

Court Upholds Termination of Employment Following the Probationary Period

Company A hired B as a swimming instructor at the swimming pool operated by Company A and entered into an employment agreement providing that (i) a three-month probationary period would begin on the date of hire, and (ii) B would be employed as a regular employee if the probationary performance evaluation was “Average” or higher. Company A’s personnel regulations and guidelines further provided that newly hired employees would be subject to a three-month probationary period and that an employee could be dismissed if any evaluator rated the employee as “Unsatisfactory” in one or more evaluation categories.

In B’s probationary performance evaluation, the first evaluator rated B as “Excellent” in three of the five evaluation categories and “Good” in the remaining two. The second evaluator, however, rated B as “Unsatisfactory” in all five categories and specifically noted concerns regarding B’s class leading attitude, attitude at work, and ability to build relationships of trust within the organization. Based on the evaluation results, Company A notified B that B’s employment would be terminated.

B filed a petition for relief with the Labor Relations Commission, alleging that the termination constituted an unfair dismissal. B’s application was rejected at both the Regional Labor Relations Commission and the National Labor Relations Commission. B subsequently filed an administrative lawsuit against the Chairperson of the National Labor Relations Commission seeking revocation of the re-examination decision, and Company A joined the administrative lawsuit as an intervenor on the defendant’s side.

Representing Company A, Shin & Kim demonstrated, with supporting evidence, that (i) the “probationary period” provided for in the employment agreement was, in substance, a “trial period” during which the company assessed B’s job suitability before deciding whether to proceed with permanent employment, and (ii) B had serious issues with his work attitude, was disrespectful toward supervisors, looked down on contractual cleaning workers and made inappropriate remarks during meetings with supervisors. Shin & Kim further demonstrated that these circumstances constituted reasonable grounds for refusing permanent employment because they could undermine the development of relationships of trust and cooperation within the organization.

The court accepted all of Shin & Kim’s arguments and dismissed the plaintiff’s claim. It held that the “probationary period” in this case was, in substance, a “trial period” and that Company A had reasonable grounds to terminate its employment relationship with B.

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