RECENT COURT DECISIONS

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U.S. DISTRICT COURT DISMISSES WRONGFUL DISCHARGE CLAIM BASED ON EMPLOYEE'S PERCEPTION OF RISK OF PHYSICAL HARM BY CO-WORKER

The rule that a Connecticut employer may not terminate an otherwise at-will employee for refusing to work in an unreasonably dangerous place or manner was not extended to include the employee's subjective perceptions of danger, in a federal court decision issued on March 6, 2009. In *Cesar Ferrer v. T.L. Cannon Management Corp.*, Chief Judge Chatigny of the U.S. District Court ruled in favor of the employer in a case of first impression regarding whether an at-will employee who is discharged for complaining about a physically threatening co-worker may sue for wrongful discharge.

The principle that an employee cannot be fired for protesting an employer's violation of public policy provides a narrow exception to the general rule allowing employers to discharge at-will employees for any reason or for no reason whatsoever. In the 1997 decision of *Parsons v. United Technologies Corp.*, the Connecticut Supreme Court found that this public policy exception requires employers to provide a reasonably safe work environment. In other words, an at-will employee may not be terminated for refusing to work "in a place or condition that poses an objectively substantial risk of death, disease or serious bodily injury" when such risk is not contemplated within the scope of the employee's duties.

A key element of the *Parsons* decision was the Court's refusal to find that an at-will employee is protected from termination for refusing to work due to merely *subjective* beliefs that a working condition or location is unreasonably dangerous. In that case, the Court found that the plaintiff could sue for wrongful discharge because his termination was allegedly based upon his refusal to accept an assignment to teach repair and maintenance of a nonmilitary helicopter for the Crown Prince of Bahrain in 1990, during the Persian Gulf War. Observing a travel advisory by the U.S. State Department then in effect warning all Americans to defer non-essential travel to that area, the Court found that the plaintiff had sufficiently alleged an objectively reasonable belief that his travel to and residence in Bahrain would pose a substantial risk of death, disease or serious bodily injury.

In the recent *Ferrer* decision, the discharged employee argued that because his co-worker had taken a swing at him, and had assaulted another employee a year prior, his employer had wrongfully discharged him in contravention of the public policy requiring employers to provide a reasonably safe work environment. However, the employee could show nothing more than a subjective belief that the co-worker posed a substantial risk of injury. Citing the *Parsons* court's express rejection of subjective beliefs as a basis for invoking the unsafe work environment exception, the Court found that the employee had not sufficiently alleged a wrongful discharge claim. In so finding, the Court noted that while there was no Connecticut case addressing this issue in the context of a physically threatening co-worker, there was no reason why this situation would require deviation from the *Parsons* objectivity rule for alleging an unreasonably safe workplace.

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