

FALSE ACCUSATIONS IN JOB TERMINATIONS: DEFAMATION OR SLANDER IN COLORADO

By: Nathan Davidovich
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It is a sufficiently traumatic experience to be terminated from a job for a lawful reason. However, it is devastating to the employee, and his or her future career, to be fired because of a false accusation of committing criminal or other job misconduct. As one author stated, "In modern times, the potential for the careless, or worse, the intentional falsehood to destroy livelihoods, disrupt families, and damage friendships has been viewed almost without exception by English and American judges as so serious a wrong that no judicial system would dare abandon a remedy for it." This article will discuss the remedy in Colorado for such conduct. If you feel that you have been a victim of defamation, it is important that you know your legal rights, and the actions you must take to prevent loss of your right to a remedy. **This article is not designed to provide legal advice or render legal opinions for specific situations. The law in other states may vary from Colorado on these issues. For specific legal questions, contact the attorney of your choice.** If you wish to consult with the author on any matter relating to Colorado employment issues, you will be advised of the fee basis for such consultation.

WHAT IS DEFAMATION?

Defamation is a communication that holds an individual up to contempt or ridicule thereby causing him to incur injury or damage. The law has afforded a cause of action for damage to a person's reputation by the publication of false and defamatory statements since the latter half of the 16th century. The law of defamation is recognition of the right of people to the protection of their own reputation from unjustified invasion and wrongful hurt, and reflects no more than our basic concept of the essential dignity and worth of every human being--a concept at the root of any decent system of ordered liberty. In Colorado, damage to reputation has been held to be the essence of a defamation action. What makes the tort of defamation so intolerable is that the statement destroys an individual's reputation, which is a characteristic which cannot be bought, and one that, once lost, is extremely difficult to restore.

ELEMENTS OF A DEFAMATION CLAIM

In Colorado, the elements of a cause of action for defamation are: (1) a defamatory statement concerning another; (2) published to a third party; (3) with fault amounting to at least negligence on the part of the publisher; and (4) either that the statement is of a type as not to require special damages, or the existence of special damages to the plaintiff caused by the publication. To prove a claim for defamation against an employer the employee must show that the employer published a false statement of defamatory fact. Truth is a defense to a claim of defamation.

The requirement of "publication" is set forth in the Colorado statute, as follows:

No action for libel or slander may be brought or maintained unless the party charged with such defamation has published, either orally or in writing, the defamatory statement to a person other than the person making the allegation of libel or slander. Self-publication, either orally or in writing, of the defamatory statement to a third person by the person making such allegation shall not give rise to a claim for libel or slander against the person who originally communicated the defamatory statement.

EMPLOYER MAY HAVE A "QUALIFIED PRIVILEGE" TO MAKE THE STATEMENT

The employer's communication to the employee of the reasons for discharge of the employee is subject to a qualified privilege, for purposes of the defamation claim, by virtue of which the statement is not defamatory. That is because the interests of the employer and employee in assuring that the employee knows the reason for discharge, and is not being fired based on a mistaken belief, outweighs any harm that knowledge of the negative reason might cause the employee. If the communication is protected by a "qualified privilege," the employee may recover only if it is proved that the employer published the material with malice. That means that the employer, at the time of making the statement, knew it to be false, or acted with reckless disregard as to its truth and veracity.

DAMAGES

An employee who has been fired from his job may recover the actual economic damages sustained, as well as damages for the loss of reputation, and emotional distress. Defamatory remarks which relate to the conduct of an individual's business are tantamount to defamation of the individual's business and professional reputation, and are categorized as "slander per se" because injury to reputation is presumed. The primary advantage to a plaintiff claiming slander per se is that certain damages are presumed if the statement is so categorized, e.g., loss of reputation, and therefore, need not be proved.

CONCLUSION

There are many more intricacies involved in slander and defamation cases than have been discussed in this article. Learn more about protecting your rights by selecting a competent lawyer to represent you.

[Nathan Davidovich](#) practices employment law in the state of Colorado, and either he, or one of his associates, is available for consultation on any matters arising in the state of Colorado. Please contact Nathan Davidovich by email at nathandavidovich@talk-law.com , by telephone at (303) TALK-LAW / (303)825-5529.

Nathan Davidovich, Attorney at Law, 219 S. Holly Street Denver, Colorado 80246
Phone: 303-825-5529 / (303) TALK-LAW