The Expansion of the Public Policy Exception to the At-Will Termination Rule after Tate v. Browning-Ferris, Inc.

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NOTES AND COMMENTS

THE EXPANSION OF THE PUBLIC POLICY EXCEPTION TO THE AT-WILL TERMINATION RULE AFTER TATE v. BROWNING-FERRIS, INC.

I. INTRODUCTION

Although the scope of available remedies for claims of racially motivated wrongful discharge has expanded over the years, it continues to differ somewhat among the states. Extensive legislation and case law, both federal and state, addressing the subject of equal rights in the workplace has added to the variation in remedies available to the aggrieved employee. In Oklahoma, there are several available remedies for a racially discriminatory wrongful discharge claim. The

1. Compare Lui v. Intercontinental Hotels Corp. (Hawaii), 634 F. Supp. 684, 685, 688 (D. Haw. 1986) (holding that because the public policy claim was created by statute, the statutory remedies are exclusive); Hamilton v. First Baptist Elderly Hous. Found., 436 N.W.2d 336, 341 (Iowa 1989) (holding civil rights statute preempted all common law actions that were based on discrimination); with Broomfield v. Lundell, 767 P.2d 697, 703 (Ariz. Ct. App. 1988) (Arizona Civil Rights Act does not preempt tort claim for wrongful discharge); Goldsborough v. Eagle Crest Partners, Ltd., 805 P.2d 723, 724-25 (Or. Ct. App. 1991) (Oregon statute does not preclude recovery under tort claim for wrongful discharge).


3. Both statutory and common law remedies exist:

It shall be an unlawful employment practice for an employer-
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.
Oklahoma Supreme Court, in *Tate v. Browning-Ferris, Inc.*,\(^4\) has thoroughly examined these remedies and discussed their relationship to each other. The thrust of the decision is that a discharge in retaliation for filing a racial discrimination complaint offends public policy, thereby allowing suit in tort under the public policy exception to the at-will termination rule in Oklahoma.\(^5\) Furthermore, the Court implied that this public policy exception may be expanded to include other forms of discrimination as well.

This case note will focus upon the Court’s recognition of the tort for racially discriminatory wrongful discharge as a public policy exception to the at-will termination rule. It will also discuss the implications of the *Tate* opinion for employees and employers, the possibility of further expansion of the exception to include handicap, sexual, and other forms of discrimination, and how the Model Employment Termination Act would affect the situation presented in *Tate*. Finally, this note will examine the potential problems that may arise from this decision, such as forum shopping for available remedies and preventing cumulative remedies.

II. STATEMENT OF THE CASE

A. Facts

Plaintiff, Walter Tate, a black employee, initially filed a racial discrimination complaint with the Equal Employment Opportunity Commission (EEOC) claiming his employer, defendant Browning-Ferris, Inc. (BFI), had committed discriminatory employment practices.\(^6\) In

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A. It is a discriminatory practice for an employer:
   1. To fail or refuse to hire, to discharge, or otherwise to discriminate against an individual with respect to compensation or the terms, conditions, privileges or responsibilities of employment, because of race, color, religion, sex, national origin, age, or handicap unless such action is related to a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business or enterprise; or
   2. To limit, segregate, or classify an employee in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee, because of race, color, religion, sex, national origin, age, or handicap unless such action is related to a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business or enterprise.


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retaliation for his EEOC complaint, BFI further discriminated against Mr. Tate and, ultimately, fired him. Mr. Tate filed a second EEOC complaint for his termination. When the EEOC failed to settle the complaints, Mr. Tate filed an action in federal court with a pendent state law claim. He alleged BFI's conduct violated Title VII of the Civil Rights Act (CRA) of 1964. He sought various remedies as provided under the statute. He also asserted a public policy tort claim under Oklahoma law, and sought compensatory and punitive damages for BFI's "racially discriminatory and retaliatory treatment."

B. Procedural History

Mr. Tate's suit was filed in the United States District Court for the Western District of Oklahoma. However, prior to handing down a decision and pursuant to the Uniform Certification of Questions of Law Act, the District Court certified a question to the Oklahoma Supreme Court. The Court asked,

Where an at-will employee terminated by a private employer files suit alleging facts that, if true, violate state and federal statutes providing remedies for employment discrimination, can the employee-plaintiff state a tort cause of action based on the same facts, pursuant to the public policy exception to the at-will termination rule, recently recognized by the Oklahoma Supreme Court in Burk v. K-Mart [Corp.], 770 P.2d 24 (Okla. 1989)?

