Tort of Wrongful Discharge

In early 2009, the Oklahoma Supreme Court has changed Oklahoma law on wrongful discharge public policy torts. See, Shirazi v. Childtime Learning Center, Inc., 2009 OK 13. This development may, particularly in the private sector, increase the number of cases brought in state court involving discrimination allegations under the Oklahoma Anti-Discrimination Act (OADA). OADA is found at 25 O.S. Section 1302. See also, Kruchowski v. Weyerhaeuser Company, 2008 OK 105.

Prior to this case, Oklahoma courts had limited the application of the Burk tort claim exception to the at-will employment doctrine when a former employee was asserting a traditional discrimination claim that violated federal law. Included are discrimination claims based on race, color, religion, sex, national origin, age and handicap.

The Burk public policy tort, which is a limited public policy exception to the terminable-at-will rule, was created by the Oklahoma Supreme Court in Burk v. K-Mart, 770 P.2d 24 (Okl. 1989). In Burk, the Court recognized a “narrow class of cases” in tort in which the discharge is “contrary to a clear mandate of public policy as articulated by constitutional, statutory or decisional law.” This was originally defined as where an employee is discharged for: (1) refusing to act in violation of an established and well-defined public policy; or, (2) performing an act consistent with a clear and compelling public policy. The Burk Court described its decision as serving the “cause of equity as well as the interests of the marketplace.”