



## Washington Claims for Wrongful Discharge against Public Policy Limited by Effective Statutory Remedies

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The Washington Supreme Court has reaffirmed that employee tort claims alleging wrongful discharge in violation of public policy may be brought only in limited circumstances, where the public policy at issue is not adequately promoted through alternative mechanisms, such as statutory remedies or criminal sanctions. *Cudney v. ALSCO, Inc.*, 2011 Wash. LEXIS 665 (Wash. Sept. 1, 2011).

### Background

While he was employed by ALSCO, Inc., Matthew Cudney made numerous complaints about alcohol use by his branch's general manager. One day, Cudney observed the general manager weaving back and forth, smelling of alcohol, and slurring his speech, among other things. He thought the general manager was intoxicated. After seeing the general manager then drive away in a company vehicle, Cudney reported his observations to the assistant general manager and the human resources manager. Less than two months later, Cudney was discharged.

He sued his former employer in state court, asserting a claim for wrongful discharge in violation of public policy on the theory that the Washington Industrial Safety and Health Act (WISHA) and the Washington laws against driving under the influence of alcohol (DUI laws) prohibited his discharge.

### Public Policy

Washington's public policy discharge tort requires the plaintiff to show four elements — only two are implicated in this case. First, Cudney must show the existence of a clear public policy (the clarity element). Second, and crucial here, Cudney must show that discouraging the conduct in which he engaged would jeopardize this public policy (the jeopardy element).

### In Court

After removing the case to federal court, ALSCO moved for partial summary judgment or dismissal based on the plaintiff's asserted failure to satisfy the jeopardy element. The U.S. District Court for the Eastern District of Washington concluded that the Washington Supreme Court had not clearly decided whether WISHA or the DUI laws adequately promoted their underlying public policies so as to preclude Cudney's wrongful discharge claim. The federal district court therefore certified these two questions to the Washington Supreme Court. For purposes of this certification, ALSCO and Cudney agreed that WISHA and its regulations establish a clear public policy of ensuring worker safety and of protecting workers who report safety violations from retaliation. They also agreed that the DUI laws embody a clear public policy of protecting the public from drunk drivers.

### Washington Supreme Court

The Washington Supreme Court accepted review of these certified questions, finding they presented pure questions of law because the relevant inquiry was limited to examining existing laws to decide whether they provided adequate means of promoting the public policies at issue.