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False Statements in the Workplace: Don't Speak Foolishly

Recent workplace-liability cases can serve as a reminder of the general rule that false oral statements in the workplace or in a business context can be actionable. The torts are called:

Slander: The speaking of false and malicious words concerning another person, whereby injury results to his or her reputation.

Defamation: Words which produce any perceptible injury to the reputation of another.

These are known as intentional statement torts. They are showing up in more and more discrimination and termination lawsuits. Here's a sampling:

Case 1 (Pennsylvania)

An HR manager sued her employer for age discrimination and defamation. The fired manager claimed that her employer reversed a previous raise and abruptly removed her car allowance. After she complained to the payroll department, the car allowance was reinstated. But allegedly when the general manager later demanded back the allowance, she refused, and was fired. She sued under the Federal ADEA (age discrimination) law, the state antidiscrimination statute and case law protecting against defamation. Under this last theory, she claimed that the general manager publicly called her a thief in the presence of coworkers.

Jury finding: Defense verdict for the employer on the age discrimination claim, but for the exemployee on the defamation claim, with \$14,000 damages. (Note: This award seems low—in a surgery suite, one doctor calling another physician a thief or a crook can trigger defamation claims or awards approaching \$2 million.)

Case 2 (Florida)

Last year the Florida Court of Appeals (4th District) ruled that an employer was not liable for alleged defamation statements in the context of the employer's responding to the fired employee's own question of why he had been fired. The statement occurred at a dismissal meeting with a supervisor and an HR department representative. The HR staff person allegedly told the plaintiff he was being let go because of his "criminal lifestyle."

In finding no defamation liability here, the Florida court held that this "was a case of invited defamation which the court declared was a complete defense to an action for defamation."

What is this "invited defamation" employer defense recognized in Florida? The court borrowed this analogy or reasoning from a law book named *Restatement (Second) of Torts* (Section 583, Illustration 2):

"A, a school teacher, is summarily discharged by the school board. He demands that the reason for his dismissal be made public. B, president of the board, publishes the reason. A has consented to the publication though it turns out to be defamatory."

Missouri courts have similarly applied this "absolute privilege" defense where the employee's request for the reasons for a termination amounted to consent to the publication of the employer's responsive statements.

Both of these cases serve as a reminder for employers to avoid making false statements in the workplace, and to obtain express written consent and a hold-harmless clause with an indemnity clause before giving negative employee reference facts to any prospective employer of former employees. **MF**