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COMMENTS

MOORE V. WARR ACRES: EXPANSION OF OKLAHOMA'S PUBLIC POLICY EXCEPTION TO THE AT-WILL EMPLOYMENT DOCTRINE

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I. INTRODUCTION

Oklahoma courts have long upheld the at-will employment doctrine in an effort to preserve the right to freely form and sever employment relationships.¹ However, conflicts between societal concerns and employers' wide discretion to discharge employees have resulted in the expansion of the common-law public policy exception to the at-will employment doctrine, particularly in cases involving public health.²

Most recently in *Moore v. Warr Acres Nursing Center*,³ the Oklahoma

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1. See *Burk v. K-Mart Corp.*, 1989 OK 22, ¶ 5, 770 P.2d 24, 26 (citing *Hinson v. Cameron*, 1987 OK 49, n.6, 742 P.2d 549, 552 n.6; *Pierce v. Franklin Elect. Co.*, 1987 OK 34, n.4, 737 P.2d 921, 923 n.4; *Singh v. Cities Serv. Oil Co.*, 1976 OK 123, ¶ 5, 554 P.2d 1367, 1369; *Foster v. Atlas Life Ins. Co.*, 1931 OK 617, ¶ 11, 6 P.2d 805, 808), *superseded in part by statute*, OKLA. STAT. tit. 25, § 1350(A) (2011 & Supp. I 2016).

2. See *Moore v. Warr Acres Nursing Ctr., L.L.C.*, 2016 OK 28, ¶¶ 1, 23, 376 P.3d 894, 895, 900; *Silver v. CPC-Sherwood Manor, Inc.*, 2004 OK 1, ¶¶ 6-7, 84 P.3d 728, 730.

3. *Moore*, 2016 OK 28, 376 P.3d 894.

Supreme Court expanded the public policy exception by determining that administrative regulations can set public policy.⁴ Before this case, only “constitutional, statutory or decisional law” could set public policy.⁵ The court sought to preserve the at-will employment doctrine while also expanding the public policy exception beyond what the court had previously considered.⁶ Under *Moore*, the basis for a clear mandate of Oklahoma public policy can be found in administrative law, in addition to statutory, constitutional, or decisional law.⁷ However, the parameters of the *Moore* court’s expansion of the public policy exception are unclear, leaving room for either a broad or narrow interpretation.

This Case Comment discusses the history of the at-will employment doctrine, the origin and evolution of the public policy limitation, and *Moore*’s effect on the public policy exception. Finally, it discusses how the expansion of the exception may be interpreted in future cases and how the court’s broad guidelines may complicate future wrongful-termination litigation brought under the public policy exception.

II. HISTORY

A. *The At-Will Employment Doctrine*

In his 1877 treatise, H. G. Wood first asserted that an “indefinite hiring is prima facie a hiring at will” unless parties agree otherwise.⁸ Most states adopted some form of Wood’s rule, which developed into the at-will employment doctrine.⁹ Though “inconsistent with the traditional freedom

4. *Id.* ¶ 30, 376 P.3d at 905.

5. *Burk*, 1989 OK 22, ¶ 17, 770 P.2d at 28; *see also* *Darrow v. Integris Health, Inc.*, 2008 OK 1, ¶ 13, 176 P.3d 1204, 1212 (“Only a specific Oklahoma court decision, state legislative or constitutional provision, or a provision in the federal constitution that prescribes a norm of conduct for the state can serve as a source of Oklahoma’s public policy.”).

6. *Moore*, 2016 OK 28, ¶¶ 20–21, 376 P.3d at 900 (finding that in addition to state’s constitutional, statutory, or decisional law, “the regulations approved by Congress and the Oklahoma Legislature” can set public policy); *but see* *Gilmore v. Enogex, Inc.*, 1994 OK 76, ¶ 11 & n.19, 878 P.2d 360, 364 & n.19 (finding that “only . . . state constitutional, statutory or decisional law” can set public policy).

7. *Moore*, 2016 OK 28, ¶ 30, 376 P.3d at 905.

8. Harry F. Tepker, Jr., *Oklahoma’s At-Will Rule: Heeding the Warnings of America’s Evolving Employment Law?*, 39 OKLA. L. REV. 373, 379–80 (1986) (quoting H. WOOD, A TREATISE ON THE LAW OF MASTER AND SERVANT § 134 (Albany, John D. Parsons, Jr., Publisher 1877)).

9. *Id.* at 380.

of contract principal that parties should be permitted to design their own legal relationships,”¹⁰ courts began using the doctrine to promote laissez-faire capitalism and freedom of enterprise.¹¹ This led to the harsh form of the at-will employment doctrine that most jurisdictions uphold today.¹² Oklahoma, like most states, recognizes and upholds the at-will employment doctrine.¹³ The modern statement of the at-will rule is: “As a general rule, an employer may discharge an at-will employee at any time and for any reason, or for no reason at all.”¹⁴ Oklahoma courts use a similarly worded rule: “[A]n employer may [terminate] an employee for good cause, for no cause or even for cause morally wrong, without being . . . guilty of legal wrong.”¹⁵

To mitigate the harsh results that the doctrine can have on employees, courts and legislatures began creating narrowly defined exclusions to the at-will employment doctrine.¹⁶ Several courts have adopted a public policy exception, which prevents an employer from terminating an employee for reasons that violate a “clear mandate of public policy.”¹⁷

B. Origin of the Public Policy Exception

Most states that recognize the at-will rule have created some form of

10. *Id.*

11. *See* *Burk v. K-Mart Corp.*, 1989 OK 22, ¶ 5, 770 P.2d 24, 26 (citing *Parnar v. Americana Hotels, Inc.*, 652 P.2d 625, 628 (Haw. 1982); Jay M. Feinman, *The Development of the Employment At Will Rule*, 20 AM. J. LEGAL HIST. 118, 118 (1976); Lawrence E. Blades, *Employment at Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power*, 67 COLUM. L. REV. 1404, 1410 (1967)), *superseded in part by statute*, OKLA. STAT. tit. 25, § 1350(A) (2011 & Supp. I 2016); Note, *Implied Contract Rights to Job Security*, 26 STAN. L. REV. 335, 342–43 (1974); Joseph DeGiuseppe Jr., *The Effect of the Employment-At-Will Rule on Employee Rights to Job Security and Fringe Benefits*, 10 FORDHAM URB. L.J. 1, 7 (1981).

12. *See* *Tepker*, *supra* note 8, at 380–81.

