



Political Retaliation Claims by Public Sector Employees

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December, 2016

- In **May of 2016**, 6 school district employees received a **\$880,000 settlement** after being allegedly reassigned and having their wages cut for supporting the opposing political slate in board elections in **Donna, TX**.
- In **October 2016**, a former police officer received a **\$1.6 million settlement** after the city's mayor allegedly caused his demotion from detective to patrol officer after the officer was spotted picking up a campaign sign for an opposing mayoral candidate in **Paterson, NJ**.
- In **August of 2015**, a former county director of purchasing received a **\$110,000 settlement** after allegedly being terminated to make way for a political supporter of county supervisors in **Lackawanna County, PA**.
- In **June of 2014**, 17 county road workers received a **\$500,000 settlement** after allegedly being fired for supporting the losing candidate in a road superintendent's race in **Monroe County, TN**.

There is nothing new about the idea that personnel decisions made by sheriffs, mayors and appointed agency leaders were motivated by *politics*. The term *politics* in this context could mean any number of non-job related motivations for decision-making. It could be based on Republican versus Democrat or conservative versus progressive. And it could also be based simply on a sense that there is "a new sheriff in town", literally or figuratively, and the employee in question "backed the wrong horse". In other words, the employee took a risk by supporting the individual who ended up on the losing end of a local election.

What *is* new is the ease and frequency with which public sector employees can express their policy views and, with that, comes a new opportunity for plaintiffs and their attorneys to point to time-stamped social media statements as the precursor that caused a negative employment action. In years past it was often difficult if not impossible to establish that, for

instance: (1) the mayor knew that I was supporting the other candidate, and (2) that knowledge motivated him to demote me from the position of captain to lieutenant.

What may have been the most difficult thing to establish was that the now-mayor *knew* that the employee was supporting the opposing candidate. *How would that knowledge be established?* In many cases, it stopped retaliation lawsuits before they even began.

But in 2016 we live in an age of smartphones and the countless outlets for immediate public expressions of support or disapproval on an infinite number of issues—including local politics, job satisfaction and one’s views of the policy decisions made by agency leaders. And it seems clear that **statements made on social media are public statements**, regardless of an individual’s “privacy settings” intended to restrict their statement to the eyes of several hundred of their closest friends. In the case of political retaliation claims brought by public sector employees, **it is actually the public nature of these social media statements that place them in the position to file successful claims of political retaliation upon demotion, termination or some other negative employment decision.**

At-Will Employment is NOT ALWAYS a Full-Proof Defense

Does at-will employment status mean that an employee can be hired, promoted, demoted or fired for any reason whatsoever? The likely answer is *yes so long as* none of those reasons violate federal law—and this condition is a crucial one. When the constitutional protections afforded under the First Amendment are claimed to be violated, at-will employment status that extends to an entire department is not always an iron-clad defense.

Depending on the judicial decisions of your state and/or federal circuit, exceptions made under the umbrella of “policymaking” personnel who are expected to be loyal to leaders’ policy vision vary significantly. *Elected officials should be sure to utilize legal advice to educate themselves on the court guidance in their state.* But it is becoming increasingly clear that damaging lawsuits alleging political patronage-style practices are not limited to municipal agencies or to employees formally labeled as “civil service”.

For instance, in July of 2014, nine current and former sheriff’s deputies in McLennan County, TX were awarded \$2 Million after allegedly being fired or demoted for supporting the sheriff’s political opponent in a primary campaign—ranging from posting yard signs to engaging in social media activity. The sheriff in that case made public assertions that it was his prerogative to structure the office as he saw fit and that political considerations were not the basis for his administrative decisions. Nevertheless, the county settled several weeks before jury selection was scheduled to begin.

Campaign Winners Beware

In January of 2017, mayors and sheriffs will accept their oath of office across the United States. Many of those elected officials successfully defeated campaign opponents in contentious

elections. Many will look within their own agency and find individuals, sworn and civilian, who openly supported “the other guy”. And many may be under the mistaken impression that the at-will employment status of those employees necessarily means that “to the victors go the spoils”. These officials would be well-served to learn the lessons of the multitude of mayors and sheriffs in recent years who have been under that impression and have had their thinking changed by millions of dollars in settlements, verdicts, legal fees.

There are many legitimate reasons to take a disciplinary action in dealing with an employee *who also happens to be on the opposite side of a local campaign or political issue.* The key for elected officials and agency leaders in anticipating possible personnel grievances is to ensure that they are capable of articulating and demonstrating that those reasons are legitimate—meaning that they are related to the job at hand.

When contemplating negative employment actions against employees who have been “on the other side” of a political fight, elected officials should take the time to consult with legal advisors to determine if they are opening themselves up to costly liability under the claim of unlawful political retaliation.