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LEGAL UPDATE

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Employees May Now Claim Wrongful Discharge Based on Violation of Public Policy

For Missouri employers, the long-time rule has been that an at-will employee can be fired for any reason or no reason at all.

This principle was modified by the Missouri Human Rights Act, which prohibits an employer from terminating an at-will employee for being a member of a protected class, including "race, color, religion, national origin, sex, ancestry, age or disability." It was modified again in 1985 to include a narrow public policy exception.

Recently, the Missouri Supreme Court further limited at-will employment by expanding the public policy exception.

Employees cannot be terminated for refusing to violate the law or for whistleblowing activity. In *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81 (Mo. 2010), a Pepoe Vision Institute ("PVI") employee was terminated one day after she reported to her employer that the U.S. Department of Labor had contacted her regarding PVI's possible violations of overtime compensation rules. The employee sued PVI for wrongful termination, and the Court adopted the public policy exception to the at-will employment doctrine.

The Court held that an employer may not terminate an employee "(1) for refusing to violate the law or any well-established and clear mandate of public policy as expressed in the constitution, statutes, regulations promulgated pursuant to statute, or rules created by a government body, or (2) for reporting wrongdoing or violations of law to superior or public authorities."

The employee only needs to show that the protected activity was a "contributing factor" to termination. As such, an employee may be able to assert a wrongful termination claim against an employer even if an employer has additional reasons for terminating an employee. The employee only has to show that the protected activity contributed to the decision. It is not necessary that the employer based its decision to terminate entirely on the protected activity.

Contract employees may also pursue a claim for wrongful termination on public policy grounds. In *Keveney v. Missouri Military Academy*, 304 S.W.3d (Mo. 2010), the Court determined that it was inconsistent to allow an at-will employee to pursue an action for wrongful termination while denying contract employees the same right because such a policy fails to recognize the reasons for the exception in the first instance. Notably, that public policy was not served where employers and employees could condition employment on the violation of public policy expressed in the constitutional, statutory, or regulatory provisions. Accordingly, contract employees may now bring a wrongful termination claim, in addition to a breach of contract claim, against an employer.

Nonetheless, a wrongful termination action cannot be based on vague public policy. In *Margiotta v. Christian Hospital Northeast*, 315 S.W.3d 342 (Mo. 2010), a hospital employee was terminated approximately two years after he reported safety violations to his supervisors. The employee claimed that his reports amounted to violations of several state and federal regulations that generally required hospitals to provide a safe environment for its patients. The Court rejected his claims as too vague on the grounds that allowing claims under a vague or general statute, rule, or regulation would require the Court to determine what public policy requires.

Employers need to be aware that they could face wrongful termination claims from former employees--regardless of whether the employee was at-will or under contract, or whether there were other reasons for the employee's termination.

For more information, please call Brown & Ruprecht, PC.

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September, 2010