Employment Law Update – Retaliation for Personnel Files

The Massachusetts Supreme Judicial Court's recently issued an important decision granting a terminated employee the right to pursue a retaliation-wrongful termination claim against his employer for exercising the right to file a rebuttal to be included in his personnel file as provided by G. L. c. 149, § 52C, which controls how employers maintain personnel files in the Commonwealth. In *Meehan v. Medical Information Technology, Inc.*, No. SJC-13117, Meehan who was an at-will employee was terminated after he sent his supervisor a rebuttal to having been placed on a performance improvement plan. Meehan filed suit against the employer Meditech for wrongful discharge in violation of public policy. The Superior Court Department, Norfolk County granted Meditech's motion to dismiss. Meehan then appealed to the Massachusetts Appeals Court which affirmed. Meehan then filed application for further review, which was granted by the Supreme Judicial Court.

In November of 2010, Meehan began working for Meditech as a sales representative. In 2017, Meditech undertook a revision of its then twelve-person regional sales department, keeping nine employees as sales representatives and moving three, including Meehan, to a newly created "sales specialist" position. The sales specialist position greatly changed Meehan's job responsibilities, and his ability to earn commissions was significantly diminished by this change. According to Meehan, the structure of the sales specialist role created little incentive for those leading sales efforts to utilize sales specialists, and even if they did so, the potential for sales specialists to earn commission income was quite limited.

Early in July of 2018, Meehan and the other two sales specialists were placed on PIPs. Approximately two weeks later, on July 17, 2018, Meehan sent his supervisor a lengthy rebuttal to having been placed on a PIP. Members of Meditech's management team met that same day to discuss his rebuttal. The president and chief executive officer of Meditech decided that Meehan's employment should be terminated immediately. After obtaining an attorney, Meehan protested his termination to Meditech. Meehan thereafter filed a one-count complaint in the Superior Court alleging wrongful discharge in violation of public policy.

The SJC considered whether an employer can terminate an at-will employee simply for exercising the right to file a rebuttal to be included in his personnel file as provided by G. L. c. 149, § 52C. 919. The SJC held that the termination of an at-will employee simply for filing a rebuttal expressly authorized by G.L. c. 149, § 52C, constitutes a wrongful discharge in violation of public policy. The Court reasoned the right of rebuttal and accuracy of information in personnel files are important for employees, and not just in relation to their ability to earn a living with their current employer, but also to protect the ability of employees to seek other

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employment, and to enable other employers to make informed decisions about hiring them, thereby preventing terminated employees from becoming public charges. Additionally, the Court reasoned the right of rebuttal may also be important for evaluating compliance with the laws of the Commonwealth, including those governing the terms and conditions of employment, such as workplace safety, the timely payment of wages, and the prevention of discrimination, and non-employment-related activity, such as those governing the environment and the economy.

Based on this ruling, employers remain free to terminate an employee for any reason or no reason so long as the employer does not violate a statute, or public policy relating to the rights of the employee. The SJC has now identified the right to file a rebuttal in the personnel file as a matter of public policy. However, the rebuttal merely memorializes the employee's position regarding the issue in dispute, and does not provide any additional rights to the employee. If the employer decides it prefers someone else in the job, the employer remains free to terminate the employee, regardless of the information contained in the rebuttal. As an example, in a matter where an employee has an attendance problem, received discipline, and the filed a rebuttal attempting to explain the basis for the attendance issues, the rebuttal would not in any way shield the employee from further discipline or termination.

Should you require any assistance regarding the Employment Law matters, including Retaliation claims in Massachusetts please contact Boyle Shaughnessy Shareholder Aaron R. White at the firm's Boston office.

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