

EXCERPT

COURT TESTIMONY: CHRIS FREELAND, APRIL 26, 2023; TONY WU, APRIL 28, 2023; MATTHEW JACKSON, MAY 1, 2023
TOPIC: AT WILL EMPLOYMENT

This lawsuit was filed against the City of West Covina by a former fire chief for disability discrimination, disability retaliation, whistleblower retaliation, and intentional infliction of emotional distress. The City of West Covina lost the case. The former fire chief was awarded \$4.1 million and almost \$1 million in attorney fees. West Covina is appealing the lawsuit.

West Covina’s legal expenses have almost doubled since 2018. In the 2024-25 proposed budget, staff recommends an additional \$6.3 million dollars in Liability & Worker Compensation funding to cover an existing negative balance (aka deficit, overdraft) in that account by reducing CIP (Capital Improvement Program) funding. Much of the legal expense increases are due in large part to complaints and lawsuits filed by employees regarding various hostile work environment and wrongful termination charges. Simply stated, employees have rights.

This excerpt discusses at will employment: “**At will** means that an employer can terminate an employee at any time for any reason, except an illegal one, or for no reason without incurring legal liability (emphasis added.. Likewise, an employee is free to leave a job at any time for any or no reason with no adverse legal consequences (National Conference of State Legislators at <https://www.ncsl.org/labor-and-employment/at-will-employment-overview>.” West Covina ordinance 2-151(q), reprinted on page 5, specifies council interaction with the city manager, employees and applicants for jobs. Councilman Tony Wu appears to have difficulty following this ordinance.

Jerri Potras, May 26, 2024

Note: In this excerpt, “Q” is Anthony Ngyuen, attorney for the plaintiff. He is questioning “A” Chris Freeland, former City Manager of the City of West Covina, Thomas M. O’Connell is an attorney for the defendant.

<p>1 SUPERIOR COURT OF THE STATE OF CALIFORNIA</p> <p>2 FOR THE COUNTY OF LOS ANGELES</p> <p>3 DEPARTMENT MOSK 54 HON. MAURICE A. LEITER, JUDGE</p> <p>4</p> <p>5 LARRY WHITHORN,)</p> <p>6 Plaintiff,)</p> <p>7 vs.) No. 20STCV08916</p> <p>8 CITY OF WEST COVINA,)</p> <p>9 Defendant.)</p> <p>10</p> <p>11 <u>REPORTER'S TRANSCRIPT OF PROCEEDINGS</u></p> <p>12 WEDNESDAY, APRIL 26, 2023</p> <p>13</p>	<p>16 Q And so during this time frame -- so when Chief</p> <p>17 Whithorn was on medical leave, either this first one</p> <p>18 and/or the second time frame, do you recall having</p> <p>19 conversations with a council member by the name of Tony</p> <p>20 Wu?</p> <p>21 A I do.</p> <p>22 Q So Tony Wu is a council member. He was</p> <p>23 elected shortly before 2016; correct?</p> <p>24 A Yes. 2015.</p> <p>25 Q So Wu elected; correct?</p> <p>26 A Correct.</p> <p>27 Q And Tony Wu was backed by the West Covina</p> <p>28 Firefighters Association; correct?</p>
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1 A I believe he was.

2 Q With the WCFA; correct?

3 A I believe.

4 Q So during this time period for Chief
5 Whithorn's medical leaves, what do you recall Tony Wu
6 saying to you in relation to Chief Whithorn's medical
7 leave?

8 A On a few occasions we were having issues of
9 course with the union. And when the chief was out of
10 the office, he was concerned that he's been spending a
11 lot of time away from the office. And at certain
12 points because the unions were unhappy with the chief
13 and with the city manager and the city council, he
14 recommended that perhaps we should get rid of Chief
15 Whithorn. Terminate him.

16 Q In these conversations with Mr. Wu, he had
17 concerns that Chief Whithorn was an absentee chief;
18 correct?

19 A Correct.

20 Q And he indicated to you that he was displeased
21 that Chief Whithorn was out on his medical leave;
22 correct?

23 A Correct.

24 Q And he indicated that the union was unhappy
25 while Chief Whithorn was out on medical leave; correct?

26 MR. O'CONNELL: Your Honor, objection.
27 Leading. I've been trying to let this go.
28 THE COURT: I'm sorry. I don't want argument

1 from either side.

2 MR. NGUYEN: Sorry, Your Honor.

3 THE COURT: The objection is overruled. Just
4 objection. Basis.

5 MR. O'CONNELL: Thank you.

6 MR. NGUYEN: May I re-ask the question, Your
7 Honor?

8 THE COURT: Yes.

9 BY MR. NGUYEN:

10 Q And council member Tony Wu at the time
11 indicated that the union was upset while Chief Whithorn
12 was out on medical leave; correct?

