Should an at-will employee whose employment is terminated in violation of public policy have a wrongful discharge cause of action against individual supervisors and managers who participated in the termination? Courts in a number of states have addressed this question, and they have provided conflicting answers. Some states (including Ohio, New Jersey, the District of Columbia, Virginia, West Virginia and Iowa) have allowed employees to proceed with claims for individual liability.¹ Others (such as Colorado, Illinois, Utah, Texas, Minnesota, and North Carolina) have concluded that liability for wrongful termination in violation of public policy is limited to the employer and, thus, have declined to recognize a cause of action against individual supervisors and managers.²

Not surprisingly, the split in states’ views has occurred because courts have framed the issue in different ways and have emphasized different factors in analyzing the question of

individual liability for the tort of wrongful or retaliatory discharge. For example, some courts have focused on whether a supervisor or manager has the capacity to commit (and be liable for) the tort under general principles of agency law. In contrast, other courts have focused on the required elements of a wrongful discharge cause of action, which, by definition, they see as applying solely to employers.

This paper discusses three main factors courts have often considered in deciding whether supervisors and managers may be held individually liable for participating in terminations of employment in violation of public policy. These are not the only factors courts have analyzed in reviewing claims of individual liability for wrongful discharge. However, as discussed below, the three factors are among the primary reasons that have persuaded courts to permit or deny individual claims against managers and supervisors who carried out terminations that allegedly violated public policy.³

1. Whether a Cause of Action for Individual Liability Amounts to an Unwarranted Expansion of the Tort of Wrongful Termination in Violation of Public Policy

By its nature, the public policy exception has the potential for broad application because of the relative ease with which employees can claim that their terminations touch on a public policy, and are therefore improper. In order to police that potential, and to limit the public policy exception to a proper scope, courts narrowly construe the exception and often resist efforts to expand it.⁴ This is necessary to preserve the strong presumption in favor of at-will employment in many states and to maintain the wrongful discharge tort as an exception that does not swallow the at-will rule.⁵

³ This discussion assumes familiarity with the core concepts of the public policy exception to at-will employment and the elements of the tort of wrongful discharge.
⁴ See e.g., Physio, 306 S.W.3d at 889; Buckner, 694 N.E.2d at 568.
⁵ See, DiMartino v. Remedi Seniorcare, 2016 U.S. Dist. LEXIS 85103, at *8 (D. Md. June 29, 2016) (applying Virginia law and explaining that the “exception is not ‘automatically’ triggered whenever an employee is terminated ‘in violation of the policy underlying any one [statute]’” and that “an automatic trigger would negate
In light of the narrow construction of the public policy exception, a number of courts have declined to recognize claims alleging individual liability for wrongful terminations in violation of public policy because they view such claims as creating an extension of the exception. The Fourteenth District Court of Appeals in Texas relied on this reason, among others, in *Physio GP, Inc. v. Naifeh*\(^6\), where it reversed a trial court judgment holding two owners of a physical therapy clinic individually liable for terminating an employee who refused to falsify patient records in a scheme to defraud insurance companies. Noting that the plaintiff already has a remedy against her former employer under the state’s *Sabine Pilot*\(^7\) doctrine (which provides an exception to at-will employment where an individual is terminated for refusing to commit a criminal act), the court observed that “*Sabine Pilot* is an extremely specific and narrow exception to the employment at will doctrine, and both the Texas Supreme Court and this court have consistently rejected attempts to expand its scope.”\(^8\) Whether to expand *Sabine Pilot* to make individual defendants liable “is more appropriately the task of the Texas Supreme Court or the Texas Legislature,”\(^9\) the court concluded and, in the absence of a finding by the legislature or the higher court, “the *Sabine Pilot* doctrine should not be extended to impose liability on individual employees rather than the plaintiff’s employer.”\(^10\)

The Supreme Court of Illinois followed similar reasoning in *Buckner v. Atl. Plant Maint., Inc.*\(^11\), where it held that “the limited tort of retaliatory discharge . . . should not be expanded to allow claims” against “the employee or agent who, on behalf of the plaintiff’s former employer,

