



# HIRE PERSPECTIVES

Spring 2009

A periodic newsletter from the Labor & Employment Law Group at Dickinson, Mackaman, Tyler & Hagen, P.C.

## Iowa Supreme Court Expands Wrongful Discharge Cause of Action to Include Public Policy Based Upon Regulations and Individual Liability of Corporate Officers.

by [REBECCA BOYD DUBLINSKE](#)

In *Jasper v. H. Nizam, Inc.*, (Iowa Sup. Ct., January 23, 2009), the Iowa Supreme Court expanded the scope of wrongful discharge claims. At issue was whether an administrative regulation, as opposed to a statute, can provide the basis for a wrongful discharge claim and whether a corporate officer can be individually liable for a claim of wrongful discharge. Further, the Court discussed the factors in determining whether a jury award of \$100,000.00 for emotional distress could be properly reduced to \$20,000.00 by the trial judge.

In *Jasper*, the plaintiff/employee was hired by defendant, Kid University, as the director of one of its child care facilities. Shortly after beginning her employment, Kimberly Jasper (“Jasper”) was told by its President, Mohsin Hussain (“Hussain”), that the center was not making enough money to justify the size of the staff. Jasper told Hussain that “any staff cuts would place the center in jeopardy of violating state regulations governing the minimum ratios between staff and children.”

Iowa Code section 237A.12 allows the Iowa Department of Human Services (“DHS”) to “adopt rules setting minimum standards to provide quality child care in the operation and maintenance of child care facilities.” In addition, DHS is authorized to adopt rules which regulate the number of personnel necessary to “assure the health, safety, and welfare of children” in those facilities. The regulation referred to by Jasper required specific staff-to-child ratios.

The issue of whether staff cuts should be made continued to be a “frequent subject of conversation and friction” between the two – each being adamant as to their own position – although Hussain never told Jasper to violate or ignore those staffing regulations. Hussain proposed that Jasper and her assistant director work as staff in the classrooms as a way to cut the number of staff needed. Jasper objected to this plan and believed that it would prevent her from performing her director duties and would risk placing the center in violation of the regulations. Within a month of this conversation, Hussain terminated Jasper’s employment.

Jasper sued the daycare facility and the owner/president Hussain individually and in his corporate capacity. The jury awarded Jasper \$26,915.00 in lost wages and \$100,000.00 for emotional distress damages; however, in post-trial motions, the trial judge reduced the emotional distress damage award to \$20,000.00.

Under Iowa law, a cause of action for “wrongful discharge” as an exception to Iowa’s employment at-will doctrine requires that the plaintiff show: (1) the existence of a clearly defined public policy that protects employee activity; (2) the public policy would be jeopardized by the discharge from employment; (3) the employee engaged in the protected activity, and that this conduct was the reason for the employee’s discharge; and (4) there was no overriding business justification for the employee’s termination. In the past, Iowa appellate courts have based the “existence of a clearly defined public policy” *only* on statutes. Those activities have previously included: (1) exercising a right or privilege (such as the right to file workers compensation or unemployment claims); (2) refusing to commit an unlawful act (refusing to commit perjury); (3) performing a statutory obligation (testifying truthfully) and (4) reporting a statutory violation.

The Iowa Supreme Court found that it has “no hesitation in finding that the staff-to-child ratios demonstrate an important public policy in Iowa.” The employer argued that there was no evidence that it violated the regulation during Jasper’s employment nor was there evidence that she had reported any violation to the State. The Court found, however, that wrongful discharge can be established by the employer’s *intent* to cut staff to child ratios and that Jasper was discharged from her employment for refusing to cut staff. In addition, the Court found that because the employer’s staffing levels were in violation of the regulation after Jasper’s termination provides evidence from which the jury could determine that the employer wanted to violate the regulation during her employment.

The Supreme Court also found that the owner/president of the day care facility can be held individually liable under the theory of “wrongful discharge”. The Court reasoned that the tort of wrongful discharge is “better served if corporate decision makers are held to the same standard of responsibility imposed on corporate actors for other tortious conduct.” In the Jasper case, the Court declined to “decide how deep the tort could reach in the corporate chain of management in a particular situation,” however, it stated further that “we only hold that liability for the tort can extend to individual officers of a corporation who authorized or directed the discharge of an employee for reasons that contravene public policy.”

Finally, the Supreme Court found that the trial judge did not err in its finding that an award of \$100,000.00 for emotional distress damages was excessive; however, it remanded the case for a new jury trial solely on the issue of emotional distress damages. In its discussion of an appropriate range for such damages, the Court noted that there are employment termination cases which may support an award of \$200,000.00 and beyond; however, in the *Jasper* case, the amount should not exceed \$50,000.00. The Supreme Court noted that although punitive damages can be awarded in a wrongful discharge case, the trial judge properly refused to submit the punitive damage request to the jury because it was a case of first impression in Iowa.

If you have questions regarding wrongful discharge claims, please contact a member of the Firm’s [Employment and Labor Law Group](#) or the Dickinson attorney with whom you normally work.

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