Watch "Loose Lips" Statements in Terminations

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Wrongful termination cases may be difficult enough to win. When you add the potential that the employee may also sue for defamation and other privacy related torts arising from termination, you increase the dangers. In Corey v. Pierce County, 154 Wn. App. 752 (2010), Pierce County learned how expensive such awards can be when the Washington Court of Appeals affirmed a $3 million award for defamation and privacy claims related to a deputy prosecuting attorney's termination.

The plaintiff was a 30-year deputy prosecuting attorney who was promoted to chief criminal deputy. Shortly after her promotion, she raised concerns about a prosecutor in the sexual assault unit and sought to have him transferred. There were problems associated with his transfer, and the plaintiff's superior, the Pierce County Prosecuting Attorney, became concerned about her ability to communicate and manage the transfer. When she challenged his decision, he started the process to terminate her. She, however, resigned before he could communicate the "good news."

In her desk, the county discovered money that had been raised for a colleague whose child was ill, but had not been distributed. News of these collected funds leaked to a local newspaper which published an article about the money and her departure from the Prosecuting Attorney's office. In the article, her supervisor stated that he had lost confidence in her, questioned her truthfulness and claimed that she was subject to a "criminal investigation" regarding the money in her desk. In the article, her supervisor also stated that the plaintiff had told several lies in connection with the transfer of the deputy prosecutor out of the sexual assault unit. The plaintiff sued claiming that she was devastated emotionally and professionally, suffered severe depression, became suicidal and experienced epileptic seizures because of the article. She also claimed that she was unable to find another legal position and was unemployable for the rest of her life because of the article. She sued her supervisor and the County for invasion of privacy, defamation, defamation by implication, false light, outrage, intentional and negligent infliction of emotional distress and breach of contract. After a three week trial, the jury returned a verdict in excess of $3 million.

On appeal, the Court held that it could only overturn the jury verdict where there was a lack of substantial evidence and that the jury verdict would not be disturbed. Because her supervisor knew that the internal investigation had not revealed any improper conduct - simply money waiting to be disbursed to the child - his statements to the press established sufficient evidence for the defamation and false light claims. The Court also found that her supervisor's statements concerning the investigation into missing donations, in which he had essentially accused her of criminal behavior despite knowledge that the internal investigation revealed a lack of substance, created a viable claim of intentional infliction of emotional distress. The Court did reject the plaintiff's claim of negligent dissemination of harmful information. It held that Washington does not impose a duty of care on employers regarding the disclosure of possibly truthful but harmful information to third parties.

The final claim related to an alleged promise by the supervisor that, before taking a management position with his administration, the plaintiff would receive "just cause" termination. Many

public employees, such as assistant prosecutors, are covered by civil rules or collective bargaining agreements that provide for "just cause" termination. Supervisors, however, do not receive the same protection. The plaintiff claimed that she had multiple conversations with her supervisor who promised that she would have such just cause termination. The supervisor disagreed and the county pointed out that there was no corroborating testimony to establish such a promise. The Court held that, because the jury believed the plaintiff, the county lost.

Finally, the Court addressed the county's argument that it should have been allowed to introduce evidence that the plaintiff had been the subject of prior internal investigations, that her husband had been prosecuted for embezzlement and that post-employment she had filed for bankruptcy and divorce. At the trial court level, the county sought to introduce this evidence as to the reasonableness of the investigation into the missing money and to rebut her claim that the newspaper article had damaged her reputation - i.e., it was already damaged. Although conceding such evidence was potentially relevant, the Court nonetheless affirmed its exclusion as unfairly prejudicial because this evidence stemmed from her personal life. The Court found that such evidence did not concern her reputation in the community but about her past personal life.

The takeaways from Corey relate to post-employment publication of reasons for termination. Employers should limit the details they provide to third parties, such as new employers, friends and family, and of course, newspapers. When discussing the reasons for the termination, the employer should reveal only facts that have been substantiated. Opinions should be avoided. When an employer knowingly publishes facts that are unsubstantiated, it faces a potential claim for defamation, false light and other privacy related claims. Another takeaway from Corey is that employers should not orally agree to alter the at-will employment relationship with an employee. Promises of just cause termination or notice can result in a breach of contract claim that includes recovery of attorneys' fees and costs of litigation. Although an employee's claim of just cause termination may be oral and disputed by a supervisor as in Corey, juries do not always believe an employer's proffered reasons for the termination. Arguably, since most juries are composed of employees and not supervisors, they may prefer to believe that an employer made a promise of just cause termination. Thus, it is prudent to memorialize the at-will nature of employment in written documents such as an employment handbook, any employment agreement, an offer letter, or even simply in an email. Finally, the Corey decision acts as cautionary tale for employers that not all "smoking gun" evidence will be admitted at trial and they should instead focus on developing the factual bases for their decisions.