SJC-13117

TERENCE MEEHAN vs. MEDICAL INFORMATION TECHNOLOGY, INC.[1]

Norfolk. November 1, 2021. - December 17, 2021.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, & Georges, JJ.

Employment, Termination, Records. Public Policy. Practice, Civil, Motion to dismiss.

Civil action commenced in the Superior Court Department on February 11, 2019.

A motion to dismiss was heard by Diane C. Freniere, J.

After review by the Appeals Court, the Supreme Judicial Court granted leave to obtain further appellate review.

Robert S. Mantell (James A. Kobe also present) for the plaintiff.

Scott J. Brewerton for the defendant.

The following submitted briefs for amici curiae:

Gavriela M. Bogin-Farber for Massachusetts Employment Lawyers Association & others.

James P. McKenna for Pioneer Institute.

Maura Healey, Attorney General, David C. Kravitz, Deputy State Solicitor, & Alex Sugerman-Brozan, Assistant Attorney General, for the Attorney General.

[1] Doing business as Meditech.

KAFKER, J. The issue presented in this case is whether an employer can terminate an at-will employee simply for exercising the right to file a rebuttal to be included in his personnel file as provided by G. L. c. 149, § 52C. We conclude that such a termination would violate the public policy exception to at-will employment. We therefore reverse the decision of the Superior Court allowing the motion, filed by the employer, Medical Information Technology, Inc. (Meditech), to dismiss the complaint brought by the plaintiff, Terence Meehan.[2]

Background. The facts are drawn from the complaint and, along with all reasonable inferences that can be drawn from them, are assumed to be true for purposes of a motion to dismiss. See Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 676 (2011). In November of 2010, Meehan began working for Meditech as a sales representative. In 2017, Meditech undertook a revision of its then twelve-person regional sales department, keeping nine employees as sales representatives and moving three, including Meehan, to a newly created "sales specialist" position. The sales specialist position greatly changed

[2] We acknowledge the amicus briefs submitted by the Attorney General; the Massachusetts Employment Lawyers Association, the American Civil Liberties Union of Massachusetts, the Fair Employment Project, GLBTQ Advocates and Defenders, and the Massachusetts Law Reform Institute; and by the Pioneer Institute.

Meehan's job responsibilities, and his ability to earn commissions was significantly diminished by this change. According to Meehan, the structure of the sales specialist role created little incentive for those leading sales efforts to utilize sales specialists, and even if they did so, the potential for sales specialists to earn commission income was quite limited.

Early in July of 2018, Meehan and the other two sales specialists were placed on "performance improvement plans" (PIPs). Approximately two weeks later, on July 17, 2018, Meehan sent his supervisor a lengthy rebuttal to having been placed on a PIP. Members of Meditech's management team met that same day to discuss his rebuttal.[3] The president and chief executive officer of Meditech decided that Meehan's employment should be terminated immediately. On the day of the meeting, Meehan's employment was terminated. In October of 2018, the PIP requirements for the other two sales specialists were discontinued with one or both of them being told that the PIP was "wrong" by a Meditech representative.

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[3] Also raised at the meeting was a three week old confrontation between Meehan and another employee, where Meehan allegedly called the other employee a "maggot" in response to a political disagreement. That employee, when asked by management, chose not to pursue the matter further. For purposes of the motion to dismiss, we accept the defendant's contention that he was fired because of the rebuttal.

After obtaining an attorney, Meehan protested his termination to Meditech. Meehan thereafter filed a one-count complaint in the Superior Court alleging wrongful discharge in violation of public policy. A Superior Court judge allowed Meditech's motion to dismiss. The motion judge recognized that Meehan had a statutory right pursuant to G. L. c. 149, § 52C, to submit a rebuttal; the judge nonetheless ruled that the right to submit a rebuttal was "not a sufficiently important public policy" to support Meehan's claim for wrongful discharge because it merely "involves matters internal to an employer's operation." She also concluded that if any employee who submitted a written statement disagreeing with any information contained in a personnel record was protected from termination, this would convert the at-will employment rule into one for just cause.

