

GETTING BACK TO BASICS:
BASIC EMPLOYMENT RIGHTS & RESPONSIBILITIES

EMPLOYMENT TORTS:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
DEFAMATION
INTENTIONAL INTERFERENCE WITH CONTRACT

ABA Section of Labor & Employment Law
Employment Rights & Responsibilities Committee

2004 Midwinter Meeting

I. INTRODUCTION

A. Three Employment Torts Covered

1. Intentional Infliction of Emotional Distress
2. Defamation
3. Intentional Interference with the Employment Contract

B. Why Include Employment Torts in Your Claims Analysis

1. Employees who do not present facts sufficient to support statutory discrimination claims may find relief in tort
2. Prior to the passage of the Civil Rights Act of 1991, including supplemental employment torts in complaints for statutory discrimination was often an effective strategy to support a jury demand and to add compensatory and/or punitive damages and thus expand the potential award beyond equitable relief
3. Today, supplemental tort claims may provide the possibility of compensatory and/or punitive damages awards in excess of the statutory caps established by Congress
4. Employment torts may be used to increase the economic viability of what would otherwise be a wrongful discharge claim for contract damages only
5. In situations where the statutory limitations period for filing a timely charge of discrimination has passed, employment torts may provide alternative claims
6. Including torts with a typical discrimination case provides legitimate bases for focusing attention on the employer's malevolent conduct
7. Torts can be a means of establishing individual liability
8. Including torts may by-pass an exclusionary insurance clause

II. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

A. Restatement (Second) of Torts § 46:

One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

B. Elements of the Claim

1. Extreme and outrageous conduct
2. Intent to cause, or disregard of a substantial probability of causing, severe emotional distress
3. A causal connection between the conduct and injury
4. Severe emotional distress

C. The Extreme and Outrageous Conduct Element

Morrison v. Sandell, 112 Ill. App. 3d 1057 (4th Dist. 1983)

D. The Severe Emotional Distress Element

Comment j to Section 46 of the Restatement requires Plaintiffs to establish that they experienced extreme emotional distress that is also severe that no reasonable man could be expected to endure it. The intensity and the duration of the distress are factors to be considered in determining severity.

III. DEFAMATION

A. The Term Defamation Encompasses Both Slander (Verbal Statement) and Libel (Written Statement)

Many states analyze slander and libel separately, recognizing libel as the more serious wrong. Illinois and several others use a single set of rules for both.

B. Restatement (Second) of Torts §558:

To create liability for defamation, there must be:

1. A false and defamatory statement concerning another,
2. An unprivileged publication to a third party,
3. Fault amounting to at least negligence on the part of the publisher, and
4. Either actionability of the statement irrespective of special harm (per se) or the existence of special harm caused by the publication (per quod).

C. Absolute and Conditional Privileges

D. Compelled Self-Defamation

Cweklinsky v. Mobil Chemical Co., 267 Conn. 210, 837 A.2d 759 (2004).

Churchey v. Adolph Coors Co., 759 P.2d 1336 (Colo. 1988).

Lewis v. Equitable Life Assurance Society of the United States, 389 N.W.2d 876 (Minn. 1986).

E. Innocent Construction

IV. INTENTIONAL INTERFERENCE WITH CONTRACT

A. Restatement (Second) of Torts §766:

One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract.

B. The Third Party Element

Lewis v. Forest Pharmaceuticals, Inc., 217 F.Supp.2d 638 (D. Md. 2002).

C. The Bad Motive Element

Levee v. Beeching, 729 N.E.2d 215 (Ind. App. 2000).

Duggin v. Adams, 360 S.E.2d 832 (Va. 1987).