

The Next Big Challenge In Employment Law?

By Reggie Belcher & William Floyd

South Carolina employers celebrated some big victories in 2004 in their ongoing effort to maintain their rights under the venerable employment-at-will doctrine, which theoretically allows either an employer or employee to end the employment relationship at any time and for any or no reason.

A Very Good Year - Governor Sanford approved a long-awaited statute enabling employers to maintain the at-will relationship, if they affix conspicuous disclaimers to the front of personnel manuals and handbooks and employees sign below the disclaimer. In addition, South Carolina's appellate courts ruled for employers in four at-will cases involving employee handbooks and policy manuals—a remarkable year considering that courts had chipped away at the at-will doctrine for the last 15 years.

In *Hessenthaler v. Tri-County Sister Help*, the South Carolina Supreme Court reconsidered its prior opinion in the case (effectively reversing itself) and ruled for the employer. In *Hessenthaler*, an employee resigned her employment with a Charleston-area domestic violence shelter because of alleged racial bias or animosity in the workplace. She then sued her employer claiming that its handbook's anti-discrimination provision constituted an implied employment contract that the

employer breached by purportedly condoning racial bias.

Despite the presence of an at-will disclaimer in the handbook, a jury awarded the employee \$25,000 in damages. The South Carolina Court of Appeals reversed the decision, but the Supreme Court initially reinstated the award, reasoning that the handbook's promise of anti-discrimination coupled with the at-will disclaimer made the handbook "inherently ambiguous." The Supreme Court held that the trial court properly submitted the issue to the jury and that the verdict was reasonable in light of the handbook's ambiguity.

The Court's original opinion seemingly contradicted prior cases which held that an employer's mere recitation, in a handbook or policy manual, of its statutory or legal obligations (in this case, the duty not to discriminate) does not create an implied employment contract.

The Second Opinion—Following its original opinion, the Supreme Court agreed to reconsider its decision, presumably because of the importance of these legal standards to the business community and employees. Upon further review, the Court held that the handbook did not constitute an employment contract, as the handbook stated that the employer could fire employees "for any reason or no reason that is in the [employer's] 'best inter-

ests.'" The Court ruled that the handbook was "not inherently ambiguous and did not alter [the employee's] at-will employment status."

The Supreme Court likewise ruled for the employer in another handbook case in *Horton v. Darby Electric Company*, while the Court of Appeals did so in *Nelson v. Charleston County Parks and Recreation Commission* and *Lingard v. Carolina By-Products and Valley Proteins Company*.

In each of these cases, the courts found that the employers' handbooks or policy manuals effectively had retained the at-will relationship and that the employers harbored a good faith belief that they had good or "just" cause to fire the employee. The courts seemingly breathed new life into the at-will doctrine, to the relief of these employers and the rest of the business community.

The Rest of the Story—Although these cases produced favorable results, the Supreme Court's second opinion in *Hessenthaler* also indicated that employees of small employers (less than 15 employees) could sue for discrimination under a public policy or "wrongful discharge" theory, instead of suing for breach of contract based on a handbook.

Public policy or "wrongful discharge" claims are potentially dangerous, as courts have struggled to define them, oftentimes

using them as a general "fairness" standard when former employees had no other remedy available to redress their firing. Public policy claims also allow aggrieved former employees to seek potentially costly punitive damages, as well as compensatory damages for emotional distress, humiliation, and embarrassment—remedies that are unavailable in cases alleging breach of contract based on a handbook or policy manual.

While 2004 marked an overall good year for the employment-at-will doctrine in South Carolina, the challenge for 2005 very likely will be public policy claims. We now must wait to see how the *Hessenthaler* case influences lower courts with this new wrinkle. Until then, prior to discharging an employee, prudent employers should ascertain whether a neutral third-party (such as a judge, jury, arbitrator, or government investigator) would find the action just, reasonable, fair, and consistent with discharging policies and past practices.

Reggie Belcher is a Shareholder with McNair Law Firm in Columbia. William Floyd is a Shareholder with Nexsen Pruet Adams Kleemeier in Columbia. Belcher and Floyd represent employers in various labor and employment matters, and they jointly submitted this article on behalf of the Columbia Chapter of the Society for Human Resource Management, where they serve on the Board of Directors.