

PUBLICATION

Tennessee Legislature Reverses Tennessee Supreme Court on Employment Litigation

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On May 21, 2011, the Tennessee Legislature passed legislation that restores a balanced approach to employment litigation in Tennessee. Baker Donelson attorneys worked with pro-employer advocates, including the National Federation of Independent Business and the Tennessee Chamber of Commerce, to help draft this legislation and advocate on its behalf.

Tennessee recently became one of only four states in the country that does not apply the *McDonnell Douglas* burden-shifting framework to employment discrimination and retaliation suits under state law. Tennessee's departure from the *McDonnell Douglas* framework was occasioned by the Tennessee Supreme Court's decision in *Gossett v. Tractor Supply Company*, 320 S.W.3d 777 (2010), where the Court held that the *McDonnell Douglas* burden shifting framework followed by the vast majority of states and federal courts did not apply in Tennessee. In *Gossett*, the Court found that an employer must disprove an employee's discrimination or retaliation claim in order to obtain summary judgment to have the case thrown out before trial. The practical impact of *Gossett* was that frivolous employment litigation was much more likely to reach trial, costing employers the attendant time, expense, and inflated settlement value of frivolous claims that reach trial. *Gossett* also created an incentive for plaintiff's attorneys to file employment claims in state courts that were unaccustomed to hearing employment disputes.

House Bill 1641 overrides the impact of *Gossett*. It imposes a statutory burden shifting framework where employees must prove a basic *prima facie* case of discrimination, retaliation, or wrongful discharge. Only after the employee proves a basic *prima facie* case will the employer be required to articulate its legitimate nondiscriminatory or nonretaliatory reason for the challenged employment decision. Once the employer articulates its legitimate reason(s), the employee must then prove that those reasons are pretextual to survive a motion for summary judgment. At all times, it is the employee's burden to prove intentional discrimination or retaliation. The net result of this legislation is that meritless employee lawsuits will be dismissed before trial, and there is no longer an incentive for Plaintiffs' attorneys to file employment litigation in state courts that are unaccustomed to hearing these claims.

House Bill 1641 has not yet been signed by Governor Haslam, and will take effect if and when he signs this legislation into law.