\(^6\) 306 S.W.3d 886 (Tex. App. - Houston [14th Dist.] 2010, no pet.).
\(^7\) This refers to *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W.2d 733, 735 (Tex. 1985), in which the Supreme Court of Texas recognized the at-will exception.
\(^9\) 306 S.W.3d at 889 (citations omitted).
\(^10\) Id. at 887.
\(^11\) 694 N.E.2d 565 (Ill. 1998).
discharged the plaintiff in alleged violation of public policy.”\(^\text{12}\) The court began its analysis by reviewing the “conflicting” decisions of the state’s appellate courts on the issue of individual liability.\(^\text{13}\) On the one hand, the First District had ruled in a line of cases that the state supreme court’s precedent “required a narrow scope for the tort of retaliatory discharge” and that “allowing a retaliatory discharge action to be brought against a party other than the former employer would unduly expand the tort.”\(^\text{14}\) As a result, the First District had maintained that the former employer “is the only proper defendant in a retaliatory discharge action.”\(^\text{15}\) In contrast, the Second District had held that a retaliatory discharge action “may be brought against not only the plaintiff’s former employer, but also the employee or agent who performed the discharge.”\(^\text{16}\) Relying on principles of agency law, the Second District reasoned that both agent and principal are liable “where the acts of an agent render the principal liable,” and it also concluded that allowing individual liability would promote deterrence by imposing liability on the “active wrongdoer.”\(^\text{17}\)

The Buckner court resolved the conflict in favor of the First District’s narrow interpretation of the scope of a retaliatory discharge action and its refusal to expand such actions to include individual liability for managers and supervisors. The court emphasized that, since it first recognized retaliatory discharge as a cause of action in *Kelsay v. Motorola, Inc.*,\(^\text{18}\) it has “reaffirmed the narrow scope of the tort” and “soundly rejected . . . [the] proposition” that the court is open to the tort’s expansion.\(^\text{19}\) Citing “[n]umerous subsequent decisions . . . [that] have similarly maintained the narrow scope of the retaliatory discharge cause of action,” the court

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\(^\text{12}\) Id. at 566.
\(^\text{13}\) Id. at 567.
\(^\text{14}\) Id. at 568.
\(^\text{15}\) Id. at 567.
\(^\text{16}\) Id. at 568.
\(^\text{17}\) Id.
\(^\text{19}\) *Buckner*, 694 N.E.2d at 568-69.
declined plaintiff’s “request to expand the retaliatory discharge cause of action” to allow the cause of action to be brought against individuals who carried out the discharge on the employer's behalf.20 “Given this court’s past precedent admonishing against the expansion of this tort,” the court explained, “we decline to expand it in the manner proposed here by the plaintiff. The policy considerations that motivated this court to recognize a retaliatory discharge cause of action are adequately vindicated by allowing a cause of action against employers.”21

Contrary to the courts in Physio and Buckner, the court in Borecki v. E. Int'l Mgmt. Corp.22 expressly rejected the notion that allowing individual liability claims would amount to an expansion of the wrongful discharge exception to at-will employment. Applying New Jersey law, the court acknowledged that the state’s public policy exception, first recognized in Pierce v. Ortho Pharmaceutical Corp.,23 “is a narrow one.”24 However, the Borecki court emphasized that the narrow scope of the exception is properly controlled by New Jersey’s requirement that plaintiffs “demonstrate a violation of a ‘clear mandate of public policy[,]’” which “adequately discourage[s] groundless suits by permitting courts to dismiss such claims prior to trial.”25 Permitting claims of individual liability for wrongful discharge, the court reasoned, “would not necessarily expand the action in a manner inconsistent with” the narrow construction of the exception because it “would . . . do nothing to expand the type of termination which would give rise to liability” and because “[c]ourts . . . would still be free to dispose of meritless claims on motions to dismiss or for summary judgment.”26 According to the court, “[t]he only impact would be to widen the number of people who could be sued under an otherwise valid claim of

