Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 466 (Senator Stone)
Finance

Labor and Employment - Employment Contracts - Implied Covenant of Good Faith and Fair Dealing

This bill specifies that an employer may not discharge an employee in the State in bad faith or without good cause. This implied covenant of good faith and fair dealing does not apply to local, State, or federal government employees.

An employee may opt-out of the implied covenant of good faith and fair dealing in an employment contract if he or she voluntarily signs a waiver that is separate from an employment contract. The employer must explain the terms of the waiver before it is signed by the employee. Such a waiver does not abdicate any other right or benefit an employee has under any other law or the employee's employment contract.

Fiscal Summary

State Effect: It is unclear to what extent the bill may increase the number of case filings in District Court; however, any increase in filings is expected to be minimal and absorbable within existing resources.

Local Effect: It is unclear to what extent the bill may increase the number of filings in the circuit courts; however, any increase in filings is expected to be minimal and absorbable within existing resources.

Small Business Effect: Potential meaningful. The higher burden of proof for employers is likely to increase award amounts in litigation. It is unclear to what extent, if at all, it may increase the number of filings.

Analysis

Current Law: With certain exceptions, employees in the State serve at the will of their employers.

The State explicitly adopted the employment at-will doctrine in 1887 in the leading case of *McCullough Iron Co. v. Carpenter 67 Md. 554, 11 A. 176 (1887).* The case involved an action for wrongful discharge brought by the assistant manager of an iron manufacturer. The employee's complaint alleged that he was hired for one year at wages of $1,000 per year beginning in April 1886. The Court of Appeals found that "an indefinite hiring is *prima facie* a hiring at-will" and that a hiring at a certain salary per week, month, or year, for no specified length of time, does not, of itself, make more than an indefinite hiring. This presumption may be rebutted by substantial, independent evidence that the parties intended to establish a term of employment. However, the employee has the burden of proof in overcoming this presumption. State courts have repeatedly reaffirmed the employment at-will doctrine.

The General Assembly and the courts have established a variety of exceptions to the at-will doctrine. Employers are prohibited from discharging employees, at-will or otherwise, on the following grounds:

- because of the employee's race, color, religion, ancestry or national origin, sex, age, marital status, or physical or mental disability unrelated to the nature and extent so as to reasonably preclude the performance of employment;
- for filing a complaint or cooperating with the State Human Relations Commission;
- because the employee refused to disclose information to the employer concerning criminal charges against him or her that have been expunged;
- because the employee had been called for military duty by the Governor or its authority;
- because the employee participated in civil defense, civil air patrol, voluntary rescue squad, and voluntary department activities at the request of local government;
- because the employee was summoned to serve on a jury;
- because the employee filed a complaint with the State Occupational Safety and Health Administration;
- because the employee refused to take a polygraph, lie detector, or similar test or examination;
- because the employee filed a claim for workers' compensation; and

- because the employee's wages were subjected to attachment for any one indebtedness with a calendar year.

The Court of Appeals, in *Adler v. American Standard Corp. 291 Md. 31, 432 A.2s. 464 (1981)* further held that employees had cause of action for abusive discharge when the employer's motivation for their discharge violated a clear mandate of public policy.

Background: Employment relationships are presumed to be "at-will" in all the states except Montana. According to the National Conference of State Legislatures (NCSL), the United States is one of a handful of countries where employment is entirely at-will; most countries allow employers to dismiss employees only for cause. NCSL advises that as of April 2008, 20 states, including Pennsylvania and Delaware, recognize some form of an implied covenant of good faith and fair dealing.

Examples of bad faith terminations include an employer firing an older employee to avoid paying retirement benefits or terminating a salesman just before a large commission on a completed sale is payable. NCSL advises that there have been relatively few cases in which employers were found liable under an implied covenant of good faith and fair dealing.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); National Conference of State Legislatures; Department of Labor, Licensing, and Regulation; *Maryland Employment Law*; Department of Legislative Services

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