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No Whistleblowing Protection Unless Conduct Is Clearly Prohibited

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A medical technician, who claims he was illegally terminated for reporting incidents of safety violations affecting patient care, did not fall within Missouri's public policy exception for wrongful discharge. The Missouri Supreme Court found the technician failed to cite any law specifically prohibiting the allegedly illegal conduct which he reported.

On February 9, 2010, the Missouri Supreme Court rejected a claim for wrongful termination brought against a St Louis hospital by a former employee, who worked as a medical image technician. The hospital claims the technician, who worked as an at-will employee, was terminated for an outburst in December of 2007. The hospital alleges the technician yelled at co-workers in front of a patient and threw a pillow across the room knocking a canister off the wall.

The technician denied making any violent outburst and claimed he was terminated for safety complaints made in 2005 concerning patient care. Those complaints included patients being left unattended, patients being improperly moved from stretchers to scanning tables, and pregnant women undergoing CT scans, which the technician asserts were unsafe practices.

Under Missouri law, and in many other states, an employer may terminate an at-will employee "for any reason or for no reason." This is referred to as "at-will" employment. However, the at-will employment doctrine is limited and does not permit employers to terminate employees for being a member of a protected class (for example, race, religion, national origin, sex, age or disability). Additionally, many states including Missouri recognize a public policy exception to the at-will employment doctrine. This exception prohibits an employer from taking an adverse action against an employee for their refusal to perform an illegal act or for reporting violations of the law.

In support of his claim of wrongful termination in violation of the public policy doctrine, the technician cited a federal regulation providing a patient the right to receive care in a safe setting and a Missouri regulation requiring hospitals to develop mechanisms to identify and

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abate safety hazards. The Court determined these legal provisions were too vague to fall within the public policy exception.

In order for an employee to prevail under Missouri's public policy exception, there must be evidence the employee reported "serious misconduct that constitutes a violation of the law and of well established and clearly mandated public policy." Because the provisions cited by the technician were broad and did not specifically prohibit the conduct forming the basis of his complaint, the public policy exception did not apply.

Providers should consult with an experienced attorney to ensure they are fully aware of the exceptions to the at-will employment doctrine within their jurisdiction. Additionally, providers should have procedures to address safety complaints and ensure compliance with federal law prohibitions against retaliation for occupational safety and health complaints and other federally protected whistleblower actions.

Margiotta v. Christian Hosp. Northeast Northwest, No. SC90249 (Mo. Feb. 9, 2010).

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