Federal Court Creates New Exception to Pennsylvania At Will Employment Doctrine

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Pennsylvania has long been considered an "employment at will" state – meaning that employers and employees may terminate their employment relationship at any time with or without cause or prior notice. However, the number of exceptions to the "at will doctrine" seems to grow every year. The year 2010 was no exception. In *Hamovitz v. Santa Barbara Applied Research Inc.*, 2010 WL 4117270 (W.D. Pa. Oct. 19, 2010), the U.S. District Court for the Western District of Pennsylvania recognized a new exception to the at will doctrine involving an employer's refusal to hire an applicant based on prior service in the National Guard.

In *Hamovitz*, the plaintiff claimed that the employer refused to rehire him based on his service in the National Guard. In addition to filing statutory claims under the Uniform Services Employment and Reemployment Rights Act ("USERRA") and the Pennsylvania Military Affairs Act ("PMAA"), the plaintiff brought a common law wrongful discharge/failure to hire claim seeking the court to apply a "public policy" exception to the employment at will doctrine. In Pennsylvania, exceptions to the at will doctrine are rare. Under the "public policy" exception, a plaintiff may have a viable wrongful discharge claim if he can show that his termination violated a clear mandate of public policy.

In order to show that an employer's actions offended a clear mandate of public policy, the plaintiff must show that he or she was terminated for: (1) engaging in conduct required by law or (2) refusing to engage in conduct prohibited by law. In such cases, the public policy cited by the plaintiff must have legislative or constitutional endorsement, and it must be clear and specific.

In *Hamovitz*, the court created a new exception to the at will doctrine: "where an employer's actions impinge upon protected rights of employees." The court found that the employer in *Hamovitz* may have impinged upon the employee's rights under the PMAA, and therefore, the plaintiff was allowed to proceed with his wrongful discharge claim.

By allowing this claim to go forward, the court also enabled the plaintiff to avoid the statutory limitations on damages found in USERRA and the PMAA. Although not available under the PMAA or USERRA, the court found that the plaintiff in *Hamovitz* would be entitled to recover punitive damages if he were to prevail on his common law wrongful discharge claim.

Unless the *Hamovitz* decision is reversed on appeal, this new exception to the at will doctrine may trigger a wave of litigation as plaintiffs seek broad interpretations of "actions that impinge upon protected rights of employees." Courts have long held that employees sacrifice certain rights in the workplace; for example, an employer may restrict free speech by prohibiting

offensive language or behavior at work. Now, however, plaintiffs may argue that a termination, or even a refusal to hire, "impinges upon protected rights" in any number of situations that previously fell under the employment at will doctrine.