The resolution of this question about the public policy exception to the at-will termination rule is the focus of both the Tate opinion and this case note.

7. Id. at 1221-22.
8. Id. at 1221.
10. Id. at 1222 n.9.
11. Id. Under Title VII, Tate sought reinstatement, including back pay and benefits, together with all retroactive seniority, promotions and benefits, or alternatively, front pay and attorney's fees. See 42 U.S.C. §§ 2000e-5, -6, -8, -17. For further discussion on these remedies, see infra note 39.
12. Tate, 833 P.2d at 1222 n.10. The Court noted that Tate indirectly sought damages for emotional distress. However, it only addressed the state law claim for the tort of wrongful discharge.
15. Tate, 833 P.2d at 1220.
III. LAW PRIOR TO THE CASE

A. The Public Policy Exception to the At-will Termination Rule

1. Its Origination in Burk v. K-Mart Corporation

The key to the Court's holding in Tate was its decision to include racial discrimination as a public policy exception to the at-will termination rule. Understanding the Court's expansion of this policy in Tate requires an examination of its origin in Burk v. K-Mart Corp.16 In Burk the Oklahoma Supreme Court first recognized a tort action under the public policy exception to the at-will termination rule.17 The Court held a tort claim is actionable under this exception when the 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."18

The Court's adoption of this public policy exception was based partially upon its decision in Hinson v. Cameron.19 In Hinson, the Oklahoma Supreme Court discussed the five "nationally recognized" areas where an employee's discharge is actionable on public policy grounds. These areas include an employee's: (1) refusal to participate in illegal activity, (2) engagement in an important public obligation such as jury duty, (3) exercise of a legal right or interest, (4) exposure of wrongdoing by his or her employer, and (5) performance of an act in accordance with public policy or refusal to act in contravention of public policy.20 Additionally, the discharge must be shown to be coupled with bad faith, malice or retaliation.21 The Burk Court focused upon this fifth area when it recognized a tort action under the public policy exception.

The Tate Court determined the basic theory behind the at-will doctrine is that either the employer or the employee may terminate

17. Id. at 28.
18. Id. at 29. To determine a "clear mandate of public policy," a court must examine relevant constitutional, statutory, and regulatory provisions, as well as past judicial expressions of public policy. Id. (quoting Parnar v. Americana Hotels, Inc., 652 P.2d 625, 631 (Haw. 1982)). An employer's attempt to avoid paying an employee wages previously earned violates such public policy. Id.

19. 742 P.2d 549 (Okla. 1987).
20. Id. at 552-53.
21. Id. at 553.
the employment at any time without cause. Decisions by the Court prior to Burk reflect a narrow approach to the rights of employees and agents to maintain their positions against their employers' and principals' will in at-will termination contracts. This narrow approach was expanded by the theory that when an employer terminates an at-will employee in contravention of specific public policy, that employee should be protected. By 1989, the Oklahoma Supreme Court was convinced it should increase the protection of employees' rights in the at-will termination context by recognizing a public policy exception to the general rule.

The Burk Court reinforced its adoption of the public policy exception by stating that tort claims can arise in the context of employment contracts. Because an action in tort can originate from contract performance, damages may be recoverable for the tort despite the fact that the contract created the parties' relationship. An employer's termination of an at-will employee which clearly violates public policy is a tortious breach of those contractual obligations. The Court adopted this theory in Burk and expanded it in Tate to include racial discrimination.

2. Expansion of the Public Policy Exception to Include Racial Discrimination

The Tate Court's decision to include racial discrimination in the public policy exception involved extensive analysis of case law of other jurisdictions. This analysis determined whether, and if so, when other courts allowed common law actions for discrimination to coexist with statutory actions. The Court noted that other jurisdictions have

