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House Engrossed Senate Bill

State of Arizona
Senate
Forty-second Legislature
Second Regular Session
1996

CHAPTER 140

SENATE BILL 1386

AN ACT

AMENDING SECTION 12-541, ARIZONA REVISED STATUTES; AMENDING TITLE 23, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 9; AMENDING SECTION 41-1461, ARIZONA REVISED STATUTES; RELATING TO EMPLOYMENT.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Intent

A. The Arizona supreme court in the case of Wagenseller v. Scottsdale Memorial Hospital, 147 Ariz. 370, 710 P.2d 1025 (1985) (en banc), held that an employer may be held liable for civil damages if such employer discharges from employment an employee for a reason that is against the public policy of this state. The court also held that it had the independent authority to determine what actions of the employer violated the public policy of this state. The legislature affirms that an employer may be held liable for civil damages in the event it discharges from employment an employee for a reason that is against the public policy of this state. However, public policy is expressly determined by the legislature in the form of statutory provisions. While courts interpret the common law in accordance with Arizona Revised Statutes section 1-201, they are not authorized to establish a cause of action in connection with specific acts or omissions that constitute a violation of the public policy of this state.

B. Citizens have a right to prior notice of those specific actions that constitute violations of the law for which they are subject to civil damages. It is the intent of the legislature to confirm that the employment relationship is contractual. Laws affecting employees and employers shall be uniformly and consistently applied to all citizens. The court impedes the uniform application of laws to citizens of the state when it purports to create, on an ad hoc basis, rights to recover civil damages in response to

1 varying factual situations before the court. Courts are not vested with the
2 authority to create public policy of the state. When courts make
3 pronouncements of public policy on an ad hoc basis, they render it impossible
4 for citizens to know in advance what actions constitute violations of the
5 laws for which they are subject to civil damages.
6 C. The Constitution of Arizona vests the legislature with the
7 authority to create laws and the public policy of the state. Article V,
8 section 1, Constitution of Arizona. In contrast, the courts are established
9 to adjudicate cases by applying the laws enacted by the legislature to the
10 facts of those cases. Article VI, Constitution of Arizona. When the
11 legislature adopted the common law to provide the courts with laws of
12 reference, it did not intend to vest the courts with the authority to
13 establish new causes of action or to independently set forth the public
14 policy of the state. Section 1-201, Arizona Revised Statutes.
15 D. It is the intent of the legislature to establish that the courts
16 cannot create new causes of action. Courts can apply common law causes of
17 action to cases they adjudicate provided that they do not expand, modify or
18 in any manner whatsoever alter the common law causes of action that were
19 adopted by the legislature pursuant to Arizona Revised Statutes section
20 1-201.
21 E. In Wagenseller v. Scottsdale Memorial Hospital, 147 Ariz. 370, 710
22 P.2d 1025 (1985) (en banc), the court was confronted with an egregious
23 factual allegation where the employer was alleged to have terminated an
24 employee for failing to publicly indecently expose herself during a staff
25 performance of the song "Moon River". While as a policy matter, the court
26 reached the correct conclusion, it lacked the authority to make such a
27 holding under the Constitution of Arizona. It is the role of the
28 legislature, the elected representatives of the citizens, and not the court,
29 to establish the public policy of the state. The court in Wagenseller
30 reached the correct holding because the alleged acts would violate the
31 state's public indecency statute, Arizona Revised Statutes section 13-1402.
32 However, the court had no authority to create a cause of action. It is the
33 intent of the legislature that the public policy of the state is that the
34 termination of an employee in retaliation for refusing to violate the public
35 indecency or other laws of the state constitutes a violation of the
36 Employment Protection Act, subjecting the employer to civil damages.
37 F. It is the intent of the legislature that the Employment Protection
38 Act will not in any way limit the other protections for employers contained
39 in the laws of the Constitution of the United States, the Constitution of
40 Arizona, the federal statutes or the Arizona Revised Statutes.
41 G. As stated above, the employment relationship is contractual in
42 nature. In the absence of a written contract, the employment relationship
43 is severable at any time by either the employee or the employer. However,
44 if the termination of the employment relationship violates the public policy

of the state as expressly defined in the Arizona Constitution and Arizona Revised Statutes, the employee may bring an action for damages against the employer. If a statute provides an express remedy for a cause of action, that remedy is the exclusive remedy for the violation of the statute or the public policy arising out of the statute.

