

# Utah Supreme Court Expands Wrongful Discharge Claims to Recognize Self-Defense as Public Policy

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The Utah doctrine of wrongful discharge claims recognizes self-defense as a clear and substantial public policy under limited circumstances, the Utah Supreme Court has ruled in a 4-1 decision that expands the state's exceptions to the at-will employment doctrine. [\*Ray, et al. v. Wal-Mart Stores, Inc.\*](#), 2015 UT 83 (Sept. 17, 2015).

The Court held the policy favoring the right of self-defense is an exception to the at-will employment doctrine, but only "where an employee reasonably believes that force is necessary to defend against an imminent threat of serious bodily harm and the employee has no opportunity to withdraw."

## Background

The five plaintiffs were former employees of Wal-Mart who were fired after incidents involving alleged shoplifters. In the first incident, an alleged shoplifter purportedly threatened two of the plaintiffs with a pocketknife and was disarmed by the two employees and a bystander. In the second incident, an alleged shoplifter purportedly displayed a gun and was disarmed by three of the plaintiffs.

A published company policy stated that if a suspect has a weapon or threatens use of a weapon, employees must disengage from the situation, withdraw to a safe position, and contact law enforcement. After investigations, Wal-Mart discharged the five employees for violating this policy.

The employees filed suit against Wal-Mart in the U.S. District Court for the District of Utah asserting various claims, including wrongful termination in violation of public policy. After pretrial discovery, the federal court granted the employer summary judgment and dismissed all claims against Wal-Mart, except the claim asserting the employees had been discharged in violation of public policy. The federal court certified the issue, asking the Utah Supreme Court to weigh in on the public policy claim. The federal court asked the Utah Supreme Court to assume that, for the purposes of its decision, the employees were unable to safely disengage from the incidents.

## Utah Wrongful Discharge Claims

Like many states, Utah recognizes a wrongful discharge exception to the at-will employment doctrine. The Utah exception is fairly limited, permitting an employee to assert a claim for wrongful discharge

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in violation of public policy when an employee has been discharged for:

1. refusing to commit an illegal or wrongful act;
2. performing a public obligation, such as accepting jury duty;
3. exercising a legal right or privilege; or
4. reporting to a public authority criminal activity of the employer.

*Ryan v. Dan's Food Stores, Inc.*, 972 P.2d 395, 408 (Utah 1998).

Not all legal rights or privileges rise to the legal standard to assert such a claim, but Utah courts have held that they must be reflected in authoritative sources of state public policy, affect the public generally, and not be outweighed by countervailing policies. Claims that an employee was discharged for asserting a workers' compensation claim is an example that Utah courts have found to fall within the coverage of the wrongful discharge doctrine.

In *Ray*, the Utah Supreme Court noted that the right of self-defense is expressed in the Utah State Constitution, as well as the Utah self-defense statute and common law decisions. The Court considered such decisions and also statutes as the Utah Stand Your Ground law that broadened the definition of self-defense under some circumstances. It addressed, as well, the parties' arguments as to the application of self-defense in a workplace setting, rather than as a defense in a criminal case, and the duty to retreat from a potentially violent confrontation.

The Court concluded, "[W]here an at-will employee is unable to withdraw from an imminent threat of death or serious bodily harm, the employer may not terminate the employee for exercising the right of self-defense."

The case now returns to the U.S. District Court for the District of Utah, where the federal court will determine whether there is sufficient evidence that the plaintiffs were unable to withdraw for the case to proceed to trial. Ultimately, a jury may be asked to determine these questions.

## **Lessons for Employers**

The Utah Supreme Court noted that the employer's policy may be consistent with the holdings of its decision. Further, it stated, "[T]here is no reason why Wal-Mart and other employers cannot continue to train their employees to disengage and withdraw from dangerous situations when there is no imminent threat of serious bodily injury or a reasonable opportunity to withdraw."

Employers — particularly those in retail or similar settings, with exposure to the public — should regularly consider workplace violence issues. (See our articles on workplace violence, [Retailers Guide to Defending Against Workplace Violence](#) and [Reminder of Challenges Associated With Workplace Violence Prevention](#).) Additionally, Utah employers should ensure their workplace violence policies are current and, to the extent they have policies regarding contact with shoplifters, are consistent with *Ray*. Moreover, by training employees having contact with the public on dealing with shoplifters and managing other potentially violent situations, employers may avoid dangerous confrontations.

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