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## **WHISTLEBLOWERS: TARGETS FOR PUNISHMENT**

**Anna N. Bass, Southeastern Louisiana University**  
**abass@selu.edu**

**Lara Kessler, Southeastern Louisiana University**  
**Lara.Kessler@selu.edu**

**John W. Yeargain, Southeastern Louisiana University**  
**jyeargain@selu.edu**

### **ABSTRACT**

*This paper examines a Supreme Court case in which the court approved the transfer of a senior attorney in a district attorney's office to a staff attorney position after the attorney questioned the validity of a search warrant. The paper also cites the commander of the local VFW post of the Abu Ghraib unit who in an interview on Sixty Minutes said the enlisted man who gave authorities the pictures of abuse had failed his comrades and was a traitor that it was not safe for him to return to his unit's home base in the United States for fear of retribution. So, we have two situations in which punishment of whistleblowers is approved. Most recently we have the wounded soldiers who spoke to reporters about the poor conditions at Walter Reed Army Medical Center. Subsequently, the wounded soldiers were told that there would be early morning room inspections and that there would be no further contact with reporters. This is an inherent organizational characteristic. We punish those who tell. It should not come as a surprise, we were taught by our parents not to tell on our siblings, even when they had violated a family rule.*



# THE AMERICANS WITH DISABILITIES ACT

**Debra Burke, Western Carolina University**  
**Malcolm Abel, Western Carolina University**  
**burke@email.wcu.edu**

## ABSTRACT

*Title III of the Americans with Disabilities Act of 1990 (ADA) provides that "no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of ... any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation" (42 U.S.C. 12182(a) (2006)). The Act also prohibits discrimination in "specified public transportation" services, defined as "transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis" (42 U.S.C §§ 12184(a) & 12181(10) (2006)). Both provisions require covered entities that provide public accommodations and public transportation to make "reasonable modifications in policies, practices, or procedures" to accommodate disabled individuals (42 U.S.C §§ 12182(b)(2)(A)(ii), 12184(b)(2)(A) (2006)), and require the removal of "architectural barriers, and communication barriers that are structural in nature" where such removal is "readily achievable," defined as being "easily accomplishable and able to be carried out without much difficulty or expense" (42 U.S.C §§ 12181(9), 12182(b)(2)(A)(iv) & 12184(b)(2)(C) (2006)). Title III further requires that any determination of "readily achievable" account for the impact of the removal of the barrier upon the overall operation of the facility (42 U.S.C. § 12181(9) (2006)).*

*Generally, entities that provide public accommodations or public transportation 1) may not impose "eligibility criteria" that tend to screen out disabled individuals, 2) must make "reasonable modifications in policies, practices, or procedures, when such modifications are necessary" to provide disabled individuals full and equal enjoyment, 3) must provide auxiliary aids and services to disabled individuals, and 4) must remove architectural and structural barriers, or if barrier removal is not readily achievable, must ensure equal access for the disabled through alternative methods (42 U.S.C §§ 12182(b) & 12184 (2006)). However, eligibility criteria that screen out disabled individuals are permitted when necessary for the provision of the services or facilities being offered (42 U.S.C §§ 12182(b)(2)(A)(i), 12184(b)(1) (2006). Moreover, policies, practices, and procedures need not be modified, and auxiliary aids need not be provided, if doing so would "fundamentally alter" the services or accommodations being offered (42 U.S.C §§ 12182(b)(2)(A)(ii)-(iii) (2006)). Furthermore, auxiliary aids are not mandated if they would result in an "undue burden," nor is any accommodation required if, as a result, disabled individuals would pose "a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services" (42 U.S.C §§ 12182(b)(2)(A)(iii) & 12182(b)(3) (2006)).*

## SPECTOR V. NCL

Norwegian Cruise Line (NCL) is incorporated in Bermuda, but has its principal place of business in Miami. NCL ships "are essentially floating resorts" that "depart from, and return to, ports in the United States" (Spector v. Norwegian Cruise Line, LTD, 2005, p. 126). Most passengers are residents of the United States, and pursuant to terms of the contract of passage, disputes between the cruise line and its passengers are subject to the laws of the United States, even though almost all of NCL's vessels sail under foreign flags. Plaintiffs in the lawsuit were disabled passengers, who

alleged violations of the ADA in that, unlike other travelers, they 1) were required to pay higher fares and special surcharges, 2) were required to waive any potential medical liability and travel with a companion, and 3) were subject to NCL's right to remove a disabled passenger from the ship whose presence posed a danger to the comfort of another passenger. They further alleged that NCL violated the ADA by maintaining evacuation programs and equipment in locations that were not accessible by disabled passengers and asserted that in general, NCL did not do enough to ensure that disabled passengers had the full enjoyment of the services offered by the cruise line (*Spector v. Norwegian Cruise Line, LTD, 2005*).

The district court held that Title III of the ADA applied to foreign flagged vessels and that the plaintiff's companions associational discrimination claim were valid, but dismissed the claim that the physical barriers needed to be removed because the agencies charged with promulgating architectural and structural guidelines for the ADA had not promulgated such regulations for cruise ships (*Spector v. Norwegian Cruise Line, LTD, 2005*). The Court of Appeals for the Fifth Circuit sustained the district court's dismissal of the petitioners' barrier-removal claims on the alternative ground that Title III does not contain a specific provision mandating its application to foreign-flag vessels, and reversed the district court on the remaining Title III claims (*Spector v. Norwegian Cruise Line, LTD, 2004*). The Fifth Circuit reasoned that, while it is settled law that a ship which voluntarily enters the territorial waters of the United States is subject to its jurisdiction, there is no obligation to exercise that jurisdictional authority. Given that the exercise of jurisdiction is not mandatory, the application of American law to the foreign flagged vessel requires that the law to be applied contain a clearly expressed affirmative intention by Congress (clear statement) to do so. The appeals court reviewed Supreme Court precedent which concluded that labor and wage laws do not apply to foreign vessels which are temporarily in port and manned entirely by foreign seaman. It further determined that nothing in the statutory text of Title III of the ADA or its legislative history indicated a contrary intent in this case, because Congress did not address the problems of the conflict of foreign laws. The court further opined that Title III barrier removal provisions must be narrowly drawn to avoid conflicts with international rules and conventions governing sea vessels, since those provisions "may govern the finest details of maritime architecture in the quest to render the ships fully accessible to disabled passenger" (*Spector v. Norwegian Cruise Line, LTD, 2004, p. 647*). As such, those changes in maritime architecture would be permanent, thus allowing Title III to apply beyond the territorial waters of the U.S.A. and representing possible conflicts with transnational or international law (*Spector v. Norwegian Cruise Line, LTD, 2004*).

