



## **Is Firing Someone for Taking a Restroom Break Illegal? Public Policy Says Maybe**

*Sarah E. Pawlicki, Esq., SPHR and James B. Yates, Esq., SPHR*

Most employers understand that the at-will employment relationship means that either the employee or the employer may terminate the relationship at any time for any lawful reason. Despite this general rule, however, employees may bring an action against their employer for wrongful discharge in violation of public policy. Does public policy require employers to permit employees to use the restroom?

In *Zwiebel v. Plastipak Packaging*, 2013-Ohio-3785, Zwiebel was terminated when he left his position on the production line unattended on three different occasions during one shift. After Zwiebel was terminated, he filed a wrongful discharge in violation of public policy claim asserting that his employer terminated him for using the restroom.

The Third District Appellate Court pointed out that in order to have an action for wrongful discharge in violation of public policy, an at-will employee must prove (1) a clear public policy existed and was manifested in a state or federal constitution, statute, or administrative regulation; (2) dismissing the employee would jeopardize the public policy; (3) the employee's dismissal was motivated by conduct related to the public policy; and (4) the employer lacked an overriding legitimate business justification for the dismissal.

The court acknowledged that there is a public policy requiring employers to provide employees with the opportunity to use toilet facilities. Specifically, the Occupational Safety and Health Administration (OSHA) standards require employers to provide toilet rooms for each sex in all places of employment and to provide employees with prompt access to the facilities. The OSHA standards, however, permit employers to impose reasonable restrictions on employee access to restroom facilities.

The court concluded that the employer's requirement that production line workers obtain coverage before leaving the line for any reason, including using the restroom, was reasonable. Specifically, the court noted that no other employee was terminated for failing to find line coverage nor was the employer aware of a situation where an employee had to use the restroom without finding such coverage. Zwiebel admitted that he never complained about the policy nor did he indicate that the policy was unreasonable or harmful to employees prior to his termination.

Additionally, the court held that there was nothing to indicate that Zwiebel's dismissal would jeopardize the policy that employers provide employees with access to restroom facilities. Despite Zwiebel's arguments to the contrary, the record established that he was dismissed for leaving the production line unattended on three different occasions (not just to use the restroom) and for failure to follow orders or instructions of his supervisor. The court held that for a public policy claim, "the employee must do more than show that a public policy was violated, the employee must show that the policy itself is at risk if the discharge is allowed to continue." Zwiebel could not.

While this case is a victory for employers, the employer had to incur the cost of defending the claim. In its decision, the court noted that employees file wrongful discharge in violation of public policy claims when a discharge seems "unfair, arbitrary, extreme, and perhaps unwarranted." Employers should keep this in mind when discharging employees and try to determine if there is a public policy that would cover the situation.

*Sarah Pawlicki and Jim Yates are attorneys with the law firm of Eastman & Smith Ltd. in the firm's Labor and Employment Group. Sarah can be reached at (419) 247-1701 or sepawlicki@eastmansmith.com. Jim can be reached at (419) 247-1830 or jbyates@eastmansmith.com.*