



**SHRM**Online  
Society for Human Resource Management

*Serve the Professional.  
Advance the Profession.*

[Join/Renew](#) [Site Map](#) [Help](#) [Contact](#)

2/20/04 12:00 AM

## Connecticut rules out ‘compelled self-publication’ defamation claims

By Lawrence Peikes

Connecticut’s Supreme Court has refused to recognize a claim for defamation based on an employee’s “self-publication” of a former employer’s allegedly defamatory explanation for a discharge decision.

In November 1998, Victor Cweklinsky, a machinist for Mobil Chemical Co., took six weeks of paid medical leave for carpal tunnel syndrome surgery. Cweklinsky’s treating physician cleared him to return to work beginning Dec. 11, 1998.

Instead, after a series of events involving alteration of the return date in his doctor’s note, Cweklinsky returned to work on Dec. 14. After investigation, Mobil determined that Cweklinsky had not falsified the doctor’s note, but he had taken paid medical leave without a medical justification. For that reason, Mobil terminated Cweklinsky’s employment.

Cweklinsky sued Mobil in federal court, making a Connecticut state law claim that he had been compelled in job interviews to repeat Mobil’s allegedly defamatory explanation for the discharge and had lost job opportunities as a result. Although there was no binding Connecticut precedent recognizing such a claim, the federal trial court held that Mobil’s statements were defamatory, and that publication occurred when Cweklinsky—ostensibly under compulsion—repeated to prospective employers Mobil’s stated reason for the discharge.

On appeal, the 2nd U.S. Circuit Court of Appeals sent to the state’s supreme court the question of whether Connecticut recognizes a cause of action for defamation based on compelled self-publication. The court responded in the negative.

Traditional defamation claims cannot rest on the plaintiff’s own dissemination of alleged defamatory statements that were made only to the plaintiff, but a minority of courts have created an exception to that rule in the employment context, the court observed.

In rejecting the exception, however, the Connecticut court emphasized that the availability of such claims would chill workplace communication, expose employers to liability in discrimination cases (where a judge or jury might consider an employer’s silence about the reason for a discharge to be evidence of pretext) and allow plaintiffs to give rise to a new claim every time they uttered the defamatory statements.

Cweklinsky contended that the requirement that self-publication be “compelled” would erode the employee’s perceived power to control the claim. But the likelihood that the subject would come up during job interviews, combined with an applicant’s need to be truthful, would create compulsion in virtually every instance, the court countered.

Ultimately, the court explained that acceptance of a cause of action for defamation based on compelled self-publication would seriously erode the doctrine of employment at will and would effectively require employers to conduct expensive and prolonged investigations for every termination to prevent liability.

Even a comprehensive investigation would not immunize the employer from litigation, the court said. The employer’s affirmative defense of truth is a question of fact for a jury. Employers successful in court still would pay a stiff price due to the time and expense of litigation.

[\*Cweklinsky v. Mobil Chemical Co., Conn., SC 16846, Jan. 6, 2004.\*](#)

**Professional Pointer:** In Connecticut, and in the majority of states that have considered the question, employers can be assured that explaining the reasons for terminating an employee will not expose the employer to liability for defamation based on the theory of compelled self-publication. This protection applies only when an employer has made the defamatory statements exclusively to the employee, however. Defamatory statements made by an employer to a third party still may be actionable.

*Lawrence Peikes is an attorney with the firm of [Wiggin and Dana LLP](#) in Stamford, Conn.*