Sec. 2. Section 12-541, Arizona Revised Statutes, is amended to read:

12-541. Malicious prosecution; false imprisonment; libel or slander; seduction or breach of promise of marriage; breach of employment contract; wrongful termination; liability created by statute; one year limitation

There shall be commenced and prosecuted within one year after the cause of action accrues, and not afterward, the following actions:

1. For malicious prosecution, or for false imprisonment, or for injuries done to the character or reputation of another by libel or slander.

2. For damages for seduction or breach of promise of marriage.

3. FOR BREACH OF AN ORAL OR WRITTEN EMPLOYMENT CONTRACT INCLUDING CONTRACT ACTIONS BASED ON EMPLOYEE HANDBOOKS OR POLICY MANUALS THAT DO NOT SPECIFY A TIME PERIOD IN WHICH TO BRING AN ACTION.

4. FOR DAMAGES FOR WRONGFUL TERMINATION.

~~3.~~ 5. Upon a liability created by statute, other than a penalty or forfeiture.

Sec. 3. Title 23, Arizona Revised Statutes, is amended by adding chapter 9, to read:

CHAPTER 9

EMPLOYMENT PROTECTION ACT

ARTICLE 1. GENERAL PROVISIONS

23-2501. Severability of employment relationships; protection from retaliatory discharges; exclusivity of statutory remedies in employment

THE PUBLIC POLICY OF THIS STATE IS THAT:

1. THE EMPLOYMENT RELATIONSHIP IS CONTRACTUAL IN NATURE.

2. THE EMPLOYMENT RELATIONSHIP IS SEVERABLE AT THE PLEASURE OF EITHER THE EMPLOYEE OR THE EMPLOYER UNLESS BOTH THE EMPLOYEE AND THE EMPLOYER HAVE SIGNED A WRITTEN CONTRACT TO THE CONTRARY SETTING FORTH THAT THE EMPLOYMENT RELATIONSHIP SHALL REMAIN IN EFFECT FOR A SPECIFIED DURATION OF TIME OR OTHERWISE EXPRESSLY RESTRICTING THE RIGHT OF EITHER PARTY TO TERMINATE THE EMPLOYMENT RELATIONSHIP. BOTH THE EMPLOYEE AND THE EMPLOYER MUST SIGN THIS WRITTEN CONTRACT, OR THIS WRITTEN CONTRACT MUST BE SET FORTH IN THE EMPLOYMENT HANDBOOK OR MANUAL OR ANY SIMILAR DOCUMENT DISTRIBUTED TO THE EMPLOYEE, IF THAT DOCUMENT EXPRESSES THE INTENT THAT IT IS A CONTRACT OF EMPLOYMENT, OR THIS WRITTEN CONTRACT MUST BE SET FORTH IN A WRITING SIGNED BY THE PARTY TO BE CHARGED. PARTIAL PERFORMANCE OF EMPLOYMENT SHALL NOT BE DEEMED SUFFICIENT TO ELIMINATE THE REQUIREMENTS SET FORTH IN THIS PARAGRAPH. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO AFFECT THE RIGHTS OF PUBLIC

EMPLOYEES UNDER THE CONSTITUTION OF ARIZONA AND STATE AND LOCAL LAWS OF THIS STATE OR THE RIGHTS OF EMPLOYEES AND EMPLOYERS AS DEFINED BY A COLLECTIVE BARGAINING AGREEMENT.

3. AN EMPLOYEE HAS A CLAIM AGAINST AN EMPLOYER FOR TERMINATION OF EMPLOYMENT ONLY IF ONE OR MORE OF THE FOLLOWING CIRCUMSTANCES HAVE OCCURRED:

(a) THE EMPLOYER HAS TERMINATED THE EMPLOYMENT RELATIONSHIP OF AN EMPLOYEE IN BREACH OF AN EMPLOYMENT CONTRACT, AS SET FORTH IN PARAGRAPH 2 OF THIS SECTION, IN WHICH CASE THE REMEDIES FOR THE BREACH ARE LIMITED TO THE REMEDIES FOR A BREACH OF CONTRACT.