In a split decision, with an expanded panel, the Appeals Court affirmed the decision allowing the motion to dismiss. Meehan v. Medical Info. Tech., Inc., 99 Mass. App. Ct. 95, 96, 100 (2021). We granted Meehan's application for further appellate review.

Discussion. 1. Standard of review. "We review the allowance of a motion to dismiss de novo" (citation omitted). Magliacane v. Gardner, 483 Mass. 842, 848 (2020). For the purposes of Meditech's motion, "we accept as true the

allegations in the complaint and draw every reasonable inference in favor of the plaintiff." Suburban Home Health Care, Inc. v. Executive Office of Health & Human Servs., Office of Medicaid, 488 Mass. 347, 351 (2021).

2. The public policy exception to employment at will. In general, "employment at will can be terminated for any reason or for no reason." Harrison v. NetCentric Corp., 433 Mass. 465, 478 (2001). Massachusetts courts have, however, recognized limited exceptions to the general rule, when "employment is terminated contrary to a well-defined public policy." Wright v. Shriners Hosp. for Crippled Children, 412 Mass. 469, 472 (1992). In carving out these exceptions, the court has emphasized that the public policy exception should be narrowly construed to avoid converting the general at-will rule into "a rule that requires just cause to terminate an at-will employee." King v. Driscoll, 418 Mass. 576, 582 (1994), S.C., 424 Mass. 1 (1996), quoting Smith-Pfeffer v. Superintendent of the Walter E. Fernald State Sch., 404 Mass. 145, 150 (1989).

More specifically, the public policy exception to at-will employment has been recognized "for asserting a legally guaranteed right (e.g., filing a worker's compensation claim), for doing what the law requires (e.g., serving on a jury), or for refusing to do that which the law forbids (e.g., committing perjury)" (emphasis added). Smith-Pfeffer, 404 Mass. at 149-

150. See DeRose v. Putnam Mgt. Co., 398 Mass. 205, 209-210 (1986) (public policy protected employee from wrongful termination where employee refused to heed employer's instructions to give false testimony). In addition to these three categories, this court subsequently created a fourth category to protect those "performing important public deeds, even though the law does not absolutely require the performance of such a deed." Flesner v. Technical Communications Corp., 410 Mass. 805, 810-811 (1991). Such deeds include, for example, cooperating with an ongoing criminal investigation. Id.

The court has also stated that "the internal administration, policy, functioning, and other matters of an organization cannot be the basis for a public policy exception to the general rule that at-will employees are terminable at any time with or without cause." King, 418 Mass. at 583 (employee not wrongfully terminated in violation of public policy where he participated in shareholder derivative action). As a further illustration of this point, in Wright, 412 Mass. at 474, a plaintiff nurse reported internal problems to high-level hospital officials and thereafter was terminated. This court determined that because the nurse's reports concerned the organization's internal matters, there was no basis for a public policy exception to the at-will termination rule. Id. at 475. See Upton v. JWP Businessland, 425 Mass. 756, 758 (1997) (no

liability for discharge stemming from employer requiring employee to work overtime, even though such schedule interfered with employee's childcare responsibilities); Mello v. Stop & Shop Cos., 402 Mass. 555, 558 n.3, 560-561 (1988) (no public policy violated where employee fired for reporting noncriminal wrongdoing by other employees).

In determining whether to create a common-law public policy exception to employment at will, we must also consider whether the Legislature has prescribed a remedy for the public policy violation at issue, including a remedy for a discharge of the employee for exercising that right. See Osborne-Trussell v. Children's Hosp. Corp., 488 Mass. 248, 265 (2021); Mello, 402 Mass. at 557. This is particularly true when the legally guaranteed right that has been exercised is defined by statute, as it is in the instant case.

With these general principles in mind, we turn to the specific public policy at issue.

3. General Laws c. 149, § 52C. The plaintiff alleges that, by filing the rebuttal, he was exercising a statutory right under G. L. c. 149, § 52C. The statute provides:

> "An employer shall notify an employee within [ten] days of the employer placing in the employee's personnel record any information . . . that . . . negatively affect[s] the employee's qualification for employment, promotion, transfer, additional compensation or the possibility that the employee will be subject to disciplinary action. . . .

