

Ninth Circuit Asks Montana Supreme Court for Guidance: Is an Employer Defending Itself in a Wrongful Discharge Lawsuit Limited to the Reasons for Termination Given in a Discharge Letter?

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Many Montana employees can claim the protection of Montana's unique Wrongful Discharge from Employment Act, which generally bars an employer for terminating an employee without "good cause" after the employee has completed a probationary period. A separate Montana statute permits a discharged employee to demand a "discharge letter" explaining the reasons why the employee was terminated, and some employers make it their usual practice to give terminated employees a written explanation of why they were fired. If an employer has to explain its reason why there was good cause to discharge an employee in a lawsuit, is the employer limited to the reasons given in a "discharge letter"? The U.S. Court of Appeals for the Ninth Circuit has asked the Montana Supreme Court to clarify this important point of law.

In the case at issue, Charles Smith sued Charter Communications alleging that Charter did not have good cause to fire him. Smith was a vice-president with responsibility for managing employees at approximately 50 sites scattered in the region. He was required to travel for his job. Although the parties dispute the full extent of a travel requirement, it is clear that the job required Smith to travel to each work site at least quarterly. When he was fired, the corrective action report listed two reasons for the termination. First, Plaintiff allowed an employee to work as an electrician, in violation of the company's policy. Second, "[i]n December 2017," Plaintiff "failed to fulfill the 50% travel requirement to [his] management area."

The federal trial court granted summary judgment to the employer. The Court found an issue of fact precluded summary judgment on the allegations about the electrician. The court also found there were conflicting facts about whether a 50% travel requirement existed in 2017. But the trial court concluded that this dispute was "immaterial" because the undisputed evidence established that Plaintiff had "failed to meet even [the] quarterly travel requirement" that Plaintiff conceded was applicable. This last reason was not expressly stated in the termination report.

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Plaintiff Smith appealed and in a January 18, 2022 decision, the Ninth Circuit decided that Montana law was unclear about whether Charter was limited to the reasons stated in the termination report when asserting that good cause for the termination existed. The Ninth Circuit asked the Montana Supreme Court to answer this question “Whether, in an action for wrongful discharge pursuant to Montana Code Annotated section 39-2-904, an employer may defend a termination solely for the reasons given in a discharge letter, as the court held in *Galbreath v. Golden Sunlight Mines, Inc.*, 890 P.2d 382 (Mont. 1995), or whether the 1999 statutory amendments have superseded the *Galbreath* rule.”

In the *Galbreath* decision, the Montana Supreme Court decided that an employer defending itself against a wrongful discharge lawsuit was limited to the reasons given to the employee in a discharge letter. That is, if the employer didn’t articulate a reason for termination in the letter, the employer couldn’t rely on that reason in court. The Montana Supreme Court has permitted employers to elaborate on reasons given in the letter, such as by providing evidence expanding on a stated reason for discharge. Meanwhile, in recent years, some trial courts in Montana have ruled that certain changes the Montana Legislature made to the discharge letter statute in 1999 means that *Galbreath* no longer applies. But no Montana Supreme Court decision has overruled *Galbreath*. The Ninth Circuit has asked the Supreme Court to decide whether *Galbreath* still applies.

It will be many months before the Montana Supreme Court answers the question. While we wait for a resolution of this case, it is a reminder that careful thought should be given to the reasons articulated for a termination, and comprehensive documentation is always the best practice. It can be tempting to limit the reasons given to a discharged employee and hope the matter goes away. But an employer that doesn’t give an employee a complete explanation of why the employee is being terminated might find itself limited in court and unable to fully explain the reasons for the discharge in defending against a wrongful discharge claim.

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