

## At Will Employment: Injury and Employment Torts

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Even if there is no applicable exception to the principle that employment is at-will, termination can give rise to liability if the employer tortiously injures the employee. In such cases, the termination itself may not be illegal, but liability arises because of some action by the employer which invades a legal right of the employee.

One example is defamation. Defamation in the employment context occurs when an employer or an agent of the employer publishes to a third party (by speech or in writing), false statements about the employee, which diminish the employee's reputation and cause injury to the employee.

Employers have a qualified privilege to publish statements about their employees for legitimate business purposes. This qualified privilege can be lost if the publication is made with malicious motive or to persons with no legitimate need to know. Disciplinary letters presented to the employee are not defamatory, since they are not published to a third party. Performance evaluations have been held not to be defamatory on the theory that employees consent to have their performance evaluated.

Careless employers, however, can easily exceed the protections afforded by the above privileges. For example, employers who have publicly accused employees of theft have been sued for defamation, giving rise to situations where the employees have been able to try the question of the truth or falsity of the accusation to a jury.

Another tortious injury which can occur in the employment context is intentional interference with contractual relations. This tort occurs when there is an unjustified intentional interference by one individual in an actual or prospective contractual relationship between two others.

Both defamation and intentional interference with contractual relations can occur when an employer makes statements to prospective employers which could limit potential re-employment opportunities.

Yet another type of tortious injury which may be inflicted by employers on employees is intentional infliction of severe emotional distress. This tort arises out of extreme and outrageous intentional conduct, exceeding that would be anticipated in a civilized society, which causes severe emotional distress. Examples in the employment context are extremely rare.

Another tort which may occur in the employment context is invasion of privacy, which may occur when an employer goes beyond what is reasonably necessary in investigating employee misconduct, for example searching the employee's home, intruding into the employee's doctor-patient relationship, searching the employee's body, etc. The tort of false imprisonment may occur when an employer locks up an employee to interrogate him or her because of a suspected theft.

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