

Supervisors Held Personally Liable For Firing Employees

By Jessica Summers

In a decision that is certain to raise hairs on the back of the neck of any boss, the Virginia Supreme Court concluded for the first time that, under certain circumstances, *a supervisor or manager can be held personally liable for wrongfully firing an employee*. The Court's decision in *VanBuren v. Grubb* (full opinion here) is one of the first in the Commonwealth's legal history to open the door to claims against individual managers and supervisors and has the potential to change the way in which Virginia plaintiffs approach and present their claims.

The decision responded to a question certified to the Virginia Supreme Court by the Fourth Circuit Court of Appeals, that is, *whether an employee who alleges that she was wrongfully discharged in violation of public policy can bring a claim against her supervisor or manager who violated the public policy and then participated in the termination decision*. Although this was a question of first impression in Virginia, a number of other courts have addressed this issue with split outcomes. Of note, the D.C. Court of Appeals in 2011 concluded that wrongful termination claims can be brought against individual supervisors.

As the facts of the *VanBuren* case were rather extreme, the precise circumstances under which an individual may be held liable for wrongful firing under Virginia law remains unclear. The plaintiff in the *VanBuren* case claimed that she had been wrongfully terminated from her job as a nurse in a medical practice by her supervising doctor - who was also the owner of the practice - after she rejected his blatant and repeated sexual advances. The nurse brought this wrongful termination claim against both the practice and the supervising doctor himself, alleging that her firing violated the public policy of Virginia because it resulted from her refusal to engage in criminal conduct, specifically adultery and lewdness. The district court in which the case was initially brought dismissed the claim against the doctor on the basis that such a claim could only be maintained against the employer. The Fourth Circuit, however, concluded that the state law on the issue was unclear and referred the question to the Virginia Supreme Court.

Like most states, Virginia common law recognizes certain exceptions to the rule that all employment is at-will and that employees may be terminated at any time with or without cause. One of these exceptions arises when an employee is terminated for refusing to engage in criminal acts, which is considered a violation of the Commonwealth's public policy. The heart of the *VanBuren* case focused on who could be held responsible for such a violation. The Virginia Supreme Court concluded that a claim of wrongful termination can be brought against an individual supervisor. The court based its decision on the fact that allowing wrongful termination claims against supervisors would be consistent with other areas of Virginia law in which it has been consistently held that both an employer and an employee may be liable for the employee's wrongful acts.

The impact that this decision will have on Virginia law remains to be seen. However, employers should make sure that supervisors and managers, particularly those who have authority to handle both day-to-day supervision as well as termination decisions, receive proper training and instruction to avoid wrongful termination claims against both the employer and the individual.