In reversing the Fifth Circuit the Supreme Court held that, while the ADA does not include a specific provision mandating its application to foreign flagged cruise ships in U.S. waters, and while its definitions of "public accommodation" and "specified public transportation" did not mention cruise ships in particular, "there can be no serious doubt that the NCL cruise ships in question fall within both definitions under conventional principles of interpretation" (*Spector v. Norwegian Cruise Line, LTD, 2005, p. 129*). "Cruise ships flying foreign flags of convenience offer public accommodations and transportation services to over 7 million United States residents annually, departing from and returning to ports located in the United States. Large numbers of disabled individuals, many of whom have mobility impairments that make other kinds of vacation travel difficult, take advantage of these cruises or would like to do so. To hold there is no Title III protection for disabled persons who seek to use the amenities of foreign cruise ships would be a harsh and unexpected interpretation of a statute designed to provide broad protection for the disabled" (*Spector v. Norwegian Cruise Line, LTD, 2005 p. 132*).

The Court surmised that while a clear statement must be made by Congress as to its intentions in its passage of legislation before the requirements of the statute can interfere with the internal operations of a foreign flagged vessel, "general statutes are presumed to apply to conduct that takes place aboard a foreign-flag vessel in United States territory if the interests of the United States or its citizens, rather than interests internal to the ship, are at stake" (*Spector v. Norwegian*



Cruise Line, LTD, 2005, p. 130). For example, the National Prohibition Act, which prohibited the sale or consumption of alcohol, was applicable to foreign flagged vessels in the territorial waters of the United States because there was no provision in the Act making it inapplicable to such vessels, and the prohibition affected the welfare of American citizens (*Cunard S.S. Co. v. Mellon*, 1923). The narrow exception of the clear statement rule to the general applicability of U.S. statutory law to foreign flagged vessels in its territorial waters applies only to matters involving “the internal order and discipline of the vessel, rather than the peace of the port” (*Spector v. Norwegian Cruise Line, LTD*, 2005, p. 130). The Court deduced that sound principles of statutory construction support both the presumption of not interfering with matters that primarily concern issues to which foreign law applies, as well as the presumption that statutes are intended to apply to all entities, foreign or domestic, that affect U.S. citizens or the peace and tranquility within the jurisdiction of the United States. Thus, only if the duties and requirements of Title III of the ADA interfere with the internal operations of a foreign flagged vessel, will the absence of a clear statement by Congress intending that effect preclude requiring compliance with those statutory obligations.

The Court admitted that there is no precise definition of what constitutes internal affairs, but admonished that precision was not necessary: “It suffices to observe that the guiding principles in determining whether the clear statement rule is triggered are the desire for international comity and the presumed lack of interest by the territorial sovereign in matters that bear no substantial relation to the peace and tranquility of the port” (*Spector v. Norwegian Cruise Line, LTD*, 2005, p. 133).

The Court acknowledged that if the predominant effect of the statutory requirement is on the internal affairs of the vessel, even though the welfare of U.S. citizens are also served, the clear statement rule’s deference is triggered. It presumed that the alleged ADA violations regarding physical barriers presented by the structure of the vessel would likely interfere with the vessel’s internal operations because they could require physical alteration of a ship’s design which would be permanent and, in some cases, substantial. In contrast, discriminatory pricing policies and mandatory waivers of liability have nothing to do with a ship’s internal affairs.

The Court also hypothesized that the express limitations contained in the statutory provisions of the ADA may make resort to the clear statement rule unnecessary. Since Title III requires barrier removal if it is “readily achievable,” a barrier removal requirement “that would bring a vessel into noncompliance with the International Convention for the Safety of Life at Sea or any other international legal obligation, would create serious difficulties for the vessel and would have a substantial impact on its operation, and thus would not be ‘readily achievable,’” under proper construction of the ADA, without resort to a consideration of the internal operations of the ship (*Spector v. Norwegian Cruise Line, LTD*, 2005, p. 135-36). Further, the Court noted that, while the determination of whether or not a barrier modification is readily achievable under Title III should consider the effect of the modification on shipboard safety, Title III by its own language provides that its nondiscrimination and accommodation requirements are not applicable if to comply would pose a significant health or safety risk to others. The court observed that obviously Congress would not have intended to bring a vessel into compliance with the ADA only to cause it to cease its overall operations, nor it would have intended that compliance with a statute, which was designed to accommodate disabled citizens, should result in posing a significant risk to the safety or health of everyone else.

In sum, the Court concluded that Title III of the ADA applies to foreign flagged vessels which are in the territorial waters of the United States “to the same extent that it is applicable to American ships in those waters,” except where it would interfere with the internal operations of the vessel” (*Spector v. Norwegian Cruise Line, LTD*, 2005, p. 142). In remanding the case for an application-by-application approach, the court directed that if the lower court finds that Title III’s requirements would interfere with the ship’s internal affairs, for example in affecting a ship’s safety requirements or conflicting with its international obligations, then the clear statement rule must be given effect, and as a result, may preclude structural modification requirements, even those that

would be readily achievable. Justice Ginsburg in her concurring opinion asserted that Title III should not be hemmed in where there is only interference with internal operations, and no potential for international discord.

The dissenting justices argued that Title III did not apply to any vessel which would require modifications of the vessel's structure, whether or not they affected the internal operations of the ship or were readily achievable. The dissent concluded that, because there is no clear statement by Congress that Title III of the ADA should apply to foreign flagged vessels, the presumption is that it does not apply. The justices further contended that any requirement to remove barriers would affect the internal affairs of a vessel, because removing barriers necessarily requires the alteration of the structure of that vessel permanently, continuing to affect the vessel, its crew and its owners beyond the territorial jurisdiction of United States. They also maintained that Title III either applies to foreign flagged vessels or does not, and cannot be interpreted as having prescriptions, some of which apply to the internal affairs of the ship and others which do not, "any more than it is in our power to prescribe that the statute applies to foreign-flag cruise ships 60% of whose passengers are United States citizens and does not apply to other foreign-flag ships" (*Spector v. Norwegian Cruise Line, LTD*, 2005, p. 156). In defending their position, the justices also noted that, while Congress clearly intended the ADA to apply to hotels and other public accommodations, it failed to mention ships of any kind.

### RAMIFICATIONS AND POLICY CONSIDERATIONS

The plurality decision in *Spector* suggests cruise ships are subject to Title III of the ADA unless the requirements would affect their internal affairs. The Court recognized that a readily achievable removal of a barrier on a foreign flagged vessel is not required if complying would interfere with internal operations, such as by posing a significant risk to the safety or health of others on the vessel, or rendering the vessel to be out of compliance with some international convention or law necessary for it to operate outside U.S. territorial waters. The parameters articulated in this case for the application of the ADA to ships, however, have not yet been applied by lower courts. On remand to the district court, the Fifth Circuit observed that the Supreme Court did not eliminate its original grounds for denying relief, that is, the government's failure to promulgate uniform physical accessibility guidelines for cruise ships, as at least being a factor in the liability determination (*Spector v. Norwegian Cruise Line, LTD*, 5<sup>th</sup> Circuit, 2005).

