

Employment Alert: First Circuit Case Provides Cautionary Tale Regarding Potential Libel Claims

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The U.S. Court of Appeals for the First Circuit recently issued a decision holding that, under Massachusetts law, negative statements about an employee can be libelous even if true.

In *Noonan v. Staples, Inc.*, Staples conducted an investigation which led it to believe that the plaintiff, a sales director who frequently traveled for the company, had deliberately falsified his expenses. As a result, Staples fired the plaintiff for cause. After the termination, a Staples executive vice president sent an e-mail to approximately 1,500 employees stating the plaintiff was fired because an investigation had revealed that he had not complied with company travel and expense policies and reminding all employees of the need to comply with these policies.

The plaintiff sued Staples for libel (among other claims), and Staples filed a motion for Summary Judgment. Staples based its motion on the fact that its statements about the plaintiff were true, and the lower court agreed, granting summary judgment. On appeal, however, the Court of Appeals held that, under Massachusetts law, truth is **not** an absolute defense where the defendant acted with “actual malice” — defined as acting with a “disinterested malevolence” or “ill will.” Relying on this little-known exception, the Court refused to dismiss plaintiff’s claim, holding that a jury could find that Staples acted with “actual malice” in making its statement regarding plaintiff’s termination, even though the statement itself was true. The Court further held that a finding of “actual malice” would prohibit Staples from arguing that the internal e-mail was privileged because it related to a “legitimate business interest” — another commonly applied defense to libel claims.

The plaintiff alleged that the statements at issue were published with “actual malice” because they were published with the purpose of singling out or humiliating him, harming his reputation through excessive publication of his termination, or distracting attention from Staples’ termination of another employee for alleged embezzlement. Among other things, the plaintiff presented evidence that the Staples official who sent the e-mail about the plaintiff’s termination had never before sent a mass e-mail referring to a terminated employee by name; that Staples had not widely announced the termination of another employee terminated for falsifying his travel reports; and that many of the individuals to whom the offending e-mail was sent did not travel, and therefore there was no business justification for sending the e-mail to them. As stated above, the Court agreed and reversed the grant of summary judgment for Staples, holding that a reasonable jury could potentially find that Staples published the statement for one of these reasons — thus undercutting both the “truth” and “legitimate business interest” defenses.

This case represents a cautionary tale of how even true statements regarding employee misconduct can lead to actions for libel, even if an employer believes that publishing such statements may serve a legitimate business purpose.

Action Items for Employers:

- Proceed cautiously when communicating information regarding any employee or his/her conduct.
- Remember that the truth of a communication about an employee does not necessarily mean the communication is not also defamatory, especially if it can be said that the communication singled out or embarrassed the employee.
- Work with counsel to mitigate potential claims arising from communications regarding employee terminations by reviewing carefully what is being said and to whom and how it is being communicated.
- Review relevant policies and/or agreements to ensure compliance with applicable confidentiality requirements.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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