharge based on an injured worker’s exercise of his or her rights under Federal Employers Liability Act (railroad workers).

Addressing this issue, the Court found that “the KWPA action and its statutory remedies relate to Campbell’s claim that Husky Hogs did not pay him all earned wages. But the retaliatory discharge claim would redress the employment termination. Since these causes do not address the same wrong, it is difficult to conclude the legislature supplanted the retaliatory discharge claim with KWPA.”

This entitled Campbell to seek future lost wages, any other actual damages, and applicable remedies for pain and suffering, as well as punitive damages.

**IV. Whistleblowing is one of Kansas’ exceptions to employment-at-will**

Whistleblowing is the act of reporting actions of co-workers or supervisors that violate laws, regulations, or rules that pertain to public policy, health or safety.

Standards of proving Whistleblowing in court:
- **Plaintiff Must Prove:**
  - A reasonably prudent person would have concluded the employee’s coworker or employer was engaged in activities in violation or rules, regulations, or the law pertaining to public health, safety, and the general welfare,
  - The Employer had knowledge of the employee’s reporting of such violations prior to discharge or the employee,
  - The employee was discharged in retaliation for making the report,
  - The whistleblowing was done in good faith based on a concern regarding the wrongful activity reported rather than for a corrupt motive like malice, spite, jealousy or personal gain
- **If Plaintiff can prove the above, Employer must prove:**
  - Plaintiff was terminated for a legitimate nondiscriminatory reason
- **If the Employer can prove that, the employee must prove:**
  - That the Employer’s motives were pretextual