20 Id. at 569.
21 Id.
23 417 A.2d 505 (N.J. 1980)
24 Borecki, 694 F. Supp. at 58 (citing Blum v. Witco Chemical Corp., 829 F.2d 367, 377 (3d Cir. 1987)).
25 694 F. Supp. at 58 (citations omitted).
26 Id. at 58-59.
wrongful discharge,” and “[c]oncern over who could be sued was simply not a factor which motivated the New Jersey Supreme Court to narrow the cause of action for wrongful discharge.”\textsuperscript{27} Based on this analysis, the court concluded that New Jersey law would permit plaintiff to proceed with his claim of individual liability for wrongful termination in violation of public policy.\textsuperscript{28}

2. Whether Wrongful Discharge Actions Are, by Definition, Limited to the Employer-Employee Relationship

A threshold question for many courts considering the issue of individual liability is whether the tort of wrongful or retaliatory discharge is confined to the boundaries of the employer-employee relationship. Framed in this manner, the analysis focuses on whether the employer, by definition, can be the only party that can commit the tort. To the extent courts view the tort as applying only to employers, the possibility of individual liability is precluded unless the plaintiff alleges that the individual is his or her employer. As discussed below, this can create challenges for plaintiffs regarding the sufficiency of pleadings and the ability to set forth a \textit{prima facie} case against individual defendants.

Based on the “employer-only” limitation, the court in \textit{Johnson v. Lone Wolf Wireline, Inc.}\textsuperscript{29} dismissed plaintiff’s wrongful discharge claim against his supervisor for failure to state a claim. Quoting \textit{Peterson v. Browning},\textsuperscript{30} the court observed that Utah’s public policy exception to employment at will “restricts an employer’s right to terminate an employee for any

\textsuperscript{27} Id. at 59.
\textsuperscript{28} Despite relying on general principles to reach this conclusion, the \textit{Borecki} court “emphasize[d] the narrowness of this holding” to “the specific facts of this case - an alleged wrongful discharge which may have been made for personal reasons by one who historically controlled the corporate defendants, and who was at least their dominant, if not sole, shareholder.” 694 F. Supp. at 60. Given its “limited role as a federal court interpreting New Jersey law and in attempting to predict how the New Jersey Supreme Court would answer the question,” the court noted that it “do[es] not pretend to decide the extent to which employees may be sued for wrongful discharge.” \textit{Id.}
\textsuperscript{29} 2013 U.S. Dist. LEXIS 65662 (D. Utah May 7, 2013).
\textsuperscript{30} 832 P.2d 1280, 1281 (Utah 1992).
reason.’”  Consequently, “[a] plaintiff pleading a claim for wrongful termination in violation of public policy must plead that his ‘employer terminated him.’” Plaintiff had argued that, because a claim of wrongful discharge is a tort, he could rely on Utah law upholding the principle that “officers, directors, managers, and others who commit torts while performing services on behalf of an otherwise valid business entity are not protected by the corporate veil.”

However, the court found that “[c]ases involving the corporate veil are inapposite” because “cases where an individual can be held liable for a tort in a corporate or agency setting” do not “involve[] supervisor liability for a tort such as wrongful discharge in violation of public policy.” As wrongful discharge is a “tort that can only be committed by an employer,” an individual supervisor “cannot [be] individually liable for” it. As a result, the court granted defendants’ motion to dismiss plaintiff’s claim against his supervisor for wrongful discharge.

Courts in Colorado have also focused on the “employer” requirement in denying wrongful discharge claims against individual managers and supervisors. In *Ayon v. Kent Denver School*, the court held that plaintiff failed to plead the necessary elements of a wrongful discharge cause of action against an individual manager because she did not allege that the individual employed her. The court began by outlining the elements of Colorado’s common law tort of wrongful discharge: “(1) the plaintiff was employed by defendant; (2) the defendant discharged plaintiff; and (3) the defendant discharged the plaintiff because the plaintiff exercised a specific statutory right or performed a specific statutory duty.” From these elements, the court reasoned that “a claim for wrongful termination is predicated upon the

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31 *Lone Wolf*, 2013 U.S. Dist. LEXIS 65662 at *11 (emphasis in *Lone Wolf*).
32 *Id*.
33 *Id*. at *12.
34 *Id*. at *12, 13.
35 *Id*. at *13.
37 *Id*. at *19-20 (citation omitted).
existence of an employment relationship. Specifically, an employment relationship must exist before an employee can be wrongfully terminated so to establish a *prima facie* case of wrongful discharge.”

