

WHAT YOU MEANT VS. WHAT YOU SAID – EMPLOYER'S WORDS INTERPRETED AS TERMINATION

Posted on April 21, 2017

Categories: [Insights](#), [Publications](#)

Employers know to choose their words carefully when disciplining an employee. The case of *Sweeting v. Mok* is a good example of why carefully wording any disciplinary language is imperative.

In *Sweeting*, the plaintiff worked as a nurse and office assistant in the defendant doctor's office for over 22 years. The parties' relationship became tense after the defendant demanded that the plaintiff implement an electronic records system, despite the fact that she was already too busy to complete her other duties.

Eventually, the tension over the electronic medical records system came to a head in a meeting in which the defendant doctor angrily berated the plaintiff. The meeting ended with the defendant telling the plaintiff that he was "sick" of seeing the plaintiff in the office and telling her that he would set up the electronic records system himself so that he would "not have to see the ugliness in the office." The plaintiff left work and did not return.

The plaintiff alleged that as a result of the defendant's statements and tone, she believed she had been terminated. The defendant denied terminating the plaintiff and submitted instead that because she did not return to work, the plaintiff had resigned.

In reaching its decision, the Court examined two key questions: (1) did the defendant terminate the plaintiff, and (2) if not, was the plaintiff constructively dismissed?

The Court found that the plaintiff was, indeed, terminated at the meeting in question. Most interestingly, it reached that conclusion despite also finding that the defendant doctor did not intend to terminate her. In spite of that finding, the Court held that an objective and reasonable person would interpret the defendant's words – having been spoken to a 22-year employee in a small office – as having terminated the plaintiff's employment. The fact that the defendant also did not attempt to rectify the situation when the plaintiff did not return to work was also a factor.

The Court further found that even though there was only a single contentious event, the Plaintiff had also been constructively dismissed. The Court wrote that in the context of the parties' longstanding relationship, the

defendant doctor's outburst effectively destroyed the parties' working relationship and made a return to employment by the plaintiff intolerable:

"In the context of the particular work environment in which they operated, that treatment made future performance of her work impossible and her continued employment intolerable. The employment relationship was effectively destroyed in that meeting. Ms. Sweeting was quite entitled to treat the employment relationship as constructively terminated."

Takeaways for Employers

Sweeting is a good reminder to employers of the importance of cautiously approaching contentious or disciplinary meetings with employees. In disciplining an employee, an employer must choose its words (whether spoken or written) carefully, lest they be interpreted in an unintended manner when viewed through an objective lens.

Sweeting also reminds of the importance of context in evaluating a constructive dismissal allegation. In certain circumstances, such as those in *Sweeting* where a long-time relationship was irrevocably harmed by the defendant's words, a constructive dismissal can occur through only a single incident.

by Kyle Lambert

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2017