



APR - ALTERNATIVE MARKETS

DEDICATED TO PUBLIC ENTITY

LESSONS FROM LOSSES: WHISTLEBLOWER AND RETALIATION

The only mistake in life is the lesson not learned.

—Albert Einstein

DESCRIPTION

A citizen approached the Chief of Police to file a police report against the City Manager. The nature of the complaint involved a land dispute that arose out of the sale of a vacant parcel owned by the city. The allegation of malfeasance arose from the City Manager's action of rescinding the sale of city property from the purchaser, under the guise that the buyer was not the first valid bid. The citizen voluntarily returned the property to the City and then the City Manager awarded the property purchase to a friend who had previously been disqualified as eligible due to tax delinquency. The complainant believed she had been defrauded, wrongfully denied property and proceeded to file the report with the Chief.

The City Manager became enraged when she learned about the complaint and fired the Chief of Police. The Chief filed suit against the city for whistleblower retaliation. The city argued that the Chief was serving under an "at-will" contract and that the termination was warranted due to poor performance. The Chief denied performance issues and supported the argument that crime decreased under his tenure. Colleagues and subordinates testified on the Chief's behalf.

THE RESULT

The Chief of Police was awarded \$550,000.

THE PROBLEM

The City Manager's unilateral act of firing the Chief soon after the report was filed, and the lack of documentation to support a claim of poor performance made the case difficult to defend and ultimately led to an award for the Chief.

LESSONS LEARNED

Whistleblower Acts are intended to protect individuals whom, in good faith, report violations contrary to the public's best interest. Even though an employee may be considered "at-will," federal and state laws prohibit termination for reasons that are illegal under state or federal law such as discrimination, harassment, or complaining about illegal activity. Here the Chief was merely fulfilling his obligation to record and file a complaint reported by a citizen: he was fired shortly thereafter without a hearing or intermediary, and no documented history of poor performance. Typically to be successful in a Whistleblower and retaliation claim, the plaintiff must prove that they were discharged from an at-will position and that the reason for the discharge was that the employee attempted to exercise a statutory or constitutional right.



It is estimated that forty-five percent of all complaints filed with the Equal Employment Opportunity Commission are retaliation claims. Public Entities are advised to review and validate that the organization has an updated anti-retaliation policy and that personnel are trained to recognize and enforce it. It is also recommended that terminations undergo a second level review by counsel or human resources prior to implementing.

Note: Although the statements above are based on an actual loss, some of the facts may have been altered for the purpose of illustration and education. This information is not intended as legal advice, please consult an attorney.

Allied Public Risk is dedicated to insuring public entities. Please contact anyone on our Alternative Markets Team regarding your public entity accounts.

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