Contracts May Not Be All They're Cracked Up To Be: The Extension Of Legal Protections In Employee Contractual Settings

Insights
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For many years, employers have generally embraced a policy of utilizing at-will employment as often as possible, where employers and employees can end their relationship with each other at any time and for any (legal) reason. Most businesses usually limit the use of written employment contracts to select executives and a few professionals.

Numerous states, often through judicial pronouncements, have recognized varying exceptions to the at-will employment concept, such as allowing employees to challenge their termination as a violation of public policy.

The 8th Circuit Court of Appeals recently published a decision which sharply limits the application of the public policy exception. Interestingly, this limitation does not apply to at-will employees, but to employees with employment contracts. Somewhat ominously, the decision does not extend to all such contracts, creating an air of uncertainty for any healthcare business with employment contractual situations.

A Million-Dollar Case

The case, *Hagen v. Siouxland Obstetrics & Gynecology,* involved an Iowa physician who sued a medical group and his former partners for ousting him from the group. The plaintiff, Edward Hagen, claimed a breach of his employment contract and wrongful termination in violation of state public policy.

He argued that he was fired for threatening to report medical malpractice by one of his partners. Before the case went to the jury, Hagen decided not to pursue his breach of contract claim and to rely instead upon the defendants' alleged violation of public policy. A federal court jury found the defendants liable for wrongful discharge and awarded Hagen over one million dollars. The case went to the 8th Circuit on appeal, which makes law for a number of Midwestern states including Missouri, Minnesota, and Iowa.

On appeal, the 8th Circuit applied state law and reversed the lower court's decision, granting an ultimate victory for the employer. It concluded that the public policy exception should be narrowly construed, and could not be used by employees who had the protection of an employment contract. So, how did the appeals court stifle Hagen's hopes for a million dollar windfall?

Appeals Court: Employees With (Some) Contracts Not Protected

The 8th Circuit reached its decision the old-fashioned way, by focusing on the existing state law. It noted that the Iowa Supreme Court had, in numerous cases, described the public policy exception to employment at-will as "narrow." It then examined the theoretical basis for the exception, which the 8th Circuit offered as its rationale for the determination.

The Iowa Supreme Court accepted that at-will employment meant that an employee could be discharged at any time with or without cause. But it viewed and described the public policy exception as a shield, protecting at-will employees who had no other protection. To have withheld such a protection from at-will employees would have, in effect, supported an action directly contravening the state's own public policy.

The 8th Circuit focused on the at-will employee's need for protection as the lynchpin for its decision. In Hagen's case, his employment contract included provisions protecting him from wrongful discharge. In addition, Hagen had negotiated his contract when he joined the practice and was president and co-owner at the time his contract was terminated. Under such circumstances, the appeals court concluded that Hagen "was not an employee with a compelling need for protection from wrongful termination."

One Step Too Far?

The appeals court, however, did not stop there. It offered some opinion about what might be the breadth of that key term – "an employee with a compelling need for protection." Relative to the question of a need for protection, the 8th Circuit noted that "there are many types of employment contracts that address the question in various ways."

It then referenced a South Carolina court that had extended the public policy exception to an employee whose contract provided merely that either party could terminate it without cause upon 30 days' notice. That South Carolina decision concluded that the employment contract offered no remedy for wrongful termination, thereby clearing the way for the court to extend such protection.

The 8th Circuit then opined that, confronted with a contract with the same without-cause provision, its decision would have likely been different and it would have granted extra protection to the employee. Although Hagen was out of luck in this particular case, the appeals court sent a fairly clear signal to employers that entering into a contract of employment with certain employees does not provide a magic shield over all wrongful termination claims.

What Does This Mean For Employers?

What, then, are we left with after this decision? We know that the 8th Circuit believes that an employee with an employment contract must proceed under the terms of that contract to pursue a wrongful discharge case.

Of at least equal significance, however, is that the 8th Circuit opened the door for employees with contracts to bring wrongful discharge claims after the business relationship falls apart. So long as

contracts to bring wrongful discharge claims after the business relationship falls apart. So long as the non-at-will employees can argue that the provisions of their particular contracts offer no remedy for wrongful discharge, they can make the case that they are in no less need of protection.

In light of this case, and acting on the assumption that courts in other jurisdictions may also follow suit, employers with contractual relationships with workers may want to take heed. You should examine your contracts to determine whether they offer sufficient legal protections to forestall a surprise wrongful discharge claim, and if not, whether it is worth the effort to revise them to address this situation.

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