Workplace defamation suits rise

Technology fuels a sensitive situation.

Tresa Baldas / Staff reporter
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Carr Maloney's Tina Maiolo

Defamation lawsuits are on the rise in the workplace as employees take on employers over the right to reputation, suing over being labeled as damaged goods after losing their jobs.

With the economy forcing so many people out of work, lawyers say the environment is ripe for defamation claims.

Employers are facing mounting pressure over how to treat departing employees, and how to explain the departure without hurting their reputations. The employers' fear is that negative or offensive information will go out the door along with the exiting employee, providing grounds for defamation claims.

And technology — including e-mails, Twitter, Facebook and blogs — is making it easier to disseminate hurtful information about employees.

In Philadelphia, a former Rite Aid employee who was fired for alleged theft is suing the company and an online employee screening service for defamation. He alleges that he was wrongfully portrayed as a thief in an online database that tracks employees, causing him to be blacklisted in the retail industry. A judge has allowed the case to proceed, ruling that the store knowingly submitted an unfounded accusation to the screening company. *Pendergrass v. ChoicePoint Inc.,* No. 08-188 (E.D. Pa.).

In a similar lawsuit, an assistant manager who was fired from Rite Aid for allegedly misusing her employee discount is also suing for defamation, claiming that a spotty background check based on false information is preventing her from finding work. *Menefee v. ChoicePoint Inc.,* No. 08-981 (E.D. Pa.)

In New York, an ousted law partner and prominent intellectual property attorney filed a $90 million defamation lawsuit against Kasowitz, Benson, Torres & Friedman, claiming he was the subject of a "malicious and unwarranted smear campaign" that followed his firing. *Pitcock v. Kasowitz, Benson, Torres & Friedman*, No. 601984-2008 (New York Co., N.Y., Sup. Ct.). Soon after, the firm filed a breach of fiduciary duty and defamation suit against him. *Kasowitz, Benson, Torres & Friedman v. Pitcock,* No. 601965-2008 (New York Co., N.Y., Sup. Ct.).

In Boston, the 1st U.S. Circuit Court of Appeals recently upheld a Staples manager's lawsuit in which he claimed he was humiliated after the company sent a mass e-mail to roughly 1,500 employees, explaining that he had been fired for violating the company's travel and expense policy. Even though this was true, the court ruled that the e-mail was meant to single him out and humiliate him, and the company should not have identified him by name. *Noonan v. Staples*, 539 F.3d 1 (1st Cir. 2008).

"In this economy, people are working under enough of a handicap than to have this on top of everything else. [Defamation] just makes it impossible to find work," said Irv Ackelsberg of Philadelphia's Langer, Grogan & Diver, who is representing the Rite Aid employees in their defamation claims. "Defamation has now become accelerated by technology," Ackelsberg said. "And the consequences are much more severe."

Employers are well aware of that, said management-side attorneys.

Doug Christensen, a partner in the Minneapolis office of Dorsey & Whitney, said employers' actions following layoffs are

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being scrutinized as never before. He said employees aren't just suing over defamatory comments, but defamatory actions as well, such as investigating them for alleged theft or sexual harassment.

"The number of defamation by conduct actions is on the rise, and former employees have won a handful of wins in these type of cases," Christensen said. "The theory is that an employer's actions, rather than its words, created an impression that the former employee was involved in some kind of wrongdoing."

A bad reference, statements made in employee performance reviews, internal documents, termination meetings and conversations among managers and supervisors — all can serve as the basis for defamation claims, Christensen said. Inflammatory comments made by an employee on a competitor's Web site, at a public discussion group or on an employee-related bulletin board are also defamation risks, he said.

More on the horizon?

Phil Miscimarra of the Chicago office of Morgan, Lewis & Bockius believes more defamation claims are on the horizon.

"When you're talking about people who have fewer options, and fewer people that have the ability to vote with their feet — if they find that they lost their job for whatever reason, it's more common in an economic downturn for those people to end up litigating over what just happened to them," Miscimarra said.

Employers are struggling with how to deal with the departed employee and protect the company's interests at the same time. For example, if employees are escorted out of the building or locked out of their computers — measures often taken to protect proprietary information or prevent a scene from taking place — employers run the risk of a defamation suit.

If they don't take such measures, information could be stolen or a disgruntled employee could hurt someone, triggering negligence lawsuits. "There is no risk-free way to go," Miscimarra said.

Tina Maiolo of Washington's Carr Maloney advises employers to have a uniform policy that treats all terminated employees the same way. If there are fears that someone might steal information from the computers, lock all the terminated employees out of their computers. That way, no can feel singled out.

"As long as an employer has a good business reason for why they're doing something, they're going to be safe," Maiolo said.

But not all business motives are to be trusted, especially where the best interest of employees lie. So argues John Balestriere of New York's Balestriere Lanza, who is representing Jeremy Pitcock, the New York IP attorney who is suing his former firm, Kasowitz Benson, for defamation based on the firm's press release that he was let go for "extremely inappropriate personal conduct." His suit claims that there was no inappropriate personal conduct, only a brief consensual kiss between himself and an associate.

Balestriere alleges that Kasowitz Benson set out to ruin his client — who left Kasowitz Benson to take a job at New York IP boutique Morgan & Finnegan — and to prevent him from taking his business clients with him.

Gandolfo V. DeBlasi of New York's Sullivan & Cromwell, who is representing Kasowitz Benson, declined comment.

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