In light of this requirement, the court determined that “[p]laintiff’s pleading is deficient” because her claim against the manager for wrongful termination “implies that [p]laintiff also had a personal employment relationship with” the manager. While plaintiff’s complaint sufficiently pled that she was employed by and wrongfully terminated from the school where she worked, it did not plead that she was separately employed by the manager. Instead, “both defendants are bundled together in the same claim,” which is inconsistent with the elements of a *prima facie* case. “On Plaintiff’s own theory of the case,” the court explained, “she can not have it both ways. Either Plaintiff had an employment contract with . . . [the school], which was wrongfully terminated by . . . [the school]; or Plaintiff had a contract with . . . [the manager], which was wrongfully terminated by . . . [the manager].” Based on this deficiency, the court held that plaintiff had not pled sufficient facts to make the manager personally liable for wrongful termination, and it suggested that “Plaintiff should plead a separate alternative claim” if she wished to proceed against the manager for individual liability. Accordingly, the court granted defendant’s motion to dismiss her complaint, and it did so without prejudice.

The court in *Spaziani v. Jeppesen Sanderson, Inc.* relied extensively on the Ayon decision in dismissing a wrongful termination action against an individual manager because the plaintiff did not plead that the manager employed her. The *Spaziano* court emphasized Ayon’s

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38 *Id.* at *24 (internal citation omitted).
39 *Id.*
40 *Id.* at *25.
41 *Id.* at *24-25.
42 *Id.* at *25.
finding that “a prima facie case for wrongful discharge can only exist where an employment relationship had already been formed, and thus, such a claim could be properly stated against an employer, but not a supervisor.” Based on that principle, the court agreed with defendants that plaintiff failed to state a claim for public policy wrongful discharge against her manager because her complaint did not allege that the manager employed her. “[B]ecause Plaintiff has alleged that Defendant Jeppesen -- and not Defendant Villanueva -- employed her,” the court stated, “only Defendant Jeppesen can be potentially liable for Plaintiff’s public policy wrongful discharge claim.” As a result, the court dismissed the wrongful discharge claim against the individual defendant “[a]s there is no individual liability for a public policy wrongful discharge claim.”

3. Whether Individual Managers or Supervisors Have the Requisite Capacity to Commit the Tort

Beyond the definitional limitation discussed above, a main issue that seems to divide courts on claims of individual liability is whether an agent who carries out a wrongful termination on behalf of an employer can, or should, be liable for the tort. Some courts have concluded that individual supervisors and managers are incapable of committing the wrongful discharge tort because, as individuals, they lack the capacity or authority to create or terminate the employment relationship. Conversely, courts that allow liability against individual managers and supervisors “view wrongful discharge in violation of public policy as any other tort that

44 Id. at *7 (citations omitted).
45 Id. at *8 (internal citation to complaint omitted).
46 Id. at *8-9. See also, Cox v. Indian Head Indus., 1999 U.S. Dist. LEXIS 9657 at *15 (W.D.N.C. May 20, 1999) (concluding that “North Carolina does not recognize a claim against a supervisor in an individual capacity for wrongful discharge in violation of public policy” and basing that finding on Lorbacher v. Housing Authority of City of Raleigh, 493 S.E.2d 74, 79 (1997), where the state’s appellate court “definitively stated” that a cause of action for wrongful discharge against individual defendants had been “properly dismissed [because] the individual defendants were not plaintiff’s employers for the purposes of a wrongful discharge claim”).
imposes liability on the individual that committed the tortious conduct” and they rely on general principles of agent liability in support of that view.

The court in Buckner, supra, determined that managers, supervisors and other employer agents lack the requisite authority to be liable for the tort of wrongful discharge. The court observed that “the only proper defendant in a retaliatory discharge action is the plaintiff’s former employer” and not an individual who carried out or was involved in the discharge. “Logically speaking,” the court reasoned, “only ‘the employer’ has the power to hire or fire an employee.” Although “an agent or employee of the employer may carry out that function on the employer’s behalf,” the court commented, it is “still the authority of the employer which is being exercised.” Thus, the court concluded, “[i]f the discharge violated public policy, it is the employer who is rightly held liable for damages.”