What are the economic consequences if foreign flagged vessels must comply with Title III of the ADA? Each year foreign-flagged ships steam into U.S. ports, preceded by an advertising strategy which fully recognizes the economic potential of the American citizen's desire to get away onboard a floating hotel with sea air, gambling, dining, entertainment, and numerous activities as they travel to exotic ports of call. The total effect of these passengers on cruise line revenues is not insignificant. Will the consequences of accommodating disabled passengers have an economic impact on the cruise industry, and if so, will the marketing strategies of the industry change? The cruise industry cannot ignore the potential likelihood of increased scrutiny by Congress, either. Recent news stories covering the man overboard cases, for example, may have already stirred Congress to consider further regulation of the cruise ship industry in the United States, both foreign and domestic. The likely impact of such regulation, which now seems permissible, could be staggering.

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## MAKING MORE INFORMED HIRING DECISIONS

**Gerald E. Calvasina, Southern Utah University**  
calvasina@suu.edu

**Richard V. Calvasina, University of West Florida**  
rcalvasi@uwf.edu

**Eugene J. Calvasina, Southern University**  
ejcalvasina@cox.net

### ABSTRACT

*Making an accurate hiring decision is extremely important for most employers. The cost associated with making a poor hiring decision from a productivity, customer service, and liability prospective have been widely studied and has been estimated to be three times the annual salary of the individual involved. Also, in recent years numerous studies have reported that applicants for employment have grown increasingly willing to misrepresent their credentials in the application process. This growing phenomenon has further complicated the hiring decision for employers attempting to hire the right individual for a position. The purpose of this paper is to examine the problems created by this increased willingness of job applicants to misrepresent their credentials, and to present policy and practice suggestions that employers can utilize in order to reduce their legal liability and the cost associated with making poor hiring decisions.*

### COSTS ASSOCIATED WITH MAKING A POOR HIRING DECISION

The cost associated with making a poor hiring decision have been widely studied. A 2004 studied conducted by SHL and the Future foundation concluded that "the hidden cost of selecting the wrong candidate for a position equals an annual sum of \$105 billion in the United States" (BIZCOMMUNITY.com, 2007). This estimate, derived from an analysis of managerial earnings and the time spent managing poor performance only captures part of the cost of making a poor hiring decision. Often the eventual remedy utilized to correct a poor hiring decision is either voluntary or involuntary termination. In those situations, the most obvious costs the firm will incur are those associated with filling the vacated position. Severance payments, cost associated with re-advertising the job, recruitment, assessment, selection process cost, and training a new hire are incurred again and possibly again if the organization repeats the same mistakes it made the first time. Poor hires can also lead to lost production, sales, and customer satisfaction in addition to poor morale as competent and productive employees develop resentment at "being on the same team with losers" (Burke, 2007).

In those situations where involuntary termination occurs, the potential for wrongful discharge allegations is usually greater (Dinse, Knapp & McAndrew, 2006). The potential legal cost associated with wrongful discharge allegations can add up very quickly in today's litigation happy society. With the wide array of protected class status options available to unhappy former employees, the possibility of having to defend an allegation of some type of discrimination and or retaliation is very real. An often cited study by ELT and Littler Mendelson, identified both the hard and soft costs and their average dollar and time amounts incurred by an organization to defend itself against a single claim in the employment law area:

Table 2

## Defense Hard Costs

Attorney Fees if the case goes to trial	\$250,000
Attorney Fees if the case settles prior to trial	95,000
Manager time expended in the claim process	40 hours
Employee time expended in the claim process	40 hours
Employee time spent investigating the claim	60 hours
Employee time spent preparing for trial	60 hours
Range of settlement costs or jury awards	\$150,000 to \$250,000

## Defense Soft Costs

Impact on the work group in terms of distraction and reduce morale.  
 Impact on the cost of insurance if company is covered and experiences losses.  
 Impact on stock price and reputation if there is publicity around the claim.  
 Potential of copycat lawsuits or other claims due to internal and external publicity.  
 Impact on attracting the best employees given potential negative publicity of a claim.  
 (ELT and Littler Mendelson, 2002).

One of the more expensive hiring mistakes that a company can make is associated with applicants that lie. If an untruthful applicant is eventually connected to a negligent-hiring lawsuit, "settling or losing such a suit can cost an employer \$1 million or more" (Babcock, 2003).

### CHALLENGES TO MAKING MORE INFORMED HIRING DECISIONS

Applicant misrepresentation of academic and work experience is a growing challenge for employers, and numerous studies have been reported in the literature. In one, a 2002 Hiring Index study by ADP's Screening and Selection Services, reported that 40% of individuals' resumes showed discrepancies in employment and education history. In a 2002 Federal Bureau of Investigation (FBI) study they cited, the FBI estimated that approximately 500,000 people falsely claimed to have a college degree (Matejkovic and Matejkovic, 2006). Another study cited by Ron Aumann, estimated that more than one million fraudulent degrees had been purchased in the past decade and that one provider of false degrees had sold more than 200,000 diplomas (Aumann, 2006). Aumann reported on some recent high profile individuals that had been exposed for overstating their academic credentials including David Edmondson, who stepped down as CEO of RadioShack Corporation, Laura Callahan, a senior director in the U.S. Homeland Security Department ousted in 2004, and Sandra Baldwin, of the U.S. Olympic Committee in 2002. An October 12, 2006 Associated Press story reporting on a federal wire and mail fraud case involving an online diploma mill, noted that a White House staff member and national Security Agency employees were among 6,000 individuals who purchased online college degrees from the company. Many of the degrees were sold to foreign residents seeking entry into the United States, raising national security concerns (Associated Press, 2006). The New York Times reported that 14 New York Fire Department employees "had used, or tried to use, bogus diplomas to be promoted or hired" purchased from the same diploma mill currently facing federal wire and mail fraud charges (Buckley, 2007). Another troubling set of statistics reported by Matejkovic and Matejkovic was on a study of college students that reported that 95% of the students in the survey stated that they would lie to get a job and that 41% reported that they had already done so (Matejkovic and Matejkovic, 2006).

