

**RECENT DEVELOPMENTS IN EMPLOYMENT LAW
2006 - The Year in Review**

By

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I. Public Policy Cases

a. Refusal to Violate Confidentiality Agreement

Case: *Norton v. FirstEnergy Corp.*, Jefferson App. No. 05-JE-5, 2006-Ohio-892 (7th Dist.)

In this case, the 7th District found a clear public policy exists in Ohio that prohibits the divulgence of trade secrets and confidential information acquired during employment.

Norton filed suit for retaliatory discharge and wrongful discharge in violation of public policy. Specifically, he alleged he was terminated for refusing to disclose his former employer's trade secrets. Norton, a nondestructive test technician, was repeatedly asked to share testing techniques he learned from his previous employer. He was unwilling to share these techniques due to a confidentiality agreement. He received poor performance reviews citing several issues, including his unwillingness to train his fellow employees.

The Court concluded that a clear public policy exists that prohibits the divulgence of trade secrets citing R.C. 1331.61 et seq. For example, the Court notes an employee may be enjoined from using secret information and sued for misappropriation. After finding the public policy exists, the Court nevertheless upheld summary judgment for the employer because Norton was unable to return to work due to his continued use of narcotic pain medication.

b. Termination of Law Partner's Employment

Case: *Tablack v. Wellman*, Mahoning App. No. 04-MA-218, 2006-Ohio-4688

In this case the 7th District held that a partner at a law firm is not an employee at will. Accordingly, a partner cannot advance a public police claim under *Greeley*.

Tablack was a minority shareholder and vice president of Tablack, Wellman, Jeren, Hackett & Skoufatos in Youngstown. He was terminated at age 75 as detailed by the partnership agreement. Tablack claimed his signature on the agreement was not voluntary because he was pressured to sign by majority shareholders.

In his suit, Tablack alleged several causes of action, including age discrimination and violation of public policy by wrongful termination based on age. Tablack argues that *Greeley* allows any employee to maintain a cause of action for termination in violation of public policy. The Court disagreed, holding that only at-will employees may bring a *Greeley* action.

As a minority shareholder in a close corporation, Tablack could not be terminated by the majority shareholders without a legitimate business purpose. Due to this protection he could not be considered an at-will employee. Accordingly, Tablack was not permitted to advance a public policy argument.

II. Retaliation

Post-Termination Lawsuit by Employer

Case: *Greer-Burger v. Temesi*, Cuyahoga App. No. 87104, 2006-Ohio-3690

In this case, the court held that an employer may not seek punitive damages against a former employee for filing an unsuccessful sexual harassment charge.

Temesi (employer) filed a suit against Greer-Burger (former employee) alleging malicious prosecution, abuse of process, and intentional infliction of emotional distress and seeking attorney fees and punitive damages. Temesi filed the suit after he successfully defended a sexual harassment charge. After Temesi's suit, Greer filed a retaliation charge with the OCRC claiming she was retaliated against for filing the prior sexual harassment charge. The Commission awarded Greer \$16,000 in attorney fees and issued a cease and desist order against Temesi.

Temesi argued no adverse employment action was/could be taken against Greer because she quit her job prior to the sexual harassment case. The Court disagreed, holding that (1) former employees are protected from retaliation and (2) "the adverse action need not be employment-related." The Court's reasoning is based on the recent *Burlington Northern* decision from the U.S. Supreme Court. *Burlington Northern* is based on the proposition that anti-retaliation protection extends beyond workplace-related retaliatory acts.

Additionally, the Court held that Temesi's reasoning for filing the suit was a merely a pretext for discrimination. R.C. 4112.02(I) "essentially creates an absolute privilege for the filing of a discrimination suit." According to the Court, any suit seeking punitive damages can be considered retaliatory because punitive damages are intended to punish the guilty more than compensate the plaintiff. Accordingly, Temesi's lawsuit was asking a court to punish the former employee. The Court was afraid that allowing punitive damages in such a case would improperly discourage future filings of harassment claims

III. Promissory Estoppel

a. Promise of Long-Term Employment

Case: *Miller v. Lindsay-Green, Inc.*, Franklin App. No. 04AP-848, 2005-Ohio-6366

In this case, the Court upholds a \$1,100,000 jury verdict against a car dealership for breach of contract and promissory estoppel. Miller was induced to leave his job as general manager of a dealership in Akron by promises of long-term employment and substantial bonuses. The main issue was whether the dealership's oral promise of a 10-year employment term was admissible in light of two documents signed by both parties.

