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Gallagher Sharp: Case of Note: Employment Law

Supreme Court of Ohio Recognizes Public Policy Exception to Employment-at-Will Doctrine for Preemptive Discharge in Anticipation of Workers' Compensation Claim

Synopsis

Like all states adhering to the “employment-at-will” doctrine, Ohio’s rule is subject to constitutional, statutory and contractual limitations. Additionally, Ohio recognizes a common law tort for wrongful discharge in violation of a “clear public policy.” Known broadly as the “public policy exception,” it can be applicable even when there is no specific statutory (or other law) prohibition on the discharge, so long as elsewhere in the law is a “clear public policy” against discharge in the presented circumstances. In *Sutton v. Tomco Machining, Inc.*, Slip Opinion No. 2011-Ohio-2723, the Supreme Court of Ohio extended the reach of the public policy exception to an injured employee who suffers retaliatory employment action after being injured on the job but before the employee files a workers’ compensation claim. The *Sutton* opinion is based on the clear public policy embodied in R.C. 4123.90, which does not expressly prohibit such preemptive discharge, but prohibits adverse job action against an employee who institutes or pursues a claim for workers’ compensation.

Facts

DeWayne Sutton was an employee of Tomco Machining when he injured his back in April 2008. He reported his injury promptly and within an hour he was fired. Further details surrounding the injury and its aftermath is unnecessary as the Supreme Court addressed only narrow questions of law in remanding the case to the trial court for further proceedings.

Procedural History

In September 2008, Sutton filed suit against Tomco, alleging that Tomco fired him to avoid having Sutton considered as an “employee” when he filed for workers’ compensation. Sutton asserted two claims, a statutory claim under R.C. 4123.90 and a tort claim for discharge in violation of public policy.

Tomco moved for judgment on the pleadings on both claims and the trial court granted both motions.

The court of appeals affirmed the judgment on the statutory claim (because the statute, strictly construed, does not expressly prohibit preemptive retaliatory discharge), but reversed and remanded as to the common law “public policy” claim. (The court of appeals did not address the question of remedies but the Supreme Court of Ohio remand limited remedies to those available under R.C. 4123.90.)

Analysis and Opinion

The traditional and long-established rule in Ohio is that at-will employment may be terminated by the employer at any time for good cause, bad cause, or no cause at all. In *Greeley v. Miami Valley Maintenance Contrs., Inc.* (1990), 49 Ohio St.3d 228, 551 N.E.2d 981, the Supreme Court recognized an exception to the employment-at-will doctrine that applies when an at-will employee is disciplined or discharged for reasons contravening clear public policy inherent in Ohio legislative enactments. Part of the Court's well-reasoned analysis was a discussion of the elements of a plaintiff's proof of a claim that his employer violated the public policy recognized by the Court. The elements include two factual ones ("causation" and "overriding justification") and two elements to be decided as a question of law ("clarity" and "jeopardy"). The Court concluded that as a matter of law R.C. 4123.90 reflects a clear public policy against preemptive retaliatory discharge in anticipation of a yet-to-be-filed workers' compensation claim, and that the circumstances of the instant case merited the conclusion that the clear public policy against such discharge was jeopardized as a matter of law. Quoting favorably from the concurrence in an earlier case, decided before the Supreme Court recognized the public policy exception to the general rule, the Court said the situation presented is not "...a footrace, the winner being determined by what event occurs first - the firing of the employee or the filing of the claim with the Bureau."

Conclusion

Any suspicion that *Sutton* represents further incremental erosion of the employment-at-will doctrine by a court that had nothing to do with the recognition of the exception in the first instance can be safely laid to rest. The Court was careful to respect the principle of *stare decisis*, and its tight reasoning in *Sutton* did nothing to disturb its prior holdings, including those decided before recognition of the common law exception. The two factual elements of the common law tort ("causation" and "overriding justification") leave wide latitude for a fact finder to find no liability.

In short, the *Sutton* court's careful reasoning in connection with its remand for further proceedings represents a reasonably moderate and not an activist court.

The full opinion can be found at: <http://www.sconet.state.oh.us/rod/docs/pdf/0/2011/2011-ohio-2723.pdf>

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