

PUBLICATION

The Jury's Out of the Game and Employers are Back on the Bench: No Right to Jury Under the Tennessee Public Protection Act

October 22, 2015

Recently, the Tennessee Supreme Court quietly passed down *David G. Young v. City of LaFollette*, which changed the face of labor and employment litigation in Tennessee. In *Young*, the Court held, among other things, that "there is no constitutional right to trial by jury for TPPA [Tennessee Public Protection Act] claims and that there is no statutory right to trial by jury for TPPA claims filed in circuit court."

Background of the TPPA

Tennessee law has long recognized a common law claim for retaliatory discharge, where an employer terminates an employee for reporting illegal, or what the employee believed to be illegal, activity or for refusing to participate in these activities (often called "whistleblowing"). In 1990, however, the Tennessee legislature created the TPPA, a statutory retaliatory discharge claim for employees terminated "solely for refusing to participate in, or for refusing to remain silent about illegal activities."¹ In passing the TPPA, the Tennessee legislature gave the state its very own whistleblower protection statute, incentivizing employees to report the boss when, for example, he or she suspiciously trades some stock before a big company acquisition. Last year, on July 1, Governor Bill Haslam signed into law legislation² that significantly amended the TPPA in a fashion favorable to employers. Most notably, the amendment eliminated Tennessee's common law claim for retaliatory discharge. The TPPA requires an employee to prove that his or her whistleblowing served as the "sole reason" for the employee's termination. The common law claim, on the other hand, only required that the employee's whistleblowing be a "substantial factor" in the employee's termination, a much easier burden to prove. Therefore, as a result of this amendment, plaintiff employees face a more difficult battle when attempting to survive an employer's summary judgment motion.

The History of *Young*

Factually, *Young* involved the troubled career of the plaintiff, David Young, who was employed as the city administrator for the City of LaFollette. During his four years as administrator, Young was subject to controversy when a clerk for the City, Ms. Lynda White, reported to the Mayor that Young had sexually harassed her. Expecting to be fired soon after, Young filed suit against the City in Circuit Court alleging anticipatory and actual breach of his employment contract and common law retaliatory discharge. After his official termination, Young amended his complaint to include a statutory retaliatory discharge claim under the TPPA and demanded a jury trial. Once the motion filing smoke cleared, Young's only remaining claim was his TPPA claim, and the City refocused its efforts on rebutting Young's right to a jury trial, filing a motion to strike Young's jury demand. The trial court determined that Young was entitled to jury on his TPPA claim but provided no legal support. The trial court did, however, grant an interlocutory appeal on the jury issue to the Court of Appeals, which reversed the trial court's decision and declined Young the right to a jury trial. Finally, the Tennessee Supreme Court granted Young's Rule 11 appeal, bringing us to this article.

The Court's Rationale

The Court first shot down Young's argument that he had a constitutional right to a jury trial on his TPPA claim according to article I, section 6 of the Tennessee Constitution. The Court reasoned that the constitutional right

to a jury did not apply to statutorily created remedies. Second, the Court tackled the TPPA's curiously ambiguous language, as the statute neither provides for nor prohibits a right to a jury trial. Ultimately, the Court decided to punt the ball on the issue, reasoning that by neglecting to expressly provide for a right to jury trial, "the [Tennessee] Legislature exercised its authority to effectively preclude the right to a jury trial, at least with respect to TPPA claims brought in circuit court."

Conclusion: *Young's* Impact

Simply put, employers should be pleased with this ruling. Statistically, judges, not juries, are an employer's best friends in the courtroom. In front of a jury, defendant employers won a modest 52.4 percent of jury trials in employment discrimination cases nation-wide, virtually the same as their overall win percentage (48.7 percent) in all civil jury trials. When facing a judge instead of a jury, however, **employers won a whopping 74 percent** of their employment discrimination cases. There is no doubt that the *Young* holding forces more bench trials in retaliatory discharge lawsuits. Consequently, employers should benefit by avoiding unpredictable juries with emotions on their sleeves and dollar signs in their eyes.

¹ Tenn. Code Ann. § 50-1-304(a).

² Public Chapter 95.