

Article Published in *Lifestyles Magazine*- October 2005

Protecting Your Legal Rights-Defamation in the Workplace

by: **Joette S. Doran, J.D.**

Defamation is legally defined as a false statement concerning an individual for which there is an unprivileged publication of the defamatory statement to a third party, and the individual is damaged. Under Illinois common law, four categories of statements are considered defamatory per se: (1) words that impute the commission of a criminal offense; (2) words that impute infection with a loathsome communicable disease; (3) words that impute an inability to perform or want of integrity in the discharge of duties of office or employment; and (4) words that prejudice a party, or impute a lack of ability, in his or her trade, profession, or business. While defamation actions are generally difficult to advance in the employment context, recently the Illinois Appellate Court held that an employer was liable for defamation where an employer failed to conduct an investigation of charges brought against an employee by his supervisor which resulted in his termination.

In that case, the employee's supervisor claimed that he exhibited inappropriate behavior during a performance review and the supervisor prepared an internal memorandum which claimed that the plaintiff used profanity. Relying on the memorandum but conducting no investigation into the supervisor's claims, the employer terminated the plaintiff for poor performance. At trial, the plaintiff a longstanding employee with an excellent record of performance, denied his supervisor's allegations. The employer defended the action by claiming that internal corporate documents are privileged and thus cannot constitute a defamatory statement. The court found that while internal company communications generally are protected by privilege, this privilege can be lost if there is a direct intention to injure the employee or there is a reckless disregard to the employee's rights. In that case, the jury trial revealed that the employer had done no investigation into the truth of the charges against the plaintiff by his supervisor and did not consider the plaintiff's prior good reviews before making the termination decision.

As such, while internal company documents are generally protected by privilege, that privilege can be lost if the communication is defamatory and be legally actionable if the privilege is abused. To prove abuse, the employee must show a direct intention to injure him or a reckless disregard of his rights and consequences that could result from the publication of false information. Reckless disregard of an employee's rights can include the failure to engage in a proper pre-publication investigation of the truth of the statement. If you believe that you were subjected to a false and defamatory review or reprimand, you are well advised to promptly seek legal advice. For further information, please visit my web site at www.joettedoran.com

**This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

MS. DORAN IS LICENSED IN ILLINOIS, ALL ILLINOIS FEDERAL COURTS AND IS A MEMBER OF THE FEDERAL TRIAL BAR. SHE IS THE PAST CHAIRPERSON OF THE EMPLOYMENT LAW COMMITTEE FOR THE NORTHWEST SUBURBAN BAR ASSOCIATION AND IS THE PAST PRESIDENT OF BARRINGTON AREA PROFESSIONAL WOMEN.

COPYRIGHT 2006 BY JOETTE S. DORAN & ASSOCIATES, P.C. All Rights Reserved.