
Facing Resistance From Above

A Case Study From Maryland

R. Scott Oswald, The Employment Law Group, P.C.

What We'll Talk About Today

- How HR's obligations can conflict with one another
- How to stand up to authority if you disagree with their orders
- The risks associated with standing up to upper management - and the consequences if you don't
- Ways to protect yourself and your job as an HR professional

Our Case Study

- *Naftal v. Prince George's County Memorial Library System*
- Jeffrey Naftal, fellow SHRM member and former HR director of the Prince George's County Memorial Library System
- Jeff filed a lawsuit against his former employer, alleging they unjustly fired him when he followed company policy





R. Scott Oswald

- SHRM member
- Employment & whistleblower lawyer
- Based in D.C.
- Represents employees (plaintiffs)
- More than 40 trial verdicts



Jeffrey Naftal


- Hired in 2016 by the Prince George's County Memorial Library System
- Director of Human Resources
- White man, late 50s



Naftal v. Prince George's County Memorial Library System

Court document excerpts from 2022 trial*

**An appellate court vacated the jury verdict and remanded the case for a second trial. The matter was resolved to Mr. Naftal's satisfaction before the second trial.*



Jeff worked for the library for three years with little issue

Teaze remarked in her evaluation of Naftal at the end of his probationary period, “In his first six months, Jeff has made a great difference in the confidence in procedures and in the ability of the department to get things done. He is an excellent addition to the team.” Ex. 1.

A supervisor asked Jeff for advice with an employee

Its like clockwork. If she works her Saturday she takes Monday. Same thing happened last pay period. She actually showed up Saturday and then took 8 hours on Monday. The one before that, she took 8 hours Saturday so she actually showed up Monday... she's still playing fast and loose with the call out procedures.

Library policy called for progressive discipline

we tried to work with Claudia on these issues and all of the alternatives to calling out we gave her (text, email, having her boyfriend or whomever make the call to us for her).

The supervisor turned to Jeff for his help as HR director.

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**Would you have yet another talk with the employee
OR move to the next step in discipline?**



**Jeff recommended following progressive discipline.
The CEO disagreed.**

HR's Twin Obligations

Follow company policy (and law)

Follow executive direction

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Follow executive direction

- Can involve exceptions / ad hoc decisions
- Based on managerial authority



**What are the risks of deviating from established policy
at the request of a supervisor?**

Is the company at risk? Are you?

Risk to the company

- Deviating from policy against an employee may be discriminatory
- Deviating in favor of an employee may support the claims of others



How do you think other employees would have reacted if Jeff hadn't suggested suspension?



Risk to the company

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- Deviating in favor of an employee may support the claims of others

Risk to the HR professional

- Being blamed for company liability
- Personal liability



Personal Liability

- Some workplace laws allow harmed employees to seek damages from individuals as well as from a corporation, such as:
 - Family and Medical Leave Act
 - Occupational Health and Safety Act
 - Fair Labor Standards Act
- Greater participation in illegal behavior = greater chance of trial
 - Examples

Stand Up to Authority

- ❑ Identify a conflict with law and company policy
- ❑ Document your concern in writing
- ❑ Ask for an opinion from your company's legal advisor
- ❑ Escalate to a higher level
- ❑ Trigger compliance mechanisms, if available
- ❑ Act under protest
- ❑ Look for a better employer

What Jeff Did

- Identify a conflict with law and company policy
- Document your concern in writing
- Ask for an opinion from your company's legal advisor
- Escalate to a higher level
- Trigger compliance mechanism if available
- Act under protest
- Look for a better employer

FIRED

Protect Your Legal Claims

- Familiarize yourself with anti-retaliation laws
- Engage in “protected activity,” which may require whistleblowing or outright refusal to violate a law
 - HR professionals may need to go the extra mile because identifying problems is part of their job
- Document, document, document
- Don’t wait for things to get worse
 - Shop for a new employer who won’t ignore the law
 - Get legal advice before you’re fired

What to Do if You're Fired

- Talk to a lawyer if you haven't already
- Save documents and communications
- Say as little as possible, but do assert that you're being retaliated against



- Bias based on an “old white man” stereotype
 - *“Lacked empathy”*
 - *“Authoritarian”*
 - *“Disciplinarian”*
- Supposed clash with new library culture
- Followed all rules, performed well
- The only person fired – and with no progressive discipline


- People younger than Jeff, of a different race than Jeff, did get progressive discipline
- Jeff was fired abruptly for seemingly no reason other than following policy
- He was replaced by a younger, black woman



Naftal v. Prince George's County Memorial Library System

2022 jury verdict form*

**An appellate court vacated the jury verdict and remanded the case for a second trial. The matter was resolved to Mr. Naftal's satisfaction before the second trial.*



1. On Jeffrey Naftal's claim of **age discrimination** in violation of the **Prince George's County Code** or **Maryland Fair Employment Practices Act** against Prince George's County Memorial Library System ("PGCMLS"), do you find by a preponderance of the evidence that age was a motivating factor in PGCMLS' decision to terminate him:

_____ YES

_____ NO

2. On Jeffrey Naftal's claim of **gender discrimination** in violation of the **Prince George's County Code** or **Maryland Fair Employment Practices Act** against Prince George's County Memorial Library System ("PGCMLS"), do you find by a preponderance of the evidence that gender was a motivating factor in PGCMLS' decision to terminate him:


_____ YES

_____ NO

3. On Jeffrey Naftal's claim of **race discrimination** in violation of the **Prince George's County Code** or **Maryland Fair Employment Practices Act** against Prince George's County Memorial Library System ("PGCMLS"), do you find by a preponderance of the evidence that race was a motivating factor in PGCMLS' decision to terminate him:

_____ YES

_____ NO



\$312,000 in damages

Anti-discrimination & anti-harassment plan for library

Training for executives & board

**An appellate Court vacated the jury verdict and remanded the case for a second trial. The matter was resolved to Mr. Naftal's satisfaction before the second trial.*





And the CEO lost her job soon after

What Can We Learn From Jeff's Case?

- Laws protect those who try to do the right thing
- Standing up to authority is tough - but possible
- You have options even if you're fired



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