The Physio court employed a similar analysis in determining that “individual liability is inappropriate” in cases of termination in violation of public policy. The court first noted that “[t]he employment relationship is the source of the duty in wrongful discharge torts” and that the employment relationship “exists only between the employer and employee, not between two employees, even when one of those employees is a supervisor or even the owner.” The employer is the only party that possesses “the power to hire and fire,” the court observed, and

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48 Buckner, 694 N.E.2d at 570.
49 Id. at 569.
50 Id.
51 Id.
52 Physio, 306 S.W.3d at 888.
53 Id. (citing Miklosy v. Regents of Univ. of Cal., 188 P.3d 629, 644-45 (Cal. 2008); Schram v. Albertson's, Inc., 934 P.2d 483, 490-91 (Or. Ct. App. 1997)).
54 306 S.W.3d at 888 (citing Miklosy, 188 P.3d at 644-45; Buckner, 694 N.E.2d at 569; Schram, 934 P.2d at 490-91).
supervisors merely exercise that power on the employer’s behalf.”\textsuperscript{55} As a result, the court explained, “Corporate employees cannot, in their personal capacity, wrongfully discharge an employee because they have no personal authority to fire an employee.”\textsuperscript{56}

In reaching its conclusion, the \textit{Physio} court expressly rejected plaintiff’s argument (and the trial court’s finding) that individual liability should be imposed because “individuals are liable for their own torts in the corporate setting.”\textsuperscript{57} The court found this argument unavailing because the cases relied upon by plaintiff and by the trial court “involve torts such as fraud that can be committed by an individual.”\textsuperscript{58} Those cases, the court explained, are consistent with the “purpose of individual liability in the corporate setting[, which] is to prevent an individual from using the corporate structure or agency law as a blanket to insulate himself from liability for his otherwise tortious conduct.”\textsuperscript{59} However, the court reasoned, those cases and the individual liability concept are inapplicable to the tort of wrongful discharge because “only an employer can wrongfully terminate the employment relationship” and “so the individual’s conduct logically could not be otherwise tortious.”\textsuperscript{60}

Like the court in \textit{Physio}, the \textit{Buckner} court considered and declined to accept the argument that “general principles of agency law” permit wrongful discharge actions to be brought against individuals who carried out the discharge.\textsuperscript{61} The court noted plaintiff’s assertion that, “under general principles of agency law, an agent whose tortious conduct renders the

\textsuperscript{55} 306 S.W.3d at 888 (citing \textit{Miklosy}, 188 P.3d at 644-45; \textit{Smith v. Waukegan Park Dist.}, 896 N.E.2d 232, 235-36 (Ill. 2008); \textit{Schram}, 934 P.2d at 490).
\textsuperscript{56} 306 S.W.3d at 888-89 (citing \textit{Miklosy}, 188 P.3d at 644; \textit{Waukegan Park Dist.}, 896 N.E.2d 232, 235-36 (Ill. 2008); \textit{Schram}, 934 P.2d at 490-91).
\textsuperscript{57} 306 S.W.3d at 889.
\textsuperscript{58} \textit{Id}.
\textsuperscript{59} \textit{Id}.
\textsuperscript{60} \textit{Id} (citing \textit{Miklosy}, 188 P.3d at 644-45; \textit{Buckner}, 694 N.E.2d at 570; \textit{Schram}, 934 P.2d at 490-91).
\textsuperscript{61} \textit{Buckner}, 694 N.E.2d at 571.
principal liable is also liable for his own tortious acts.”62 However, the court found that “[t]his general rule may not . . . be logically applied to the tort of retaliatory discharge” because “the power to hire and fire employees is ultimately possessed only by the employer” and, therefore, “the tort of retaliatory discharge may be committed only by the employer.”63 As a result, the court concluded, “The agent or employee who carries out the employer’s decision to fire will not be subject to personal liability for retaliatory discharge.”64

Colorado courts have added an interesting element to the analysis of whether an individual supervisor or manager can be liable for the tort of wrongful discharge. In Ayon, the federal district court observed that the Colorado Supreme Court had enunciated the following principle in a corporate bankruptcy case where a terminated employee sought to hold corporate officers individually liable for nonpayment of wages:

A corporate officer is not the employer responsible for creating the contractual employment relationship and is not personally responsible for a breach of that relationship, unless he or she created the relationship without disclosing the responsible principal corporation to which he answered as an agent. Instead, an officer acts for the corporation when he or she extends an offer of employment or terminates the employment relationship.65

Finding this principle applicable and persuasive “in the wrongful discharge context,” the Ayon court “adopt[ed] the principle . . . that an agent is not personally responsible for a breach of an employment relationship, unless the agent created the relationship without first disclosing the

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62 Id.
63 Id.
64 Id. See also, Chavez-Lavagnino v. Motivation Educ. Training, Inc., 767 F.3d 744, 752 (8th Cir. 2014) (“The employees note that as a general matter, an agent is subject to liability to a third party harmed by the agent’s tortious conduct, even when the agent’s conduct may also subject the principal to liability. . . . We do not think the Minnesota court would be convinced. Unless the employer has authorized the firing, the agent is without power to destroy the employment relationship, and there can thus be no discharge, wrongful or otherwise. The supervisor has no independent capacity to commit the tort, so the general rule about agent liability . . . has no application here.”) (internal citations and references omitted).
responsible principal corporation to which he answered as an agent.” Applying the principle to
the case before it, the court held that plaintiff’s claim against her manager should be dismissed
because she did not plead that the manager had created an employment relationship between her
and her employer without first disclosing the employer as the responsible principal.67

In contrast to the views adopted by the courts in Ayon, Physio and Buckner, the Supreme
Court of Virginia is “not persuaded” that individual liability must be precluded by the fact that
only the employer can effect termination of employment, and it expressly rejected that argument
in Van Buren v. Grubb.68 In Van Buren, the court was presented with the following question that
had been certified to it by the Fourth Circuit Court of Appeals (and that the Virginia Supreme
Court modified):

Does Virginia law recognize a common law tort claim of wrongful discharge in violation
of established public policy against an individual who was not the plaintiff’s actual
employer but who was the actor in violation of public policy and who participated in the
wrongful firing of the plaintiff, such as in the capacity of a supervisor or manager?69

The court answered the question in the affirmative, and it arrived at that answer by dismissing
the individual defendant’s contention that liability must end with the employer and by focusing
on the individual actor’s role and conduct in the commission of the tort. “In a wrongful
discharge case,” the court stated, “the tortious act is not the discharge itself; rather, the discharge
becomes tortious by virtue of the wrongful reasons behind it. Where those tortious reasons arise
from the unlawful actions of the actor effecting the discharge, he . . . should share in liability . . .
just as he would . . . had he engaged in any other tortious conduct.”70

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67 Id. at *23-24.
68 733 S.E.2d 919 (Va. 2012).
69 Id. at 921.
70 Id. at 923 (citing Jasper v. H. Nizam, Inc., 764 N.W.2d 751, 776 (Iowa 2009)).
This reasoning, the Van Buren court observed, is “consistent with the Court’s established case law regarding agency relationships.”\(^71\) “It has long been settled in Virginia,” the court explained, “that ‘employers and employees are deemed to be jointly liable and jointly suable for the employee’s wrongful act.’”\(^72\) Although the court did not go so far as to state that managers and supervisors have an individual duty of care to employees in connection with termination of employment, it noted that its precedent provides that “[b]oth principal and agent are jointly liable to injured third parties for the agent’s negligent performance of his common law duty of reasonable care under the circumstances.” \(^73\)

Moreover, the Van Buren court criticized the concept of limiting liability to the employer because doing so “would follow a contract construct” despite the fact that “[w]rongful discharge . . . is an action sounding in tort.”\(^74\) “While there are components of a contractual relationship,” the court explained, “wrongful discharge remains a tort and tort principles must apply.”\(^75\) In addition, the court commented, denying individual liability in cases of wrongful discharge would be at odds with the public policy that motivates the tort. “The purpose of the wrongful discharge tort -- namely, the deterrence of discharge in violation of public policy -- is best served if individual employees in a position of power are held personally liable for their tortious conduct,”