(b) THE EMPLOYER HAS TERMINATED THE EMPLOYMENT RELATIONSHIP OF AN EMPLOYEE IN VIOLATION OF A STATUTE OF THIS STATE. IF THE STATUTE PROVIDES A REMEDY TO AN EMPLOYEE FOR A VIOLATION OF THE STATUTE, THE REMEDIES PROVIDED TO AN EMPLOYEE FOR A VIOLATION OF THE STATUTE ARE THE EXCLUSIVE REMEDIES FOR THE VIOLATION OF THE STATUTE OR THE PUBLIC POLICY SET FORTH IN OR ARISING OUT OF THE STATUTE, INCLUDING THE FOLLOWING:

(i) THE CIVIL RIGHTS ACT PRESCRIBED IN TITLE 41, CHAPTER 9.

(ii) THE OCCUPATIONAL SAFETY AND HEALTH ACT PRESCRIBED IN CHAPTER 2, ARTICLE 10 OF THIS TITLE.

(iii) THE STATUTES GOVERNING THE HOURS OF EMPLOYMENT PRESCRIBED IN CHAPTER 2 OF THIS TITLE.

(iv) THE AGRICULTURAL EMPLOYMENT RELATIONS ACT PRESCRIBED IN CHAPTER 8, ARTICLE 5 OF THIS TITLE.

ALL DEFINITIONS AND RESTRICTIONS CONTAINED IN THE STATUTE ALSO APPLY TO ANY CIVIL ACTION BASED ON A VIOLATION OF THE PUBLIC POLICY ARISING OUT OF THE STATUTE. IF THE STATUTE DOES NOT PROVIDE A REMEDY TO AN EMPLOYEE FOR THE VIOLATION OF THE STATUTE, THE EMPLOYEE SHALL HAVE THE RIGHT TO BRING A TORT CLAIM FOR WRONGFUL TERMINATION IN VIOLATION OF THE PUBLIC POLICY SET FORTH IN THE STATUTE.

(c) THE EMPLOYER HAS TERMINATED THE EMPLOYMENT RELATIONSHIP OF AN EMPLOYEE IN RETALIATION FOR ANY OF THE FOLLOWING:

(i) THE REFUSAL BY THE EMPLOYEE TO COMMIT AN ACT OR OMISSION THAT WOULD VIOLATE THE CONSTITUTION OF ARIZONA OR THE STATUTES OF THIS STATE.

(ii) THE DISCLOSURE BY THE EMPLOYEE IN A REASONABLE MANNER THAT THE EMPLOYEE HAS INFORMATION OR A REASONABLE BELIEF THAT THE EMPLOYER, OR AN EMPLOYEE OF THE EMPLOYER, HAS VIOLATED, IS VIOLATING OR WILL VIOLATE THE CONSTITUTION OF ARIZONA OR THE STATUTES OF THIS STATE TO EITHER THE EMPLOYER OR A REPRESENTATIVE OF THE EMPLOYER WHO THE EMPLOYEE REASONABLY BELIEVES IS IN A MANAGERIAL OR SUPERVISORY POSITION AND HAS THE AUTHORITY TO INVESTIGATE THE INFORMATION PROVIDED BY THE EMPLOYEE AND TO TAKE ACTION TO PREVENT FURTHER VIOLATIONS OF THE CONSTITUTION OF ARIZONA OR STATUTES OF THIS STATE OR AN EMPLOYEE OF A PUBLIC BODY OR POLITICAL SUBDIVISION OF THIS STATE OR ANY AGENCY OF A PUBLIC BODY OR POLITICAL SUBDIVISION.

(iii) THE EXERCISE OF RIGHTS UNDER THE WORKERS' COMPENSATION STATUTES PRESCRIBED IN CHAPTER 6 OF THIS TITLE.

(iv) SERVICE ON A JURY AS PROTECTED BY SECTION 21-236.

