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### Gavel to Gavel: Add a box to your termination checklist

By: Chris Thutchley Guest Columnist July 13, 2016 0



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A recent decision from the Oklahoma Supreme Court adds new considerations to the list of items employers should examine before terminating an employee.

In *Moore v. Warr Acres Nursing Center*, the court significantly expanded the reach of the Burk public policy wrongful discharge tort claim. Under *Burk v. K-Mart Corp.*, employers were required to ensure the discharge doesn't violate public policy expressed in the Oklahoma Constitution or an Oklahoma statute. Now, under Moore, employers must also make sure the termination doesn't violate public policy expressed in an Oklahoma or federal regulation.

What is the takeaway for employers? Moore substantially increases their risk of being sued for violating public policy.

The issue in *Moore* was whether firing a nurse for missing work due to the flu violates Oklahoma public policy and constitutes wrongful discharge, because state and federal health regulations prohibit a nurse from working with the flu.

The facts of this case are these. Moore, the plaintiff, worked as nurse at a nursing center. The director of nursing heard Moore vomiting, said he must have a virus or the flu, and sent him home. Moore's physician took him off work for three days. Moore called in to report his status per company policy. Days later, the nursing home fired him. Moore sued, alleging he was fired for not working with the flu in violation of public policy.

The law prior to the Moore decision was much more narrow and employers faced much less risk of being sued for wrongful discharge claims based on an alleged violation of Oklahoma public policy. That has now changed.

Before firing an at-will employee, companies should evaluate whether any facts create an inference that a significant factor motivating the decision was the employee's action required by a regulation or the employee's refusal to do something a regulation prohibits. It's important for employers to be knowledgeable of the types of state and federal regulations that could apply to their employees and create the most risk.

As the dissenting justices in Moore warned, "an employer must (now) consult (state and federal) rules and regulations before exercising the decision to terminate an employee." Thus, employers should add another step to their termination review checklist before finalizing the decision to discharge an at-will employee.

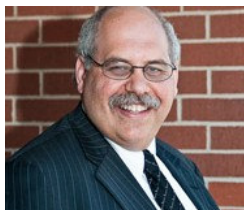
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July 13, 2016



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