

TOWN OF NORTH BRENTWOOD

RESOLUTION NO. 2018 - 02

Introduced by: Councilmember Baynes
Seconded by: Councilmember Wiloy
Date of Introduction: March 19, 2018

A Resolution establishing a wrongful termination avoidance policy, and generally relating to employment matters and fair practices.

WHEREAS, pursuant to Section 904 of the Charter of the Town of North Brentwood, the Town shall have the power to employ such officers and employees as it deems necessary to execute the powers and duties provided by the Charter or other State law and to operate the Town government; and

WHEREAS, the Local Government Insurance Trust ("LGIT") has recently completed a Hazard Evaluation Survey of the Town's buildings, policies and manuals and has recommended that the Town adopt a policy and procedures regarding the avoidance of wrongful discharge claims; and

WHEREAS, the Mayor and Council finds that claims alleging wrongful termination have increased exponentially throughout the last decade or so, and that widespread wrongful termination litigation appears to be a trend due to developing structures of the American workplace, which are joined with changes in the environment outside the workplace that have greatly impacted the exposure to wrongful termination claims; therefore, it is in the best interest of the Town to adopt the below referenced policy.

NOW THEREFORE BE IT RESOLVED, by the Council of the Town of North Brentwood that the Town Government and its employees, as well as its appointed and elected officials shall comply with the following policy:

TOWN OF NORTH BRENTWOOD WRONGFUL TERMINATION AVOIDANCE POLICY

I. WHAT IS WRONGFUL TERMINATION?

Although there are many ways to properly terminate an employee, Wrongful Termination (or Wrongful Discharge) is the act of terminating an employee in an approach that is against the law. Wrongful Termination also encompasses what is called constructive discharge, a situation in which the employee's work environment is deliberately made so difficult that he or she is forced to resign to protect his or her financial or physical and emotional well-being (e.g., employee is forced to work excessive hours in physically unsafe conditions, or substantial reduction in wages from what he or she previously earned).

II. TERMINATION OF EMPLOYEES

- A. Resignations are normally the least difficult type of termination. However, matters such as continuation of benefits must be dealt with, if the process is to be smooth for both parties.
- B. Employers are fully within their rights to institute temporary or permanent layoffs, as long as no discrimination is involved. If the Town is planning layoffs, it will need to evaluate whether women, older employees or members of minority groups will feel the effects of the layoffs disproportionately.

- C. Termination for poor performance can result from an ongoing pattern of tardiness or absence from work, or failure to adequately meet the demands of the job. Termination for misconduct can involve a wide range of unacceptable behaviors, including but not limited to: 1.) Lying, 2.) Stealing, 3.) Violence or the threat of violence, 4.) Unwillingness to follow directions from supervisors, and 5.) Disregard for the safety of other employees.
- D. Constructive discharge occurs when the employee resigns because a supervisor placed him or her in a position where there was no reasonable alternative to quitting the job. The local government must be certain that apparently voluntary resignations are not in reality constructive discharges. Constructive discharge frequently results in legal action and charges of wrongful discharge.

III. DISCRIMINATION

- A. The anti-discrimination laws that apply to hiring employees also apply to terminations. These include discrimination on the basis of: Race, Color, Gender, Age, Religion, Citizenship, National Origin, Marital and Family Status, Pregnancy and Disability.
- B. The U.S. Constitution's equal protection and due process clauses require that citizens be treated fairly and equally, and that the government not discriminate unless there is a compelling governmental interest at stake (e.g., women are prohibited from serving in certain military occupations).

IV. AT-WILL EMPLOYMENT

- A. It is the general policy of the Town of North Brentwood to employ its employees at-will. Barring a contract, policy or ordinance that states otherwise, in an at-will employment relationship, the employer (and employee) has the right to end the employment relationship for any lawful reason it chooses or even for no reason at all. However even in an at-will relationship, the employer does not have the right to terminate an employee because of his or her race, age, or exercise of statutory rights such as filing a worker's compensation claim or any other protected characteristic or activity.
- B. The Employment-At-Will Doctrine is applicable in the State of Maryland. This means that employers wishing to institute an at-will policy are strongly advised to state this clearly, and prominently in the employee handbook, if any, and in other appropriate employment-related materials or offer letters. An employment contract may be implied particularly if informal remarks by a job interviewer or other manager state or imply that the employee will be terminated only for misconduct or poor performance. Failure to state the Town's at-will policy may be interpreted by the courts to constitute an implied contract that deprives the employer of the right to terminate the employee at-will.
- C. Exceptions to the At-Will status of employee-employer relationships is sometimes found in municipal employment. A few local governments in this State provide their employees with merit protection or they are permitted to enter into collectively bargained agreements as members of a union. A merit employee can typically only be terminated for just cause and only after notice and a hearing on the basis of discharge or discipline. Unionized employees are protected by the union agreements.

- D. In recent years, both courts and legislatures have developed numerous exceptions to this at-will employment doctrine. It has become easier to uphold an action for Wrongful Termination, and the number of claims has consequently risen.

