

2019 -- S 0169

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WRONGFUL DISCHARGE FROM
EMPLOYMENT

Introduced By: Senators Quezada, Euer, Bell, Metts, and Crowley

Date Introduced: January 24, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR
2 RELATIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 6.15

4 WRONGFUL DISCHARGE FROM EMPLOYMENT ACT

5 **28-6.15-1. Short title.**

6 This chapter shall be known and may be cited as the "Wrongful Discharge from
7 Employment Act."

8 **28-6.15-2. Purpose.**

9 The purpose of this chapter is to change the state labor laws and provide reasonable
10 employment protection to most workers that:

11 (1) Provides job security to workers who perform satisfactorily;

12 (2) Provides for discharge from employment for just cause only;

13 (3) Abolishes the application of the "employment-at-will" doctrine in the state; and

14 (4) Creates specific remedies for wrongful discharge from employment.

15 **28-6.15-3. Definitions.**

16 (1) "Constructive discharge" means the voluntary termination of employment by an
17 employee because of a situation created by an act or omission of the employer which an
18 objective, reasonable person would find so intolerable that voluntary termination is the only

1 reasonable alternative. Constructive discharge does not mean voluntary termination because of an
2 employer's refusal to promote the employee or improve wages, responsibilities, or other terms
3 and conditions of employment.

4 (2) "Discharge" includes a constructive discharge as defined in this section and any other
5 termination of employment, including resignation, elimination of the job, layoff for lack of work,
6 failure to recall or rehire, and any other cutback in the number of employees for a legitimate
7 business reason.

8 (3) "Employee" means a person who works for another for hire. The term does not
9 include a person who is an independent contractor.

10 (4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave,
11 medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in
12 force on the date of the termination.

13 (5) "Good cause" means reasonable job-related grounds for dismissal based on a failure
14 to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate
15 business reason.

16 (6) "Lost wages" means the gross amount of wages that would have been reported to the
17 Internal Revenue Service as gross income on form W-2 and includes additional compensation
18 deferred at the option of the employee.

19 (7) "Public policy" means a policy in effect at the time of the discharge concerning the
20 public health, safety, or welfare established by constitutional provision, statute, or administrative
21 rule.

22 **28-6.15-4. Elements of wrongful discharge – Presumptive probationary period.**

23 (a) A discharge is wrongful only if:

24 (1) It was in retaliation for the employee's refusal to violate public policy or for reporting
25 a violation of public policy;

26 (2) The discharge was not for good cause and the employee had completed the
27 employer's probationary period of employment; or

28 (3) The employer violated the express provisions of its own written personnel policy.

29 (b)(1) During a probationary period of employment, the employment may be terminated
30 at the will of either the employer or the employee on notice to the other for any reason or for no
31 reason.

32 (2) If an employer does not establish a specific probationary period or provide that there
33 is no probationary period prior to or at the time of hire, there is a probationary period of ninety
34 (90) days from the date of hire.

1 **28-6.15-5. Remedies.**

2 (a) If an employer has committed a wrongful discharge, the employee may be awarded
3 lost wages and fringe benefits for a period not to exceed four (4) years from the date of discharge,
4 together with interest on the lost wages and fringe benefits. Interim earnings, including amounts
5 the employee could have earned with reasonable diligence, must be deducted from the amount
6 awarded for lost wages. Before interim earnings are deducted from lost wages, there must be
7 deducted from the interim earnings any reasonable amounts expended by the employee in
8 searching for, obtaining, or relocating to new employment.

9 (b) The employee may recover punitive damages otherwise allowed by law if it is
10 established by clear and convincing evidence that the employer engaged in actual fraud or actual
11 malice in the discharge of the employee in violation of § 28-6.15-4.

12 (c) There is no right under any legal theory to damages for wrongful discharge under this
13 chapter for pain and suffering, emotional distress, compensatory damages, punitive damages, or
14 any other form of damages, except as provided for in subsections (a) and (b) of this section.

15 **28-6.15-6. Limitation of actions.**

16 (a) An action under this chapter must be filed within one year after the date of discharge.

17 (b) If an employer maintains written internal procedures, other than those specified in §
18 28-6.15-7, under which an employee may appeal a discharge within the organizational structure
19 of the employer, the employee shall first exhaust those procedures prior to filing an action under
20 this chapter. The employee's failure to initiate or exhaust available internal procedures is a
21 defense to an action brought under this chapter. If the employer's internal procedures are not
22 completed within ninety (90) days from the date the employee initiates the internal procedures,
23 the employee may file an action under this chapter and for purposes of this subsection the
24 employer's internal procedures are considered exhausted. The limitation period in subsection (a)
25 of this section is tolled until the procedures are exhausted. In no case may the provisions of the
26 employer's internal procedures extend the limitation period in subsection (a) of this section more
27 than one hundred twenty (120) days.

28 (c) If the employer maintains written internal procedures under which an employee may
29 appeal a discharge within the organizational structure of the employer, the employer shall, within
30 seven (7) days of the date of the discharge, notify the discharged employee of the existence of
31 such procedures and shall supply the discharged employee with a copy of them. If the employer
32 fails to comply with this subsection, the discharged employee need not comply with subsection
33 (b) of this section.

34 **28-6.15-7. Exemptions.**

1 This chapter does not apply to a discharge:

2 (1) That is subject to any other state or federal law that provides a procedure or remedy
3 for contesting the dispute. These laws include those that prohibit discharge for filing complaints,
4 charges, or claims with administrative bodies or that prohibit unlawful discrimination based on
5 race, national origin, sex, age, disability, creed, religion, political belief, color, marital status, and
6 other similar grounds.

7 (2) Of an employee covered by a written collective bargaining agreement or a written
8 contract of employment for a specific term.

9 **28-6.15-8. Preemption of common-law remedies.**

10 Except as provided in this chapter, no claim for discharge may arise from tort or express
11 or implied contract.

12 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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1 This act would end Rhode Island's "employment-at-will" legal doctrine, and would
2 provide job protection for employees that satisfactorily perform their duties. The act would also
3 provide specific remedies for wrongful discharge.

4 This act would take effect upon passage.

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