## **POLICY AND PRACTICE ISSUES FOR EMPLOYERS**

Whether hiring in health care, child care, or any other service related occupation, employers that are truly interested in making an informed hiring decision, must include a criminal background check as part of the applicant screening process. Socolof and Jordan believe that especially in health care related situations, "criminal background checks are the single most important component of a thorough screening process"(Socolof and Jordan, p. 9, 2006). Their rationale is supported by the widely held view that "prior behavior is often the best indicator for future behavior", and that "criminal records are the first records searched by litigant attorneys and the press after an accusation is made against an employee"(Socolof and Jordan, p. 9, 2006). In conducting criminal background checks, employers must be aware of federal and state laws that govern most background information on applicants and employees. The most important federal regulations in this area are associated with the Fair Credit Reporting Act (FCRA). State laws can vary with none being more imposing for employers than the regulation in California. California statutes include the California Consumer Credit Reporting Agencies Act and the California Investigative Consumer Credit Reporting Agencies Act (Stivarius, 2006). FCRA provisions have been broadly applied to both "consumer reports" and "investigative consumer reports". Employers utilizing third-party background screening companies must be aware that these companies are defined as consumer reporting agencies under FCRA and that the reports they prepare are defined as "consumer reports" (Zeidner, 2006).

Another widely cited effective element in any applicant screening process is the use of a standard application (Babcock, 2003). In developing the application form, employers must remember that these forms are subject to federal and state antidiscrimination laws and that any inquiry must be job-related and nondiscriminatory in nature (Bettac, 2003). Basic information application forms should require applicants to provide is their name and other names they have used, their social security number, address and phone numbers. An employment history section that goes back at least 10 years with addresses and phone numbers of the previous employers should also be obtained (Bettac, 2003). If certain degrees, certifications, or licenses are required applicants should also be required to provide that information as well. The address information will be critical if the employer is to do a criminal record search (Babcock, 2003). Applicants should also be asked if they have ever been convicted of a crime but employers should be cautioned against inquiring about arrest records. The Equal Employment Opportunity Commission (EEOC) has generally viewed arrest records as irrelevant and the potential for utilizing them may cause an adverse impact on protected class individuals in some parts of the country (Twomey, 2005). Finally, applicants should also be required to sign the application forms, attesting to the truthfulness and accuracy of the information provided, and that providing false, inaccurate, or incomplete information may be grounds for being denied employment or dismissed (Babcock, 2003, Bettac, 2003). The application form should also contain the "employment-at-will" disclaimer and, if applicable, that the employer will be requiring a drug test (Bettac, 2003).

Collecting relevant job related information is important in making an accurate hiring decision, but unless the organization is willing to extend resources to verify the information provided by the applicant, making an informed hiring decision will be difficult. Individuals charged with verifying information must be trained to employ objective methods in verifying information. Without physical evidence, spotting lies based on feelings and observation of how individuals respond in interviews is a very risky approach.

An employer attempting to verify information supplied on an application form faces a formidable task if they are not going to outsource the process. Verifying degrees, certificates, and licenses, while potentially much easier utilizing the internet, can still be time consuming and thus expensive. One often cited source for verify degrees is the National Student Clearinghouse at <http://www.studentclearinghouse.org/> (Aumann, 2006).

Organizations looking to avoid the public embarrassment associated with the publicity that often surrounds press coverage when individuals in high places are identified as having bogus degrees, let alone the potential legal fallout, should verify employee and applicant claims in this area.

Other tell-tale signs that experienced evaluators of application form information recommend include looking for time gaps between employment, incomplete information, and failing to sign the application, "which could shield the candidate from being accused of falsification, or not consenting to background screening" (Babcock, p. 52, 2003).

## SUMMARY AND CONCLUSIONS

Employers looking to hire and promote the most qualified applicants though, should remember the downside cost of not making every necessary effort to make more informed hiring decisions. While press releases would seem to support the idea that the biggest downside costs are associated with negligent hiring, employers should also calculate the "hidden cost" of selecting the wrong candidate for a position identified in the SHL and the Future Foundation study and the "soft cost" detailed in the ELT and Littler Mendelson study. It would appear that the propensity of applicants to lie when applying for both entry level and upper level positions in all kinds of organizations is a rampant and growing problem in our society. This cultural phenomenon will require employers intent on making informed hiring decisions to allocate even more resources in the future to make more informed hiring decisions.

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# **AN EXAMINATION OF CLAIMS UNDER THE AMERICANS WITH DISABILITIES ACT IN LIGHT OF THE DISABILITY SOCIAL DISTANCE SCALE RESEARCH**

**Robert D. Hatfield, Western Kentucky University**

**bob.hatfield@wku.edu**

**Shane Spiller, Western Kentucky University**

**shane.spiller@wku.edu**

## **ABSTRACT**

*The EEOC recently released claim data for 14 years including claims under the Americans with Disabilities Act. Researchers have, for thirty years, studied the differences between various disabilities using the Disability Social Distance Scale. This paper examines the actual ADA claim data to see how the preferences toward and away from various disabilities are correlated with the filings, resolutions, and financial awards in ADA cases. Both the earlier and later social preference hierarchies are used in the examination of the correlations.*



# THREE STATES OF MIND: LIABILITY FOR NEGLIGENT ENTRUSTMENT OF MOTOR VEHICLES

John Hoft, Columbus State University  
hoft\_john@colstate.edu

## ABSTRACT

*Negligent entrustment of motor vehicles is an independent tort that imposes liability upon the owner of a motor vehicle for his negligent act in lending a vehicle to someone who is incompetent to drive it where the incompetent driver injures a third party due to his incompetence and careless operation of the vehicle. The law of three bordering states each addresses an owner's potential liability for entrusting his vehicle to another in different ways. Georgia requires the injured third party to prove that the entrustor had actual knowledge of the incompetence or habitual recklessness of the entrustee. Alabama allows the injured third party to prove the owner should have known about the entrustee's incompetence and will admit the entrustee's driving record as proof of incompetence and, by implication, the owner's constructive knowledge. Florida will ignore the question of the entrustee's incompetence altogether and will impose strict liability upon the owner for simply entrusting his vehicle to another. This article will carry an identical entrustment case to the courts of each state to analyze the reasoning and result therein so as to provide a better understanding of liability for entrustment of motor vehicles.*

## INTRODUCTION.

In August, 2002, Western Industries, Inc., an exterminating company, hired Samuel Shareef as a truck driver and furnished him with a company truck. Western's policy required all driver applicants to supply the company with a copy of their driving record in order to qualify for employment. Western's branch manager said that there was no way Shareef would have been hired without providing a copy of his driving record. On November 1, 2002, Shareef negligently operated the company truck and crashed into Mr. Poole injuring him. Poole learned that Shareef's driving record included a hit-and-run accident and a drivers' license suspension. Western's branch manager said that had he known about this hit-and-run conviction and license suspension he would not have hired Shareef. Mr. Poole sued Western for negligently entrusting its truck to Shareef, an allegedly incompetent driver. Western replied by stating that the driving record could not be found in Shareef's personnel file. No explanation was given for this discrepancy. Western then claimed that it did not learn about Shareef's driving record until after the collision and that it did not know about the hit-and-run conviction and license suspension beforehand. The issue presented by this case, and untold numbers like it, is: Whether a party who entrusts a motor vehicle to another is liable to third persons who are injured by the negligence of the driver of the entrusted vehicle? The courts in three bordering states, Georgia, Alabama and Florida, will each apply different standards to this issue. These states, while geographic neighbors, are worlds apart in the manner in which their judicial departments will decide liability in this case. The purpose of this paper is to identify the rules of law and analysis that each state's judiciary will employ in determining Western's liability, if any, so as to illustrate liability exposure generally when entrusting a motor vehicle for use by another.

