

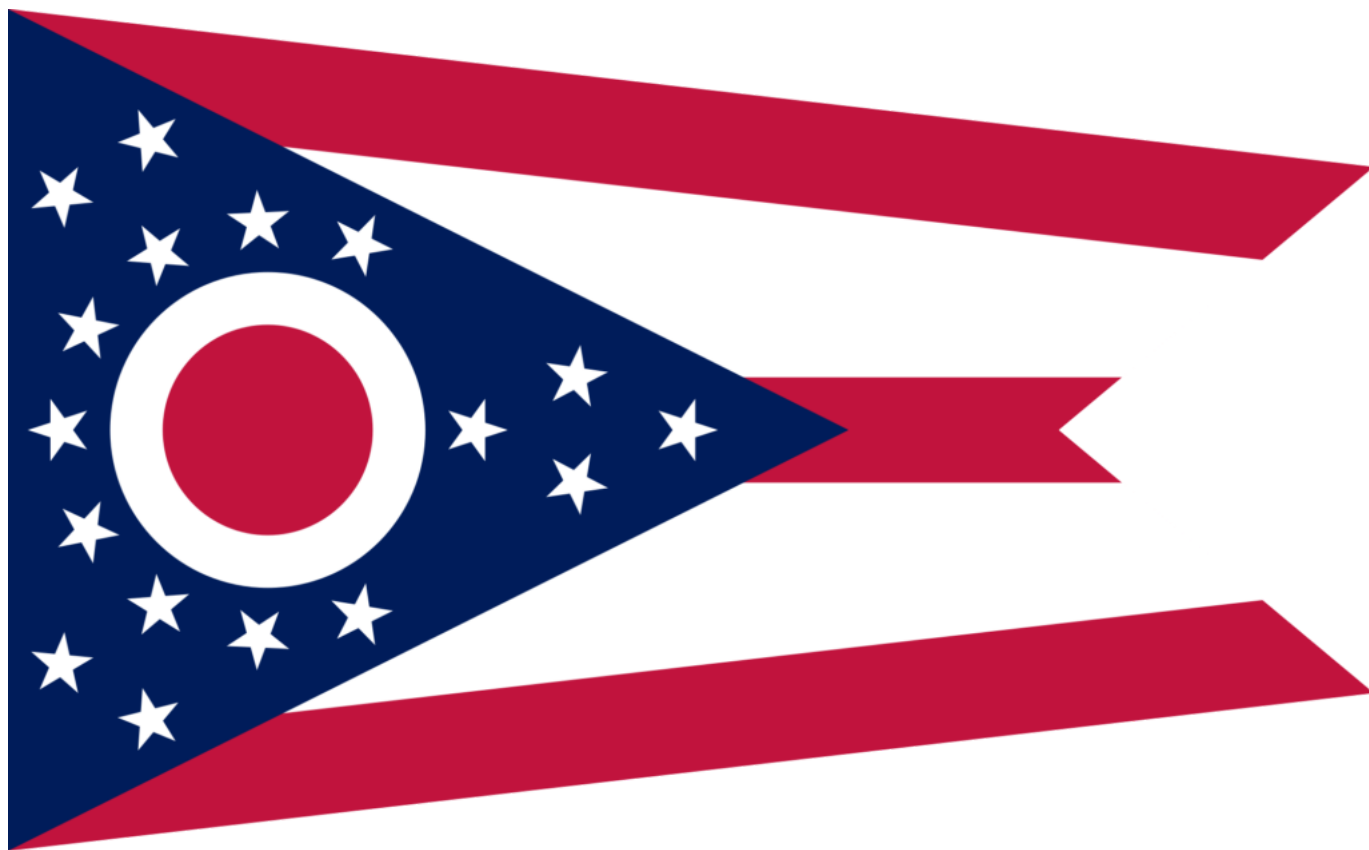
Ohio Supreme Court Restricts Wrongful-Discharge Claims by Probationary Public Employees

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By [Ellen Toth](#)



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The Supreme Court of Ohio recently confirmed that public employees in their probationary periods are not entitled to the same protections with regard to employment termination that tenured civil servants enjoy. In *Miracle v. Ohio Dept. of Veterans Servs.*, Slip Opinion No. 2019-Ohio-3308, the court held that Ohio Revised Code (R.C.) sections 124.27(B) and 124.56 do not express a clear public policy to support probationary public employees bringing wrongful-discharge claims against their employers.

This decision is of practical significance for Ohio public employers for several reasons. First, it provides some clarity regarding the grounds upon which Ohio public employers may base the discharge of probationary employees. Second, it reinforces legal distinctions between probationary public employees and tenured civil service employees, who benefit from greater protections against employment termination. *Miracle* is generally a win for public employers in Ohio, but it does leave open the possibility of probationary employees' bringing wrongful-discharge claims based on sources other than R.C. 124.27(B) and 124.56.

