

February 11, 2010

MISSOURI SUPREME COURT ISSUES THREE EMPLOYMENT DECISIONS

On February 9, 2010, the Missouri Supreme Court issued three opinions in the area of employment law that could have a significant impact on decisions affecting employees in Missouri.

First, in Keveney v. Missouri Military Academy, Docket No. SC89925, the Court held that a wrongful discharge cause of action applies equally to employees who are at-will with no definite term of employment and to employees whose employment is governed by a written contract. In this case, Plaintiff Michael Keveney was employed by Defendant Missouri Military Academy (“MMA”) pursuant to an employment contract. Following his termination, Keveney filed suit alleging wrongful discharge and breach of contract, claiming his termination resulted from his insistence that his superiors report evidence of a student’s physical abuse to the Division of Family Services (“DFS”). Following the circuit court’s dismissal of his wrongful discharge claim, Keveney appealed, asserting that wrongful discharge claims should be available to contract employees.

The Court reversed prior Missouri precedent and extended the wrongful discharge cause of action to contract employees because such an action (which serves to refrain employers from discharging employees who refuse to participate in or conceal actions inconsistent with public policy) should be made available to contract employees irrespective of the terms and conditions of the employment contract; an employee discharged in violation of public policy should be permitted to recover the distinct remedies available; and because it is inconsistent and illogical to grant greater protection against wrongful terminations in violation of public policy to at-will employees than to contract employees.

Second, in Margiotta v. Christian Hospital Northeast Northwest d/b/a Christian Hospital, and BJC Health System, Docket No. SC90249, the Court held that the plaintiff’s acts did not constitute reporting violations of law or public policy to his superiors, commonly referred to as “whistleblowing,” in that the reported acts did not entail “*serious misconduct that constitutes a violation of the law and of ... well established and clearly mandated public policy.*” Daniel J. Margiotta, an at-will medical image technician, brought a wrongful termination action against his former employer, Defendant Christian Hospital Northeast Northwest (“the Hospital”), alleging the Hospital terminated him for reporting violations of federal and state regulations.

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McMAHON BERGER, P.C.
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
(314) 567-7350
www.mcmahonberger.com

MISSOURI SUPREME COURT ISSUES THREE EMPLOYMENT DECISIONS (cont.)

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Following the trial court's grant of summary judgment in favor of the Hospital, Margiotta appealed.

On review, the Missouri Supreme Court noted that Margiotta had reported and/or complained three times about the treatment and/or care of certain patients. Margiotta claimed the Hospital retaliated against him for reporting these incidents and alleged wrongful termination of an at-will employee for refusing to perform an illegal act or reporting wrongdoing or violations of law to superiors or third parties. Margiotta based his wrongful discharge claim on a federal regulation concerning a patient's right to receive care in a safe setting, and a state regulation requiring hospitals to develop a mechanism for identifying and correcting safety hazards to the patients, staff or public.

Reviewing the federal regulation, the Court found that it operates solely for the protection of the patient and does not grant protection to, or authorize any affirmative conduct by, an employee. Moreover, the federal regulation does not prohibit the acts which Margiotta reported. Thus, the federal regulation relied upon by Margiotta to support his claim was held to be too vague. As for the state regulation, the Court found it to be inapplicable because it "clearly deals with building safety, not patient treatment."

In reaching its decision that Margiotta's acts did not constitute protected whistleblowing, the Court noted "there is no whistleblowing protection for an employee who merely disagrees personally with an employer's legally-allowed policy." This holding narrowly construes the wrongful discharge public policy exception and instructs Missouri courts to find in favor of the employer in whistleblower cases absent a sufficiently defined statute, regulation, constitutional provision or rule which clearly notifies the parties of its requirements.

Third, in Fleshner v. Pepose Vision Institute, P.C., Docket No. SC90032, the Court held that the proper standard to be applied in cases alleging wrongful discharge in violation of the public-policy exception to the at-will doctrine is "contributing factor." This is the same standard the Court has held should be applied in cases arising under the Missouri Human Rights Act. Thus, the Court has extended the scope of cases which will subject an employer to liability where there is some unlawful factor which contributed to the employer's decision to discharge.

Please contact a McMahon Berger attorney with questions about these or any other issues.

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