



Founding Partner Mathew B. Tully, Esq. on whether or not an Employee can be Fired for Refusing to Act Illegally.

Mathew Tully's Ask the Lawyer column: Can I be fired for refusing to act illegally?

By Mathew B. Tully, Esq.

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** Question:**

Can my employer fire me for refusing to participate in its illegal activities or for exposing its criminal dealing? Response:

Most states subscribe to the doctrine of at-will employment under which employers are generally allowed to terminate employees without reason or notice, barring any contract stating otherwise and so long as the employer does not discriminate in its decision making. Some states adhere to this doctrine more strictly than others. In Virginia, for example, under what is known as the "public policy exemption," employers cannot use the at-will employment doctrine "as a shield... to force their employees, under the threat of discharge, to engage in criminal activity," the U.S. District Court for the Eastern District of Virginia said in *Williams v. Virginia* (2012). New York, however, does not recognize such an exception and as such, employers, generally, may use the at-will doctrine as a shield. "[T]here is no exception for firings that violate public policy such as, for example, discharge for exposing an employer's illegal activities," the New York County Supreme Court said in *Candella v Banco Indus. De Venezuela, C.A.* (2009). However, the Court continued, "New York does recognize a narrow exception to its at-will employment doctrine. Specifically, an employer may not terminate an

employee when the employee made its employer aware of an express written policy limiting the right of discharge and the employee detrimentally relied on that policy in accepting employment." Such a written policy may be found in an employee handbook, but the employer's right to terminate at-will would not be forfeited if that document contains a disclaimer saying it does not represent an employment contract. Depending on the circumstances, employees who find themselves working for an employer engaged in illegal conduct may be able to blow the whistle and be protected from retaliatory terminations. As the New York Court of Appeals pointed out in *Horn v. New York Times* (2003), "the strictures of the at-will doctrine itself, a judge-made doctrine, have been subject to a limited number of statutory exception." The New York State Labor Law, for example, prohibits health care employers from taking retaliatory personnel actions against any employee who "discloses, or threatens to disclose to a supervisor or public body an activity, policy or practice of the employer that is in violation of the law, rule or regulation" that either "creates and presents a substantial and specific danger to the public health or safety, or ... constitutes health care fraud." Similarly, the Civil Service Law prohibits employers from retaliating against public employees who disclose violations to local, state or federal law, and Title VII of the Civil Rights Act protects employees from retaliation when filing an Equal Employment Opportunity Commission complaint or discrimination lawsuit. Employees who want to blow the whistle on an employer's illegal activities, or who have been discharged for doing so, should consult with an experienced employment law attorney who could help them make a protected disclosure or prepare a wrongful termination lawsuit. Mathew B. Tully is the author of The Saratogian's "Ask the Lawyer" column and the founding partner of the law firm Tully Rinckey PLLC in Colonie. Email employment law-related questions to askthelawyer@1888law4life.com

The information in this column is not intended as legal advice.