Factual Background

James Miracle brought suit against the Ohio Department of Veterans Services (ODVS), challenging the termination of his employment as a facilities manager. Prior to working for ODVS, Miracle had worked for the Ohio Department of Corrections (ODC) as a building-construction superintendent at a Mansfield, Ohio, prison. During Miracle's tenure as superintendent, an inmate escaped. ODC investigated the incident and discharged Miracle for failing to secure tools and for falsifying tool-inventory

documents. Miracle appealed his discharge to the State Personnel Board of Review (SPBR), reached a settlement with ODC, and was reinstated to a position at a different prison in Ohio before a decision on the appeal was rendered.

Miracle left the Ohio prison system and began working as a probationary employee with ODVS. During the application process with ODVS, Miracle revealed his adverse job history at ODC and was assured it would not be a problem. Miracle performed his job at ODVS without incident and received ratings of “meets expectations” or “exceeds expectations” in his first performance review several months after his employment began. Six days later, still during Miracle’s probationary period, ODVS’s human resources director told Miracle that ODVS was terminating his employment because it “was moving in a different direction.” ODVS did not provide any additional information. Miracle later learned that a senior advisor to then-governor John Kasich had directed the superintendent to terminate Miracle’s employment because of negative press surrounding Miracle’s alleged involvement in the Mansfield inmate escape.

Miracle filed suit alleging that ODVS’s decision to discharge him had violated a public policy articulated in R.C. 124.27(B) that favored retaining probationary employees who satisfactorily performed their duties. Miracle also asserted a claim for wrongful discharge in violation of the public policy articulated in R.C. 124.56. That section provides for an investigation and possible removal of an appointing authority who has appointed, removed, or suspended an employee in violation of R.C. Chapter 124. In response, ODVS argued that the Ohio General Assembly intended for different legal standards to govern the employment terminations of probationary employees and tenured civil servants.

The court concluded that Miracle’s reliance on R.C. 124.27(B) and 124.56 for his wrongful-discharge claim was misguided because those sections do not express a clear public policy against terminating the employment of probationary employees “for reasons other than unsatisfactory performance” and “they do not provide[] the basis for a wrongful-discharge claim for civil service employees terminated during their probationary period[s].”

Legal Impact of *Miracle*

Generally, either party to an at-will employment relationship in Ohio may legally terminate the relationship at any time and for any reason, so long as it is not contrary to law. Ohio courts have carved out an exception to this rule by recognizing a cause of action for at-will employees whose employment has been terminated in violation of public policy. “To succeed on a claim for wrongful discharge in violation of public policy,” the court wrote, “a plaintiff must establish four elements: (1) that a clear public policy existed and was manifested either in a state or federal constitution, statute or administrative regulation or in the common law (‘the clarity element’), (2) that dismissing employees under circumstances like those involved in the plaintiff’s dismissal would jeopardize the public policy (‘the jeopardy element’), (3) the plaintiff’s dismissal was motivated by conduct related to the public

policy (‘the causation element’), and (4) the employer lacked an overriding legitimate business justification for the dismissal (‘the overriding-justification element’).”

Prior to the Supreme Court of Ohio’s ruling in *Miracle*, it remained unresolved whether R.C. 124.27(B) or 124.56 provided a sufficiently clear public policy for probationary public employees to meet the first element of a wrongful-discharge claim. Ohio’s public employment statute provides that tenured civil servants can only be removed for the reasons specified in R.C. 124.34(A), one of which is “unsatisfactory performance.” By contrast, under R.C. 124.27(B), a probationary employee can be removed for “unsatisfactory service.” The court analyzed this language and determined that “unsatisfactory service” is an inherently broader concept than “unsatisfactory performance.” The court concluded that, unlike “unsatisfactory performance,” the term “unsatisfactory service” includes situations in which continued employment would not advance the interests of the agency itself. As such, Miracle’s wrongful-discharge claim failed on the clarity element, and ODVS was justified in terminating Miracle’s probationary employment for the negative press he generated, even though Miracle had been adequately performing his job duties.

With respect to R.C. 124.56, the court held that the section does not confer any substantive rights on employees or impose any enforceable duties on employers apart from the rights and duties established elsewhere in R.C. Chapter 124. Instead, R.C. 124.56 authorizes the SPBR to investigate and remove certain officials. It does not give public employees themselves any rights. Therefore, Miracle could not use it as a basis for his wrongful-discharge claim, as it failed on the clarity element as well.

Key Takeaways

The *Miracle* decision is good news for public employers in Ohio, but it is not a magic bullet to defend against all wrongful-discharge claims brought by probationary employees. In a concurring opinion, Justice Michael Donnelly argued that the majority’s opinion does not preclude the possibility of a wrongful-discharge tort claim by a probationary employee if terminating his or her employment violates some other clear public policy. Thus, plaintiffs in Ohio may still be able to find a public policy “hook” in sources of law other than RC 124.27(B) and 124.56, and such claims are not necessarily barred by the *Miracle* decision. Public employers in Ohio should be sure to keep these thoughts in mind.

Ogletree Deakins will continue to monitor developments in this area of the law and provide updates.

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