



Unhappy New Year? South Carolina Employers Face New LawsUIT Worries After Supreme Court Decision

Insights

12.16.21

Employees in South Carolina who report workplace misconduct may soon find themselves personally named as defendants in employment lawsuits following a recent noteworthy decision from the South Carolina Supreme Court. Managers and Human Resources personnel who investigate workplace misconduct may also find themselves in the same boat. The December 1 decision in Hall v. UBS will almost certainly lead to a rise in recently terminated employees suing their former co-workers and managers for tortious interference with a contract when bringing other employment law claims against their employers – even if they were simply at-will employees. This case, coupled with another recent South Carolina Supreme Court decision in Paradis v. Charleston County School District making civil conspiracy claims easier for plaintiffs to assert against individual employees, demonstrates that South Carolina employers need to evaluate and approach termination decisions with care, now more than ever.

Disputed Events at Happy Hour Lead to Termination – and Lawsuit

On September 1, 2017, Curtis Hall, a UBS Financial Services employee, organized an employee happy hour. Mary Lucy Reid was one of several other UBS employees who attended. What happened during and immediately after the happy hour is in dispute, but this Insight will recite the allegations as discussed in the court decision with the caveat that some of the parties claim different versions of the events. During the happy hour, Reid talked about issues she was having with her boyfriend and stated she was scared to go home. Reid says that Hall offered to let her stay at his home for the evening.

At the end of the happy hour, Hall invited everyone still present to dinner at a nearby restaurant, but only Reid and one of her friends joined him. After dinner, Reid and her friend gave Hall a ride home. Hall and Reid rode in the backseat of the car while Reid's friend drove. After arriving at Hall's house, Hall again asked Reid if she would be alright and she said she would be. Hall then gave Reid a "European-style consolatory cheek kiss" and exited the vehicle.

Later that evening, Hall texted Reid to confirm she was okay, and repeated his offer for her to stay with him – and told her he was outside his home with his dog. Reid responded to Hall's comment about his dog but did not respond to Hall's offer to stay at his house.

Reid subsequently reported Hall's behavior to UBS's Human Resources department. When questioned by HR, Hall stated Reid's version of events was not true in several respects. According to Hall, Reid fabricated certain events concerning the evening, Hall's general advances towards her, and Hall's relationships with other employees in the office. A few weeks after Reid's report, UBS fired Hall.

Hall filed a lawsuit against UBS and Reid over his termination. He asserted various state law claims, including breach of the implied covenant of good faith and fair dealing against UBS. He also filed a claim called "tortious interference with a contractual relationship" against Reid, despite the fact that he was simply an at-will employee at UBS and had no formal written employment contract with the company. He filed the action in South Carolina state court, but the case was moved to federal court.

South Carolina Supreme Court Steps in to Expand Liability Against Co-Workers

Generally, absent a contractual provision to the contrary, employers are free to terminate at-will employees at any time for any reason – or no reason at all. Therefore, for Hall's claims to be viable, two underlying principles need to exist:

- Hall's at-will employment relationship with UBS must have been "contractual" in nature; and
- UBS's termination of Hall's at-will employment must have constituted a breach thereof.

Because it appeared that there was divergence in South Carolina case law with respect to the application of these principles to the claims brought by Hall, the federal district court asked the South Carolina Supreme Court to weigh in by asking three questions that would help it render a final decision.

Question 1: Are At-Will Employment Relationships "Contractual"?

The district court first asked the South Carolina Supreme Court if terminable-at-will employment relationships are contractual in nature as a matter of law. The Supreme Court answered yes.

The Court recognized that employment in South Carolina is presumed to be at-will, meaning an employer can terminate an employee for any reason (or for no reason) at any time. The Court, however, held that every at-will employment relationship is contractual at nature — regardless of whether the employment relationship is memorialized in a written contract stipulating the at-will nature of the employment or orally formed simply out of circumstance.

The good news for employers? The Court was quick to note its "recognition that at-will relationships are contractual does not alter the established rule allowing an employer to discharge an at-will employee for any reason without incurring liability." Therefore, even though every employee relationship is considered contractual, an at-will employee cannot bring a cause of action for breach of contract against their employer in connection with their termination.

Question 2: Can the Termination of At-Will Employment Relationships Breach the Covenant of Good Faith and Fair Dealing?

The South Carolina Supreme Court divided the second question into two parts. The first part of the question asked whether the implied covenant of good faith and fair dealing exists in the at-will employment relationship. The Court answered this question: yes.