13. *Burk*, 1989 OK 22, ¶ 5, 770 P.2d at 26; *cf.* 3C M. THOMAS ARNOLD & H. WAYNE COOPER, VERNON’S OKLAHOMA FORMS 2D, BUSINESS ORGANIZATIONS § 14.04 (2001) (listing Oklahoma’s exceptions to the at-will employment doctrine).

14. 19 WILLISTON ON CONTRACTS § 54:39 (4th ed. 2001), Westlaw (database updated 2016) (footnotes omitted).

15. *Burk*, 1989 OK 22, ¶ 5, 770 P.2d at 26 (citing *Hillesland v. Fed. Land Bank Ass’n*, 407 N.W.2d 206, 211 (N.D. 1987)).

16. *Id.* ¶ 6, 770 P.2d at 26.

17. *Id.* ¶ 17, 770 P.2d at 28; *see also* *Parnar v. Americana Hotels, Inc.*, 652 P.2d 625, 631 (Haw. 1982); *Palmateer v. Int’l Harvester Co.*, 421 N.E.2d 876, 878 (Ill. 1981); *Thompson v. St. Regis Paper Co.*, 685 P.2d 1081, 1089 (Wash. 1984); *Tepker*, *supra* note 8, at 397.

the public policy exception based in either contract or tort law.¹⁸ The Oklahoma Supreme Court first acknowledged the public policy exception in the 1987 case *Hinson v. Cameron*.¹⁹ After recognizing public policy exceptions implemented in other jurisdictions, the *Hinson* court considered applying an exception.²⁰ But the court concluded that the employee did not have a potential wrongful-termination claim under this theory because the termination did not violate an important public policy.²¹ Two years later, Oklahoma officially adopted the public policy exception to the at-will employment rule in the landmark case of *Burk v. K-Mart Corp.*²²

In *Burk*, the court was presented with a certified question of whether Oklahoma law “implied [an] obligation of good faith” in employment contracts.²³ The court held that Oklahoma does not recognize an implied obligation of good faith in employment contracts.²⁴ The court declined to create a cause of action for wrongful termination based in contract law; however, the court recognized a cause of action based in tort law.²⁵ The court stated, “[T]he circumstances which present an actionable tort claim under Oklahoma law is where an employee is discharged for refusing to act in violation of an established and well-defined public policy or for performing an act consistent with a clear and compelling public policy.”²⁶ *Burk* created a new cause of action for wrongful termination based in tort law, since known as a *Burk*-tort action.²⁷

While recognizing a new exception to the at-will employment rule, the *Burk* court cautioned that the exception applied only to a “narrow class of cases” and “must be tightly circumscribed.”²⁸ In *Burk*, the court limited the basis for public policy to “constitutional, statutory, or decisional

18. RESTATEMENT OF EMP’T LAW § 5.01 cmt. a. (AM. LAW INST. 2015).

19. *Hinson v. Cameron*, 1987 OK 49, ¶ 10, 742 P.2d 549, 552.

20. *Id.* ¶¶ 7, 10–11, 742 P.2d at 552–53 (finding no public policy exception where an employee claimed her supervisor falsified an assignment sheet to reflect an assignment the employee never received, and the employee was subsequently fired for failing to follow orders).

21. *Id.*

22. *Burk*, 1989 OK 22, ¶ 22, 770 P.2d at 29.

23. *Id.* ¶ 3, 770 P.2d at 25.

24. *Id.* ¶ 4, 770 P.2d at 26.

25. *Id.* ¶¶ 12, 17, 770 P.2d at 27–28.

26. *Id.* ¶ 19, 770 P.2d at 29.

27. *See Saint v. Data Exch., Inc.*, 2006 OK 59, ¶¶ 3–6, 145 P.3d 1037, 1038–39.

28. *Burk*, 1989 OK 22, ¶¶ 17–18, 770 P.2d at 28–29.

law.”²⁹ Additionally, as previously stated, a *Burk*-tort action exists only when the termination violates a “clear and compelling public policy.”³⁰

Although *Burk* declared minimal guidelines for what constitutes an action for wrongful termination in violation of public policy, there is a continuing effort by courts to determine the full scope of the public policy exception.³¹

C. Defining the Scope of the Public Policy Exception

The continuing effort to define the scope of Oklahoma’s public policy exception to the at-will doctrine has been ongoing for decades.³² The court in *Vasek v. Board of County Commissioners of Noble County*,³³ which the *Moore* opinion cited,³⁴ summarily described the commonly recognized elements of a *Burk*-tort claim that have developed in the caselaw since *Burk*:

A viable *Burk* claim must allege (1) an actual or constructive discharge (2) of an at-will employee (3) in significant part for a reason that violates an Oklahoma public policy goal (4) that is found in Oklahoma’s constitutional, statutory, or decisional law or in a federal constitutional provision that prescribes a norm of conduct for Oklahoma and (5) no statutory remedy exists that is adequate to protect the Oklahoma policy goal.³⁵

Since *Burk*, several courts have expanded parameters of the *Burk*-tort action while keeping the cause of action’s scope “tightly circumscribed.”³⁶ For example, the court in *Collier v. Insignia Financial Group*³⁷ determined that an employee may bring a *Burk*-tort claim regardless of whether the

29. *Id.* ¶ 17, 770 P.2d at 28.

30. *Id.* ¶ 19, 770 P.2d at 29.

31. See ARNOLD & COOPER, *supra* note 13, § 14.04(b) & n.7; see also discussion *infra* Section II.C.

32. See ARNOLD & COOPER, *supra* note 13, § 14.04(b) & n.7.

33. *Vasek v. Bd. of Cty. Comm’rs*, 2008 OK 35, 186 P.3d 928.

34. *Moore v. Warr Acres Nursing Ctr., L.L.C.*, 2016 OK 28, ¶ 19, 376 P.3d 894, 899–900 (citing *Vasek*, 2008 OK 35, ¶ 14, 186 P.3d at 932).

35. *Vasek*, 2008 OK 35, ¶ 14, 186 P.3d at 932.

36. *Burk v. K-Mart Corp.*, 1989 OK 22, ¶ 18, 770 P.2d 24, 28–29, *superseded in part by statute*, OKLA. STAT. tit. 25, § 1350(A) (2011 & Supp. I 2016).

