



## ***Wrongful Termination: How a Litigation Consultant Helps Your Case***

*by Chris Hamilton, CPA, CFE, CVA, DABFA*

Employment law is one of the most litigation-prone areas of a business. Many employers invest considerable resources to stay as informed as possible on recent developments in labor and employment law. However, despite that investment, even the best efforts cannot fully exclude any possibility of a claim.

While discrimination, harassment, trade secret theft and wage/contract disputes are leading causes of employment lawsuits, wrongful termination is an area in which management blunders can cause serious financial consequences. Therefore, whether from a defense or plaintiff perspective, it is critical to engage a litigation consultant with expertise in the economic and financial issues involved in such matters.

### **Examples of Typical Cases**

Since California is an "at will" state, in which an employee can generally be fired at any time without liability, there is usually no legal recourse for the employee. California Labor Code § 2922 states: "An employment, having no specified term, may be terminated at the will of either party on notice to the other. Employment for a specified term means an employment for a period greater than one month." However, there are exceptions to the general rule in which an employer has fired or laid off an employee for illegal reasons. These exceptions give rise to wrongful termination lawsuits. Here are a few examples in which a litigation consultant may be involved:

- An executive in upper management may negotiate an employment agreement not to terminate except for "good cause." This type of agreement can be written, oral, or implied and is the most common form of wrongful termination suits. Since the financial impact of a hefty salary over the course of several years can be very severe, these lawsuits can be very contentious.
- In some instances, the dispute can be over an agreement of employment for a specified term, such as one year. This may occur, for example, when a management-level employee is lured from a competitor and is offered a "guaranteed" two-year tenure via an oral contract, then is terminated in a shorter period of time.
- Some wrongful termination cases are based on circumstance in which an employer violates the California Fair Employment and Housing Act ("FEHA") mandates on discrimination (i.e., termination cannot be based upon race or color; religion; national origin or ancestry, physical disability; mental disability or medical condition; marital status; sex or sexual orientation; age, with respect to persons over the age of 40; and pregnancy, childbirth, or related medical conditions).
- An employee cannot be terminated in retaliation for asserting a right protected by the Fair Employment and Housing Act. For example, an employee might complain about sexual harassment in the work place but management, after an investigation, says that there is no such problem – and then the employee is later terminated.
- When an employee refuses to perform an illegal act, such as shipping goods illegally to avoid tariffs or taxes, and is subsequently terminated, there may be a wrongful discharge lawsuit.

These are only a few of the many different scenarios in which an employee can be wrongfully dismissed and a litigation consultant is then hired to support the claim.



### **Why Use a Litigation Consultant?**

In wrongful termination cases, the plaintiff seeks to receive compensation for the economic loss sustained by the firing, most of which is typically lost earnings and benefits. Since this is a financial matter, litigation consultants are often called in by both plaintiff and defense counsel.

An attorney should be able to rely upon his/her litigation consultant to provide objective and independent evaluation of the economic and financial issues involved in wrongful termination. The role of the expert is to assist the parties in quantifying the damages. This may involve assistance in discovery, developing reasonable assumptions, reading and interpreting contracts, compiling financial data, assisting in preparation of deposition and cross-examination questions, and presenting the data. Discovery will be based on the theory of damages being pursued and an experienced litigation consultant can drive a more efficient process of collecting and using relevant data.

Presentation of the conclusions and the basis for the conclusions is often critical to the success of the engagement. There are a lot of experts who can do an adequate or even superior job in the analysis stage but cannot present the data in a form that is understandable and reasonable for a trier of fact to adopt. Conversely, there are experts who tell a good story but do not have the analytical skills required. They either have others do the analysis and step in personally only to provide the testimony or they do scant analytical work and rely on their testifying skills to carry the day. Finding both skills in one expert brings efficiency to the damages phase of the case. Regardless of the venue (jury trial, bench trial, or arbitration) the ability to present the conclusions in an easily understood presentation that is backed up with substantial data not only can win the case, it can also assist in settling the case before incurring the expense of a trial.

### **The Arxis Difference**

Arxis Financial's "Litigation Consulting" practice provides objective and independent evaluation of the economic and financial issues involved in wrongful termination litigation. Clients are particularly pleased with Arxis Financial's abilities to clearly, persuasively, and accurately present economic and financial evidence and opinions. Our professionals assist attorneys in interpreting the data and help counsel to understand and analyze events or issues as they develop the case and prepare discovery. Expert analysis and conclusions are presented in depositions and trial at local, state and federal court levels as well as mediation and arbitration. If you have a matter that you would like to discuss, please feel free to contact us.

### **About the author:**

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