

Walmart Not Liable for Failure to Rehire Employee

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In an August 30, 2012, decision, the Sixth Circuit Court of Appeals held that an employee could not support his assertion that his former employer, Walmart, refused to rehire him because he filed for unemployment benefits.

The employee, William Barrington, worked for Walmart at its West Main store in Kalamazoo, Michigan. During his four years of employment, Barrington took a number of authorized leaves of absence. In February 2007, Barrington took a leave approved through April 30, 2007. However, Barrington did not return from the leave on April 30. In mid-May, Walmart contacted him and informed him that he would be fired for failing to return from his leave. Barrington was informed that he could re-apply for employment after 90 days.

Barrington applied for unemployment benefits based on the termination. Walmart contested the application, asserting that Barrington's termination was considered voluntary since he did not return from his leave of absence when it expired. While the claim was being contested, 90 days passed and Barrington reapplied for employment. Walmart did not offer him a position. After another 90 days, Barrington again reapplied for a position, and again, was not rehired.

Barrington then filed a lawsuit against Walmart, alleging that Walmart failed to rehire him because he had applied for unemployment benefits. Barrington did not rely on any statutory provision, as none existed, but asserted that the decision not to rehire him was contrary to public policy in Michigan.

The Sixth Circuit Court of Appeals found that the question of whether an employer can be liable for failing to rehire an employee because s/he filed a claim for unemployment benefits had not been decided by the Michigan Supreme Court. The Court also found that Barrington was an at-will employee and stated that there are limited situations where Michigan courts will create a public policy claim in an otherwise at-will employment situation. Barrington asserted that the Court should recognize the claim because it would "prohibit retaliation against employees 'for exercising a right conferred by a well-established legislative enactment,'" namely, filing a claim for unemployment benefits.

The Court declined to find a cause of action, stating "[a]n employee's right to be hired or rehired by an employer [. . .] has never been recognized as actionable, under common law on public policy grounds." Further, the Court stated "[w]ithout any indications from binding or persuasive authority that Michigan courts are prepared to recognize a private claim for wrongful failure to rehire [. . .] even if we were inclined to accept Barrington's rationale, our precedent requires us to refrain from doing so on behalf of the Michigan Supreme Court." Because the decision was made by the Sixth Circuit anticipating what Michigan's courts would decide, it is not binding in Michigan. Michigan employers should remain cautious when making hiring decisions based on an applicant's unemployment compensation history.