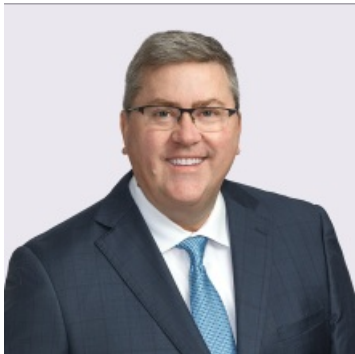


Indiana Court Declines to Expand At-Will Employment Exception

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Employment Litigation

Reaffirming Indiana’s “strong” presumption of at-will employment, the Indiana Court of Appeals has declined to expand the public policy exception to the at-will employment doctrine to include an employee’s mistaken belief that he was subpoenaed to testify at an unemployment hearing. [Perkins v. Memorial Hosp. of South Bend](#) No. 18A-CT-1340 (Ind. Ct. App. Apr. 11, 2019).

The Court affirmed summary judgment in favor of Memorial Hospital of South Bend in the wrongful termination case filed by Forrest Perkins, a former police officer for the Hospital.

Background Facts and Procedural History

Perkins began his at-will employment with the Hospital as a security officer in 2011. When the Hospital’s security office became a police department in 2014, Perkins became a police officer for the Hospital. On May 12, 2015, Perkins left his shift early to testify at an unemployment benefits appeal hearing on behalf of a former coworker. Perkins believed he had been subpoenaed to testify, but he had not. The Hospital did not appear for the unemployment hearing, although the Assistant Chief of the Hospital’s police department was aware Perkins testified at the hearing.

On June 7, 2015, a Hospital cafeteria cashier reported to the Assistant Chief of the Hospital’s police department that Perkins did not pay for all of his food. After an investigation, the Assistant Chief determined that Perkins had on two other occasions received a biscuit from the cafeteria without paying for it. The Hospital terminated Perkins for stealing food from the cafeteria in violation of the Hospital’s standard of conduct.

After his termination, Perkins filed a wrongful discharge complaint in state court. He claimed he was unlawfully terminated because he testified at the unemployment hearing for which he believed he had been subpoenaed. He also argued an exception to the at-will employment rule should apply in his case. The Hospital filed a summary judgment motion, relying upon the at-will employment doctrine. After a hearing, the trial court granted the Hospital’s motion. Perkins appealed.

At-Will Employment Doctrine Reaffirmed

On appeal, the Court noted Indiana’s “strong” presumption in favor of the employment-at-will doctrine, under which an employee’s employment may be terminated by either party, with or without reason.

The Court laid out the three exceptions to the doctrine:

1. Where there is adequate independent consideration that supports an employment contract;
2. Where *public policy* demands a deviation from the employment-at-will doctrine

because (a) a clear statutory expression of a right or duty is contravened, or (b) an employer discharged an employee for refusing to commit an illegal act for which the employee would be personally liable; and

3. Where the doctrine of promissory estoppel applies.

Consistent with summary judgment standards, the Court assumed as true that Perkins was terminated for testifying at the unemployment compensation proceeding. Perkins claimed his good-faith belief he was subpoenaed to the hearing gave rise to a “duty to testify.” In support, Perkins relied on *Frampton v. Central Ind. Gas Co.*, 297 N.E.2d 425 (Ind. 1973), in which the Indiana Supreme Court first recognized an exception to the at-will doctrine where an employee is terminated “solely for exercising a statutorily conferred right.” The employee in *Frampton* had filed a worker’s compensation claim.

The Hospital countered that Perkins had no such duty because he was never actually subpoenaed to testify.

Rejecting Perkins’s argument, the Court noted the *Frampton* exception is “quite a limited exception” and was “grounded in express statutory language—i.e., that an employee has a right to file a worker’s compensation claim.” The Court observed that Perkins, however, “did not have a statutory right to testify.” It further declared that “Perkins’s honest belief that he was subpoenaed to testify at an unemployment hearing is ‘not on par with the rights and obligations’ that have been recognized as warranting an exception to the at-will employment doctrine.” The Court concluded that “Perkins’s sincere yet mistaken belief that he had been subpoenaed” did not fall within Indiana’s public policy exception.

The Court declined to decide whether issuance of a subpoena would have created a duty for Perkins to testify, which means that issue is left open for another day.

Importance of At-Will-Employment Doctrine

Memorial Hospital is a reminder of the significant benefits of Indiana’s employment-at-will doctrine. Had the Court expanded the at-will employment exceptions as urged by Perkins, the Hospital would have been liable for back pay and other damages arising out of the termination. The at-will employment doctrine helps limit wrongful termination litigation against Indiana employers and the substantial costs associated with such litigation.

Following are some actions Indiana employers should consider to protect their rights under the at-will employment doctrine:

- Ensure at-will employment is included in all key employment-related documents and communications provided to employees (and applicants), such as employment applications, employee handbook, offer letters, employment agreements (when the company desires the employee to remain at-will), and website;
- Ensure each at-will employee signs an acknowledgement that he or she is an at-will employee (this can be part of the handbook acknowledgement);
- Ensure an employee’s termination is non-discriminatory and is based on a legitimate business reason; and
- Ensure termination decisions are fair, consistent with similar circumstances in the past, supported by documentation, and carried out in a professional manner.

Please contact a Jackson Lewis attorney with any questions related to this case, at-will employment, or litigation avoidance practices.

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