22. Tate, 833 P.2d at 1223-25.
23. Although Burk was the first case to clearly state Oklahoma's adoption of the public policy exception, earlier case law hints at the Court's recognition of the important role filled by implied covenants in employment at-will situations. See, e.g., Hall v. Farmers Ins. Exch., 713 P.2d 1027, 1029-30 (Okla. 1985) (holding that a covenant of good faith not to resort wrongfully to termination at-will clause was implied in written agency contract); but see Hinson, 742 P.2d at 554 (recognizing an implied covenant of good faith and fair dealing exists in some jurisdictions and situations whether or not a formal employment contract exists, but not adopting this covenant in Oklahoma). It should be noted that Burk explicitly held regarding an employment at-will contract, "there is no implied covenant of good faith and fair dealing that governs the employer's decision to terminate ...." Burk v. K-Mart Corp., 770 P.2d 24, 27 (Okla. 1989).
25. Id. at 28.
26. Id.
27. Id.
taken one of three positions. First, anti-discrimination statutes provide exclusive remedies by preempting all common law actions. Second, when existent, anti-discrimination statutes provide exclusive remedies, and common law remedies are permitted only when public policy would otherwise go unvindicated. Third, common law remedies supplement statutory remedies and serve to deter "entrenched existing illegal employment practices." The Tate Court adopted the third theory by declaring that common law public policy remedies should coexist with statutory remedies unless the state legislature expressed a clear intention that the statutory remedies be exclusive. Furthermore, racial discrimination "clearly contravenes the public policy" of the Oklahoma anti-discrimination statute. The Court reasoned that in the absence of "textually demonstrable legislative intent to make the [statutory] remedies ... exclusive," a plaintiff may still sue for redress under the public policy exception. Based on this reasoning, the Court recognized Mr. Tate's common law public policy claim.

B. The Court's Decision in Tate

The Tate decision had three major points. First, the Court held that Title VII of the 1964 CRA does not preempt state law. Second, the Court held the Oklahoma anti-discrimination act does not provide an exclusive remedy, rather it coexists with other statutes and available common law remedies. Third, and most importantly, the Court held that racially motivated wrongful discharges offend public policy, and therefore are tortious breaches of contractual employment obligations.

30. E.g., Crews v. Memorex Corp., 588 F. Supp. 27 (D. Mass. 1984). The Crews Court noted that theoretically, common law remedies should be available "to protect a statutory right when no other civil remedy is available." Id. at 29.
32. Tate, 833 P.2d at 1225-26. Generally, "the common law remains in full force in this state, unless a statute explicitly provides to the contrary." Id. at 1225.
33. Id.
34. Id. at 1230.
35. Id.
37. Id. at 1227-30.
38. Id. at 1225.
IV. THE EFFECT OF TATE ON THE LAW IN OKLAHOMA

A. What Tate Means for Employees

The Tate decision will most certainly have a significant impact upon future employment discrimination in Oklahoma. Tate has opened the doors for broader recovery of damages by the aggrieved employee. Tate allows recovery of damages under federal and state statutes, as well as the common law. If the employee properly files his or her federal claims, he or she can potentially recover not only compensatory and punitive damages, but also back pay or front pay, attorney's fees, and equitable relief. The aggrieved employee also has available the remedies provided in the Oklahoma anti-discrimination act. These remedies include attorney's fees, equitable relief, and back pay. Finally, the court's expansion of the public policy exception provides aggrieved employees with a third available remedy: common law compensatory and punitive damages. However, Oklahoma law clearly limits the plaintiff's damages to one complete recovery. The net result of the Tate decision is a wide variety of available remedies in three different areas of the law.

B. What Tate Means for Employers

The greatest effect of Tate upon Oklahoma employers is that they are subject to stricter standards of acceptable behavior in order to prevent greater liability for discriminatory practices. Private employers are now subject to a "legal environment of zero tolerance." This expanded liability is a result of extensive legislation in the context of employment discrimination, as well as the expansion of the public policy exception. Employer's liability for unlawful employment practices includes, as already stated, the traditional damages available under the 1964 CRA, as well as compensatory and punitive damages under supplemental civil rights legislation and the public policy exception.


The *Tate* decision should be a clear warning to private employers that there is little room for questionable behavior towards their employees, and that any discriminatory practices could result in significant money judgments against the employer.

C. **Further Expansion of the Public Policy Exception to Include Other Forms of Discrimination**

1. **Handicap Discrimination**

Handicap discrimination by an employer is expressly prohibited by statute in Oklahoma. The Oklahoma anti-discrimination act provides redress for those employees discriminated against on the basis of their handicap. More importantly, section 1901(a) specifically allows a party dissatisfied with the administrative process to file a private action against the employer. Statutory recognition of handicap discrimination provides the public policy that is effectively an exception to the at-will termination rule. Nevertheless, inclusion of handicap discrimination in the public policy exception doctrine has not been clearly indicated yet by the Oklahoma courts. Inclusion into the public policy exception is the next step for this form of discrimination in order to clarify the rights of the handicapped employee. The statutory recognition of this form of discrimination, as well as the recent inclusion of racial discrimination in the public policy exception, provides a strong argument that handicap discrimination should be included in this public policy exception as well.