37. *Collier v. Insignia Fin. Grp.*, 1999 OK 49, 981 P.2d 321.

discharge was actual or constructive.³⁸ In *Collier*, the court was responding to a certified question from a federal court in a case where an employee alleged her supervisors constructively discharged her for reporting sexual harassment.³⁹ The court ultimately determined that constructive discharge would not preclude a *Burk*-tort action.⁴⁰

Another notable case is *Silver v. CPC-Sherwood Manor, Inc.*,⁴¹ in which a nursing home terminated a cook for leaving work because he developed diarrhea and was vomiting due to an intestinal infection.⁴² In *Silver*, the employee sued for wrongful termination, alleging the termination was in violation of a clear public policy set by the Oklahoma Department of Health's administrative rules.⁴³ The trial court dismissed the action, agreeing with the nursing home that administrative rules cannot form the basis of public policy, and the Oklahoma Court of Civil Appeals affirmed.⁴⁴ The Oklahoma Supreme Court granted certiorari and reversed, holding that the language of a public-health-and-safety statute prohibiting those with communicable diseases from preparing food clearly stated a well-established public policy.⁴⁵

Although there have been numerous cases expanding the public policy exception since *Burk*, including cases that protect workers from being fired due to a protected status such as race, gender, or age,⁴⁶ many cases have sought to limit the scope of the public policy exception.⁴⁷ For example, in *Hayes v. Eateries, Inc.*,⁴⁸ the court stated in *dicta* that "[t]he identified public policy [in a *Burk*-tort claim] 'must truly be public, rather than merely private or proprietary.'"⁴⁹ The *Hayes* court held that discharge of

38. *Id.* ¶ 15, 981 P.2d at 326.

39. *Id.* ¶¶ 1–2, 981 P.2d at 322.

40. *Id.* ¶ 10, 981 P.2d at 324.

41. *Silver v. CPC-Sherwood Manor, Inc.*, 2004 OK 1, 84 P.3d 728.

42. *Id.* ¶ 2, 84 P.3d at 729.

43. *Id.* ¶ 3, 84 P.3d at 729.

44. *Id.*

45. *Id.* ¶¶ 3, 7, at 729–30 (citing OKLA. STAT. tit. 63, §§ 1–1102(a), (c), 1–1109(a)(4) (2001)).

46. *Saint v. Data Exch., Inc.*, 2006 OK 59, ¶ 6, 145 P.3d 1037, 1039 (holding that a *Burk*-tort action could be brought for age discrimination); *Tate v. Browning-Ferris, Inc.*, 1992 OK 72, ¶ 19, 833 P.2d 1218, 1230 (holding that a *Burk*-tort could be asserted for racially motivated termination).

47. *See infra* notes 49–75 and accompanying text.

48. *Hayes v. Eateries, Inc.*, 1995 OK 108, 905 P.2d 778.

49. David W. Lee, *Three Steps Forward in the Continuing Search for the Parameters of the Public Policy Exception to the At-Will Employment Doctrine in Oklahoma*: Wilburn v. Mid-South Health Development, Inc., *Barker v. State Insurance Fund*, and *Crain v.*

an employee for reporting theft and embezzlement of money from the employer was not a violation of public policy because reporting internal theft involves a private rather than public interest.⁵⁰

In *Clinton v. Logan County Election Board*⁵¹ and *List v. Anchor Paint Manufacturing Co.*,⁵² the supreme court determined that an existing federal or state statutory remedy would preclude a claim alleging wrongful discharge in violation of public policy.⁵³ The court reasoned in *Clinton* that an existing statutory remedy already deters employers from terminating employees for reasons contrary to public policy.⁵⁴ However, *Saint v. Data Exchange, Inc.*,⁵⁵ as recognized in *Kruchowski v. Weyerhaeuser Co.*,⁵⁶ implicitly overruled *Clinton* and *List*.⁵⁷ The *Kruchowski* court held that an existing remedy would not preclude a *Burk*-tort action when the remedy available to the plaintiff was “not commensurate with” remedies available to the same or similar class of employment-discrimination victims.⁵⁸

In a similar case, *Vasek*, the court held that a potential § 1983 federal remedy did not preclude a *Burk* claim.⁵⁹ In *Vasek*, the plaintiff claimed she was fired from her job as a court clerk for reporting flooding and mold in

National American Insurance Co., 29 OKLA. CITY U. L. REV. 95, 98 (2004) (quoting *Barker v. State Ins. Fund*, 2001 OK 94, ¶ 14, 40 P.3d 463, 468).

50. *Hayes*, 1995 OK 108, ¶¶ 23–24, 905 P.2d at 786–87.

51. *Clinton v. Logan Cty. Election Bd.*, 2001 OK 52, 29 P.3d 543, *overruled in part by Kruchowski v. Weyerhaeuser Co.*, 2008 OK 105, ¶ 25, 202 P.3d 144, 152.

52. *List v. Anchor Paint Mfg. Co.*, 1996 OK 1, 910 P.2d 1011, *overruled by Kruchowski*, 2008 OK 105, ¶ 23, 202 P.3d at 151.

53. *Clinton*, 2001 OK 52, ¶¶ 3, 11–12, 29 P.3d at 544, 546 (holding that an employee claiming she was fired because she was pregnant could not pursue a *Burk* remedy because there was an “adequate federal statutory remedy”). “[T]he existence of a federal statutory remedy that is sufficient to protect Oklahoma public policy precludes the creation of an independent common law claim based on a public policy exception to the employment-at-will doctrine.” *Id.* ¶ 9, 29 P.3d at 546; *accord List*, 1996 OK 1, ¶¶ 12, 18, 910 P.2d at 1014–15 (rejecting a wrongful-discharge claim for age discrimination when an adequate state statutory remedy existed).

54. *Clinton*, 2001 OK 52, ¶ 9, 29 P.3d at 546.

55. *Saint v. Data Exch., Inc.*, 2006 OK 59, 145 P.3d 1037.

56. *Kruchowski*, 2008 OK 105, 202 P.3d 144.

57. *Id.* ¶¶ 21–25, 202 P.3d at 151–52 (discussing *Saint*, 2006 OK 59, 145 P.3d 1037).

58. *Id.* ¶ 32, 202 P.3d at 153.

