



MISSOURI SUPREME COURT ISSUES THREE OPINIONS ON WRONGFUL DISCHARGE CLAIMS

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On February 9, 2010, the Missouri Supreme Court issued three opinions that change the law governing wrongful discharge for violation of public policy. This cause of action is an exception to Missouri's employment-at-will doctrine that several districts of the Missouri Court of Appeals have recognized for more than a quarter of a century, but which had never been formally recognized by the Missouri Supreme Court. The Supreme Court's new opinions not only formally recognize the cause of action, but also set parameters for its scope, resolve a dispute between the Eastern and Western Districts of the Missouri Court of Appeals on the causation element, and expand the cause of action to contracted employees.

The Cause of Action

Missouri's employment-at-will doctrine allows an employer to terminate a non-contractual employee (an "at will" employee) for any reason or no reason at all. The Missouri Human Rights Act (MHRA) creates one exception to the doctrine: employees may not be terminated because of their membership in a protected class of persons, *i.e.*, their race, color, religion, national origin, sex, ancestry, age, or disability. Section 213.055, R.S.Mo. 2000. In this respect, Missouri law generally comports with its federal counterpart as codified in Title VII of the Civil Rights Act of 1964, the ADA, and the ADEA, amongst other laws.

Since the Western District's 1985 opinion in *Boyle v. Vista Eyewear, Inc.*, 700 S.W.2d 859 (Mo. App. W.D. 1985), Missouri courts have recognized a second exception to the employment-at-will doctrine in the form of wrongful discharge actions based on violations of public policy. In short, an employer may not terminate an employee for the employee's refusal to violate the law or because the employee reported violations of the law to his superiors or public authorities. *Id.* at 878. As a common-law action, a public policy exception case is not subject to the procedural requirements of the MHRA. Until now, the exact parameters of the action were spelled out only in opinions from the Missouri Court of Appeals, which at times differed between the Court's several districts.

To prevail on a wrongful discharge claim based on the public policy exception, a plaintiff must prove she engaged in a protected action, that she was discharged, and that her protected action was the cause of the discharge. The Missouri Supreme Court's 2010 triumvirate of opinions affirm these general elements, further define what constitutes "protected action," redefine the causation element, and broaden the action to contractual employees as well as at-will employees.

***The Protected Conduct:
Margiotta v. Christian Hospital Northeast Northwest***

The Missouri Supreme Court in *Margiotta v. Christian Hosp. Northeast Northwest*, No. SC90249 (Mo. banc, February 9, 2010), affirmed the principle articulated by appellate opinions since *Boyle* that the public policy exception to the employment-at-will doctrine is a narrow one. To qualify for its protection, the employee must show the act the employee refused to perform or reported was illegal or contrary to a strong mandate of public policy. Thus, the claims must be based on a constitutional provision, statute, regulation, or rule promulgated by a government body; however not every statute or regulation gives rise to a claim. A plaintiff must cite the specific law that was violated, and the law cited must amount to a clear mandate of well-established public policy, the violation of which constitutes serious misconduct. Vague statutes will not suffice because they would require judicial interpretation of what public policy requires and would prevent employers from knowing what duties were imposed upon them. The Missouri Supreme Court held this exception is not so broad as to grant protected status to a plaintiff for making complaints about acts or omissions he merely believes to be violations of the law or public policy. Instead, the legal duty is imposed upon employers by laws that clearly give notice of their requirements.

Furthermore, the Supreme Court held a plaintiff must demonstrate the public policy mandated by the relied-upon provision is actually violated by his discharge. However, the employee need not show he was personally affected by the violations, nor must there be an allegation that an anti-retaliation provision in the law has been violated. Rather, the employee must show how the reported conduct violates the laws upon which he relies for his claim; a “mere citation” will not suffice.

***The Causation Requirement:
Fleshner v. Pepose Vision Institute, P.C.***

Before the Missouri Supreme Court’s opinion in *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81 (Mo. banc 2010), the Eastern District of the Missouri Court of Appeals had held the protected action, which was necessary to sustain the cause of action, had to be shown to be the exclusive cause of the employee’s discharge. *Lynch v. Blanke Baer & Bowey Krimko, Inc.*, 901 S.W.2d 147 (Mo. App. E.D. 1995). The Western District of the Missouri Court of Appeals had not specifically disagreed, but had questioned the Eastern District’s analysis and suggested the appropriate language for a jury instruction was that the termination occurred “because of” the employee’s protected conduct. *Brenneke v. Dept. of Mo., Veterans of Foreign Wars*, 984 S.W.2d 134 (Mo. App. W.D. 1998).

The Supreme Court resolved this conflict by overturning both district’s cases and holding the appropriate causation standard is the “contributing factor” analysis, which it created to apply to MHRA actions in the controversial opinion, *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814 (Mo. banc 2007). The Court’s decision marks a significant departure from both appellate court decisions and dramatically weakens the causation requirement adopted by the Eastern District.

The Supreme Court reasoned that exclusive causation is not the proper standard in these cases because it would deter employees from reporting their employers' violations of the law or from refusing to violate the law themselves. The Court noted the "because of" standard is used in federal jury instructions and observed that the standard reflects the general federal standard for Title VII cases that the conduct be the "motivating factor" in the discharge. The Court also rejected the "motivating factor" standard without detailed explanation, as it did in *Daugherty*. Instead, the Court held the "contributing factor" standard, as applied in MHRA cases, should be applied in all future wrongful discharge claims based on public policy violations.

***Application of the Doctrine to Contracted Employees:
Keveney v. Missouri Military Academy***

Before the Missouri Supreme Court's opinion in *Keveney v. Missouri Military Academy*, 304 S.W.3d 98 (Mo. Banc 2010), wrongful discharge actions were limited to at-will employees. The Supreme Court has now expanded the action to be available to employees under contract as well. The Court reasoned: "An employer's obligation to refrain from discharging an employee who refuses to participate in or conceal actions inconsistent with public policy does not depend on the terms and conditions of the employment contract." *Keveney*, 304 S.W.3d at 102. Further, the Court held the remedies in a breach of contract action and a wrongful discharge action are distinct. The Court noted breach of contract actions fail to vindicate the violated public interest or provide a deterrent against future violations, implying, without specifically holding, that punitive damages would be available to a plaintiff in such a case. Finally, the Court reasoned it is inconsistent to allow an at-will employee to recover for wrongful discharge but deny the same right to a contract employee.