

LawClips

June 2012
Vol. 12, No. 2

Topic for the Month

Employment Termination

Mark A. Bartels

Terence J. Bouressa

John P. D'Angelo

Debra A. DeLeers

Timothy A. Hawley

Robert J. Janssen

Michael J. Kirschling

Joshua M. Koch

Evan Y. Lin

Lora A. Matzke

Christina L. Peterson

Patricia J. Sandoz

C. David Stellpflug

Kathryn M. Ver Boort

444 Reid St., Suite 200

De Pere, WI 54115

920-336-5766

920-336-5769 (fax)

866-525-5200 (toll-free)

stellpfluglaw.com

info@stellpfluglaw.com

Lakewood Office:

15251 Hwy. 32

Lakewood, WI 54138

715-276-6599

Hayward Office:

10594 Main St.,

Hayward, WI 54843

715-934-2767



You're Fired!

Watching wealthy celebrities be fired from a game show may be entertaining, but receiving notification from your employer that your employment has been terminated is in most instances a life changing event. This article is intended to outline the initial steps that an employee should take if their employment has been terminated.

The first step following termination is to apply for unemployment compensation benefits. Initial claims applications are made at ucclaim-wi.org or by dialing toll free (800) 822-5246. Once your claim for unemployment compensation has been filed, the employer will be notified of the claim to determine whether the employer disputes your entitlement to unemployment compensation. Employers can dispute unemployment compensation if the employee quits, if the employee was engaged in misconduct or in other specific instances, but generally unemployment compensation benefits are available to a terminated employee.

After being notified of your termination you should promptly request a full and complete copy of your employment file. Section 103.13 Wis. Stats. provides that an employer, upon the request of the employee, which can be required to be in writing, must permit the employee to inspect personnel documents and provide the employee with a copy of the employment file. The request for inspection shall be at a location reasonably near the employer, may provide a reasonable time for the inspection and may be required during working hours.

The employee or employee's representative has the right to copy and receive copies of records at a reasonable charge not exceeding the cost of the reproduction. An employer who fails to comply with this section can be fined not less than \$10 or \$100 for each violation and each day of refusal constitutes a separate violation. Unemployment matters are handled through the State of Wisconsin Unemployment Compensation Division. Wage and hour issues, including failure to provide an employment file upon a proper request, would be enforced by the State of Wisconsin, Wage and Hour Division.

After these initial steps are taken following termination, the employee should then determine whether the termination violated any fair employment laws, family and medical leave issues, wage and hour or worker's compensation laws.

It is illegal for an employer to discriminate against an employee based upon any of the following in Wisconsin: age, ancestry, arrest record, color, conviction record, creed, disability, genetic testing, honesty testing, marital status, military service, national origin, pregnancy or child birth, race, sex, sexual orientation or use and non-use of lawful products off the employers premises during non-working hours.

If a person believes that he or she has been discriminated against on one of these grounds a complaint can be filed with the Equal Rights Division under Wisconsin's Fair Employment Law which will generally also accomplish a filing with the federal Equal Employment Opportunity Commission. The complaint form and other forms to be utilized during this process can be found at dwd.wisconsin.gov/er/discrimination_civil_rights. Depending on the type of discrimination there are deadlines by which a discrimination claim needs to be filed with the Equal Rights Division.

Upon the filing of a complaint an investigator will be assigned to your case. The investigator will serve the complaint on the employer and engage in fact finding including review of relevant documents in an effort to determine whether probable cause exists that you have been discriminated against. If the investigator determines that there is probable cause to believe that discrimination exists, the case is certified for hearing and ultimately a hearing is held before a state Administrative Law Judge. If the investigator finds that there is no probable cause the employee may appeal that decision and have a hearing on the probable cause issue and if successful could then go on to a hearing on the merits of the claim. Ultimately cases before the Equal Rights Division are decided by an Administrative Law Judge who determines what damages or other remedies are appropriate as a result of the discriminatory conduct on the part of the employer. Attorney's fees are recoverable in these cases.

If you feel that you have been discriminated against as a result of the conduct of an employer or as an employer you have questions in the area of employment discrimination, the attorneys at Stellpflug Law, S.C. are here to answer your questions and guide you through employment related issues.

Employees should also be aware that employers are subject to a penalty of one year's lost wages for terminating an employee because of a work injury. Our attorneys also practice in the area of worker's compensation law.

Employers are also required to comply with laws relating to breaks and meals, plant closures, termination of health care benefits (COBRA), hours of work and overtime, minimum wage and wage claims among others.

Because the termination of employment can be a life changing event that can have significant consequences for a family, it is important that workers be aware of their rights, and act diligently in pursuing their rights including consulting with attorneys familiar with issues in the employment law area. The attorneys at Stellpflug Law welcome the opportunity to review your employment matter and make suggestions and recommendations as to how

you proceed, including the need for legal representation when appropriate. Employees and employers may contact Attorney Terry Bouressa or Attorney Mike Kirschling at 920.336.5766 with questions. ♦



Terence J. Bouressa



Michael J. Kirschling