

Virginia: Employees can sue Individual Supervisors for Wrongful Termination in Violation of Public Policy

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A nurse who worked at an orthopedic spine center claimed that she was subjected to sexual harassment by her supervisor, a doctor who was the owner of the center. When she refused to leave her husband to be with the doctor, he allegedly fired her. She filed suit, claiming gender discrimination as well as wrongful discharge against both the center and the doctor. Both parties filed motions to dismiss, and the doctor prevailed on his motion because the district court found that wrongful discharge claims by an employee are cognizable only against the employer and not against supervisors in their individual capacity. The nurse appealed to the Fourth Circuit Court of Appeals, which then certified the following question to the Virginia Supreme Court:

Does Virginia law recognize a common law tort claim of wrongful discharge in violation of established public policy against an individual who was not the plaintiff's actual employer, such as a supervisor or manager, but who participated in the wrongful firing of the plaintiff?

Upon consideration of the certified question, the Virginia Supreme Court found that there was no question that the nurse had a cognizable claim against the employer, and that she could similarly maintain her claim against her individual supervisor, the doctor. The Court looked to various other jurisdictions which likewise permit such actions, and found that the existing precedent in the state supported allowing such suits. This determination was largely based upon principles of agency, in that employers and employees are deemed to be jointly liable and jointly suable for the employee's wrongful act. Though the doctor argued that only the employer has the ability to bring about a discharge, and thus, only the employer can be liable, the Court rejected this position, reasoning that in a wrongful termination case, the tortious act is not the discharge itself, but instead, the wrongful reasons behind it. Where these reasons stem from the unlawful actions of the employee, he or she should share in liability.

Ultimately, the Court concluded that "the deterrence of discharge in violation of public policy...is best served if individual employees in a position of power are held personally liable for their tortious conduct."

Terminations are risky, even when based upon documented, non-discriminatory, non-retaliatory bases. To manage risk and avoid making common mistakes, employers are cautioned to consult with counsel.

For more information read [VanBuren v. Grubb](#).

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