

Employer Held Liable For Firing Employee Who Complained About Clients' Billing Practices

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An employer can fire an at-will employee for any reason or for no reason, so long as the reason for the termination does not violate public policy. An employer cannot lawfully fire an employee for reporting an alleged violation of "a statute of public importance." In a recent decision, *Casella v. SouthWest Dealer Services, Inc.*, the California Court of Appeal affirmed that an employer can be found liable for terminating an employee for complaining about "fraudulent" conduct by the employer's clients, even if the conduct was not explicitly unlawful at the time of the termination.

SouthWest Dealer Services sells after-market products to car dealerships. Casella alleged that SouthWest fired him because he had complained to his supervisors about the dealerships' billing practices. He claimed that this amounted to "wrongful termination in violation of public policy." The jury agreed, and awarded the employee nearly five hundred thousand dollars in damages.

On appeal, SouthWest argued that the billing practices Casella complained about were not unlawful. In fact, SouthWest pointed out that the legislature considered and rejected a bill that would have outlawed the billing practices. SouthWest further noted that a law outlawing the billing practices was not passed until 2005, which was two years after SouthWest fired Casella. As a result, SouthWest argued, it could not have fired Casella for reporting the violation of a "fundamental and substantial" public policy.

The Court of Appeal disagreed and upheld the jury's verdict. The appellate court acknowledged that an employer cannot be liable for wrongful termination in violation of public policy, unless the public policy is "carefully tethered to fundamental policies that are delineated in constitutional or statutory provisions." Yet the appellate court rejected SouthWest's claim that the billing practices about which Casella complained were lawful because the legislature had not specifically outlawed them. It held that SouthWest's argument "hinges on a demonstrably false premise – namely, that conduct which falls within a new criminal statute must have been permissible under already existing criminal statutes." The appellate court ruled that the billing practices at issue violated a section of the Penal Code prohibiting "fraudulent activities," and therefore SouthWest could not lawfully fire Casella for reporting them.

Quoting the California Supreme Court, the appellate court noted that an employer "is bound, at a minimum, to know the fundamental public policies of the state and nation as expressed in their constitutions." In practice, "fundamental public policies" are sometimes difficult to define, and an employer risks liability anytime it fires an employee who has complained about supposedly unlawful conduct.