The second part of the question asked if an employer's termination of an at-will employee can give rise to a claim by the former employee for breach of the covenant. The South Carolina Supreme Court held that although the covenant exists in an at-will employment relationship, termination of an at-will employee **cannot** form the basis of a claim that the employer breached the covenant of good faith and fair dealing. The Court reasoned that this covenant cannot be breached by an employer terminating an at-will employee because the covenant does not infringe on what the at-will employment contract allows an employer to expressly do — terminate an employee for any reason.

Question 3: Can an At-Will Termination Lead to a Contractual Interference Claim?

Finally, the South Carolina Supreme Court was called upon to answer this question: "Can an employer's termination of an at-will employee, which results from a third-party employee's report to the employer, give rise to a claim by the terminated employee against the third-party employee for tortious interference with a contractual relationship, even when the termination itself was not a breach of the at-will contract?"

The Court answered this question: yes. The Court held the absence of an underlying breach by the terminating employer does not shield a third party from liability when that third party intentionally and unjustifiably procures the termination of an at-will employee. The Court found that until the at-will employment contract is terminated, it is a valid and existing contract and third parties cannot improperly interfere with the contract.

Takeaways for Employers

The South Carolina Supreme Court's holding should give pause to employers and employees alike as it likely will have two significant ramifications.

First, there will likely be a significant rise in the number of lawsuits by at-will employees against companies in South Carolina that contain a corresponding state law claim for tortious interference with a contractual relationship. Those claims will be asserted against individual employees who report misconduct that led to the plaintiff's termination.

Could this holding thus have a significant chilling effect on employees reporting potential misconduct by their co-workers? Employees may believe reporting misconduct is not worth being named in a lawsuit, and those witnessing misconduct may not wish to participate in workplace investigations for fear of being sued. This could cause problems for employers as the failure to

report misconduct or participate in investigations are usually violations of workplace policies. It could also create morale problems if employees believe they cannot report misconduct without potential legal repercussions. However, the good news is that it is unlikely that your average employee will know about the nuances of South Carolina law related to individual liability and tort claims, so you should not change your HR policies and practices when it comes to investigations.

Second, managers or Human Resources personnel who investigate misconduct may also be sued for tortious interference due to this recent decision. With respect to many statutory and common law claims, courts generally hold that although employers must take prompt, remedial action designed to end any discriminatory or harassing conduct, they do not owe their employees a duty to conduct a perfect investigation. Courts have also generally held that after a workplace investigation, employers may lawfully terminate an employee if the employer believes in good faith that the employee engaged in misconduct — even if it turns out the employer's investigation reached the wrong conclusion.

With the Court's decision, however, a terminated at-will employee could allege that managers and Human Resources personnel acted outside the scope of their employment and intentionally took steps during the investigation to terminate the employee. This means you should sharpen your practices when it comes to investigating and acting upon employee misconduct.

What Can Employers Do?

Employers should take the following proactive steps now to help their management and employees defend against tortious interference with contractual relationship claims:

- You should review your handbooks and workplace misconduct policies. If you do not currently have a handbook or written workplace rules, consider implementing them now. Workplace rules should be clear on what conduct is prohibited and to whom misconduct should be reported. Be sure to review your handbook and policies with your employment counsel as South Carolina has specific rules regarding when a handbook and policies may become an employment contract.
- You should thoroughly investigate workplace misconduct to demonstrate good faith.
- You should document the results of any workplace investigation and have clear findings regarding whether the employee engaged in the alleged misconduct. To that end, it is highly recommended that you provide training to managers and Human Resources personnel on best practices for documenting discipline and conducting investigations into workplace misconduct.
- Some companies have a practice in which the complaining party is asked what outcome they expect if the investigation substantiates their complaint. This question is often asked for the company to assess potential remedial measures. Such a question may now be risky if the complaining party expresses that they expect the alleged wrongdoer to be terminated. Although this may not increase potential exposure to the company, the complaining party may later be accused of tortious interference based on this stated desire.

These steps will not completely insulate your employees from tortious interference claims but will help provide better defenses. Taking these proactive steps will help encourage employees to continue to properly report misconduct in the workplace.

The law in this area will continue to develop. We will continue to monitor issues surrounding this and similar claims. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions about what proactive steps you can take in light of this change in the law, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Columbia office](#).

Related People



Phillips L. McWilliams

Partner

803.255.0000

[Email](#)



Benjamin Dudek

Partner

803.255.0000

[Email](#)

Service Focus

Employment Discrimination and Harassment

Litigation and Trials

Related Offices

Columbia