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EMPLOYER LAW BLOG

Missouri Supreme Court: Most State Employees Must Be Employed "At-Will"

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On October 4, 2022, the Missouri Supreme Court clarified most state employees are employed "at-will" per the terms of a law passed in 2018. In this case, the trial court had concluded this 2018 law did not require "at-will employment," and if it did, it was unconstitutional. The Supreme Court disagreed. Some background helps explain the significance of the high court's decision.

For decades, Missouri has had a merit system for state employees—that is, a legal arrangement whereby state employees were entitled to certain employment protections and procedures, such as requiring "good cause" or grievance procedures for any termination decision. Unions often represented these state employees and entered into collective bargaining agreements setting forth terms and conditions of employment consistent with the parameters of Missouri's merit system laws.

However, in 2018, Missouri amended the merit system laws, limiting their application to state employees of charitable or penal institutions. In other words, all other state employees became "at-will" employees who were no longer entitled to the protections of the merit system laws.

Unions representing these employees filed suit challenging the 2018 law, claiming it unlawfully or unconstitutionally infringed upon their right to bargain collectively with their employer, or otherwise violated the terms of existing collective bargaining agreements. The trial court ruled in the unions favor after a four-day bench trial.

The State, however, appealed. Emphasizing the "unavoidable, plain and clear language" of the 2018 law, the Missouri Supreme Court dismissed the trial court's concerns and concluded this new legislation lawfully requires these other state employees to be employed "at-will."

With that said, the Supreme Court clarified the 2018 law does not *categorically* prohibit these state employees from unionizing or bargaining over terms and conditions of employment. Rather, the law limits them from bargaining collectively over terms and conditions "inconsistent with at-will employment," such as terms and conditions requiring "good cause" for termination.

The Court added further nuance to its decision: "grievance procedures and other similar terms and conditions of employment are not *always* inconsistent with at-will employment." (emphasis added). In the Court's view, this is true as well for certain seniority and for-cause protections. It held that such procedures and other terms and conditions of employment only run afoul of the 2018 law where they "limit the state's right to terminate employment at any time without cause."

The Court provided examples of when and how such protections may (or may not) run afoul of the new law. For example, "[r]egarding seniority protections, if an employer is required to consider seniority as a deciding factor in termination, the employer's right to discharge an employee at any time without cause would be restricted by that individual's amount of experience." This would conflict with the 2018 law. However, other seniority protections that did not so restrict the termination decision could pass muster under the 2018 law.

By way of further example, the Court observed "a for-cause protection that limited disciplinary action against an employee to certain conduct would not interfere with the right to terminate employment without cause and would not be inconsistent with at-will employment."

At the end of the day, the Supreme Court made clear states can, and should (where appropriate), still bargain with unions over terms and conditions of employment for unionized employees. However, the Court affirmed a significant limit on what terms and conditions may be subject to bargaining—that is, nothing that limits the right to terminate employment at any time without cause.

This decision is significant in many respects. It brings to the forefront and emphasizes the fundamental but oft-forgotten rule of "at-will employment" in Missouri, like nearly every other state in the country: an employee can be fired for any reason or no reason, so long as it does not violate a law. The decision also expounds upon what types of employment limits or protection are (or are not) consistent with "at-will employment." Litigants often attempt to argue an employer deviated from and abandoned the "at-will employment" doctrine by providing some workplace protections to employees.

We anticipate the lessons and observations from the Court might reverberate throughout employment-related cases and decisions going forward. But, while not certain, it appears that the decision and its reasoning is largely favorable to private employers, in that it clarifies that the "at-will employment" rule does not disappear or lose force because an employer establishes policies or procedures in relation to, for example, issues of discipline. Only time will tell the impact of this decision, so stay tuned.