

SECOND REGULAR SESSION

SENATE BILL NO. 871

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Pre-filed December 1, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

3174S.01I

AN ACT

To amend chapter 290, RSMo, by adding thereto six new sections relating to certain rights and obligations of employers and employees in causes of action for wrongful discharge.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 290, RSMo, is amended by adding thereto six new sections, to be known as sections 290.155, 290.160, 290.165, 290.170, 290.175, and 290.180, to read as follows:

290.155. As used in sections 290.155 to 290.180, the following terms mean:

(1) "Constructive discharge", the voluntary termination of employment by an employee because of any act or omission of the employer that an objective, reasonable person would find so intolerable that voluntary termination by the employee is reasonable;

(2) "Discharge", a constructive discharge or any involuntary termination of a person's employment by the employer;

(3) "Employee", a person who works for another for hire. Employee does not include the Internal Revenue Services' definition of independent contractor, elected government official in Missouri, or employee of the United States government;

(4) "Employee benefits" includes, but is not limited to, employee welfare and pension plans;

(5) "Employer", any person, corporation, partnership, or

professional association who employs fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding year. Employer includes any agent of the employer acting, directly or indirectly, in the interest of the employer, as well as the state, counties, municipal corporations, townships, school districts, and any other political subdivision of government. The term employer does not include the United States or any corporation wholly owned by the government of the United States;

(6) "Probationary period", unless otherwise specified by the employer, the probationary period of time during which an employee may be terminated at will is six months; except that, a probationary period specified by the employer may not be longer than twelve months from the date of employment;

(7) "Public policy", the principle which holds that no one can lawfully do that which tends to be injurious to the public or against the public good;

(8) "Written personnel policy" or "handbook", any published manual, personnel procedure, policy, handbook, guideline, or other document setting forth terms of employment, rights or benefits of employees, or other matters relating to the terms and conditions of employment of all or any employees, including, but not limited to, causes or procedures for discipline and discharge of employees.

290.160. 1. A discharge is wrongful, if:

(1) It was in retaliation for the employee's refusal to violate law or public policy, or for complaining about, or reporting to the employer or a third party, a violation of law or public policy;

(2) The employer, in executing an involuntary or constructive discharge, violates the express provisions of its own written personnel policy or handbook; or

(3) An employer substantially deviates from its customary practice or standard operating procedure used for dismissal, whether or not an employee handbook exists.

2. The employee has the burden of proof in any action brought pursuant to sections 290.155 to 290.180.

290.165. 1. Employees may bring a cause of action pursuant to subdivision (2) or (3) of subsection 1 of section 290.160, regardless of

whether the written personnel policy or handbook constitutes a valid and binding contract, and regardless of whether the employee had actual knowledge of the policy, handbook, practice, or procedure.

2. An employer may amend or revoke a written personnel policy or handbook; except that the employer shall give reasonable advance notice to all employees of any proposed amendment to, or revocation of, a written personnel policy or handbook before the amendment or revocation becomes effective.

3. Sections 290.155 to 290.180 do not create a new cause of action for unlawful discrimination based on race, national origin, sex, age, disability, creed, religion, color, or any other ground of discrimination. Such claims shall be brought pursuant to existing state and federal anti-discrimination statutes.

4. Sections 290.155 to 290.180 shall not be construed to amend or negate the terms of any written collective bargaining agreement.

5. Public employees may seek relief pursuant to sections 290.155 to 290.180 only after such employees have fully exhausted their administrative or civil service remedies pursuant to applicable state or local statutes or ordinances. Employees need not appeal the administrative or civil service determination to the circuit court to avail themselves of a cause of action pursuant to sections 290.155 to 290.180.

6. If an employer, public or private, maintains written internal procedures, other than those formulated pursuant to state or federal anti-discrimination statutes, under which an employee may appeal a discharge within the organizational structure of the employer, the employee shall first exhaust those procedures prior to filing an action pursuant to sections 290.155 to 290.180. The employee's failure to exhaust available internal procedures is a defense to an action brought pursuant to sections 290.155 to 290.180. If the employer's internal appeal procedures are not completed within ninety days from the effective date of the discharge, for purposes of this subsection, the employer's internal procedures shall be considered exhausted and the employee may file an action pursuant to sections 290.155 to 290.180. The limitation period in section 290.170 shall be tolled while the employer's internal procedures are being exhausted, but such toll period shall not exceed one hundred eighty days from the effective date of discharge.

7. If the employer maintains written internal procedures under which an employee may appeal a discharge within the organizational structure of the employer, the employer shall, within seven days of the date of the discharge, notify the discharged employee of the existence of such procedures and shall supply the discharged employee with a copy of them. If the employer fails to comply with this subsection, the discharged employee need not comply with subsection 6 of this section.

8. Sections 290.155 to 290.180 shall not apply to employees during their probationary period as defined by subdivision (6) of section 290.155.

290.170. An action brought by an individual alleging wrongful termination pursuant to sections 290.155 to 290.180 shall be filed within three hundred sixty-five days of the effective date of the discharge.

290.175. 1. In a cause of action brought pursuant to subdivisions (2) and (3) of subsection 1 of section 290.160, an employee may be awarded lost back wages and employee benefits from the date of discharge, together with interest thereon; except that, an employee has a duty to mitigate damages. In addition, an employee may be awarded attorneys' fees, out-of-pocket costs of litigation, and relocation expenses.

2. An employee may recover punitive damages if it is established by clear and convincing evidence that the employer engaged in fraud, malice, or reckless disregard for the rights of the employee pursuant to subdivision (1) of subsection 1 of section 290.160. Punitive damages are not available for causes of action arising from violations of subdivision (2) or (3), or both, of subsection 1 of section 290.160.

3. In a cause of action brought pursuant to subdivision (1) of subsection 1 of section 290.160, an employee may be awarded lost back wages and employee benefits from the date of discharge, together with interest thereon, as well as attorneys' fees, out-of-pocket costs of litigation, and relocation expenses. An employee may also be awarded compensatory damages for physical and mental distress occasioned by a violation of subdivision (1) of subsection 1 of section 290.160, independent of punitive damages.

290.180. Any party to an action brought pursuant to sections 290.155 to 290.180 may demand a trial by jury on any and all claims brought pursuant to sections 290.155 to 290.180.

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