## **THE NEGLIGENT ENTRUSTMENT DOCTRINE GENERALLY.**

Negligent entrustment is a separate common law tort and a recognized cause of action in nearly every state (*Kitchen v. K-Mart Corporation*, 1997). The Restatement (Second) of Torts §308 (1965) defines the concept as follows:

It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

The “crux of the negligence is the knowledge of the entruster of the youth, inexperience, known propensity towards reckless and irresponsible behavior, or other quality of the trustee, indicating the possibility that he will cause injury (*Dooley, J.*, 1977).

### **I. GEORGIA.**

#### **The Rule: The Required Extent of the Owner’s Knowledge of Incompetency.**

The Georgia negligent entrustment rule has been stated in two ways in cases decided within months of one another. In one case the court stated that liability for negligent entrustment of automobiles arises from the “negligent act of the owner in lending his automobile to another to drive, with actual knowledge that the driver is incompetent or habitually reckless” (*Scott v. LaRosa & LaRosa, Inc.*, 2005). In the second case the court stated that “under the doctrine of negligent entrustment, a party is liable, if he entrusts someone with an instrumentality, with actual knowledge that the person to whom he has entrusted the instrumentality is incompetent by reason of his age or inexperience or his physical or mental condition or his known habit of recklessness” (*Danforth v. Bulman*, 2005). The rules are identical in the requirement that actual knowledge of the driver’s incompetency is an essential element of the tort (*Keenan v. Hill*, 1989).

#### **Constructive Knowledge of Incompetency Insufficient.**

Constructive knowledge of the incompetence of the trustee is not sufficient and has been expressly rejected by Georgia courts (*Saunders v. Vickers*, 1967). Thus, the courts have on numerous occasions made it incumbent upon the party injured by the negligence of the trustee to prove that the entrustor had actual knowledge of the trustee’s incompetent driving or facts from which such knowledge could be inferred (*Greene v. Jenkins*, 1997).

#### **Common Law Focus.**

In Georgia, the vast majority of cases focus on the entrustor’s knowledge of the alleged incompetency of the trustee at the point that the vehicle is furnished to the trustee (*Danforth v. Bulman*, 2005). In most cases the plaintiff is simply not able to present sufficient facts of actual knowledge to survive a summary judgment especially where liability cannot be premised on the entrustor’s failure to even inquire about the trustee’s competence (*Upshaw v. Roberts Timber Company, Inc.*, 2004). In many cases the entrustor simply denies having knowledge of any incompetency of the trustee and summary judgment for the entrustor duly follows (*Fletcher v. Hatcher*, 2006).

### **Western's Liability.**

Western is not liable to Poole for negligently entrusting its truck to Shareef (Western Industries, Inc. v. Poole, 2006). The court reasoned that a claim for negligent entrustment cannot succeed in the absence of a showing that the employer had actual knowledge that the driver was incompetent or habitually reckless. The court ruled on summary judgment for Western that it was not sufficient for the Plaintiff to show constructive knowledge of incompetence, i.e. that Western should have known Shareef was not competent to drive. The court did not comment about the driving record missing from Shareef's file except to point out that Western had no statutory duty to obtain a driving record then concluded that since Poole failed to point to any facts suggesting that Western had actual knowledge of Shareef's hit-and-run conviction his claim for negligent entrustment must fail.

## **II. ALABAMA.**

### **The Rule: The Required Extent of the Owner's Knowledge of Incompetency.**

In Alabama the rule is: "if an owner of a motor vehicle entrusts its operation to one known to him to be an incompetent, reckless, or careless driver, the owner will be liable to one injured by the combined negligence of the owner and the operator (Day v. Williams, Ala. 1995). Therefore, there must be proof of negligent conduct that involves three factors: First, there must be entrustment by the owner; second, there must be incompetence or recklessness on the part of the trustee; and third, the owner must have actual or constructive knowledge of such incompetence or recklessness (Milligan v. Sparks, Ala.Civ.App. 1973).

### **Constructive Knowledge of Incompetency Sufficient.**

Proof of the entrustor's scienter by constructive knowledge has been a part of Alabama's common law since 1917 (Gardiner v. Solomon, 1917). The question in Alabama, then, is whether repeated acts of the trustee's carelessness and incompetence would have come to the entrustor's knowledge had he exercised ordinary care (Thompson v. Havard, 1970). Moreover, the trustee's driving record is highly relevant and admissible into evidence to show constructive knowledge on the part of the entrustor (Bruck v. Jim Walter Corporation, 1985). Thus, liability for negligent entrustment can be imposed upon an owner who "has reason to know or believe" the trustee was an incompetent driver (Day v. Williams, 1995).

### **Common Law Focus.**

The primary focus in cases involving negligent entrustment in Alabama is the trustee's alleged incompetence to drive the entrusted motor vehicle (Day v. Williams, 1995). This issue is resolved by a fact-based inquiry and there are no absolutes.

### **Western's Liability.**

Western is liable to Poole for negligently entrusting its truck to Shareef (Bruck v. Jim Walter Corporation, 1985). It is anticipated that the court will reason that a claim for negligent entrustment will succeed where the entrustor should have known that the trustee was incompetent (Thompson v. Havard, 1970). Western's policy required all driver applicants to supply a copy of their driving record so Western should have known about the hit-and-run conviction and license suspension. Furthermore, Shareef's driving record is admissible and highly relevant to show knowledge of

incompetence on the part of Western (*Bruck v. Jim Walter Corporation*, 1985). As to the issue of incompetence, Western's branch manager admitted that had he known about the hit-and-run episode and license suspension he would not have hired Shareef. That Western admitted that it believed Shareef was incompetent supplies the necessary manifestation of incompetence required to fulfill the elements for negligent entrustment in Alabama (*Chiniche v. Smith*, 1979).

