by Kenneth J. Heinz

SUPREME COURT CHANGES EMPLOYMENT LAW IN THE MIDDLE OF A TRIAL

Over my 40 years of trying cases, I have had a number of interesting challenges present themselves. However, in defending a city during a recent circuit court jury trial on a retaliatory discharge claim, I was confronted with something entirely new. The claim for retaliatory discharge was tried and evidence completed on the basis of the existing law, namely that retaliation for the filing of a complaint had to be the "exclusive" reason for the employee's discharge in order for the plaintiff to prevail. Jury instructions were prepared based upon the existing law. Just before submitting the case to the jury, the former employee's attorney informed both myself and the judge that the Supreme Court had recently issued an opinion the day before, on April 15, 2014, in the case of *Templemire v. W. & M. Welding, Inc.* (SC93132). While the jury waited, the judge and attorneys raced through the 36-page opinion on their tablets. In a 5-2 decision, the Supreme Court reversed its prior decisions on retaliatory discharge cases. The key issue involved was whether the discharge was in retaliation for the filings of workers' compensation claims. The same principles could be applicable to cases involving alleged retaliation for complaints with the Equal Employment Opportunity Commission (EEOC) or the Missouri Human Rights Commission.

In Templemire, the Court changed the law to be that the filing of a workers' compensation claim only needs to be a "contributing factor" leading to the discharge of an employee. This is a major difference because a jury can find for the employee if the fact finder determines that the prior complaint was even a minor contributing factor, perhaps as little as 1 percent, to the discrimination or the discharge. Fortunately, despite the substantial reversal and a flurry of changed jury instructions, the jury still ruled in favor of our client.

More than simply being a case anecdote, it is important for city officials to consider the effect of this change in the law. In retaliatory discharge cases, whether they relate to EEOC, Missouri Human Rights Commission or workers' compensation claims, the jury need only find that retaliation was a "contributing factor" and not the "exclusive" reason for an employee's discharge. The Supreme Court rejected the employer's plea to at least require a "motivating factor" test to avoid marginally competent employees from filing "the pettiest of claims in an effort to avoid a valid termination." (The decision is not yet final and could be subject to legislative action.)

It is now even more important for municipal employers, from the very early stages, to respond to such complaints carefully and in accordance with the law as interpreted by the Supreme Court in the *Templemire* case. Human resource officers and attorneys need to be clear in their advice that there should be no evidence of retaliation for those with such prior complaints.❑

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