

Office Management: Termination of Employees in the Physician's Office

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Kansas is an “at-will” employment state. In practical terms, this means that unless employees have a contract with different provisions, their employment can be terminated for a good reason, a bad reason, or no reason – as long as it does not violate protections afforded under the law. Most physicians and office administrators know that employees cannot be terminated based upon their gender or race. These are examples of protections afforded under state and federal law that provide exceptions to at-will employment. Other Kansas and federal statutes afford additional protections.

One such statute is specific to the health care industry. Kansas law requires health care providers and their employees to report acts by health care providers that may fall below the standard of care and have a reasonable probability of causing injury to a patient. K.S.A. 65-4923. Reporting is also required for acts committed by health care providers that may supply grounds for disciplinary action by a licensing agency. *Id.* Likewise, reports must be made concerning health care providers who are believed to be impaired and unable to practice with reasonable skill and safety due to physical or mental disabilities, including those related to drug and alcohol abuse. K.S.A. 65-4924.

An employee who makes a report under these statutes is protected from employer retaliation under Kansas law. K.S.A. 65-4927. This means the employee cannot be discharged from employment “or otherwise discriminated against” for making a required report. *Id.*

This prohibition makes sense because it encourages the public policy of protecting public health and safety. It can, however, be a powerful weapon in the arsenal of a disgruntled

employee who has been discharged. Employers who discharge or discriminate against “whistle-blowers” under this statute face stiff repercussions. They are liable to the employee for all wages and other benefits lost due to the discharge or discrimination. They must also pay the employee a civil penalty in an amount equal to or less than the damages for lost wages and benefits. The employee may also recover attorney fees if he or she “substantially prevails” on any of the allegations of retaliation.

One important way employers can defend themselves against claims that they retaliated against “whistle-blowers” is to document their legally valid, nondiscriminatory reasons for discharging employees. Thus, if an employee has made a report under the statute – but has also stolen from the employer, or is terminated due to overstaffing – the employer will want to be able to marshal evidence of these nondiscriminatory reasons for termination in the event the employee files suit and claims to be a wrongfully discharged whistle-blower.