### III. FLORIDA

#### **The Rule: Dangerous Instrumentality Doctrine.**

Under Florida's unique dangerous instrumentality doctrine the owner of a motor vehicle who voluntarily entrusts that motor vehicle to another is strictly liable to third persons for injuries caused by the negligent operation or use of the motor vehicle by the trustee without regard to the trustee's competence or lack thereof (*Lamb v. Matetzschk*, 2005). Under this bright line doctrine an owner, who gives authority to another to operate the owner's vehicle, by either express or implied consent, has a nondelegable obligation to ensure that the vehicle is operated safely (*Aurback v. Gallina*, 2000). The rationale for the doctrine is that it serves to deter vehicle owners from entrusting their vehicles to drivers who are not responsible by making the owners strictly liable for damages to third parties resulting from the negligent operation of the entrustor's vehicle (*Burch v. Sun State Ford, Inc.*, 2004).

#### **Western's Liability.**

Western is liable to Poole for entrusting its truck to Shareef. It is anticipated that the court would reason that Western voluntarily furnished a truck owned by it to Shareef and is therefore strictly liable for damages caused by the negligence of the trustee in the operation of this dangerous instrumentality (*Southern Cotton Oil Co. v. Anderson*, 1920).

### CONCLUSION.

Most states recognize the tort of negligent entrustment of motor vehicles but the elements comprising the tort differ from state to state. In Georgia, it is incumbent upon the party injured by the negligence of the incompetent trustee to prove that the entrustor had actual knowledge of the trustee's incompetence. This has proved to be a difficult burden. In Alabama the plaintiff need only prove that the entrustor had constructive knowledge of the incompetence of the trustee. The driving record of the trustee is admissible to prove incompetence and to prove by implication that the entrustor should have known about such incompetence. In Florida, proof of the trustee's incompetence is not necessary. Florida has adopted a dangerous instrumentality theory that holds that the owner of motor vehicle who voluntarily entrusts it to another is strictly liable to third persons for injuries caused by the negligent operation of the motor vehicle by the trustee.

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## **PRIVATE SCHOOL'S ADMISSIONS POLICY VALIDATED BY THE 9<sup>th</sup> CIRCUIT**

**Gwendolyn McFadden, NC A & T State University  
Jean Wells, Howard University  
mcfaddeg@ncat.edu**

### **ABSTRACT**

*The recent decision of Doe v. Kamehameha Schools, a case of first impression involving a private Hawaiian school and its admissions policy which grants preference to Native Hawaiians, challenges a well settled rule that private schools cannot discriminate on the basis of race in their admissions policy. The Ninth Circuit Court of Appeals decided that the school's admissions policy was a valid race-conscious preferential/remedial plan which was neither racially discriminatory nor a violation of 42 U.S.C. § 1981. The court modified a test used by the United States Supreme Court in Johnson v. Transportation Agency (an employment case) and rejected the well settled rule established nearly 30 years in Runyon v. McCrary, where the Supreme Court ruled that the exclusion of African-Americans from private white schools was a "classic violation of § 1981."*

*The paper reviews the historical background of the Kamehameha Schools, court challenges to the admissions policy, and the treatment and classification of Native Hawaiians by the United States government. The paper discusses the Doe decision which presents both a race-conscious preferential/remedial plan analysis as applied in Johnson and a racially discriminatory analysis pursuant to Runyon. The paper concludes that the Doe case was correctly decided by the Ninth circuit using the modified Johnson analysis, but notes that it would have been decided differently had Runyon been applied. Finally, the paper reviews the implications of the Doe decision on the tax exempt status of the school and finds that the decision is consistent with the IRS' long standing determination that the admissions policy of the school is not contrary to public policy.*



## **CSR2 : CALLING SCHOOLS TO RESPOND TO CORPORATE SOCIAL RESPONSIBILITY**

**Peter Sherman, University of Evansville  
Jan Hansen, Benedictine College**

### **ABSTRACT**

*Researchers have studied the role of social responsibility in organizations for decades. Despite this extensive research, the teaching of corporate social responsibility in the classroom remains somewhat limited. In order of educators in business to catch up with corporations who are increasingly focusing on issues and stakeholders beyond the bottom line, there must be an increased and integrative focus on CSR. This paper makes a call an increased focus on social responsibility across business disciplines and makes recommendations on how they can be implemented.*



## **MAJOR CHANGES TO BANKRUPTCY LAW: HOW ARE BUSINESSES IMPACTED?**

**Laura L. Sullivan, Sam Houston State University  
lls003@shsu.edu**

**Charles R.B. Stowe, Sam Houston State University  
fin\_crs@shsu.edu**

### **ABSTRACT**

*The purpose of this paper is to review a few of the more significant provisions in the new Bankruptcy Code (“Code”) that impact businesses. It is important for businesses to understand how the new Code impacts and effects them in the event of bankruptcy. Bankruptcy not only has an effect on the businesses assets but real estate lease decisions business debtor. Both of these issues will be addressed.*

*After many years of discussing the many failures and loop holes in the bankruptcy system the President and Congress sought to repeal the Code. In 2005 the Bankruptcy Abuse Prevention and Consumer Protection Act (“the Act”) was passed. This Act was primarily supported by credit card companies and other unsecured creditors. The unsecured creditors had a legitimate interest in bankruptcy reformation since they are the biggest losers in the bankruptcy process. However, approximately half of the legislation affects business bankruptcy.*

*The main changes affecting businesses are geared to impact small business owners. One major change references the automatic stay provision which allows the debtor protection from creditors once the bankruptcy petition has been filed.<sup>1</sup> Under the new law, small business debtors are not entitled to this coveted protection in certain circumstances.<sup>2</sup> This is a major setback for small businesses contemplating bankruptcy.*

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<sup>1</sup> 11 U.S.C.A. 362(n)(1)

<sup>2</sup> Robin Miller, *Validity Construction and Application of Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 2005 A.L. R. Fed. 2d 3, \_\_, (2005).