> "If there is a disagreement with any information contained in a personnel record, removal or correction of such information may be mutually agreed upon by the employer and the employee. If an agreement is not reached, the employee may submit a written statement explaining the employee's position which shall thereupon be contained therein and shall become a part of such employee's personnel record. . . .
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> "Whoever violates the provisions of this section shall be punished by a fine of not less than [$500] nor more than [$2,500]. This section shall be enforced by the attorney general."

G. L. c. 149, § 52C. There is also a records retentions provision in the statute:

> "An employer of twenty or more employees shall retain the complete personnel record of an employee as required to be kept under this section without deletions or expungement of information from the date of employment of such employee to a date three years after the termination of employment by the employee with such employer. In any cause of action brought by an employee against such employer of twenty or more employees in any administrative or judicial proceeding, including but not limited to, the Massachusetts Office of Affirmative Action, the Massachusetts Commission Against Discrimination, Massachusetts Civil Service Commission, Massachusetts Labor Relations Commission, attorney general, or a court of appropriate jurisdiction, such employer shall retain any personnel record required to be kept under this section which is relevant to such action until the final disposition thereof."

Id. Thus, G. L. c. 149, § 52C, is designed, in part, to create a complete and reliable record of an employee's tenure that is available for introduction as admissible evidence under the business records exception to the hearsay rule in any resulting

litigation that may arise. See id.; Mass. G. Evid. § 803(6)(A) (2021).

4. Whether termination of employment for a violation of G. L. c. 149, § 52C, constitutes a public policy exception to at-will employment. We conclude that the statutory right of rebuttal provided in G. L. c. 149, § 52C, is a legally guaranteed right of employment, and therefore, termination from employment for the exercise of this legally guaranteed right fits within the first public policy exception to employment at will defined by our case law. See Mello, 402 Mass. at 557 ("A basis for a common law rule of liability can easily be found when the Legislature has expressed a policy position concerning the rights of employees and an employer discharges an at-will employee in violation of that established policy, unless no common law rule is needed because the Legislature has also prescribed a statutory remedy"). See also Smith-Pfeffer, 404 Mass. at 149 (providing public policy protection against discharge for assertion of "legally guaranteed right").

When addressing the discharge of an employee for the exercise of an employment right defined by statute, we do not, as the motion judge and Appeals Court did here, decide whether the right is important or relates only to internal matters. See Meehan, 99 Mass. App. Ct. at 98-100. In enacting the statutory employment right, the Legislature has already made both

determinations, concluding that the right is a matter of public significance.[4]

It is primarily in the fourth category, when we are seeking to identify a public policy that has not been already recognized in the law, that we consider how important the policy is, and whether it relates primarily to internal affairs. Flesner, 410 Mass. at 810-811 ("We think that the reasons for imposing liability in the [three] categories of cases set forth in Smith-Pfeffer also justify legal redress in certain circumstances for employees terminated for performing important public deeds, even though the law does not absolutely require the performance of such a deed"). In this context, where there has been no legislative recognition of the right, an examination of the importance and public nature of the policy at issue in the discharge of the at-will employee is necessary to determine whether it merits protection.[5]

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[4] As an employment right, it also obviously fully applies in the workplace.

[5] In extending this importance and internal affairs analysis to the instant case, the motion judge and the Appeals Court primarily relied on our decision in King, 418 Mass. 576. See Meehan, 99 Mass. App. Ct. at 96-99 & n.4. In King, 418 Mass. at 577-578, a vice-president of a closely held corporation was fired after bringing a shareholder derivative suit against his own employer regarding the corporation's stock buyback price. Although King did involve a statutory right, and we did discuss its importance, it was not a right of employment, nor one that had been expressly connected to employment. Id. at 584-585.