59. *Vasek v. Bd. of Cty. Comm’rs*, 2008 OK 35, ¶ 27, 186 P.3d 928, 934 (“The question is not, and never has been, merely whether a discharged at-will employee could possibly pursue a statutory remedy. The question is whether ‘a statutory remedy exists that is sufficient to protect the Oklahoma public policy goal.’” (quoting *McCrary v. Okla. Dept. of Pub. Safety*, 2005 OK 67, ¶ 9, 122 P.3d 473, 475)).

the jail of the courthouse.⁶⁰ The court stated that a statutory remedy would only preclude a *Burk* claim if the existing remedy “sufficiently protects” an Oklahoma public policy interest, and the court held that § 1983 did not “sufficiently protect[]” the public interest of reporting unsafe building conditions.⁶¹

Additionally, the Tenth Circuit, in *McKenzie v. Renberg’s Inc.*,⁶² determined that a federal statute alone could not establish a clear mandate of Oklahoma public policy.⁶³ A year later, the Oklahoma Supreme Court, in *Griffin v. Mullinix*,⁶⁴ recognized and upheld the Tenth Circuit’s holding in *McKenzie*.⁶⁵ In *Griffin*, the plaintiff brought a *Burk*-tort action based on the federal Occupational Safety and Health Administration Act (OSHA) and the Oklahoma Occupational Health and Safety Standards Act.⁶⁶ The court held neither act alone articulated public policy nor did “the two in conjunction with one another” apply to private employers.⁶⁷ Under the holding in *Griffin*, only state law could determine the public policy of Oklahoma.⁶⁸

Furthermore, the court in *Wheless v. Willard Grain & Feed, Inc.*⁶⁹ held that in order to maintain a *Burk* claim the employee must have been fired for either an “act in violation of an established public policy, []or for acting consistent with an established public policy.”⁷⁰ In *Wheless*, the employer fired an employee for “falsifying environmental regulatory reports” at the direction of management.⁷¹ The court held the employee was not able to maintain a wrongful termination action because the firing did not result

60. *Id.* ¶¶ 2, 7, 186 P.3d at 930–31.

61. *Id.* ¶¶ 27–28, 186 P.3d at 934 (quoting *McCrary*, 2005 OK 67, ¶ 9, 122 P.3d at 475).

62. *McKenzie v. Renberg’s Inc.*, 94 F.3d 1478 (10th Cir. 1996).

63. *See id.* at 1487–88 (affirming the district court’s dismissal of a *Burk* claim where an employee relied on federal Fair Labor Standards Act to support his claim but was unable to “point[] . . . to any specific Oklahoma statute establishing a public policy”).

64. *Griffin v. Mullinix*, 1997 OK 120, 947 P.2d 177.

65. *Id.* ¶ 17, 947 P.2d at 179; *see also* *Darrow v. Integris Health, Inc.*, 2008 OK 1, ¶¶ 12–13, 176 P.3d 1204, 1211–12.

66. *Griffin*, 1997 OK 120, ¶ 2, 947 P.2d at 177 (first citing Occupational Safety and Health Act of 1970, 29 U.S.C. § 654(a)(1) (1994); then citing Oklahoma Occupational Health and Safety Standards Act, OKLA. STAT. tit. 40, §§ 401–435 (1991)).

67. *Id.* ¶¶ 2, 22–23, 947 P.2d at 177–78, 180.

68. *Id.* ¶ 17, 947 P.2d at 179.

69. *Wheless v. Willard Grain & Feed, Inc.*, 1998 OK 84, 964 P.2d 204.

70. *Id.* ¶ 7, 964 P.2d at 206.

71. *Id.*

from acting *in accord* with public policy.⁷²

Most recently, the Oklahoma Supreme Court has expanded the sources of public policy in *Burk* to also include regulatory provisions.⁷³ The *Burk* opinion itself first mentioned regulatory provisions as potential sources of a clear mandate of public policy.⁷⁴ The *Burk* court, in describing how the public policy exception should be “tightly circumscribed,” quoted from the Supreme Court of Hawaii’s decision in *Parnar v. Americana Hotels, Inc.*:

In determining whether a clear mandate of public policy is violated, courts should inquire whether the employer’s conduct contravenes the letter or purpose of a constitutional, statutory, or *regulatory* provision or scheme. Prior judicial decisions may also establish the relevant public policy. However, courts should proceed cautiously if called upon to declare public policy absent some prior legislative or judicial expression on the subject.⁷⁵

It is unclear whether the *Burk* court deliberately omitted *Parnar*’s regulatory-provision language from its opinion. The uncertainty lingered until 2016, when the *Moore* court finally provided a clear answer.⁷⁶

III. *MOORE V. WARR ACRES NURSING CENTER*

A. *Facts*

Donald Moore worked as a licensed practical nurse at Warr Acres Nursing Center in Oklahoma City, Oklahoma, from January 17, 2008, until his termination on December 3, 2008.⁷⁷ On November 25, 2008,

72. *See id.*

73. *Moore v. Warr Acres Nursing Ctr., L.L.C.*, 2016 OK 28, ¶ 30, 376 P.3d 894, 894.

74. *Burk v. K-Mart Corp.*, 1989 OK 22, ¶ 18, 770 P.2d 24, 28–29, *superseded in part by statute*, OKLA. STAT. tit. 25, § 1350(A) (2011 & Supp. I 2016).

75. *Id.* ¶ 18, 770 P.2d at 29 (emphasis added) (quoting *Parnar v. Americana Hotels, Inc.*, 652 P.2d 625, 631 (Haw. 1982)).

76. *Moore*, 2016 OK 28, ¶ 30, 376 P.3d at 905 (holding that regulations in conjuncture with statutory and constitutional provisions articulate a public policy against firing a nurse for being absent from work due to having the flu); *see also* *Gilmore v. Enogex, Inc.*, 1994 OK 76, n.19, 878 P.2d 360, 364–65 n.19 (“When attempting to find and articulate a clear mandate of public policy, we look to the letter or purpose of a constitutional, statutory or *regulatory* provision.” (emphasis added)).

77. *Moore*, 2016 OK 28, ¶¶ 3, 5, 376 P.3d at 895–96; *see also* First Amended Petition

Moore became ill and was vomiting while working at the nursing center.⁷⁸ The assistant director of nursing advised him to go home.⁷⁹ Moore then left work and proceeded directly to his physician, who diagnosed him with influenza.⁸⁰ His physician provided him with a written doctor's note advising him to take three days off work.⁸¹ That same day, Moore informed his on-call scheduler, per the guidelines in his employee handbook, and told the scheduler about his illness and the doctor's note.⁸² The following day, Moore spoke with the director of nursing about his illness and the doctor's note.⁸³ Although not originally scheduled to work that coming weekend, Moore "offered to work" those days if "he had recovered."⁸⁴

On November 30, 2008, Moore arrived at work with his doctor's note.⁸⁵ At that time, Moore "discovered [his name] had been crossed off the . . . schedule for the week of December 1, 2008."⁸⁶ On December 3, 2008, the nursing center terminated Moore.⁸⁷

B. Procedural History

On April 15, 2010, Moore sued his former employer, Warr Acres Nursing Center, for wrongful termination in the District Court of Oklahoma County.⁸⁸ The petition alleged Warr Acres Nursing Center terminated Moore in violation of the Administrative Workers' Compensation Act (AWCA) and clear and compelling Oklahoma public policy, citing numerous statutes and regulations governing nursing homes as well as the AWCA.⁸⁹

at 1, *Moore v. Warr Acres Nursing Ctr., L.L.C.*, 2016 OK 28, 376 P.3d 894 (No. CJ-2010-3177).