The first document executed between the parties, titled "Terms of Acceptance", detailed specific salaries and bonuses Miller would receive during his employment at the dealership. This document did not contain a specific employment term, although it had provisions for year-end bonuses. The second document, titled "Acknowledgement", was a boiler-plate signature sheet acknowledging that the employee had read the handbook. Additionally, it made one reference that any employment at the dealership was "at-will", with no other reference to an employment term. However, both the Acknowledgement and the Handbook included language providing that the documents are not contracts.

The Court held that the oral promise of employment for ten years was properly admitted because the two documents did not constitute a fully integrated contract due to the failure to mention a term of employment. The Court affirmed the jury's verdict in favor of Miller on the promissory estoppel claim finding that Miller detrimentally relied on the promise because he uprooted his family to Columbus and turned down a new job in Akron due to his reliance on the long-term employment.

b. Promise of future business direction do not constitute a sufficient promise of continued employment

Case: *Fearn v. Longaberger Co.*, Licking App. No. 2006CA00020, 2006 Ohio 6234.

In this case, the Court held that a statement by an employer that an employee "need not look" for another job was not a sufficiently specific promise of continued employment.

Fearn, the First Assistant Golf Course Superintendent at Longaberger Golf Club, filed suit asserting a number of claims, including a claim based on promissory estoppel. Fearn claimed he inferred continued future employment when he was assured by his supervisor that "he need not look for a job because nothing at the basket operation would affect the golf course operation." In reliance on this statement, Fearn claimed he did not seek out employment during the winter when golf course jobs "frequently become available". The trial court granted

Longaberger's Civil Rule 12(C) motion for judgment on the pleadings. Subsequently, Fearn appealed.

On appeal, the Court held that the statement regarding the "basket operation" was a vague promise of future business direction and did not rise to the level of a specific promise of continued employment. Accordingly, the trial court properly granted Longaberger's motion for summary judgment on the promissory estoppel claim.

IV. Breach of Contract

Authority to terminate for just cause despite promise of specific term of employment

Case: *Williams v. Case Western Reserve Univ.*, Cuyahoga App. No. 87719, 2006 Ohio 6190

In this case, the Court held that a university has the implied right to terminate an employee for poor performance despite any agreement with respect to a specific term of employment.

Williams was hired as a non-tenured Senior Instructor for a "three-year commitment." Nothing in the contract detailed what constituted proper cause for early termination. Williams was terminated approximately one year into his employment after the research project he was working on did not obtain further funding. Williams filed suit for breach of the three-year employment contract, breach of implied contract, promissory estoppel and declaratory judgment claiming he was terminated due to lack of funding.

Case denied liability and moved for summary judgment claiming the termination was due to Williams' below-average productivity, failure to obtain usable data, and lack of "appreciation" for the university's research goals. In fact, one of Williams' superiors believed "lack of funding was legitimate reason" to terminate someone. However, the decision to terminate Williams was not reached until after the funding was not renewed.

Williams admitted he was unfamiliar with many of the techniques required to conduct the relevant experiments, however, he asserted it was customary for researchers to have one year to acclimate to project. Nevertheless, the trial court granted summary judgment in favor of Case.

Williams appealed asserting this decision was in violation of the explicit terms of the contract and that the trial court erred in presuming poor performance even if good cause is implied in the contract. The Court did not agree that the termination was in violation of the contract, holding that an implied right to fire for just cause exists even when employment is for a specific term. However, the Court did determine that a genuine issue of material fact existed as to whether Williams was fired for poor performance or due to the subsequent lack of funding and sent the case back to the trial court for further proceedings.