



## Legal Alert: Tennessee Supreme Court Rulings Mean Employers May See More State-Court Retaliation Claims

10/7/2010

The Tennessee Supreme Court recently issued two decisions that likely will make it more difficult for Tennessee employers to obtain summary judgment (and, thus, avoid going to trial) on state-law retaliatory discharge claims. In *Kinsler v. Berkline* (September 2010) and *Gossett v. Tractor Supply Co.* (September 2010), the TNSC held that the *McDonnell Douglas* framework is inapplicable at the summary judgment stage because it is incompatible with Tennessee's summary judgment jurisprudence.<sup>[1]</sup>

Summary judgment operates to dispose of cases **only** when there is no genuine issue of material fact. Thus, in order to win summary judgment, the TNSC found that the employer must establish that a case presents no genuine issue of material fact 1) by pointing to evidence that affirmatively negates (disapproves) a material factual allegation made by the employee; or 2) by showing that the employee cannot prove an essential element of the claim at trial. *Gossett* also suggests a third means by which summary judgment may be obtained – when the employer presents **undisputed** evidence that its legitimate reason was the **exclusive** motivation for discharging the employee.

In *Gossett*, the TNSC reasoned that while evidence of an alternative legitimate reason for the employee's discharge can satisfy the requirements of the *McDonnell Douglas* framework, it does not tend to disprove any factual allegations of discrimination or retaliation made by the employee. In *Gossett*, the employer stated that Gossett was discharged in a reduction in workforce (RIF). While the RIF satisfied the employer's burden under the *McDonnell Douglas* framework (i.e., offering a legitimate alternative reason for the discharge), it did not establish the right to summary judgment because it failed to: 1) show the RIF was the **exclusive** reason for his discharge; or 2) disprove any factual allegation of discharge for refusal to participate in an illegal activity. The TNSC noted that even if it were to accept the RIF as true, there still remained questions of fact as to whether the retaliatory motive alleged (refusal to participate in illegal activity) was a substantial factor in deciding to terminate him via the RIF.

By employing the *McDonnell Douglas* framework, employers in the above situation could have been awarded summary judgment simply by offering evidence that the employee was terminated due to a RIF, without ever having to disprove any of the employee's allegations as to why he was terminated. Because *McDonnell Douglas* only requires that the employer **articulate, not prove**, a legitimate alternative to the reason for discharge,

the TNSC determined that Tennessee employers have been able to obtain summary judgment without also establishing that no genuine issue of material fact exists.

**Impact on Employers:** Employers will no longer be able to obtain summary judgment in state court by offering a legitimate alternative to the reason for the employee's discharge. Employers will be required to establish that no genuine issues of material fact exist by 1) affirmatively negating (disproving) a material factual allegation made by the employee; 2) showing that the employee cannot prove an essential element of his claim; or 3) providing undisputed evidence that the employer's legitimate reason was the exclusive motivation for the employment action. Also, because this new standard applies to discrimination and retaliation claims, plaintiffs who previously chose not to bring cases under the Tennessee Human Rights Act (THRA) because of the lack of available punitive damages may now file under the THRA because the higher standard applies at the summary judgment stage. Plaintiffs will have to weigh the higher summary judgment standard against the inability to obtain punitive damages.

For more information on retaliatory discharge and summary judgment in Tennessee, please contact the authors of this Alert, N. Victoria Holladay, [vholladay@fordharrison.com](mailto:vholladay@fordharrison.com), 901-291-1531 or Asia Diggs, [adiggs@fordharrison.com](mailto:adiggs@fordharrison.com), or the Ford & Harrison attorney with whom you usually work.

[1] The *McDonnell Douglas* framework sets out the order in which proof must be presented in discrimination and retaliation cases: once the plaintiff (employee) has stated evidence to meet the elements of a discrimination or retaliation claim, the defendant (employer) must articulate, but not prove, a non-discriminatory reason for the discharge. Upon that showing, the employee is then required to prove that the employer's stated reason is pretext for discrimination or retaliation.