## **PHYSICAL PRESENCE V. ECONOMIC PRESENCE: FIN 48 IMPLICATIONS**

**Jean Wells, Howard University**  
**Gwendolyn McFadden, North Carolina A & T State University**  
**mcfaddeg@ncat.edu**

### **ABSTRACT**

*This paper reviews recent case law that establishes nexus requirements for the imposition of state income and franchise taxes and discusses the implications of FIN 48 in light of the application of inconsistent standards among jurisdictions. Some states use an economic presence test while other states use a physical presence test to establish nexus with the state. The paper urges congressional intervention to establish a uniform definition of nexus, thereby enhancing the level of recognition and measurement as required by FIN 48.*

*The paper argues for the urgency of a uniform definition because FIN 48 is now effective. FIN 48 provides that the taxpayer must consider the facts, circumstances, and other information available at the reporting date to determine the recognition and measurement requirements for reporting uncertain tax positions in the financial statement. To assist taxpayers in making this determination, FIN 48 identifies legislation, legislative intent, regulations, rulings, and case law as authoritative sources. However, case law varies by jurisdiction resulting in inconsistent application of nexus standards. To help ensure compliance with FIN 48, Congress should establish a standard that could be more easily and evenhandedly applied.*



# THE PUBLIC POLICY EXCEPTION TO EMPLOYMENT AT WILL: BALANCING EMPLOYERS' RIGHTS AND THE PUBLIC INTEREST

Lorrie Willey, Western Carolina University  
lwilley@email.wcu.edu

## ABSTRACT

*Despite the fact that employment at will remains the fundamental tenet in American employment law, more and more circumstances have served to remove the termination of an employee from the "at will" arena. The employer's power and control over the employee is now subject to numerous exceptions to the "at will" doctrine. Perhaps the most elusive exception requires the balancing of employers' right in controlling an employee and the public's right in assuring that employers do not act in a manner contrary to the public interest. In considering the public policy exception to employment at will, courts find public policy in varying sources and apply the public policy exception to a wide variety of termination situations. In this paper, the courts' application of the public policy exception to employee dismissal disputes is examined.*

## INTRODUCTION

Workers in the United States are most commonly hired, and fired, based on the employment relationship deemed "at will." While England provided the foundation to most law in the United States, the questions regarding the duration of employment and whether a firing must be for cause have been answered in a distinctly American way. Historically, contract law defined the extent of the employment relationship. In England, absent specific contractual language, the term of employment was presumed to be one year (Summers, 2000). Early American courts were not sure if they should apply this rule; some courts followed the English rule, some not (Id). In 1877, Horace Wood, a jurist, proclaimed that the rule in the United States established a presumption opposite that of the English courts. In America, employment was of an indefinite period unless the employee could prove otherwise (Id).

The theory of employment at will as the basic employment relationship has stood the test of time, basically in tact. It remains a fundamental tenet of contemporary employment law: an employer is free to terminate employees without cause or consequence. When no duration of employment is expressed, both parties are free to hire and be hired only for so long as both wish to remain in such a relationship. "In the absence of any employment contract for a definite period, both employer and employee are generally free to termination their association at any time and without reason" (Salt v. Applied Analytical, Inc., 1991).

## PUBLIC POLICY EXCEPTION

In 1908, the US Supreme Court ruled that contracts for employment are

"subject to the can be sustained, which the law, upon reasonable grounds, forbids as inconsistent with the public interests or as hurtful to the public order or as detrimental to the common good" (Adair v. United States, 1908).

Since then, courts have demonstrated flexibility in defining public policy and in identifying employee dismissals that contravene the public interest. A California court determined that "public

policy has been defined as the principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good” (Petermann v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Local 396, 1959). The Oklahoma Supreme Court stated that the public policy exception “rests on the notion that in a civilized society the rights of employers to discharge at-will employees is necessarily balanced against the rights of the public at large as found in existing law” (Clinton v. State of Oklahoma, 2001). However, the courts have also deemed that what is considered public policy must be firmly established in law and the interest to protect fundamental, substantial (Tameny v. Atlantic Richfield Company, 1980) and one which impacts society as a whole (Burk v. K Mart Corporation, 1989).

For the courts, all the circumstances surrounding an employee’s termination and the close study of applicable law is required to determine whether public policy has been violated. This is a restriction on employers that must be applied sparingly. As stated by the Court of Appeals of Missouri, “The public policy exception is narrow enough in its scope and application to be no threat to employers who operate within the mandates of the law and clearly established public policy ...”(Boyle v. Vista Eyewear, Inc., 1985).

### **WHISTLE BLOWING**

Whistle blowing, the act of an employee reporting wrongful acts of the employer, is often the circumstance in public policy cases. In such cases, to whom the employee reports the wrongdoing and what the employee reports will play a crucial role in determining whether public policy has been violated. Generally, an employee who reports criminal activity on the part of the employer to the appropriate government authorities will gain some protection against an at will firing. The Supreme Court of Kansas added one more factor: the employee’s motivation in reporting the criminal conduct of must be based on a good faith concern “rather than from a corrupt motive such as malice, spite, jealousy or personal gain” (Shaw v. Brown, 1988).

Employees who engage in external whistle blowing, the reporting of the wrongful employer actions outside the workplace, generally are protected from termination under the public policy exception. This exception was applied to the firing of a lab technician at an eye wear company. The company failed to test its eye glasses in violation of federal regulations. After being repeatedly ignored in her efforts to get her employer to properly test, and indicating that she would report the violation, the employee did report to the appropriate authorities was fired (Boyle v. Vista Eyewear, Inc., 1985).

Internal whistle blowing is more problematic. Reports to supervisors or others internal to the employer are not always protected. An employee discovered that his company’s district manager was stealing from the company. Rather than report to a supervisor, the employee confronted the manager about his suspicions (Faust v. Ryder Commercial Leasing and Services, 1997). After that confrontation, certain responsibilities were eliminated from the employee’s position and, eventually, he resigned. No violation of Missouri public policy took place since the report was made to the wrongdoer and not to authorities (Id.). No public interest was served from such an internal report.

### **EMPLOYEE REFUSING TO ENGAGE IN CRIMINAL CONDUCT**

Many courts have reviewed the public policy concerns that arise when an employee is fired for refusing to engage in criminal activities on behalf of the employer. The Texas Supreme Court determined that refusal of an employee to commit a crime, in this case a deck hand who refused to pump bilges into the water, was permitted a “very narrow” exception to the terminable at will doctrine (Sabine Pilot Service v. Hauck, 1985).

The Supreme Court of California also considered this question. An oil company employee refused to pressure independent gas stations to cut their prices as part of his employers scheme to illegally fix gasoline prices (*Tameny v. Atlantic Richfield Company*, 1980). His firing violated the public interest in discouraging and reporting criminal conduct (Id.).

Can the employee be fired for refusing to engage in activity that may result in a future crime when there is no present criminal conduct? An accountant refused to engage in producing documents for his employer that he believed his employer was going to use to commit a crime (*Dunn v. Enterprise Rent-a-Car Company*, 2005). The comptroller had serious concerns about documents his employer was planning to use in preparation of an initial public offering of stock (Id.). He was vocal about aspects of the documents that he felt violated law and he was terminated from his position. While he did not report the improper financial activities to outside authorities, and neither he nor his employer actually engaged in criminal conduct, the Missouri Court of Appeals found his termination in violation of public policy (Id.). The Court held that the laws requiring honest financial disclosures by companies offering securities to the public was clear and that protection should be extended to “an employee who is terminated from his or her employment for objecting to practices he or she reasonably believes violate this policy” (Id.).