13 A That is correct.

14 Q And upset and unhappy or words to that effect?

15 A That is correct.

16 Q And he told you that something had to be done
17 about Chief Whithorn regarding this situation of him
18 being out. Otherwise to -- was it to get rid of him?

19 A That is correct.

20 Q Now, did you tell Chief Whithorn about this --
21 I guess we will say pressure that you were getting from
22 Council Member Tony Wu?

23 A I did.

24 Q Did that result, if you recall, Chief Whithorn
25 returning earlier than he had anticipated for his
26 medical leave?

27 A I'm not sure on that.

16 Q You mention that the employee is at will.
17 They can't be fired for illegal reason discriminatory
18 reason or and/or retaliatory reasons?

19 A There's a variety, yes.

20 Q Even if you are an at will employee, you
21 cannot be fired for discriminatory retaliatory, or
22 otherwise illegal reason?

23 A Yes.

24 THE COURT: We will stop for lunch. Be here
25 at 1:30. Be ready to go. See you all then.

18 DIRECT EXAMINATION (CONTINUED)

19 BY MR. NGUYEN:

20 Q Thank you, Mr. Freeland. Before we went to
21 lunch, we were talking to the issue at will. Do you
22 remember that?

23 A Yes.

24 Q In that situation you were speaking with or
25 the situation or scenario where you were speaking with
26 Council Member Wu while Chief Whithorn was on medical
27 leave, with him telling you to terminate or get rid of
28 Chief Whithorn while he was on medical leave. That

1 would be something that he would not be able to do;
2 correct?

3 A That's correct. The only person that can hire
4 or fire is a department head and myself.

5 Q In terms of yourself, it would not be
6 something you can do based on Council Wu's direction
7 because of the fact that Chief Whithorn was on medical
8 leave; correct?

9 A Correct.

10 Q In other words, if there was a directive to
11 the city manager to terminate Chief Whithorn while he's
12 dealing with his medical situation, that can be
13 illegal; corrects?

14 A Correct. Even if I wanted to take the action
15 that a certain Council Member wanted me to terminate a
16 employee if they are out on medical leave, that's a
17 protected leave of absence. So the city would be
18 violating the law and creating exposure to a risk or
19 liability.

20 Q There's protected leave. But then the
21 protected leave expires; right?

22 A It does.

23 Q But even after the protected leave expires,
24 that's still something the city would not be able to do
25 because of accommodation laws; correct?

26 A I believe that to be the case.

27 Q And similar question. But if there was a
28 directive or attempt to terminate Chief Whithorn after

1 he took his leave of absence -- medical leave of
 2 absence in retaliation, that would also be potentially
 3 illegal; correct?
 4 A I believe so.

Note: In this excerpt, "Q" is Anthony Ngyuen, attorney for the plaintiff. "A" is Tony Wu, councilmember, City of West Covina.

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 FOR THE COUNTY OF LOS ANGELES
 3 DEPARTMENT 54 HON. MAURICE A. LEITER, JUDGE
 4 LARRY WHITHORN,)
 5 PLAINIFF,)
 6 VS.) CASE NO.: 20STCV08916
 7 WEST COVINA,)
 8 DEFENDANT.)
 9
 10 REPORTER'S TRANSCRIPT OF PROCEEDINGS
 11 FRIDAY, APRIL 28, 2023

RELATED TO THIS ISSUE

Henry, J. (2023, May 5). [Former West Covina fire chief awarded \\$4.1 million in wrongful termination suit.](#) *San Gabriel Valley Tribune.*

City News Service. (2023, December 11). [Former West Covina fire chief wins nearly \\$1 million in attorneys fees in discrimination suit.](#) *San Gabriel Valley Tribune.*

West Covina Neighbors. [Reckless City Council Decisions Cost City Millions](#) (www.westcovinaneighbors.org)..

15 Q. SURE. AS A CITY COUNCIL MEMBER, ARE YOU ALLOWED
 16 TO HAVE A ONE-ON-ONE CONVERSATION WITH THE CITY MANAGER
 17 AND TELL HIM THAT YOU WANT A DEPARTMENT HEAD REMOVED?
 18 A. I THINK IT'S OUT OF THE JURISDICTION FOR THE
 19 CITY COUNCIL. I THINK IT'S OUT OF THEIR ROLE. THEIR
 20 ROLE IS ONLY CAN FIRE, HIRE CITY MANAGER. WE DO NOT
 21 EVALUATE THE CITY STAFF. THAT IS CITY MANAGER'S JOB.
 22 Q. SO IF YOU WERE TO HAVE A CONVERSATION WITH
 23 CHRIS FREELAND IN 2017 AND TELL HIM THAT CHIEF WHITHORN,
 24 IF HE DOESN'T COME BACK FROM MEDICAL LEAVE, HE WOULD HAVE
 25 TO BE FIRED, THAT'S NOT A CONVERSATION YOU'RE ALLOWED TO
 26 HAVE?
 27 A. ABSOLUTELY. I DON'T THINK I WOULD SAY SOMETHING
 28 LIKE THIS. IF SOMEBODY IS SICK, SOMEBODY IS SICK. HOW

