

# Getting Claims Straight: S.C. Supreme Court Clarifies the Contractual Nature of At-Will Employment

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## Article

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In *Hall v. UBS*, the South Carolina Supreme Court recently issued definitive answers on three certified questions in the employment law context. The opinion clarifies the following S.C. employment law issues:

1. At-will employment in South Carolina is contractual in nature.
  1. The implied covenant of good faith and fair dealing (“covenant”) exists in at-will employment contracts in South Carolina, as it does in other contracts.
2. A former employee does not have a claim for breach of the covenant against her former employer based on termination of an at-will employment agreement.
3. A former at-will employee may have a claim against a third party for intentional interference with contractual relations.

The *Hall* lawsuit was filed after alleged actions during a work happy hour and an eventual termination of an at-will employee. During the federal lawsuit and with the district court’s permission, the parties asked the S.C. Supreme Court to answer three questions related to at-will employment.

### At-will employment relationships are contractual

The Court first clarified that in South Carolina, an at-will employment relationship—whether there is a formal written agreement or no written agreement at all—can be a contract between the employer and employee. The Court also decided that because “there exists in every contract an implied covenant of good faith and fair dealing,” the covenant also “exists in at-will employment contracts,” overruling prior precedent.

No claim for breach of the covenant by a former employee against a former employer

Even though that covenant applies in an employment contract, a claim of breach of the covenant is not available to a terminated employee against his former employer when that employee was employed at-will.

The Court found that an inherent and essential part of an at-will employment relationship is the right of either party, the employee or the employer, to terminate the employment for any reason or no reason at all. As such, an employer cannot, as a matter of law, breach the covenant by doing “what the contract allows him to do—terminate the employee for any reason. Accordingly, if “a party to that contract believes the covenant is breached, “the cause of action is simply one for breach of contract” (as opposed to breach of the covenant).

### **A terminated employee may claim tortious interference with contract against a third party**

Like a majority of jurisdictions that have considered the issue, the Court held that the “absence of an underlying breach by the terminating employer does not shield [a] third party from liability when she intentionally and unjustifiably procures the termination of an at-will employee.”

Accordingly, a third party who intentionally causes the termination of an at-will employee, assuming the existence of additional factors, may be liable to the terminated individual for intentionally interfering with the contractual employment relationship.

### **Implications for Employers:**

In light of the Court’s clarifications, employers should be careful when deciding to terminate employees, including at-will employees. The rulings in the case could lead to more terminated at-will employees filing lawsuits against their former employers or third parties for breach of contract or tortious interference with contractual relations. As a result, it is important for employers to evaluate how third-party complaints or internal complaints are handled.

While there is an explicit recognition that at-will employment relationships are contractual in nature, the Hall decision also provides clarity about the precise contours and availability of certain claims by former employees. The decision confirms that a terminated at-will employee does not have a claim for breach of the covenant against a former employer based on termination of employment. Employers additionally have clarity that there is a “contractual right” to terminate at-will employees for any reason or no reason at all, as long as it is not an otherwise illegal reason.

Nexsen Pruet’s Employment and Labor Law team monitors case law and other updates to ensure employers have up-to-date information and insight surrounding the laws, case law, and regulations that could impact their employment relationships. Should you have any questions or require guidance about employee terminations, please contact one of our team’s attorneys.