

PUBLICATION

Baker Donelson Partners with SHRM Tennessee to Advocate On Employer's Behalf before the Supreme Court of Tennessee

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Baker Donelson, through its association with the Tennessee Society for Human Resource Management (TN SHRM), recently filed a brief as *amicus curiae* in a case pending before the Supreme Court of Tennessee that could have important implications for employers.

The case, *Webb v. Nashville Habitat for Humanity*, presents a troubling issue for Tennessee employers, primarily because it follows the Court's recent decisions in *Hannan v. Alltel Publishing Co.*, and *Gossett v. Tractor Supply Co., Inc.* In both of those decisions, the Court departed from well-established standards under federal law that have traditionally governed when summary judgment should be granted (*Hannan*), and what framework should be used by state courts evaluating summary judgments in retaliation cases (*Gossett*). In *Webb*, the employee, along with a group of employee-side employment lawyers as *amicus curiae* on behalf of employees, argues that the Supreme Court should further depart from federal standards. These parties assert that the Court should remove from current law the requirement that plaintiffs be able to establish at least factual allegations when they file a lawsuit that, if found to be true, would support a viable claim.

The plaintiff in *Webb* argues instead that potential plaintiffs should be able to file a lawsuit and then, through discovery, determine if there is factual support for the claim asserted. If such a standard were to be adopted, it could mean that an employer facing a lawsuit has to pay a lawyer and defend itself, even against the most frivolous of claims, and that the lawyer and the client have to go through the often very expensive discovery process before they can test the merits of these claims. This would not necessarily be the situation under current law, as the employer and its counsel could move for a preliminary dismissal via a motion to dismiss, arguing that the plaintiff fails, in the language of the procedural rules, to "state a claim upon which relief can be granted." In the absence of factual support for the claim presented, such a motion would normally be granted. If the Court adopts the position urged by the plaintiff in *Webb*, however, the ability to prevail on such a motion to dismiss may become only academic, as a plaintiff could be required only to allege that he/she believed he/she was the subject of discrimination, retaliation, or other actionable conduct, and the case would proceed to discovery.

Baker Donelson was approached by the Tennessee SHRM chapters in late 2010 and, after considering the importance of the issues presented in the *Webb* case and the need for vocal representation of the interests of employers statewide, the Firm agreed to represent the groups on a *pro bono* basis. On February 23, 2011, lead attorneys Jonathan C. Hancock, Legal and Legislative Chair for SHRM-Memphis since 2004 and current Legislative Director for the Tennessee State Council, and Whitney M. Harmon, Co-Legal and Legislative Chair for SHRM-Memphis since 2008, filed the Brief of *Amicus Curiae* Tennessee SHRM State Council, SHRM-Memphis, SHRM Volunteer Chapter #272, SHRM Chattanooga, Tennessee Valley Human Resources Association, Middle Tennessee SHRM, and Upper Cumberland SHRM. The matter is currently pending before the Court and a decision is expected in the near future.

At the national level, SHRM is the largest association devoted solely to human resource management, and its membership currently exceeds 250,000 human resources professionals. The Tennessee State Council, together with the 12 regional chapters across Tennessee, boasts a membership in excess of 3,500, and these

chapters provide their members and the human resources community with educational and support opportunities and resources as well as a legal and legislative voice on important issues impacting the workplace. Baker Donelson maintains a close partnership with SHRM affiliates across Tennessee, with its attorneys serving in leadership roles including Chapter President in Knoxville, Legal and Legislative Board Chairs in Memphis, and Legal and Legislative Director for the Tennessee SHRM State Council.