

# After having her Phil, ex-worker sues for false imprisonment, constructive discharge

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*False imprisonment is the unlawful restraint of a person without her consent by someone without legal justification or authority. It can occur in a room, a moving vehicle, or out in the open, as long as the person is unable to move freely because of actual force or threats or fear of force.*

*False imprisonment, which is often confused with false arrest, can occur in the workplace when an employer gets carried away during an investigation into allegations of employee theft or other wrongdoing. But when does an employer cross the theoretical line from an appropriate workplace investigation into the wrongful detention of an employee during an investigation into her suspected wrongdoing?*

## **'How's that working for you?'**

For nearly 12 years, Leah Rothman "worked competently and performed strongly" for *The Dr. Phil Show* as an employee of CBS Studios, Inc., all the while allegedly being subjected to "hostile behavior" in the workplace. Rothman alleges in litigation she recently initiated against Dr. Phil McGraw, CBS, and others that the hostile behavior became too much on March 11, 2015, when she was called into work on her day off, summoned into a single room with 300 other employees, and subjected to a tyrannical rant by McGraw after he "demanded that the doors to the room be locked."

In her complaint, Rothman alleges that during McGraw's rant, the employees were packed into a room, forced to shut off their cell phones, and subjected to continuous profanity and threats for the supposed purpose of allowing McGraw to investigate who among his employees leaked a story to TMZ about his interview with Nick Gordon. (For those of you who, like me, "suffer" from an aversion to popular culture, Gordon was the boyfriend of Bobbi Kristina Brown, the daughter of singers Whitney Houston and Bobby Brown, who died last year.) According to Rothman, the investigation was

a sham to allow McGraw to threaten and scare his employees because he already knew who leaked the story.

On March 18, 2015, having allegedly suffered severe emotional distress "after the meeting and false imprisonment," Rothman had a meeting with Cassie Thomas, the senior vice president of HR for CBS. She claims that after she reported her concerns about McGraw's inappropriate behavior, Thomas told her that the company would "have to look into it." She alleges that rather than looking into her concerns, the company "condoned Dr. Phil's behavior," and Thomas made it difficult for Rothman to meet with her thereafter. As a result, she says, she "was forced to quit her job . . . due to the intolerable workplace she had been subjected to."

Rothman is seeking monetary damages for, among other claims, false imprisonment and constructive discharge. Although her case is pending in California, this article focuses on whether her allegations would be actionable against an Arizona employer.

## **'It's better to be healthy alone than sick with someone else'**

Arizona's constructive discharge statute sets two standards under which a constructive discharge claim may be established. The first standard requires an employee to give the employer written notice of the objectively difficult or unpleasant working conditions that are making her feel compelled to resign and 15 days to resolve the problem. Written notice is required only if the employer conspicuously posts a notice informing employees of their rights under the statute. The second standard requires an employee to provide evidence of outrageous conduct by the employer, including threats of violence and a continuous pattern of discriminatory harassment.

Rothman alleges there was ongoing "hostile behavior" in the workplace, but she didn't specifically point to any hostile behavior aside from the March 11 meeting. Without specific allegations about threats of violence or

a continuous pattern of discriminatory harassment by McGraw or CBS, Rothman's claim for constructive discharge based on outrageous conduct by the employer likely would fail in Arizona.

Because she doesn't appear to have a claim under the more stringent constructive discharge standard, Rothman would need to demonstrate that she gave her employer written notice and 15 days to cure the unpleasant working conditions or that the employer failed to conspicuously post the notice of her rights under the constructive discharge statute. This demonstrates the importance of the "safe harbor" provided to employers that post the requisite notice about constructive discharge.

### ***'We teach people how to treat us'***

To establish a claim for false imprisonment in Arizona, Rothman would need to demonstrate that:

1. McGraw intended to restrain her within an area of his control.
2. His restraint was without lawful authority or her consent.
3. His act resulted in direct restraint of her freedom of movement either by actual force or threats or fear of force.
4. His act would have caused a reasonably prudent person in the same situation to believe she was restrained.
5. She was harmed by the restraint.

It's important to note that it's the act of detention, not the duration of the restraint, that is necessary for false imprisonment. The duration may become a factor when damages are assessed, however.

At this stage of Rothman's case, we are privy only to her version of the events of March 11. We "know" from her allegations that McGraw called the employees into an office (i.e., an area within his control) for the purpose of investigating a leaked story. Whether that investigation was a sham will play into his authority to require the employees to come in for the investigation. McGraw may assert that Rothman's appearance at the office demonstrated—at least initially—her consent to attending the meeting.

Rothman alleges that McGraw had the doors locked and two security guards posted at the exit. She fails to mention whether she or any of the 300 other employees asked to leave at any time and were prevented from

doing so. Without those facts, it's unclear whether she was actually restrained. If other employees were permitted to leave, that would demonstrate that a reasonably prudent person didn't believe he was restrained during the meeting.

### ***'Awareness without action is worthless'***

Like many TMZ reports, Rothman's allegations about what occurred on March 11, 2015, are likely sensationalized for the benefit of the viewing public. Only time will tell whether what actually happened during the investigation amounts to false imprisonment. The case's outcome probably won't receive as much press as the filing of the complaint, which means most of us will never know. But it does create awareness among employers that certain actions during an investigation into an employee's wrongdoing could result in claims of false imprisonment. Appropriate action is key to avoiding liability.

Throughout an investigation, you should be aware that an employee who initially consented to remaining on the premises to answer questions (or travel to a drug-testing site to provide a sample for testing) may withdraw her consent. If the employee withdraws her consent, you must determine whether continued detainment would be justified under the circumstances. (In most cases, it would not be justified.) Finally, you should be certain that the person conducting the investigation doesn't threaten or force employees in any way and is aware of how to avoid liability for false imprisonment.

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