78. *Moore*, 2016 OK 28, ¶ 3, 376 P.3d at 895.

79. *Id.*

80. *Id.* ¶¶ 1, 3, 376 P.3d at 895.

81. *Id.* ¶ 3, 376 P.3d at 895.

82. *Id.* ¶ 4, 376 P.3d at 896.

83. *Id.*; *see also* First Amended Petition, *supra* note 77, at 2.

84. *Moore*, 2016 OK 28, ¶ 4, 376 P.3d at 896.

85. *Id.* ¶ 5, 376 P.3d at 896.

86. *Id.*

87. *Id.*

88. *Id.* ¶¶ 0, 5, 376 P.3d at 895–96; *see also* First Amended Petition, *supra* note 77, at 1.

89. *Moore*, 2016 OK 28, ¶ 5, 376 P.3d at 896; *see also* First Amended Petition, *supra* note 77, at 2–3 (citing 42 U.S.C. § 1396(r) (2012); Oklahoma Nursing Practicing Act, OKLA. STAT. tit. 59, §§ 567.1–.19 (2011 & Supp. I 2015); Oklahoma Public Health Code,

The nursing center filed a motion to dismiss for failure to state a claim on May 6, 2010, arguing that Moore did not sufficiently plead a *Burk*-tort action.⁹⁰ The trial court agreed that Moore failed to state a *Burk*-tort claim and granted the motion to dismiss on June 18, 2010.⁹¹ On December 8, 2010, the Oklahoma Court of Civil Appeals reversed.⁹² The appellate court agreed with the trial court that Moore did not have a cause of action under the AWCA.⁹³ However, the appellate court remanded with instructions to allow Moore to amend his petition in order to pursue a *Burk*-tort action.⁹⁴

In his amended petition filed March 14, 2011, Moore referenced various state statutes and federal and state regulations claiming those laws established a clear mandate of public policy in support of his *Burk*-tort action.⁹⁵ The employer again filed a motion to dismiss, which the trial court again granted.⁹⁶ On April 10, 2012, the Oklahoma Court of Civil Appeals found that the alleged facts were sufficient to withstand a motion to dismiss and remanded the case.⁹⁷

On remand, Warr Acres Nursing Center filed a motion for summary judgment, claiming that Moore had not stated a *Burk*-tort claim.⁹⁸ In its supporting brief, the nursing center pointed out that Moore had not referenced any “statute or constitutional provision” that articulated a clear public policy.⁹⁹ The nursing center cited several cases to support its

OKLA. STAT. tit. 63, §§ 1–101 to –114.2 (2011 & Supp. II 2015); Nursing Home Care Act, OKLA. STAT. tit. 63, §§ 1–1900.1 to –1951 (2011 & Supp. II 2015); Administrative Workers’ Compensation Act, OKLA. STAT. tit. 85A, §§ 1–125 (Supp. II 2015); *Burk v. K-Mart Corp.*, 1989 OK 22, ¶ 17, 770 P.2d 24, 28, *superseded in part by statute*, OKLA. STAT. tit. 25, § 1350(A) (2011 & Supp. I 2016); OKLA. ADMIN. CODE § 310:675-1-1 to 675-21-5 (2011).

90. *Moore*, 2016 OK 28, ¶ 6, 376 P.3d at 896.

91. *Id.*

92. *Id.* ¶ 7, 376 P.3d at 896; *see also Moore v. Warr Acres Nursing Ctr., L.L.C. (Moore I)*, No. 108595, slip op. at 10 (Okla. Civ. App. Dec. 8, 2010).

93. *Moore I*, slip op. at 6.

94. *Id.* slip op. at 9.

95. *Moore*, 2016 OK 28, ¶¶ 7–9, 376 P.3d at 896; *see also* First Amended Petition, *supra* note 77, at 4. In addition to the statutes and regulations cited in Moore’s original petition, he cited the following in his First Amended Petition: Residential Care Act, OKLA. STAT. tit. 63, §§ 1–819 to –840 (2011); OKLA. ADMIN. CODE § 310:675-7-17.1 (2011); *Darrow v. Integris Health, Inc.*, 2008 OK 1, 176 P.3d 1204; *Silver v. CPC-Sherwood Manor, Inc.*, 2004 OK 1, 84 P.3d 728; 42 C.F.R. § 483.65 (2008).

96. *Moore*, 2016 OK 28, ¶ 10, 376 P.3d at 897.

97. *Id.* ¶ 11, 376 P.3d at 897; *see also Moore v. Warr Acres Nursing Ctr., L.L.C. (Moore II)*, No. 109573, slip op. at 7 (Okla. Civ. App. Apr. 10, 2012).

98. *Moore*, 2016 OK 28, ¶ 12, 376 P.3d at 897.

99. Motion for Summary Judgment and Brief in Support at 5, *Moore*, 2016 OK 28, 376

assertion that caselaw clearly states that only Oklahoma “constitutional, statutory, or decisional law, or [the] federal constitution” can mandate public policy.¹⁰⁰ For that reason, the nursing center argued, Moore had failed to state a proper *Burk* claim.¹⁰¹ On June 13, 2014, the trial court granted summary judgment in favor of the employer and found that there was no public policy that prevented the employer from firing Moore at will.¹⁰² Moore appealed, and the Oklahoma Supreme Court granted certiorari.¹⁰³

C. The Opinion

In its opinion filed March 8, 2016, the Oklahoma Supreme Court reversed the trial court’s summary judgment and remanded for trial.¹⁰⁴ In the majority opinion written by Justice Kauger, the court held that a clear and compelling public policy exception to the at-will employment doctrine existed in state statutes and state and federal regulations, and that public policy primarily rooted in regulatory law prohibited firing a nurse “solely for not working while infected with influenza.”¹⁰⁵

Moore is the first case to expand Oklahoma’s public policy exception by determining that both statutory and administrative law can set public policy.¹⁰⁶ In its reasoning, the court pointed out that administrative code is a valid source of public policy under constitutional, statutory, and case law:

[The Oklahoma Constitution] vests the Legislature the power to establish agencies such as the Oklahoma Health Department and to designate agency functions. The Legislature delegates rule making authority to facilitate administration of legislative policy and such delegation is intended to eliminate the necessity of establishing every administrative aspect of general public policy

P.3d 894 (No. CJ-2010-3177).

100. *Id.* at 4–5 (first citing *Darrow*, 2008 OK 1, 176 P.3d 1204; then citing *Vasek v. Bd. of Cty. Comm’rs*, 2008 OK 35, 186 P.3d 928; and then citing *Reynolds v. Advance Alarms, Inc.*, 2009 OK 97, 232 P.3d 907).

