

Legal Notes: December 2012

Any bonehead can complain at work. Any bonehead can complain about work. Heck, some people, like movie critics and lawyers, complain for a living. Effective complaining, now that is the goal. A recent case established that certain “oral complaints” in the workplace can protect an employee’s job.

Under both state and federal law, people who make certain complaints are protected from retaliation from their employer. Generally, these complaints must be about the employer’s violation of the law, such as sexual harassment or safety violations. Such retaliation cases are one of the fastest growing areas of the law.

In a recent Wisconsin case, an employee complained about violations of the federal wage and hour law to his employer. The complaint was that the time-clocks were not easily accessible. Not surprisingly, this same employee had a history of failing to punch in and out on time. The employer fired him for accumulating too many disciplinary points.

After being fired, the employee filed a legal action alleging that the real reason for his termination was retaliation by the employer. The employer did not like that the employee complained about the wage and hour violation, so it terminated his employment. The employee made his complaints orally. He did not make a written complaint. The court found that even oral complaints can trigger the anti-retaliation protections of the wage and hour law.

While oral complaints are now protected, they still are not a good idea. Like oral contracts, oral complaints are subject to interpretation, such as who said what and when. A written complaint is still the preferable way to go. If an employee does complain orally, then the employee should make notes at the time about what was said.

Who you make the complaint to is also important, especially in sexual harassment cases. An employee can never go too high in the chain of command when making a complaint. The company president is a good place to start. Human resources is an alternative.

Just like Chicago elections: Complain early and often.