Finally, even if we had to decide whether the right of rebuttal was important, we would so conclude here. The right of rebuttal and accuracy of information in personnel files are important for employees, and not just in relation to their ability to earn a living with their current employer, but also to protect the ability of employees to seek other employment, and to enable other employers to make informed decisions about hiring them, thereby preventing terminated employees from becoming public charges. See Meehan, 99 Mass. App. Ct. at 103 (Henry, J., dissenting) (General Laws c. 149, § 52C "serves an important public policy by ensuring that when employees choose or are to seek different employment, they can be fairly evaluated by potential new employers. In essence, the statute makes labor markets work more fairly by making . . . more balanced[] information available to potential employers"). The right of rebuttal may also be important for evaluating

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Cf. Mello, 402 Mass. at 557 n.2 (listing statutes where Legislature has expressed policy position concerning rights of employees). The court in King, supra at 584, also did explain, albeit confusingly, that "[f]or the exercise of a statutory right to be worthy of protection in this area we believe that the statutory right must relate to or arise from the employee's status as an employee, not as a shareholder." The court then went on to conclude that "[t]he exercise of the right to file a derivative action arose from King's status as a shareholder." Id. at 584-585. It is this point, not the importance or unimportance of the statutory right at issue, that should be understood as the basis of the King decision. We emphasize that respect for the legislative branch makes any discussion of the unimportance of a statutory right highly problematic.

compliance with the laws of the Commonwealth, including those governing the terms and conditions of employment, such as workplace safety, the timely payment of wages, and the prevention of discrimination, and nonemployment-related activity, such as those governing the environment and the economy. See note 7, infra. The records retention provision of the statute confirms the additional purposes that documentation of personnel records, including rebuttal, may serve. See G. L. c. 149, § 52C.

Having concluded that there is a public policy employment right recognized by statute, we proceed to the question whether the remedy for discharge of the employee for exercising this statutory right of employment is already provided by statute or requires further common-law protection.

"Of course, a statute itself may provide that an employer may not terminate an employee for exercising rights conferred by the statute, and in such a case, the common law public policy exception is not called into play." King, 418 Mass. at 584 n.7. See Mello, 402 Mass. at 557 & n.2. See also Osborne-Trussell, 488 Mass. at 265. Where the Legislature has provided a remedy for the statutory violation but not a remedy for discharge from employment for its exercise, the analysis is more difficult. In these circumstances we must discern whether the statutory remedy is meant to be comprehensive, or whether there is a gap to be

filled by common-law protection. Cf. Upton, 425 Mass. at 759 ("The Legislature has directed that unemployment compensation should be available to [a person unable to work extended hours due to childcare responsibilities], but it has not provided that such an employee has an action for wrongful discharge"); Melley v. Gillette Corp., 19 Mass. App. Ct. 511, 513 (1985), S.C., 397 Mass. 1004 (1986) (where employee sought to bring wrongful discharge claim for age discrimination, court stated "that where, as here, there is a comprehensive remedial statute [protecting against age discrimination in the workplace], the creation of a new common law action based on the public policy expressed in that statute would interfere with that remedial scheme").

In the instant case, the Legislature has provided a limited remedy for violations of the act: a fine of not less than $500 nor more than $2,500, to be enforced by the Attorney General. G. L. c. 149, § 52C. The statute does not address termination or retaliation for exercise of the right itself. Given the limited nature of the remedy, the absence of any discussion of termination, and the lack of a private enforcement mechanism, the Legislature does not appear to have considered the possibility of an employer simply terminating an employee for exercising the right of rebuttal. Indeed, such a response would appear to be sticking a finger in the eye of the Legislature.

It would also empower any employer who so desired to essentially negate the important policies served by the right of rebuttal. We conclude that the Legislature would not have permitted such a flouting of its authority, had it contemplated the possibility.[6] Thus, we hold that recognizing a common-law wrongful discharge action for the termination of an at-will employee for exercising the statutory right of rebuttal would complement the remedial scheme.

We also disagree with the motion judge and the Appeals Court that recognizing this right would provide just cause protection for at-will employees or transform the courts into "super personnel departments, assessing the merits -- or even the rationality -- of employers' . . . business decisions." Sullivan v. Liberty Mut. Ins. Co., 444 Mass. 34, 56 (2005), quoting Mesnick v. General Elec. Co., 950 F.2d 816, 825 (1st Cir. 1991), cert. denied, 504 U.S. 985 (1992). See Meehan, 99 Mass App. Ct. at 98-99. The employer remains free to terminate the employee for any reason or no reason so long as the employer does not terminate the employee for filing the rebuttal itself. The rebuttal merely memorializes the employee's position regarding the issue in dispute; it does not provide any

