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Virginia Workplace Law

Supervisors and Managers May Be Personally Liable for Wrongful Discharge

By: Phyllis Katz. *Monday, November 19th, 2012*

In a case of first impression, the Supreme Court of Virginia declared on November 1, 2012, that a supervisor can be **personally liable** when the supervisor participates in the wrongful discharge of an employee.

This case, ***Van Buren v. Grubb***, presented compelling facts: A nurse was subjected to severe sexual harassment by her supervisor, who was a physician and the owner of the medical practice. For five years, the doctor would "hug her, rub her back, waist, breast, and other inappropriate areas and attempt to kiss her" and profess his love. The nurse continually rebuffed his advances, but this conduct persisted at work and in hotel rooms when they traveled together for business. It continued even after the nurse married at which time the doctor started to demand that the nurse leave her husband. One day, the physician definitively demanded that the nurse end her marriage, but the nurse refused. The next day, she was fired.

The nurse then sued the medical practice for gender discrimination under **Title VII of the Civil Rights Act of 1964**, as well as the doctor for wrongful discharge in violation of public policy. She alleged that her discharge resulted from her refusal to engage in criminal conduct, namely adultery in violation of **Va. Code § 18.2-365** and open and gross lewdness and lasciviousness in violation of **Va. Code § 18.2-345**. The doctor, attempting to limit his personal liability, moved to dismiss the nurse's claims against him individually. But the Supreme Court, answering a certified question from the Fourth Circuit, ultimately declared that Virginia law allows the nurse to sue her supervisor to hold him **personally liable** for his tortious actions.

The Supreme Court based its ruling on its own previous decisions allowing a joint liability claim against the employer and certain named directors, *see e.g.*, ***Bowman v. State Bank of Keysville*, 229 Va. 534 (1985)**, a claim against the employer and the supervisor, ***Lockhart v Commonwealth Educational Systems Corp*., 247 Va. 98 (1994)**, as well as precedents from other jurisdictions. Based on this prior law, the Supreme Court concluded that "[i]n a wrongful discharge case, the tortious act is not the discharge itself; rather the discharge becomes tortious by virtue of the wrongful

reasons behind it." Therefore, relying on principles of tort law and not contract law, the court paved the way for wrongfully terminated employees to sue not only their employers, but also their supervisors and managers individually. In reaching this conclusion, the court explained that "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."

The impact of this case could be far-reaching, depending on how the Supreme Court deals with future cases seeking to hold supervisors and managers personally liable for damages based on behavior that can be shown as violating public policy. Certainly, supervisors and managers will need to reconsider the scope of their protection as an employee as employers rethink their defense litigation strategies that might otherwise benefit a supervisor or manager. More importantly, employers should consider implementing or revisiting their policies targeted at preventing harassment and minimizing tortious acts of their supervisors and managers.

If you need further legal guidance concerning termination or sexual harassment policies and investigations, the Sands Anderson Employment attorneys will be happy to assist you.