101. *Id.* at 5.

102. *Moore*, 2016 OK 28, ¶ 12, 376 P.3d at 897.

103. *Id.*; see also Certificate of Appeal, *Moore*, 2016 OK 28, 376 P.3d 894 (No. SD-113098).

104. *Moore*, 2016 OK 28, ¶¶ 30–31, 376 P.3d at 905.

105. *Id.* ¶ 30, 376 P.3d at 905.

106. See *id.* ¶¶ 23, 30, 376 P.3d at 900, 905.

by legislation. Administrative agencies create rules which are binding similar to a statute and are only created within legislatively-granted authority and approval. Such rules are necessary in order to make a statutory scheme fully operative.¹⁰⁷

The court then went on to discuss decisional law that supported its reasoning.¹⁰⁸ Another Oklahoma Supreme Court case the court discussed, *Estes v. ConocoPhillips Co.*,¹⁰⁹ recognized that “the Legislature may delegate rulemaking authority to agencies, boards, and commissions,” and such rules are “valid expressions of lawmaking powers having the force and effect of law.”¹¹⁰

Various regulations and statutes, the court explained, impliedly outline a larger public policy that would prevent an employer from firing a nurse for missing work due to the flu.¹¹¹ Specifically, the court cited the Oklahoma Department of Health regulations as supporting evidence of such a public policy.¹¹² The court primarily relied on various statutes, such as the Nursing Home Care Act, the Residential Care Act, and the Oklahoma Nursing Practice Act, which collectively support a public policy that discourages personnel and nursing staff from exposing patients and nursing home residents to communicable diseases.¹¹³ For further support, the court also referred to the federal regulations that provide general guidelines for infection control and minimum standards for long-term care facilities.¹¹⁴

The court throughout its opinion cited *Silver*.¹¹⁵ The majority opinion noted the similarities between *Moore* and *Silver* and determined that both cases involved the same public policy set forth in statutes that “prohibit[] nursing home food . . . prepared under conditions whereby it may have been unwholesome or injurious to health.”¹¹⁶

For the reasons previously stated, the court held that Oklahoma public

107. *Id.* ¶ 23, 376 P.3d at 900 (footnotes omitted).

108. *Id.* ¶¶ 19–22, 376 P.3d at 899, 900.

109. *Estes v. ConocoPhillips Co.*, 2008 OK 21, 184 P.3d 518.

110. *Moore*, 2016 OK 28, ¶ 24, 376 P.3d at 901 (quoting *Estes*, 2008 OK 21, ¶ 10, 184 P.3d at 523).

111. *Id.* ¶¶ 25–28, 376 P.3d at 901–04.

112. *Id.* ¶ 25, 376 P.3d at 901–02.

113. *Id.*

114. *Id.* ¶ 26, 376 P.3d at 903.

115. *Id.* ¶¶ 21–22, 27–28, 376 P.3d at 900, 904.

116. *Id.* ¶ 27, 376 P.3d at 904.

policy prohibits terminating a nurse solely for missing work due to the flu.¹¹⁷ The majority remanded the case for trial to determine whether the employee's termination was for missing work due to influenza or for other reasons relating to the employee's prior job performance and disciplinary record.¹¹⁸ If the jury found the termination was due to job performance, it would bar Moore's *Burk*-tort claim.¹¹⁹

D. Justice Winchester's Dissent

In the dissent, Justice Winchester, with whom Justice Taylor joined, argued that expanding the public policy exception compromises the integrity of the at-will employment doctrine.¹²⁰ Justice Winchester pointed out that the decision expands the public policy exception in two significant ways: First, the decision expands *Silver* by adding administrative rules and regulations to sources of public policy,¹²¹ and second, both state and federal regulations can now set Oklahoma public policy.¹²²

Justice Winchester disagreed with the court's reasoning that administrative regulations, like statutes, have the full force of law under the Oklahoma Constitution.¹²³ As Justice Winchester pointed out, article V, section 1 of the Oklahoma Constitution requires that "[t]he Legislative authority of the State shall be vested in a Legislature consisting of a Senate and House of Representatives."¹²⁴ Under the nondelegation doctrine, this constitutional provision prohibits "the delegation of legislative power" to administrative agencies.¹²⁵ In support of this premise, Winchester cited

117. *Id.* ¶ 30, 376 P.3d at 905.

118. *Id.* ¶ 14, 376 P.3d at 898 ("The alleged facts show that this at-will employee could certainly have been legally terminated by the employer. Given the employee's disciplinary record at the nursing center, failure to follow supervisor's instructions, spreading rumors, failure to complete tasks, and rebellious behavior, the termination likely was neither pretextual, post hoc rationalization, nor a violation of public policy.").

119. *See id.* ¶ 14, 376 P.3d at 898–99.

120. *Id.* ¶ 2, 376 P.3d at 905 (Winchester, J., dissenting).

121. *Id.* ¶¶ 2–8, 376 P.3d at 905–06.

122. *Id.* ¶ 3, 376 P.3d at 905.

123. *Id.* ¶ 8, 376 P.3d at 906.

124. *Id.* ¶ 10 (quoting OKLA. CONST. art. V, § 1).

125. *Id.* ¶ 10, 376 P.3d at 906; *see also* Democratic Party of Okla. v. Estep, 1982 OK 106, ¶ 16, 652 P.2d 271, 277–78 ("While the constitutional doctrine of nondelegation has been somewhat relaxed in several jurisdictions, its force in this state remains undiminished. The doctrine teaches that the legislature must establish its policies and set out definite standards for the exercise of an agency's rulemaking power." (footnotes omitted)).

Democratic Party of Oklahoma v. Estep,¹²⁶ which held that absent an explicit legislative policy, rule-making agencies could not declare public policy guidelines.¹²⁷ Thus, the majority's holding is inconsistent with *Estep*, Winchester concluded.¹²⁸

Additionally, Justice Winchester condemned the majority's interpretation of *Silver*.¹²⁹ Winchester stated that the *Silver* court, unlike the majority in *Moore*, did not use administrative regulations as the basis for public policy prohibiting nursing-home staff from working while infected with a communicable disease.¹³⁰ Rather, the court in *Silver* merely concluded that it was not necessary to consider administrative codes since statutory law alone sufficiently articulated such a public policy.¹³¹

Furthermore, Winchester voiced concern that these modifications to the public policy exception will affect the well-being of businesses, compromising the integrity of the at-will doctrine.¹³² Winchester warned that expanding the potential sources of public policy to regulations imposed an unfair "burden on employers," forcing them to consider all possible rules and regulations before terminating an employee.¹³³ This in turn, he argued, compromised the integrity of the long-standing at-will doctrine itself.¹³⁴

IV. ANALYSIS

While the court's conclusion is correct and its reasoning sound, the opinion failed to clearly articulate the newly modified scope of the public policy exception, and it neglected to provide clear guidance on how to apply *Moore* in future cases. The holding can be interpreted and applied either narrowly or broadly.

