Insight

IN-DEPTH DISCUSSION

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Amorphous No More – Virginia Defines "Reasonable Notice" of Termination as "Effectual Notice" in the At-Will Employment Context

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The Supreme Court of Virginia, in *Johnston v. William E. Wood & Associates, Inc.,* No. 151160 (June 2, 2016), recently answered the question of what constitutes "reasonable notice" for terminating an at-will employee. The question has been an open one for over 100 years in Virginia. The court's answer: Reasonable notice is "effectual notice," and can be immediate, such as when an employer tells an employee that her employment is terminated "effective immediately." In rendering this decision, the court reinforced the Commonwealth's strong adherence to the traditional employment-at-will doctrine, and further buttressed its reputation as "employer-friendly."

At-Will Employment in Virginia

Virginia remains one of the few states that continue to adhere strongly to the traditional employment-at-will doctrine, with very few exceptions. In 1906, the Supreme Court of Virginia held that when an employment contract does not specify a time period for its duration, either the employer or employee are both "ordinarily at liberty to terminate it at-will on giving *reasonable notice* of his intention to do so." *Stonega Coal & Coke Co. v. Louisville & Nashville R.R. Co.,* 106 Va. 223, 226, 55 S.E. 551, 552 (1906) (emphasis added). However, for over a century, the Supreme Court of Virginia has not addressed precisely what "reasonable notice" means, and whether reasonable notice equates to

advance notice. In fact, the Virginia Courts – both at the federal and state level – have been sharply divided on this issue.[1]

The Case Before the Court

The court's decision in *Johnston* reflects the court's wish not to disrupt Virginia's long-standing observance of the traditional at-will doctrine, while also recognizing the practical hodgepodge of outcomes that could result if it ruled that "reasonable notice" meant some type of "advance notice."

The plaintiff in *Johnston* was a long-tenured employee, having worked for the defendant, a real estate services firm, for 17 years. The defendant discharged the plaintiff without any advance notice. The plaintiff sued, alleging wrongful discharge and breach of an implied term of her employment contract that she be provided reasonable notice of any termination. The plaintiff argued that reasonable notice of termination included a temporal component – that the notice must have been provided at some reasonable time before the actual termination of the employment relationship. The defendant argued that reasonable notice simply meant "effectual notice" that the employment has been terminated.

In ruling in the defendant's favor, the court relied on the bedrock principle of the traditional at-will employment doctrine – that it offers maximum flexibility for an employer or employee to end the employment relationship for any reason or for no reason at all, so long as any reason is not an illegal one. The court stated that interpreting "reasonable notice" as "advance notice" is "antithetical" to this flexibility and would undermine the indefinite duration aspect of at-will employment.

The court also considered the policy implications of its decision, cautioning that ruling to the contrary would create a breeding ground for future litigation in Virginia. The court explained that if "reasonable" advance notice was required, then what is reasonable will "vary based on each employment situation" and that such an "amorphous" standard would create an environment in which an employer could be sued if it guesses wrong about what is "reasonable notice" under the circumstances. By the same token, an employee could also be subject to an employer-filed lawsuit for failing to provide sufficient advance notice of resignation, which would deter employees from seeking better opportunities elsewhere. The court noted, "[e]very decision to terminate an employment relationship, or of an employee to quit a job, would become a jury question – hardly the clear, flexible rule that the at-will doctrine contemplates." Further, "[a] change so fundamental to employment relations in Virginia should be left to the legislature, which is best situated to study the employment relationship and fashion appropriate remedies to address specific problems or changing conditions."

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1 Courts in the following cases concluded that "reasonable notice" does not require advance notice: *Calquin v. Doodycalls Fairfax VA LLC*, No. 1:09cv543, 2009 U.S. Dist. LEXIS 83936, at *4-10 (E.D. Va., Sept. 11, 2009); *Jafari v. Old Dominion Transit Mgmt. Co.*, No. 3:08-CV-629, 2008 U.S. Dist. LEXIS 97037, at *27 n.15 (E.D. Va., Nov. 26, 2008); *Perry v. American Home Prods. Corp.*, No. 3:96cv595, 1997 U.S. Dist. LEXIS 2521, at *22-26 (E.D. Va., Mar. 4, 1997); *Rubin v. American Soc'y of Travel Agents, Inc.*, 78 Va. Cir. 1, 4-6 (2008); *Brehm v. Mathis*, 59 Va. Cir. 31, 33-34 (2002); *Wilt v. Water & Wastewater Equip. Mfrs. Ass'n, Inc.*, 43 Va. Cir. 118, 122 (Loudoun Cnty. Cir. Ct., July 21, 1997).

Courts found to the contrary in: *Mercado v. Lynnhaven Lincoln-Mercury, Inc.*, No. 2:11cv145, 2011 U.S. Dist. LEXIS 122145, at *34-37 (E.D. Va., Oct. 21, 2011); *Wells v. G.R. Assocs., Inc.*, No. 00-1408-A, 2000 U.S. Dist. LEXIS 22982, at *18-21 (E.D. Va., Nov. 22, 2000); *Tingle v. Chasen's Bus. Interiors, Inc.*, 41 Va. Cir. 451, 454-55 (Norfolk Cir. Ct., February 27, 1997); *Laudenslager v. Loral*, 39 Va. Cir. 228, 229 (Chesapeake Cir. Ct., May 6,1996); *Slade v. Central. Fid. Bank*, 12 Va. Cir. 291, 291-92 (Campbell Cnty. Cir. Ct., June 13, 1988).

How *Johnston* Affects Virginia Employers

Employers in Virginia no longer have to worry whether "reasonable notice" requires advance notice of involuntary termination. *Johnston* makes clear that reasonable notice occurs the moment the termination decision is announced—even if the termination is immediate. This rule, however, applies equally to employees who are not required to provide advance notice of their decision to leave.

Of course, this ruling does not change the fact that employers still need to be mindful of the applicable federal and/or state employment laws that should be considered when terminating an employee in any given situation. However, this decision provides reassurance to employers that the at-will employment doctrine is alive and well in the Commonwealth and that simply telling an employee that his/her employment is terminated meets the "reasonable notice" component of the at-will employment relationship.