

## **Wrongful Discharge Claims Limit Employment At-Will Doctrine in North and South Carolina: Employment Law Update - September 2011 Supplemental**

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Employment in North and South Carolina is at-will, which generally means an employer can terminate an employee at any time without notice. However, both states have long-recognized exceptions to the employment-at-will doctrine, including provisions that an employee cannot be discharged for reasons that contravene the “public policy” of the state. Although courts in North and South Carolina generally construe public policy wrongful termination claims narrowly, at least one recent court decision has signaled a willingness to broaden the scope of such claims, potentially exposing employers to more lawsuits by terminated employees.

### **Recent South Carolina Decision Broadens Wrongful Discharge Claims**

In *Barron v. Labor Finders of South Carolina* (Opinion Number 27018, August 1, 2011), the South Carolina Supreme Court ruled that an employee who was terminated the day after making an internal complaint about unpaid commissions could not maintain a claim for wrongful discharge under South Carolina law. On the surface, the decision is unremarkable and generally consistent with previous South Carolina case law regarding wrongful termination claims. The case is significant, however, because it actually broadens the previously narrow category of circumstances under which a claim for wrongful termination would be recognized.

Prior to the *Barron* decision, South Carolina courts generally limited public policy wrongful termination claims to circumstances where an employer a) required an employee to violate the law, such as remaining at work instead of complying with a jury subpoena, or b) where the reason for the termination itself was a violation of criminal law.

While the *Barron* decision is, in fact, consistent with the previous limitations on public policy wrongful termination exceptions, the South Carolina Supreme Court emphasized that the public policy exception to the at-will employment doctrine should not to be limited by prior court decisions. The court found that determining what constitutes public policy is a matter of law to be decided by the court in the first instance. Thus, only after a public policy is found by the court would a jury then determine whether the employee’s termination was in violation of that public policy. Unfortunately, however, the court gave little guidance regarding specific circumstances or actions that would constitute public policy or otherwise support a wrongful termination claim.

### **Factual Background**

Glenda Barron was a longtime employee of Labor Finders of South Carolina. In 2004, in conjunction with a promotion to regional sales manager, she signed an agreement acknowledging her at-will employee status and setting her compensation on a “straight commission” basis. In January 2005, Barron complained to her supervisor that the company had not paid her full commissions owed. Her supervisor contacted the owner, who acknowledged that the failure to pay

was an oversight. The company separated Barron's employment the next day, indicating it was downsizing in light of recent budget cuts. Approximately one week later, the company issued a check to Barron in excess of the amount owed for commissions.

Barron then sued in state court, alleging wrongful termination in violation of public policy and other claims. The trial court granted summary judgment to Labor Finders. Barron appealed the ruling as to her wrongful termination claim, but the Court of Appeals affirmed. The South Carolina Supreme Court granted certiorari to review the decision from the Court of Appeals. Although the Supreme Court determined that the Court of Appeals erred in its analysis of the claim, it nevertheless affirmed the trial court's decision, as modified.

The Supreme Court emphasized that the trial court is to determine in the first instance what constitutes "public policy" for purposes of a wrongful termination claim. It went on to find that Barron did not state a claim for wrongful discharge because even if Labor Finders terminated Barron for her internal complaint, termination on that basis did not amount to a violation of public policy. Nevertheless, the court held that the public policy exception is not limited to the two narrow situations outlined above, suggesting that there may be other circumstances in which a complaint over wages may give rise to a wrongful termination in violation of public policy claim. Specifically, the court noted that Barron did not engage in activity protected by the South Carolina Payment of Wages Act; that is, she did not file a written wage complaint with the South Carolina Department of Labor Licensing and Regulation as contemplated by the Act, nor did she tell Labor Finders that she had filed or intended to file such a complaint.

In short, while the Supreme Court determined that termination based on an internal company complaint about wages did not give rise to valid public policy claim, it did not "foreclose the possibility that a claim for wrongful termination in violation of public policy may exist when an employee is terminated in retaliation for instituting a claim under the [South Carolina Payment of Wages] Act."

## **Status of Wrongful Discharge Claims in North Carolina**

The North Carolina Court of Appeals recently upheld a finding of wrongful termination against public policy in *Walker v. Town of Stoneville* (COA10-278, April 19, 2011). Although the *Walker* decision did not address the substantive elements of a public policy wrongful termination claim, the decision confirms the viability of such claims in North Carolina.

Similar to South Carolina, North Carolina's wrongful discharge against public policy is a narrow exception to the employment at-will doctrine, having been recognized in state courts where an employee is discharged a) for refusing to violate the law at the employer's request; b) for engaging in a legally protected activity; or c) based on some activity by the employer contrary to law or public policy. As with South Carolina, North Carolina law offers little guidance to employers on what may constitute "public policy" for purposes of a wrongful termination claim.

## **Implications for Employers in North and South Carolina**

Although wrongful termination public policy claims have existed in North and South Carolina for some time, the claims have generally been limited to a narrow set of circumstances, affording

employers some level of predictability. However, the recent expansion of the claim, at least in South Carolina, may make some termination decisions more challenging for employers. Moreover, even in an employment-at-will state, employers may not terminate employees for any unlawful reason. With that in mind, employers should be mindful of the facts and circumstances regarding any employee's termination.