V. LEGAL GROUNDS FOR WRONGFUL TERMINATION CLAIMS

- A. There are generally two categories of Wrongful Termination: 1.) a wrongful termination in violation of a statute, or 2.) Wrongful Termination in violation of a public policy, which is typically filed as a civil tort claim.
- B. In general, plaintiff employees can meet the elements of a Wrongful Termination in violation of a statute if they can establish 1.) they are members of a protected class that engage in an activity that is protected by statute, 2.) they are doing satisfactory work, 3.) they were discharged, and 4.) similarly situated individuals outside the employee's protected class were treated more favorably or other circumstances surrounding the adverse employment action give rise to an inference of discrimination. Some statutory examples include:
- 1.) Title VII of the Civil Rights Act of 1964 (making it unlawful to discharge any individual because of that individual's race, color, religion, sex, or national origin),
 - 2.) The Federal Age Discrimination in Employment Act (protecting individuals from discharge based on their age, if over 40),
 - 3.) The Federal Fair Labor Standards Act and the Maryland Wage & Hour Law (making it unlawful to discharge employees for asserting their rights to legal compensation), and
 - 4.) Federal "Whistleblower" Statutes (making it illegal for an employer to discharge a whistleblower as defined in the relevant statute).
- C. The elements of a Wrongful Termination in violation of public policy are similar, but the plaintiff employee also bears the burden of demonstrating 1.) the existence of a clear public policy, 2.) that discourages the conduct in which the employee may have engaged and that would jeopardize the public policy, 3.) a causal link between the plaintiff employee's conduct in furtherance of the public policy and his or her discharge, and 4.) that the defendant employer cannot articulate an overriding justification for the dismissal. Public policy claims often stem from refusal to participate in illegal activities (e.g., padding the cost of services delivered under a government contract), refusal to perform a lawful act (e.g., not consenting to undergo alcohol or drug testing where this refusal is protected by law).

VI. PROCEDURES FOR PREVENTING WRONGFUL TERMINATION CLAIMS

- A. General. In most places, compliance requires no legal knowledge, but can be achieved by simply treating all employees fairly, consistently and with respect. However, there are several steps or procedures that can help minimize the frequency and severity of Wrongful Termination claims.
- B. Advertising. When advertising a job position, all references to sex, age, race, color, religion, national origin, pregnancy or disability should be eliminated. A local government is prohibited from excluding applicants based on these factors.
- C. Applications. The job application is used to gather desired information on a prospective employee. Therefore, questions regarding the applicant's sex, age, race, color, religion, national origin, pregnancy or disability should not be asked unless it is relevant to the job in question. If the Town

government needs this information for insurance or other purposes, it should be asked after the applicant is hired. A sample "at will" statement which may be used on the application follows:

I certify that the information contained in the application is correct to the best of my knowledge. In consideration of my employment, I agree to abide by the rules and regulations of the Town of North Brentwood, and I understand that these rules, regulations, and any personnel manual (or similar policies), do not constitute a contract of employment. I understand that my employment and compensation can be terminated, with or without cause, and with or without notice, at any time, at either my option or the option of the Town of North Brentwood. I further understand that no supervisor or representative of the Town has authority to enter into any agreement for employment for any specified period of time or to make any agreement to the foregoing.

- D. Interviews and Background Checks. The Town should conduct detailed pre-employment interviews and background checks, performed in compliance with state and federal laws. The information obtained from this process (prior work experience, why the applicant left prior employment, career goals and required educational experience) will be valuable in assessing a future employee's track record of previous problems with management and history of job turnover during his or her care. Managers should develop a uniform interview format and document the answers to ensure that all applicants for the same position are asked similar questions.
- E. Hiring. Managers should thoroughly evaluate and screen all applicants and select the one who is best qualified to perform the essential functions of the job. Managers should retain all documents relating to the hiring decision including interview summary sheets, resumes, applications, advertisements, and job postings. These documents help to support the hiring decision if a rejected applicant makes a claim for discriminatory hiring actions. The Town should confirm the terms of the employment offer to the prospective employee in writing. The offer letter should also restate the above "at will" statement.
- F. Performance Evaluations. Conducting performance evaluations that honestly note deficiencies but give the employee opportunity for remedial action is a valuable loss control technique. Performance evaluations should be conducted on a regular basis (if possible both midyear and at the end of the year or anniversary date) and followed by written procedures developed by management. Job descriptions should be prepared and approved to serve as base line information.
- G. Discipline. The Council and/or the Mayor will develop and publish a code of conduct of expected and unacceptable behavior that employees are to follow. Progressive and documented discipline is typically desired but certain types of behavior call for immediate termination.
- H. Termination Process. Prior to terminating an employee the following questions should be asked: 1.) Is the termination absolutely necessary, or is there some other disciplinary or corrective action that would be more appropriate? 2.) If the employee contests the termination in court, is there enough evidence or documentation to successfully defend the Town's decision to terminate? Prior to the decision being made to terminate an employee, and before taking further action the Mayor should consult with the Town Attorney for further legal guidance.

VII. ADDITIONAL SOURCES

The suggestions outlined above should help minimize the number and impact of wrongful termination litigations against the Town government. Further information including interviewing scripts, sample employment applications, applicant information releases, sample job descriptions, discipline documentation and exit interview forms and various checklists are available in Appendix A (Wrongful Termination) of Module 4 (Personnel Issues) of the LGIT Risk Management Manual.


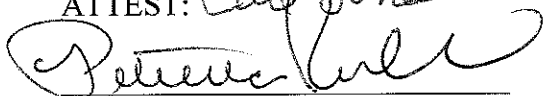
VIII. IMPLEMENTATION

- A. The Mayor shall adopt such policies and regulations as are necessary or desirable for the implementation of this Policy.
- B. All supervisors are responsible for implementing and enforcing and monitoring compliance with the requirements of this Policy.
- C. All employees are required to acknowledge receipt of a copy of this Policy by returning an acknowledgement of receipt to their supervisor for insertion in their personnel file.

BE IT FURTHER RESOLVED, that this Resolution shall be effective immediately.

THIS RESOLUTION IS ADOPTED BY THE COUNCIL OF THE TOWN OF NORTH BRENTWOOD THIS 19 DAY OF March, 2018.

Aye: 2
Nay: 0
Absent: 1
Abstain: 0

ATTEST: 

Petrella Robinson, Mayor

Date: 3-19-2018