

What to Do if You're Fired Because Seen As Associating With Another Unwanted Employee.

Suppose a husband and wife work at the same company, in different departments. Suppose the wife makes a sexual harassment complaint at work. Suppose further both she and her husband get fired not long after that. She claims she was fired in retaliation because of her complaint. He claims he was fired because he was married to her. What are their rights?

In matters of pleading a case, careful legal research is critical. Why? Because the pleading must conform to the law. If the facts alleged do not include the critical elements of a recognized "cause of action" found in law, the case will be dismissed. Folks, we lawyers can't just make these things up.

Now it gets sticky. Was the husband fired in violation of the laws prohibiting discrimination because of marital status? Our California courts have held "No." Why? Because it wasn't that the husband was in the class of persons identified as "married" and that the employer showed dislike and bias toward that class of persons. He was fired because of his association with the woman who was fired, who happened to be his wife.

Where does that leave the fired husband? The U.S. Supreme Court has held that independently of marital status, a man who was a fiancé to a woman who complained of sex discrimination could sue his employer, who fired both the woman and him. The ruling was based on Title VII of the Civil Rights Act. The Court held the fiancé, while not directly protected, was a "person aggrieved" by violation of the statute. That is, they got to her through him. He was hurt because they wanted to hurt her, and they wanted to hurt her because of her discrimination claim. That was good enough for Justice Scalia. *Thompson v. North American Stainless, LP*, 131 S.Ct. 863, 178 L.Ed.2d 694, 111 Fair Empl.Prac.Cas. (BNA) 385, 2011 Daily Journal D.A.R. 1214, 94 Empl. Prac. Dec. P 44,081, 79 USLW 4053, 11 Cal. Daily Op. Serv. 971, 2011.SCT.0000008<<http://www.versuslaw.com>>

For the California law on this point, see *Chen v. County of Orange* (2002) 96 Cal.App.4th 926. The Chen Court added in dicta that while a marital status retaliation claim was not available, a married person could prove a "termination in violation of public policy" by alleging that the firing deprived him of his right of

free association under the First Amendment of the U.S. Constitution. The idea is the same: a secondary party is fired to cause injury to the primary target.