(v) THE EXERCISE OF VOTING RIGHTS AS PROTECTED BY SECTION 16-1012.

(vi) THE EXERCISE OF FREE CHOICE WITH RESPECT TO NONMEMBERSHIP IN A LABOR ORGANIZATION AS PROTECTED BY SECTION 23-1302.

(vii) SERVICE IN THE NATIONAL GUARD OR ARMED FORCES AS PROTECTED BY SECTIONS 26-167 AND 26-168.

(viii) THE EXERCISE OF THE RIGHT TO BE FREE FROM THE EXTORTION OF FEES OR GRATUITIES AS A CONDITION OF EMPLOYMENT AS PROTECTED BY SECTION 23-202.

(ix) THE EXERCISE OF THE RIGHT TO BE FREE FROM COERCION TO PURCHASE GOODS OR SUPPLIES FROM ANY PARTICULAR PERSON AS A CONDITION OF EMPLOYMENT AS PROTECTED BY SECTION 23-203.

(d) IN THE CASE OF A PUBLIC EMPLOYEE, IF THE EMPLOYEE HAS A RIGHT TO CONTINUED EMPLOYMENT UNDER THE UNITED STATES CONSTITUTION, THE ARIZONA CONSTITUTION, ARIZONA REVISED STATUTES, ANY APPLICABLE REGULATION, POLICY, PRACTICE, OR CONTRACT OF THE STATE, ANY SUBDIVISION OF THE STATE OR OTHER PUBLIC ENTITY, OR ANY ORDINANCE OF ANY POLITICAL SUBDIVISION OF THE STATE.

Sec. 4. Section 41-1461, Arizona Revised Statutes, is amended to read:

41-1461. Definitions

In this article, unless the context otherwise requires:

1. "Employee" means an individual employed by an employer, except that employee does not include an elected public official of the state or any political subdivision of the state, any person chosen by such officer to be on such officer's personal staff, an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office, unless such person or appointee is subject to the civil service laws of the state or any political subdivision of the state.

2. "Employer" means a person who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such person, EXCEPT THAT TO THE EXTENT THAT ANY PERSON IS ALLEGED TO HAVE COMMITTED ANY ACTS OF SEXUAL HARASSMENT, "EMPLOYER" MEANS, FOR PURPOSES OF ADMINISTRATIVE AND CIVIL ACTIONS REGARDING SUCH ALLEGATIONS OF SEXUAL HARASSMENT, A PERSON WHO HAS ONE OR MORE EMPLOYEES IN THE CURRENT OR PRECEDING CALENDAR YEAR, but such term does not include either:

(a) The United States or any department or agency thereof, a corporation wholly owned by the government of the United States, or an Indian tribe.

(b) A bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the internal revenue code of 1954.

3. "Employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

4. "Handicap" means, with respect to an individual, except any impairment caused by current or recent use of alcohol or drugs, any of the following:

(a) A physical impairment that substantially limits one or more of the major life activities of the individual.

(b) A record of a physical impairment that substantially limits one or more of the major life activities of the individual.

(c) Being regarded as having a physical impairment that substantially limits one or more of the major life activities of the individual.

5. "Labor organization" means a labor organization and any agent of such an organization and includes any organization of any kind, any agency or employee representation committee, group, association or plan so engaged in which fifteen or more employees participate and which exists for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, and any conference, general committee, joint or system board or joint council so engaged which is subordinate to a national or international labor organization.

6. "Person" means one or more individuals, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy or receivers.

7. "Qualified handicapped individual" means a person with a handicap who with reasonable accommodation is capable of performing the essential functions of the particular job in question within the normal operation of the employer's business in terms of physical requirements, education, skill and experience.

8. "Reasonable accommodation" means an accommodation which does not:

(a) Unduly disrupt or interfere with the employer's normal operations.

(b) Threaten the health or safety of the handicapped individual or others.

(c) Contradict a business necessity of the employer.

(d) Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer and the estimated cost and extent of the accommodation.

9. "Religion" means all aspects of religious observance and practice, as well as belief. Unlawful practices as prohibited by this article shall include practices with respect to religion unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

APPROVED BY THE GOVERNOR APRIL 9, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 1996