Employment-at-Will and Whistleblowing

Business Law and Ethics-
CTomski
Employment-at-will

• Employment-at-will is a legal doctrine which gives employers broad discretion to fire employees “for a good reason, a bad reason, or no reason at all.” -pg 46
Whistleblower

• “A person who feels morally driven to call attention to problems they see at work, often at the risk of disturbing the status quo, alienating others, and bringing damaging repercussions upon themselves and their families.” pg 46

• The whistleblower is caught between being loyal to the company and being loyal to your conscience. It is a conflict of the duty of loyalty.
So can you get fired for being a whistleblower?

• Yes and No.
• Statutes in all 50 states provide some protection for whistleblowers, but wide variation exists between them.
• In tough economic times, people may choose not to bring things up for fear of losing their job.
Some laws that protect whistleblowers...

- Clean Air Act
- Occupational Safety and Health Act
- Safe Drinking Water Act
- Sarbanes Oxley Act - protects whistleblowers who report financial misconduct in publicly traded companies
- Super Fund
- Age Discrimination in Employment Act
- ADA
- Civil Rights Act of 1964
- Fair Labor Standards Act
- National Labor Relations Act
- Patient Protection & affordable Care Act
- Whistleblower Protection Act
- Website for Whistleblower Laws and Info: http://www.whistleblowerlaws.com
Instead of a law, some states use...

- A contract of employment “to imply a promise of good faith and fair dealing.”
- Or an employee handbook or policy statement that implies contractual terms stating things like they won’t dismiss except for good cause.
- But only 12 states use these!
In most states, this statement would be used:

- (from a law firm)-“Your employment with the Firm is voluntarily entered into and you are free to resign at any time. Similarly, the Firm is free to conclude an employment relationship with you where it believes it is in the Firm’s best interest at any time. It should be recognized that neither you, nor we, have entered into any contract of employment, express or implied. Our relationship is and will be always one of voluntary employment “at will.””
“Wrongful discharge”

• There is a trend in the U.S. for an employee to sue for “wrongful discharge” but he or she would have to prove that the firing contradicts public policy or the dismissal had undermined what is beneficial to society in general.

• But how do you define what is public policy?
What if you file a:

- Worker’s compensation claim, or a
- Sexual harassment claim, or
- Missed work because of jury duty, or
- Your boss put you in between a “rock and a hard place” by expecting you to break the law, or
- You joined or started a union at work.
- Could you be fired? In most states, no.
On Monday be prepared to discuss:

• Facts of the case (what happened?)
• History of the case (how did it get to the Supreme Court of New Jersey?)
• Issues: What questions are being asked in the case?
• Reasoning: (The decision of the case and what reasoning was used to answer the questions).