A North Carolina Court ruled on the question of public policy and truthful testimony. A nurse working in a hospital was told that she would “be in trouble” if she told all about what she had seen during an incident at the hospital that resulted in a malpractice case (*Sides v. Duke University*, 1985). The nurse witnesses a doctor administer drugs to a patient, after she had refused to do so due to the dangers, that caused the patient brain damage. The nurse told all and truthfully during the trial, rather than perjure herself and was fired. In finding in favor of the nurse on her claim for wrongful termination, the Court stated “that in a civilized state where reciprocal legal rights and duties abound the words ‘at will’ can never mean ‘without limit or qualification...An at will prerogative without limits could be suffered only in an anarchy, and there not for long...” (Id.).

### **REFUSAL TO FIRE ANOTHER EMPLOYEE**

A dismissal for filing a workers’ compensation claim, or for refusing to fire an employee for filing a workers’ compensation claim, has also been the basis for public policy discussions in the courts. A father and son worked to an automobile dealer, with the father as the son’s supervisor (*Rothrock v. Rothrock Motor Sales, Inc.*, 2005). After the son claimed he was injured on the job, another relative working at the dealership, an uncle, told the father to get his son to file a waiver of his workers’ compensation claim releasing the dealership. When the son refused to sign, both father and son were terminated. While an earlier ruling protected workers who were retaliated against as the result of filing for workers’ compensation, and therefore, protected the son (*Shick v. Shirey d/b/a Donald L. Shirey Lumber*, 1998) the court ruled that the public policy exception protected the father as well. The Court rules that “...it would be ...repugnant for this Court to turn its back on such supervisors, who amount to innocent pawns in a conflict between employer and subordinate employee...” (*Rothrock v. Rothrock Motor Sales, Inc.*, 2005).

### **EMPLOYMENT DISCRIMINATION**

Discrimination can still be the basis of litigation involving at will termination and the public policy exception. Many federal statutes prohibiting workplace discrimination require a minimum work force for the application of the particular law. Moreover, not all states have anti-discrimination statutes. When an employee was fired from his employment solely on the basis of his age, the Supreme Court of Vermont reviewed the case (*Payne v. Rozendaal*, 1986). The Court noted that at the time the employee experienced discrimination on the basis of his age, no state or federal remedy existed (Id). The Court held that the firing on the basis of age only “is a practice so contrary to our

society's concern for providing equity and justice that there is a clear and compelling public policy against it" (Id.).

Sexual harassment was also the basis of review of an employee's termination. An employee who refused the sexual advances of her foreman and refused to sleep with him was fired (Lucas v. Brown & Root Inc., 1984). The Court likened the situation to the crime of prostitution: "A woman invited to trade herself for a job is in effect being asked to become a prostitute" (Id.). Moreover, "it is implied in very contract of employment that neither party be required to do what the law forbids" (Id.).

### **FREE SPEECH**

Constitutional guarantees, such as those protecting free speech, can also involve public policy questions when an employee is fired. The claim of free speech violations was not sustained in a North Carolina case. During a primary election for sheriff, an employee of the department ran against the incumbent sheriff (Hines v. Yates, 2005). The sheriff won and the employee lost, the election and his job. The Court did not agree with the employee that the firing was in contravention to the right to free political speech. During the election, the employee made public statements critical of his employer, the sheriff. The Court could not find any public policy basis on which to base the employee's claims. The Court pointed out that the employee had been free to run against his employer and publicly criticize the sheriff. There had not been any restriction of his speech (Id.).

### **JURY DUTY**

Firings based on an employees serving on juries has also been the basis of litigation involving the public policy exception. When an employee was terminated after being called to serve on a jury, the Supreme Court of Oregon considered the public policy implications (Nees v. Hocks, 1975). The employee received a summons and advised the clerk that she wanted to serve on the jury. She made no attempt to be excused despite her employer's request that she do so. The Court determined that her firing violated the public interest; "the legislature and the courts clearly indicate that the jury system and jury duty are regarded as high on the scale of American institutions and citizen obligations" (Id.). Clearly, the demands of society to uphold the integrity of the legal system established fundamental public policy.

### **PROFESSIONAL CONDUCT**

Even workers in the professions often serve their employers at will. The conflict between employer demands and professional ethical codes can also provide the basis for court consideration of professional standards and public interest. A physician was fired when he refused to refer patients to other doctors within his organization (LoPresti v. Rutland Regional Health Services d/b/a Rutland Regional Physician Group Inc., 2004). He was of the strong belief that those doctors did not treat their patients with acceptable standards of care. In line with his ethical obligations, he continued to refuse to refer patients even when his employer pressured him to do so. On appeal, the doctor identified specific provisions of the American Medical Association Principles that guided the conduct that ultimately lead to his termination. The court readily held the doctors ethical code the source of public policy; the public interest in high standards for health care was clear (Id.).

### **CONCLUSION**

While various exceptions to the doctrine exist, employment at will still rules the workplace. In matters of public policy, though, the at-will prerogative takes on a strong opponent, the public

interest. While the application of the public policy exception requires a clear public policy interest, when one is discerned, the employer's conduct will not be sustained. From free speech to whistle blowing, the courts find clear mandates to negate an employment at will termination on behalf of the public interest. As a result, more and more employment issues are no longer a private matter between employer and employee. In many cases, employment issues are a matter of the public interest.

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## **MOVING PAST A DIVORCE: THE FINANCIAL AND HOLISTIC WELL BEING OF WOMEN**

**Denise Woodbury, Southern Utah University  
woodbury@suu.edu  
Marie Dayton, Southern Utah University**

### **ABSTRACT**

*Following a divorce, the woman is usually left with a smaller piece of the marital pie. She may find herself at another disadvantage because of her lack of marketability in the job market. Thus, her wages, based on her gender, education, and experience probably won't allow her to live in the same style as she could pre-divorce. This is compounded as she tries to raise children alone often with little or no financial or emotional support from the former spouse. Such challenges can be magnified when lawmakers and judges fail to recognize or value the many domestic contributions a woman makes during the course of her marriage. In addition, little value is recognized of the woman's role that enabled her husband to excel in the workforce. Even if she is awarded alimony or child support, she relies on the government and courts to enforce the order of support. Unfortunately, our judicial system is overwhelmed and under funded; with resources stretched thin, enforcement of post-divorce financial orders is rarely a priority. For a recently divorced woman, these struggles can become insurmountable hurdles for women. These problems can leave her feeling that she is drowning in a quagmire of money problems, her own hopelessness, her children's acting out, a new life with a lower socio-economic level. This condition is potentially worse outside of the United States. Internationally, women are exposed to a slew of inequalities, and often lack the funds, representation, and legal support they need to better their situation. Deficiencies in women's financial and holistic well being take place around the globe. Only through conscientious reform will equality begin to surface for women following a divorce.*



