



LAW NOTES

from the Law Firm of
Kay & Andersen, S.C.

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What Every Employer Should Know.....

ABOUT EMPLOYEE PARTICIPATION IN A FRAUD

Generally speaking, an employer is permitted to take adverse action against an employee who refuses to perform lawful activities which the employee is capable of performing. However, when an employer asks one of its employees to participate in a fraud, the employer may find itself exposed to liability for subsequently punishing the employee for refusing. This principle is illustrated in the recent Wisconsin Court of Appeals decision *Labarbera-Haines v. Boardwalk Investments, LLC*, No. 2006 AP 275 (Wis. Ct. App. January 25, 2007), available at <http://www.wisbar.org/res/capp/2007/2006AP000275.htm>. In this case, Haines accused her supervisor at Boardwalk of instructing Haines to lie to city assessors about the number of occupants in one of Boardwalk's rental properties in order to avoid tax liability. Haines' supervisor also allegedly asked her to prepare paperwork to charge previous tenants for cleaning services that were not provided. Because of the employer's repeated requests to perform these actions, Haines felt forced to resign and subsequently sued Boardwalk for wrongful discharge. Although the Court of Appeals acknowledged that the general rule in Wisconsin is that an at-will employee may be terminated for any reason or no reason, there is an exception to the employment-at-will doctrine permitting the employee to pursue a cause of action if his or her discharge violated a fundamental and well-defined public policy. Here, the Court of Appeals concluded that Haines had established a sufficient connection between her termination and the public policy goal of preventing false reporting in business dealings. The Court of Appeals remanded the case back to the circuit court so that Haines' case could be considered by a jury. Thus, this case reiterates that employees cannot be fired for refusing to take part in fraudulent or illegal conduct. However, nothing in this decision prohibits an employer from punishing an employee for refusing to perform a lawful work order which the employee is capable of performing. Kay & Andersen, S.C. can help employers in disputes with their employees, before or after a lawsuit has been commenced.

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