Schaffer Law, LLC
Labor and Employment Law

Employer Rights When Employees Breach their Duty of Loyalty

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The duty of loyalty is a common law concept whereby employees owe their employer a certain degree of allegiance by not competing against them while employed, or obtaining monetary gains that are rightfully those of the employer. The Connecticut Supreme Court recently reviewed the obligations employees owe their employer, and the damages available should employees breach their duty. *Wall Systems v. Pompa*, 324 Conn. 718 (2017).

Here, the plaintiff, William Pompa, while working as an employee for Wall Systems, secretly worked as an independent contractor for one of its competitors, and took kickbacks from some of its subcontractors. The employee was fired and litigation ensued. The trial court found for Wall Systems, and both parties appealed the amount of damages awarded by the court. The employer argued that it was entitled to greater damages while the employee claimed the award was excessive.

More specifically, the employer believed it was entitled to recover all wages paid to the employee during the term of his employment, as well as any monies paid by his competitor to his employee (forfeiture), and the amount of any kickbacks received (disgorgement). The trial court disagreed and instead awarded Wall Systems its provable damages. The Supreme Court upheld the trial court and found that there is no standard measure of damages, and that the trial court has equitable discretion in awarding relief.

The Supreme Court went on to discuss the duty of loyalty and the range of potential relief available when it is breached. The general principle is that an agent must act solely for the benefit of the principal in matters connected to the agency. This includes a duty to not compete or disclose confidential information. Also, an employee must refrain from acquiring material benefits from third parties in connection with transactions undertaken on the employer's behalf, including secret commissions or kickbacks. An employee can be found to be disloyal even if the unlawful acts do not depend on the use of an employer's confidential information. Further, the scope of the duty varies based on the nature of the relationship. Employees occupying a position of trust and confidence owe a higher duty than those performing low-level tasks. Also, greater access to confidential information increases the duty.

Remedies include actual damages suffered by the employer, forfeiture of compensation paid to an employee during the period of disloyalty, and disgorgement of any amounts received from third parties related to the disloyalty, even if an employer has not suffered any actual damages. In making its award, courts are permitted to consider a wide range of factors, including the employee's position, duties and degree of responsibility; compensation; the frequency, timing and egregiousness of the disloyal acts; the effect the acts have on the business; and the degree of planning undertaken to implement the disloyal acts.

Employers should consider bringing claims for breach of the duty of loyalty when employees are found to be working against the company's interests, especially when there are no non-compete, confidentiality, or other restrictive covenant agreements in place to otherwise provide protection.

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