

SCHIFF & HULBERT
ATTORNEYS AT LAW
150 N. WACKER DRIVE SUITE 1300
CHICAGO, ILLINOIS 60606
~
TELEPHONE (312) 726-2800
Facsimile (312) 726-2100

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**The Employer
Advisory**

Employment Case Analysis You Can Use

COURT REFUSES TO ENLARGE TORT OF RETALIATORY DISCHARGE

Chicago Commons Association (“CCA”) filed a lawsuit against its current employee, Darrel Hancock. CCA sought reimbursement for overpaid wages. Hancock filed an appearance after receiving the complaint. Fifteen days after filing his appearance, CCA terminated Hancock. Hancock filed a counterclaim for retaliatory discharge. CCA filed a motion to dismiss the counterclaim. The trial court dismissed the counterclaim and Hancock appealed.

The Illinois Appellate Court for the First District affirmed. Retaliatory discharge is a limited exception to the general rule that an at-will employee is terminable, at any time, for any or no cause. To establish retaliatory discharge, a plaintiff must show he was discharged in retaliation for his activities and the discharge violated a clearly mandated public policy. Public policy concerns what is right and just and what affects the citizens of the State collectively. It is to be found in the State’s constitution and statutes and, when they are silent, in its judicial decisions. An action that violates public policy must strike at the heart of a citizen’s social rights, duties, and responsibilities before a retaliatory discharge will be found.

Illinois courts have allowed retaliatory discharge action in two settings. First, when an employee is discharged for filing, or in anticipation of filing of, a claim under the Illinois Workers’ Compensation Act. Second, when an employee is discharged in retaliation for reporting illegal conduct by the employer, otherwise known as “whistle-blowing.” Hancock’s claim did not fall within either category. The underlying dispute involved a wage claim. There was no public policy favoring a person’s right to retain overpaid wages. The court found Hancock’s right to defend against CCA’s complaint was nothing more than an economic right.

Hancock alternatively argued CCA’s decision to fire him implicated the due process clause and equal protection clause of the Illinois Constitution. These clauses are designed to protect citizens from actions by the government and not by other citizens. CCA was not acting under the color of state law when it fired Hancock

To establish a cause of action for retaliatory discharge, a claimant must show he was discharged in retaliation for his activities and the discharge violated a clearly mandated public policy.

Chicago Commons Assoc. v. Hancock, 2004 WL 241676, __ N.E.2d __ (Ill. App. 1st Dist. 2004). Copyright 2004 Schiff & Hulbert. This employer newsletter is for information purposes only and is not intended to constitute or be a substitute for legal advice. If you have a question about a particular situation, please contact us. (DAS)