The Oklahoma Supreme Court previously limited the public policy

126. *Estep*, 1982 OK 106, 652 P.2d 271.

127. *Moore*, 2016 OK 28, ¶ 11, 376 P.3d at 906-07 (citing *Estep*, 1982 OK 106, ¶ 16 & n.23, 652 P.2d at 277 & n.23).

128. *Id.* ¶ 11, 376 P.3d at 906-07.

129. *Id.* ¶¶ 4-5, 376 P.3d at 906.

130. *Id.* ¶¶ 5-6, 376 P.3d at 906 (discussing *Silver v. CPC-Sherwood Manor, Inc.*, 2004 OK 1, ¶¶ 6-7, 84 P.3d 728, 730).

131. *Id.* ¶ 6, 376 P.3d at 906 (citing *Silver*, 2004 OK 1, ¶ 6, 84 P.3d at 730).

132. *See id.* ¶¶ 2, 13, 376 P.3d at 905, 907.

133. *Id.*

134. *See id.* "The majority opinion clearly impacts and restricts employment-at-will." *Id.* ¶ 2, 376 P.3d at 905.

exception to certain sources.¹³⁵ The court in *Darrow* set clear limits on sources of public policy: “A federal statute, standing alone, does not articulate Oklahoma’s public policy. Only a specific Oklahoma court decision, state legislative or constitutional provision, or a provision in the federal constitution that prescribes a norm of conduct for the state can serve as a source of Oklahoma’s public policy.”¹³⁶ By contrast, the *Moore* opinion broadly expanded the public policy exception.¹³⁷ The court concluded that administrative regulations can establish a mandate of public policy,¹³⁸ but it is not clear which regulations can set public policy, nor is it clear whether administrative regulations standing alone are sufficient. Additionally, it is not clear if public policy sources include federal regulations.¹³⁹

However, based on the *Moore* court’s reasoning and the prior holding in *Darrow*, it does not necessarily follow that federal regulations are now potential sources of public policy.¹⁴⁰ *Darrow*, in explaining why a federal statute alone cannot serve as a source of public policy, stated “that it is neither the court nor [the United States] Congress but the Oklahoma legislature that is primarily vested with the responsibility of declaring the public policy of this state.”¹⁴¹ The *Darrow* court reaffirmed that the Oklahoma legislature has the sole authority to set Oklahoma policy.¹⁴² Thus, the only way to reconcile *Darrow* and *Moore* is to assume that the *Moore* court did not intend for administrative law to establish a clear mandate of public policy independent of a statutory or constitutional provision.¹⁴³ A sensible interpretation of *Moore* is that administrative law can be a source of public policy if those regulations further a public policy the Oklahoma legislature has *already established*. Another narrow reading of *Moore* is that a single administrative provision *alone* cannot create a

135. See *supra* notes 53–67 and accompanying text; *Darrow v. Integris Health, Inc.*, 2008 OK 1, ¶ 13, 176 P.3d 1204, 1212.

136. *Darrow*, 2008 OK 1, ¶ 13, 176 P.3d at 1212 (emphasis omitted).

137. *Moore*, 2016 OK 28, ¶ 13, 376 P.3d at 907.

138. *Id.* ¶ 30, 376 P.3d at 905 (majority opinion).

139. *Id.* ¶ 3, 376 P.3d at 905 (Winchester, J., dissenting). The *Moore* majority stated, “The public policy behind precluding a nursing home employee from working while infected with influenza is manifested in the Oklahoma Constitution, the Oklahoma statutes, *Oklahoma and Federal regulations* and caselaw.” *Id.* ¶ 1, 376 P.3d at 895 (majority opinion) (emphasis added).

140. See *id.* ¶ 30, 376 P.3d at 905; *Darrow*, 2008 OK 1, ¶ 13, 176 P.3d at 1212.

141. *Darrow*, 2008 OK 1, ¶ 13, 176 P.3d at 1212.

142. See *id.*

143. *Id.*; see also *Moore*, 2016 OK 28, ¶ 30, 376 P.3d at 905.

clear and compelling public policy, but a *series* of administrative public-health directives within the administrative code could. Thus, there are a multitude of ways that the *Moore* holding could be read to favor employer interests.

Furthermore, this interpretation is supported by the fact that *Moore*'s majority did not rely solely on administrative sources of law to determine whether a sufficiently important public policy existed.¹⁴⁴ Rather, the court also considered statutory law, such as the Nursing Home Care Act, the Residential Care Act, the Nursing Practice Act, and general public-health-code provisions prohibiting adulterated food.¹⁴⁵ In *Moore*, the court appeared to use the Oklahoma Department of Health regulations merely as supporting evidence of an existing public policy.¹⁴⁶ As the *Moore* court aptly noted, these statutes clearly demonstrate that the legislature intended to set a public policy that long-term care facilities, such as nursing homes, who house and care for a vulnerable segment of our population, must make efforts to prevent exposing their patients to communicable infections.¹⁴⁷ Therefore, administrative regulations that further this goal are not creating policy per se, but merely setting in place standards and guidelines that further the legislature's already-established public policy goal.

The *Moore* court's expansion of the public policy exception primarily affects employers at the pretrial stage, making it easier for an employee to survive an employer's motion for summary judgment or motion to dismiss.¹⁴⁸ In his dissent, Winchester argued the court's holding does not adequately balance the interests of the public and those of employers because employers will now have to consult administrative regulations prior to terminating an at-will employee.¹⁴⁹ However, the employee must show "that the conduct that caused the discharge was consistent with a clear and compelling public policy," only then does "the burden of proof . . . shift[] to the defendant employer to prove that the dismissal was for just cause."¹⁵⁰ Further, "[u]nless the employee can identify a specific declaration of public policy, no cause of action has been stated. The determination of whether the public policy . . . is a well-defined and

144. *See Moore*, 2016 OK 28, ¶¶ 25, 28, 376 P.3d at 901–02, 904.

145. *Id.*

146. *See id.* ¶ 25, 376 P.3d at 901–02.

147. *See id.* ¶ 1, 376 P.3d at 895.

148. *See Brockmeyer v. Dun & Bradstreet*, 335 N.W.2d 834, 840–41 (Wis. 1983).