\(^{71}\) Van Buren, 733 S.E.2d at 923.
\(^{72}\) Id. (quoting Thurston Metals & Supply Co. v. Taylor, 339 S.E.2d 538, 543 (Va. 1986)).
\(^{73}\) 733 S.E.2d at 923 (quoting Miller v. Quarles, 410 S.E.2d 639, 642 (Va. 1991)). See also, Armstrong, 2005 Ohio App. LEXIS 2565 at *22-23 (“Support for permitting an individual supervisor to be sued for wrongful discharge is found in the general principles of agency and tort law. It is a long-standing rule that ‘an agent who does an act otherwise a tort is not relieved from liability by the fact that he acted at the command of the principal or on account of the principal.’”) (quoting Restatement (Second) of Agency § 343 (1958) and also citing Restatement (Second) of Agency § 217B1957 for the proposition that “principal and agent can be joined in an action for a wrong resulting from the tortious conduct of an agent or that of agent and principal, and a judgment can be rendered against each”).
\(^{74}\) 733 S.E.2d at 923.
\(^{75}\) Id. See also Jasper, 764 N.W.2d at 776 (“We acknowledge that an officer or employee of a corporation who discharges an employee in the name of the corporation has no contractual liability in the event the discharge violates an obligation under an employment contract. The limited-liability principles of corporate law serve to insulate officers from liability for corporate contracts and obligations. Tort law, however, concerns liability imposed by society for acts by individuals deemed to be undesirable in society. The tort seeks to encourage responsibility for individual behavior.”).
the court explained, and “employer-only liability would be insufficient to deter wrongful discharges.” The court acknowledged “the concern that supervisors will be hesitant to rightfully discharge at-will employees for fear of suit.” However, it explained that this concern is overcome by “the extremely narrow nature of wrongful discharge actions . . . and the requirement that the defendant employees’ personal actions be shown to have violated the relevant public policy,” which “provide[] sufficient protection from the overuse of wrongful discharge claims.”

Similar to Van Buren, the New Jersey Supreme Court held in Ballinger v. Del. River Auth. that individual managers and supervisors could be found personally liable for the tort of wrongful discharge based on principles of agency law. The individual defendants in that case had argued that they could not be liable to plaintiff for wrongful discharge because they acted within the scope of their employment. However, the court determined that this argument did not apply to the question of individual liability for the tort of wrongful discharge. “‘Whether an employee is or is not acting within the scope of his or her employment,’” the court stated, “‘is only relevant in determining whether the employer can be secondarily liable for the employee’s tort. In either case, the employee . . . remains liable for his (or her) own torts.’”

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76 733 S.E.2d at 923. But see, Chavez-Lavagnino, 767 F.3d at 752 (“Individual liability for supervisors is not necessary to deter unlawful conduct by employees who induce a wrongful discharge, because the employer will be liable for discharge, and it is likely that the employer itself will act to deter that agent or employee from repeating such conduct.”) (citation and internal quotation marks omitted); Physio, 306 S.W.3d at 889 (“Furthermore, individual liability is not necessary to promote deterrence because liable employers will likely take their own measures to deter agents or employees from wrongfully exercising termination authority. . . . Moreover, it can be difficult to determine--or limit in scope--the individuals who might be held accountable for a decision to terminate. This is particularly true in a corporate environment involving group evaluation of employees and collective decisionmaking for terminations.”) (citation omitted).

77 Id.

78 Id. at 110 (quoting Cosmas v. Bloomingdales Bros., Inc., 660 A.2d 83, 89 (1995)).
Referring to New Jersey and Pennsylvania law, the Ballinger court observed that a claim for wrongful discharge is considered a tort action and, thus, “in both states, an individual who personally participates in the tort . . . may be held individually liable.” 81 This conclusion, the court commented, “comports with the long-standing rule that ‘[a]n agent who does an act otherwise a tort is not relieved from liability by the fact that he acted at the command of the principal or on account of the principal.’” 82 Accordingly, the court affirmed a lower court ruling allowing claims to proceed against individual defendants “for their own tortious conduct.” 83

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82 800 A.2d at 110 (quoting Restatement (Second) of Agency § 343 (1958)).
83 800 A.2d at 111.