1 CAN YOU HAVE SOMEBODY COME BACK IF THEY'RE STILL SICK?
 2 Q. MY QUESTION IS A LITTLE BIT DIFFERENT. I'M
 3 ASKING, ARE YOU ALLOWED TO HAVE THAT CONVERSATION?
 4 A. I DON'T KNOW OTHER PEOPLE, BUT I THINK THIS IS
 5 OUT OF POSITION FOR PEOPLE TO TELL THE CITY MANAGER
 6 REGARDING SOMEBODY IS SICK AND THEY WANT THEM TO COME
 7 BACK. I NEVER SAY ANYTHING ABOUT IT.
 8 Q. RIGHT. BECAUSE IF YOU DID HAVE A CONVERSATION
 9 THE CITY MANAGER AND MADE SUGGESTIONS ABOUT WHAT TO DO
 10 WITH CHIEF WHITHORN AS FAR AS HIS EMPLOYMENT STATUS, THAT
 11 WOULD BE A VIOLATION OF THE CITY OF WEST COVINA'S
 12 MUNICIPAL CODE; CORRECT?
 13 A. I THINK FREEDOM OF SPEECH, THE CITY COUNCIL CAN
 14 TELL, ASK, SAY, BUT DOESN'T MEAN CITY MANAGER HAS TO
 15 FOLLOW IF IT'S OUT OF BOUNDS.

Note: In this excerpt, "Q" is Anthony Ngyuen, attorney for the plaintiff. "A" is Matthew Jackson, former president of West Covina Firefighters Association IAF Local 3226. Jennifer M. Misetih is an attorney for the defendant.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 54 MAURICE A. LEITER, JUDGE

LARRY WHITHORN,)
PLAINTIFF,) CASE NO. 20STCV08916
VS.)
CITY OF WEST COVINA,)
DEFENDANT.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MONDAY, MAY 1, 2023

31

13 Q. AND YOU HAD SIMILAR CONVERSATIONS WITH MR. WU
14 ABOUT YOUR INTEREST IN REMOVING CHIEF WHITHORN AS FIRE
15 CHIEF, CORRECT?
16 A. I DON'T RECALL. WE DID A VOTE OF NO
17 CONFIDENCE AGAINST THE FIRE CHIEF AT ONE POINT, AND, YOU
18 KNOW, I'VE HAD CONVERSATIONS WITH ALL OF THESE PEOPLE
19 BECAUSE THEY WERE COUNCILMEMBERS AND I WAS IN A POSITION
20 WHERE I OFTEN MET WITH COUNCILMEMBERS, AND OUR
21 DISPLEASURE WITH HIS PERFORMANCE SOMETIMES CAME UP, YES,
22 BUT WHEN THOSE PARTICULAR CONVERSATIONS HAPPENED, I
23 CAN'T SAY FOR SURE.

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24 MR. NGUYEN: I'D LIKE TO READ FROM
25 MR. JACKSON'S DEPOSITION, PAGE 72/LINE 8 THROUGH
26 LINE 12.
27 MS. MISETICH: NO OBJECTION, YOUR HONOR.
28 MR. NGUYEN: AND THIS IS FROM MR. JACKSON'S

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1 DEPOSITION TAKEN OCTOBER 19, 2022.
2 "QUESTION: BUT DID YOU HAVE
3 CONVERSATIONS WITH COUNCILMEMBER WU ABOUT
4 YOUR EXPRESSED INTEREST IN THE REMOVING
5 CHIEF WHITHORN AS FIRE CHIEF?
6 "ANSWER: I'M SURE I HAD CONVERSATIONS
7 WITH HIM ABOUT THAT, BUT WHEN THEY WERE,
8 I DON'T RECALL."

Excerpt | City of West Covina Ordinance
DIVISION 2. - CITY MANAGER
Sec. 2-151. - Powers and duties.
(q) Council-manager relations. The city council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry, and neither the city council nor any member thereof shall give orders to any subordinates of the city manager. The city manager shall take his or her orders and instructions from the city council only when sitting in a duly held meeting of the city council and no individual councilmember shall give any orders or instruction to the city manager. The city council shall instruct the city manager in matters of policy. No councilmember shall in any manner directly or indirectly by suggestion or otherwise attempt to influence or coerce the city manager or any candidate for the position of city manager on matters relating to the appointment, promotion or demotion or removal of any employee or the award of any purchase order or contract.