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Hill v. Borough of Kutztown Public Employees May Defend Their Reputation After Termination.¹

By Sharon R. López, Esquire ©

Public school teachers, police officers, city and municipal employees and other public employees who are slandered by their public employer enjoy greater constitutional protections after Third Circuit Senior Judge Garth's² clear ruling in *Hill v. Borough of Kutztown*. Before this precedential Third Circuit decision, public employees who were defamed did not have clear guidance from the court as to what would constitute a proper cause of action for defamation of their reputation.

What happened in the *Hill* case?

Mr. Hill was a public employee hired to be the Borough Manager for the Borough of Kutztown, Pennsylvania. After Mr. Hill had many successful years as the Borough Manager, Mayor Marino was elected. Mayor Marino made public statements to the press, both verbally and in writing, that caused Mr. Hill to feel as though he had no choice but to resign his position as Borough Manager. The court referred to this as “constructive discharge.” Mr. Hill filed complaints with the Pennsylvania Human Relations Commission and the Equal Employment Opportunity Commission. He filed a complaint in federal court alleging multiple forms of injury, including age discrimination, constitutional infringement of free speech, and a constitutional violation of his 14th Amendment rights. Judge Garth addressed all these issues in his opinion, and provided other important civil rights analysis. This article focuses on Mr. Hill's reputation, protected by the United States Constitution as a liberty interest, because as a public employee.

How is an employee's reputation a constitutional interest?

As an employee, your reputation is often directly connected to your livelihood. Employees work hard to get good performance evaluations, please their boss and meet deadlines. If your boss starts spreading rumors that you are sloppy, wasteful of resources, or untrustworthy, you may be able to sue your employer in state court for defamation or slander. Normally these types of cases are considered state tort actions, which are not constitutional violations. As a public employee, however, your employer is acting under *color of state law*. That means public employers are

¹ This article is not intended to serve as legal advice. If you believe you have a cause of action, call Deem & López Law Offices at (717) 892-3900, or contact us at info@dflworkforjustice.com.

² Judge Garth is a Senior Judge on the Third Circuit. He is known for his strict application of the Federal Rules of Procedure and his clear and unambiguous decisions. He testified at the Senate Judiciary Hearing on Justice Samuel Alito's confirmation to the United States Supreme Court. For a copy of his testimony go to http://judiciary.senate.gov/testimony.cfm?id=1725&wit_id=4895.

protected from state court tort claims and are *immune from suit*. Public employees are left with fewer opportunities to vindicate their good name.

Judge Garth found that public employees do have a constitutionally protected interest in their reputations under the Fourteenth Amendment of the United States Constitution. He found that the public employee is deprived of this right when has no opportunity to correct the false statements. This is called a “name-clearing hearing.” After the *Hill* decision, employees have a clear right to a name-clearing hearing and possible money damages under 42 U.S.C. § 1983.

How do you prove a constitutional violation has occurred when a public employee’s reputation is smeared by a public employer?

The constitutional right that may be violated when a public employer slanders a public employee is called a liberty interest. A legal cause of action may ripen if two conditions are met: 1) false and harmful information is spread publicly by the public employer, and 2) the employee is deprived of an additional right or interest. This is called the “*stigma-plus*” test. “[T]o make out a due process claim for deprivation of a liberty interest in reputation, a plaintiff must show a stigma to his reputation, *plus* deprivation of some additional right or interest.” *Hill* at *18, *citing Paul v. Davis*, 424 U.S. 693 (1976).

Why is the *Hill* case important?

What makes the *Hill* decision important is that it clearly recognizes that termination from employment, including constructive termination from employment, is a deprivation of a protected interest. This clarity was not evident before the *Hill* opinion. Judge Garth pointed out that the Federal District Courts have not been consistent regarding the deprivation prong of the stigma-plus test. Because the Third Circuit is a high level court and the decision was published, this case recognizes a clear new standard that the courts in the Third Circuit must follow. The Third Circuit includes Pennsylvania, New Jersey, Delaware and The Virgin Islands. The *Hill* rule can be stated as follows: “a public employee who is defamed in the course of being terminated or constructively discharged satisfies the “stigma-plus” test even if, as a matter of state law, he lacks a property interest in the job he lost.” *Hill* at *26.

What does this mean for public employees?

The *stigma-plus test* is clear in the Third Circuit. If a public employee feels forced to quit or is actually fired as a result of public statements made by the public employer, the public employee may have a cause of action. The relief available may include a “name-clearing hearing” and money damages for loss of work or other injuries caused by the defamatory action. If you believe you have a cause of action, contact Deem & López Law Offices. Call us at (717) 892-3900 or email us at info@dflworkforjustice.com.

