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Virginia High Court Sheds Light on At-Will Doctrine

From Daily Labor Report

By Lisa Nagele-Piazza

June 3 — An at-will employee for a real estate firm in Virginia who was fired without notice can't proceed with her breach of implied contract claim, the Virginia Supreme Court ruled (Johnston v. William E. Wood & Assocs. , 2016 BL 175129, Va., No. 151160, 6/2/16).

One hundred years ago, the Virginia high court held that when a contract is silent as to its duration, "either party is ordinarily at liberty to terminate it at-will on giving reasonable notice of his intention to do so," Justice Stephen R. McCullough wrote for the court.

Rejecting Brenda Johnston's claim against William E. Wood & Associates Inc., the court said "reasonable notice" doesn't mean "advance notice." It just means "effective notice" that the employment relationship has ended, the court held in a June 2 opinion.

The ruling resolves a split among state circuit courts and federal district courts as to whether "reasonable notice" has a temporal component, attorneys told Bloomberg BNA June 3.

Ambiguity Resolved

"The court clarified an ambiguous aspect of the law in terms of what reasonable notice means," the employer's attorney, Brian Muse of LeClairRyan in Williamsburg, Va., told Bloomberg BNA.

"The opinion is helpful for employers because it recognizes that at-will is a cornerstone of Virginia law," Karen Elliott of Eckert Seamans Cherin & Mellott in Richmond, Va., said. Elliott authored an amicus brief on behalf of several employer groups.

"It is also helpful to employees because it clarifies that they aren't obligated to give advance notice to their employer before resigning," Elliott said.

But the at-will doctrine can be "economically brutal" for an employee who loses her job without notice, Johnston's attorney, Jeramiah Denton, told Bloomberg BNA.

"Every once in a while there is an opportunity to lessen the burden of the at-will doctrine," Denton said. "But the court elected not to do that here."

No Temporal Component

Johnston worked for William E. Wood & Associates for 17 years, according to the court.

The company terminated her employment without advance notice, and she filed a lawsuit claiming wrongful discharge and breach of an implied contract term.

Johnston argued that her employer should have provided reasonable advance notice of termination. But the court disagreed.

“Imposing a requirement of reasonable advance notice is antithetical to the flexibility that lies at the heart of the at-will doctrine and would undermine the indefinite duration element of at-will employment,” the court said. It said a contrary ruling would create uncertainty for both employers and employees.

The court noted that a “reasonable advanced notice” rule would mean employers could sue workers who don't provide sufficient notice of leaving. This could discourage employees from seeking better jobs elsewhere, it said.

“Every decision to terminate an employment relationship, or of an employee to quit a job, would become a jury question—hardly the clear, flexible rule that the at-will doctrine contemplates,” the court said.

In light of the ruling, employers should review their handbooks and make sure they don't impose a temporal requirement, like two-weeks' notice, on employees who resign, Elliott told Bloomberg BNA.

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