[6] A review of the legislative history reveals no draft bills or discussion addressing termination from employment for exercising the right of rebuttal.

additional rights.[7] If the employer decides it prefers someone else in the job, the employer remains free to terminate the employee, regardless of the rebuttal. For example, if an employee had an attendance problem, was disciplined for it, and filed a rebuttal, the rebuttal would not in any way shield the employee from being disciplined or fired for lack of attendance. If the absenteeism continued, the employee could be terminated from employment, regardless of the rebuttal.[8]

Finally, we provide some precautionary guidance on the obvious issue left unresolved by the unusual factual posture of

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[7] This record may of course be relevant when an employee claims that termination was the result of exercising a different protected right, including the right not to be discharged for a discriminatory reason, such as race, age, or sex, and the question whether the reasons provided by the employer were pretextual has been raised. See, e.g., Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 684-685 (2016) (jury could have concluded that negative evaluations were pretextual or biased based on other, contradictory evaluations in personnel file); Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 111 (2000) ("the jury could have found that the incident reports were false and were entered into [the employee's] file without his knowledge"). That is an express purpose underlying the right of rebuttal and the records retention requirement in the statute. See G. L. c. 149, § 52C (requiring employers to keep personnel records for period of three years after employee's termination, or until final disposition of administrative or judicial claim).

[8] If, however, the employer had given the employee a warning or a short suspension for being late, and then without further attendance problems, when the employer receives the rebuttal, the employer terminates the employee, the issue whether the filing of the rebuttal was the cause of termination is presented. This is analogous to the facts of the instant case.

this case. In filing his motion to dismiss, the plaintiff did not attach a copy of his rebuttal to his complaint or allege its contents. For purposes of the motion to dismiss, we must therefore accept that he was fired for merely filing the rebuttal as opposed to what he wrote in the rebuttal. As the issue of termination of an employee for what is written in the rebuttal may very well arise on remand, and will most certainly arise in subsequent cases, we briefly address this issue as well, leaving further line drawing in this area to future cases.

As explained above, the express purpose of the rebuttal provision is to give employees an opportunity to respond to information in their personnel files that "has been used or may be used . . . to negatively affect" them. G. L. c. 149, § 52C. The rebuttal provision itself only applies when there is "disagreement" on the content of the file that the parties cannot mutually resolve. Id.

As such, the rebuttal may be expected to involve disputed, contentious subjects and vehement disagreement. In this context, where emotions inevitably run high, the exercise and expression of the right of rebuttal should not be grounds for termination when it is directed at "explaining the employee's position" regarding the "disagreement with . . . information contained in [the] personnel record," G. L. c. 149, § 52C, no matter how intemperate and contentious the expression in the

rebuttal. Cf. Glover v. South Carolina Law Enforcement Div., 170 F.3d 411, 414 (4th Cir. 1999), cert. dismissed, 528 U.S. 1146 (2000) (antiretaliation clause for participation in employment discrimination administrative proceedings "ensure[s] not only that employers cannot intimidate their employees into foregoing the [federally prescribed] grievance process, but also that investigators will have access to the unchilled testimony of witnesses"); Sias v. City Demonstration Agency, 588 F.2d 692, 695 (9th Cir. 1978) (narrow interpretation of right to bring informal, internal grievances "would not only chill the legitimate assertion of employee rights under [Federal law] but would tend to force employees to file formal charges rather than seek conciliation or informal adjustment of grievances"). Such protection from termination, of course, does not extend to threats of personal violence, abuse, or similarly egregious responses if they are included in the rebuttal. Egei v. Johnson, 192 F. Supp. 3d 81, 91 (D.D.C. 2016) (protection may not extend to employee who "threatens another participant during the course of" protected activity).

Conclusion. Termination of an at-will employee simply for filing a rebuttal expressly authorized by G. L. c. 149, § 52C, constitutes a wrongful discharge in violation of public policy. We therefore reverse the Superior Court's order allowing the defendant's motion to dismiss, and the matter is remanded to the

Superior Court for further proceedings consistent with this opinion.

So ordered.