

WHISTLEBLOWER ACTIONS IN IOWA

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I. BACKGROUND

A. Employment At-Will

Employment in Iowa is generally at-will, which means an employee can be terminated at any time for any reason or for no reason at all.

Dorshkind v. Oak Park Place of Dubuque II, L.L.C., 835 N.W.2d 293, 300 (Iowa 2013).

B. Public-Policy Exception

The Iowa courts have carved out a public policy exception for wrongful discharge claims.

Springer v. Weeks & Leo Co., Inc., 429 N.W.2d 558 (Iowa 1988)
(recognizing claim for wrongful discharge for filing a workers' compensation claim).

1. Elements of the Claim

- A. Existence of a clearly defined and well-recognized public policy that protects the employee's activity;
- B. This public policy would be undermined by the employee's discharge from employment;
- C. The employee engaged in the protected activity, and the protected activity was the reason the employer discharged the employee; and
- D. The employer had no overriding business justification for the discharge.

Berry v. Liberty Holdings, Inc., 803 N.W.2d 106, 109-110 (Iowa 2011).

2. Questions of Law and Fact

- A. The first two elements are questions of law to be determined by the court.
- B. The last three elements are fact questions to be decided by the trier of fact.
- C. If an employee establishes all four elements, the employee is entitled to recover both personal injury and property damage.

Berry, 803 N.W.2d at 110.

3. Recognized Applications

A. Statutory Protections

Public Employees - Iowa Code §§ 70A.28, 70A.29

Discrimination - Iowa Code § 216.11(2).

Genetic Testing - Iowa Code § 729.6(6)

Occupational Safety and Health - Iowa Code § 88.9(3)

Wage Payment Collection - Iowa Code § 91A.10(5)

B. Common Law Protections

1. Filing a Workers' Compensation Claim

Springer, 429 N.W.2d at 558.

Clarey v. K-Products, Inc., 514 N.W.2d 900 (Iowa 1994).

Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682 (Iowa 1990).

2. Filing an Unemployment Insurance Claim

Lara v. Thomas, 512 N.W.2d 777 (Iowa 1994).

3. Refusing to Participate in Illegal Activity

Fitzgerald v. Salsbury, 613 N.W.2d 275 (Iowa 2000).

Jasper v. H. Nizam, Inc., 764 N.W.2d 751 (Iowa 2009).

4. Reporting Illegal Activity

Teachout v. Forest City Cmty. Sch. Dist., 584 N.W.2d 296 (Iowa 1998).

II. INTERNAL COMPLAINTS

A whistleblower is an employee who expresses concerns about objectionable policies or practices existing within the employee's workplace. In analyzing a claim, the courts apply the four-factor test for terminations against public policy. *Dorshkind*, 835 N.W.2d 293 (2013).

A. **Clearly Defined and Well-Recognized Public Policy Protecting the Employee's Activity**

In determining whether an express or implied public policy exists, the courts look to statutes and the Iowa Constitution.

In *Dorshkind*, an employer terminated an employee after the employee internally complained the employer had falsified training documents the employer was required to maintain by administrative rule. The court examined Iowa Code chapter 231C governing assistive living facilities and the governing administrative rules, and finding the rules specifically articulated a concern for the health, safety and welfare of dementia patients and required the implementation of a training program with state-mandated training documents to safeguard dementia patients' health, safety, and welfare, satisfying the first element.

Ballalatak v. All Iowa Agricultural Ass'n, 781 N.W.2d 272 (Iowa 2010) (finding the workers' compensation statutes did not provide a public policy exception for an internal complaint based on a fellow employee's concern that the employer may not be complying with Iowa workers' compensation laws).

B. **The Public Policy Would be Undermined by the Employee's Discharge from Employment**

The court in *Dorshkind*, found the employee's discharge undermined the policy at stake because her dismissal punished her for reporting conduct jeopardizing the health, safety and welfare of dementia patients, and would have a chilling effect on other employees.

III. PUBLIC OFFICIALS

A. Involvement of the Ombudsman

An employee of a governmental entity, department, board, commission, council or institution may contact the Office of the Ombudsman about administrative actions or wrongdoings by agency officials the person believes are contrary to law, rule or policy.

The Office of the Ombudsman's investigative powers are limited to a small percentage of Iowa's public employees who are not merit system employees or employees covered by a collective bargaining agreement. Iowa Code § 2C.11A.

The statute requires the Office of the Ombudsman to investigate a complaint by a state employee "who alleges that an adverse action has been taken against the employee" in violation of Iowa Code section 70A.28(2). *Id.*

The complaint must be filed with 30 calendar days of the adverse employment action.

The Office of the Ombudsman is required to investigate the matter and issue findings relative to the complaint "in an expeditious manner." *Id.*

B. Statutory Protection for Public Employees

Iowa Code § 70A.28(2) – State Employees

Iowa Code § 70A.29 – Employees of Political Subdivisions

Standard applied is the same under both provisions.

1. Under Iowa Code section 70A.28(2):

A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for a failure by that employee to inform the person that the employee made a disclosure of information permitted by this section, or for a disclosure of any information by that employee to a member or employee of the general assembly, a disclosure of information to the office of ombudsman,

or a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. . . .

The provision provides protection to state employees “who affirmatively disclose to those designated in the statute information evidencing ‘a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety.’” *Hegeman v. Kelch*, 666 N.W.2d 531, 533 (Iowa 2003).

A. Criminal Implications

A person who violates Iowa Code section 70A.28(2) commits a simple misdemeanor. Iowa Code § 70A.28(4).

B. Civil Action

An employee may enforce Iowa Code section 70A.28(2) through a civil action. Iowa Code § 70A.28(5).

1. *Reasonable Belief*

Actions under Iowa Code sections 70A.28(2) and 70A.29, require proof the employee “reasonably believes” the information being disclosed is evidence of wrongdoing.

The courts have held the provision “embraces both a subjective and an objective standard.” *Carter v. Lee County*, No. 13-1196, 2015 WL 161833 at * 7-8 (Iowa Ct. App. 2015).

The employee must establish a reasonable person in the employee’s circumstances would have believed the disclosed information revealed a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Thus, if the employee’s beliefs are objectively unreasonable, the employee’s actions do not constitute protected activity.

Carter, 2015 WL 161833 at *8.

2. *No Right to a Jury Trial*

In *Zwanziger v. O'Brien*, No. 11-1548, 2012 WL 4513836 (Iowa Ct. App. Oct. 3, 2012) the Iowa Court of Appeals has held there is no right to a jury trial because the statute only discusses the award of equitable relief.

In *Carter*, 2015 WL 161833 at *7, the appellate court reviewed the merits of the action, which was tried to a jury. The court did not discuss *Zwanziger*.

3. *Relief*

A. Equitable Relief

A person who violates Iowa Code section 70A.28(2) is liable to the aggrieved employee for:

1. Reinstatement with or without back pay.
2. Other equitable relief the court deems appropriate, including attorney fees and costs

Iowa Code § 70A.28(5) *a*.

B. Injunctive Relief

The aggrieved employee or the Attorney General may seek injunctive relief to prohibit continuation of such acts.

Iowa Code § 70A.28(5) *b*.

C. Actual and Punitive Damages

The statute does not provide for punitive damages. The statute provides for reinstatement with or without back pay and other equitable relief. Iowa Code § 70A.28(5) *a*.

In *Zwanziger*, 2012 WL 4513836 at *6, the Iowa Court of Appeals found that the express language of Iowa Code section 70A.29 did not provide for an award of damages for pain and suffering, and emotional distress damages.