149. *Moore*, 2016 OK 28, ¶ 2, 376 P.3d at 905 (Winchester, J., dissenting).

150. *Brockmeyer*, 335 N.W.2d at 841.

fundamental one is an issue of law and is to be made by the trial court.”¹⁵¹ Thus, broadening the public policy exception simply gives more employees a foot in the door in wrongful-termination litigation, even if the actual cause for termination is found to be a just cause.

Another reason that employers will not be unduly burdened is that the court’s holding need not be read so narrowly as to impose a duty on employers to exhaustively “search through” and consider all potentially relevant administrative regulations prior to terminating an employee.¹⁵² Although an employer will now have to use more careful consideration before firing an employee, the decision in *Moore* imposed no new regulations on employers.¹⁵³ Rather, *Moore* creates liability for terminating someone in violation of health and safety regulations already applicable to nursing homes.¹⁵⁴ Furthermore, because the public policy exception must relate to a public good, rather than a personal or moral interest,¹⁵⁵ only general “health, safety, or welfare” regulations would be applicable under the expanded exception.¹⁵⁶ Rules that are purely administrative and do not relate to the public welfare, thus, would infrequently, if at all, be applied in a wrongful-discharge case.¹⁵⁷ If the *Moore* holding is read narrowly to mean that administrative law can be a source of public policy only if it furthers a public policy the legislature established, employers would be more likely to be on notice of what violates public policy. Thus, in a practical sense, the *Moore* holding does not require employers to be any more aware of regulatory law than before.

However, Justice Winchester is correct that policymaking authority resides in the legislature and that an administrative regulation that sets public policy absent statutory authority would violate the nondelegation doctrine.¹⁵⁸ While administrative agencies can enact regulations that expand or refine public policy, an agency can do so only if the legislature

151. Tepker, *supra* note 8, at 401 n.195 (quoting *Brockmeyer*, 335 N.W.2d at 840–41).

152. *Moore*, 2016 OK 28, ¶ 13, 376 P.3d at 907.

153. *See id.* 2016 OK 28, 376 P.3d 894 (majority opinion).

154. *Id.* ¶ 30, 376 P.3d at 905.

155. *Hayes v. Eateries, Inc.*, 1995 OK 108, ¶¶ 23–24, 905 P.2d 778, 786.

156. Lee, *supra* note 49, at 111 (“The discharge of an employee for reporting embezzlement of private property, either internally or to law enforcement, does not constitute a violation of public policy.”).

157. *See id.*; RESTATEMENT OF EMP’T LAW § 5.03 cmt. e, illus. 4 (AM. LAW INST. 2015) (“Regulations that focus on largely administrative issues generally do not support public-policy claims.”).

158. *Moore*, 2016 OK 28, ¶¶ 9–10, 376 P.3d at 906 (Winchester, J., dissenting); *see also* *Griffin v. Mullinix*, 1997 OK 120, ¶ 18, 947 P.2d 177, 179.

validly delegates policymaking authority to the agency first.¹⁵⁹ Oklahoma caselaw supports such a delegation.¹⁶⁰ Indeed, *Democratic Party of Oklahoma v. Estep*, the case cited in Justice Winchester's dissent, is consistent with *Burk*'s holding.¹⁶¹ In *Estep*, the court did not hold that the legislature could not delegate the power to set policy.¹⁶² Rather, the court held that *absent a policy declared by the legislature* an agency could not enact or implement rules that further a policy goal.¹⁶³ Because the administrative rules cited in *Moore* rest on a previously existing public policy set forth in statutory enactments, those administrative rules are valid policy-setting rules under *Estep*.¹⁶⁴ Thus, under prior Oklahoma case and statutory law, policymaking authority set forth in administrative law is not clearly a violation of the nondelegation doctrine.

Consequently, the *Moore* court's determination that regulations, in conjunction with statutes or constitutional provisions, may establish a clear mandate of public policy is both sound and reasonable.

V. CONCLUSION

Redefining the scope of public policy exception will help further mitigate the harsh effects of the at-will employment doctrine. However, *Moore* provides inadequate guidance to lower courts and private employers on how to apply its holding. The holding in *Moore* can be construed and applied in a number of ways, which inevitably will require further clarification in future cases. The number of wrongful-termination suits may increase now that potential sources of public policy include administrative law. Though *Moore* answered the question of whether administrative law can be used to support a *Burk* claim, the full scope of the public policy exception is far from settled.

However, *Moore* seems to strike a balance between the different

159. *Moore*, 2016 OK 28, ¶¶ 8–9, 376 P.3d at 906; *see also* Administrative Procedures Act, OKLA. STAT. tit. 75, § 250.2(A)–(B) (2011 & Supp. II 2016).

160. *See Griffin*, 1997 OK 120, ¶ 18, 947 P.2d at 179; *Democratic Party of Okla. v. Estep*, 1982 OK 106, ¶ 16, 652 P.2d 271, 277–78.

161. *Moore*, 2016 OK 28, ¶ 11, 376 P.3d at 906–07 (citing *Estep*, 1982 OK 106, n.23, 652 P.2d at 277 n.23).

162. *See Estep*, 1982 OK 106, ¶ 4, 652 P.2d at 273.

163. *Id.* ¶¶ 4, 16, 652 P.2d at 273, 277–78. “The [non-delegation] doctrine teaches that the legislature must establish its policies and set out definite standards for the exercise of an agency’s rulemaking power.” *Id.* ¶ 16, 652 P.2d at 277–78.

164. *See id.* ¶¶ 16, 20, 652 P.2d at 277–78; *Moore*, 2016 OK 28, ¶ 30, 376 P.3d at 905 (majority opinion); *Darrow v. Integris Health, Inc.*, 2008 OK 1, ¶ 13, 176 P.3d 1204, 1212.

camp on either side of the at-will doctrine: those who are concerned about public welfare and those who are concerned about burdening businesses and interfering with the decisional autonomy of employers. Regardless, *Moore*'s holding upholds the spirit of *Burk*, which recognized that the interests of employers to fire employees at will are still paramount and are only overridden when those interests are contrary to a compelling public policy.¹⁶⁵ Thus, although the decision in *Moore* has advanced the public policy exception, the at-will employment doctrine as a whole remains undiminished.

165. See *Burk v. K-Mart Corp.*, 1989 OK 22, ¶ 16, 770 P.2d 24, 28 (“[J]urisdictions which have adopted the public policy exception have done so to accommodate the competing interests of society, the employee and the employer.”), *superseded in part by statute*, OKLA. STAT. tit. 25, § 1350(A) (2011 & Supp. I 2016).