2. **Sexual Discrimination**

Based upon the recent expansion of the public policy exception to include one form of highly prevalent discrimination, victims of sexual discrimination should expect to see this form of discrimination included in the public policy exception as well. Recently, the severity

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45. See id. §§ 1501-08.
46. *Id.* § 1901(a). The pertinent part provides:

   If a charge for discrimination in employment on the basis of handicap is filed ... and is not resolved to the satisfaction of the charging party ... the charging party may commence an action for redress against any person who is alleged to have discriminated against the charging party ... .

*Id.*
47. Throughout this section of the note, the use of the term “sexual discrimination” will include the concept of sexual harassment.
and prevalence of sexual discrimination have been increasingly recog-
nized nationally. Sexual discrimination will most likely be included
in the Oklahoma public policy exception because it is prohibited
under the same statute as racial and handicap discrimination and
because no statutory language declares that the statutory remedies are
exclusive. Additionally, other states have allowed common law ac-
tions based upon sexual discrimination.

Sexual discrimination violates a clear mandate of public policy.
The Tate Court found that the legislature’s inclusion of racial discrimi-
nation in the statute amounted to a declaration of public policy. Likewise, inclusion of sexual discrimi-
nation in this statute is a declara-
tion of Oklahoma’s public policy. Thus, the next step is for the courts
to include sexual discrimination in the public policy exception. Fi-
nally, since the Tate Court found that the anti-discrimination statute
does not provide the exclusive remedy for racial discrimination, like-
wise the statute should not be interpreted as providing the exclusive
remedy for sexual discrimination, either.

Case law also favors the expansion of the public policy exception
to include sexual discrimination. Other states have already recog-
nized sexual discrimination as creating a private right of action in tort.
The Oregon Supreme Court has recognized sexual harassment as one
act of sexual discrimination that can result in tortious liability for the
employer. The plaintiff in Holien was a female employee who was

48. See, e.g., Joan Biskupic, Court Tries to Sort Merely Annoying from Clearly Harassing,
Senate Testimony, The Washington Post, Oct. 12, 1993, at A17 (noting that female agent had
testified before a Senate committee about sexual harassment in the bureau); Joan Biskupic, At
the Supreme Court, A New Solicitor General Takes a New Stand, The Washington Post, Oct. 11,
1993, at A13 (noting that the new solicitor will argue that the 1991 federal anti-discrimination
law should be applied retroactively to conduct occurring before its passage); Joan Biskupic, Wo-
men’s Issues Spotlighted by Supreme Court: Harassment, Bias Lead List of Cases as Ginsburg
Joins, The Washington Post, Oct. 4, 1993, at A01 (reporting that the high court’s docket is
dominated by sexual harassment and discrimination suits); Elizabeth Kadetsky, The Million-
Dollar Man, 18 Working Woman 46 (Oct. 1993) (reporting male worker awarded $1.017 mil-
lion in damages in a sexual harassment suit prosecuted against female supervisor); John Green-
harassment suit filed by a high-ranking female corporate executive).

51. Id. at 1230.
52. Holien v. Sears, Roebuck & Co., 689 P.2d 1292, 1309-1300 (Or. 1984) (stating that since
“reinstatement, back pay and injunctions vindicate the rights of the victimized group without
compensating the plaintiff for such personal injuries as anguish, physical symptoms of stress, . . .
[legal as well as equitable remedies are needed to make the plaintiff whole”). Id. at 1303-04.
discharged after resisting sexual advances and harassment by her employer.\textsuperscript{53} The Court held that since the Oregon legislature did not provide an exclusive remedy for discrimination, the Court’s recognition of discriminatory sexual harassment would allow the plaintiff to pursue her common law claim for wrongful discharge.\textsuperscript{54}

New Hampshire has also acknowledged common law actions for wrongful discharge based upon sex. In \textit{Chamberlin v. 101 Realty, Inc.},\textsuperscript{55} the First Circuit Court of Appeals stated New Hampshire law recognizes, “that a sexually-motivated discharge from employment may evidence a discriminatory workplace environment, provided the two are causally connected.”\textsuperscript{56} The Court reiterated that sexual discrimination in the workplace violates New Hampshire public policy, thereby allowing at-will employees to assert wrongful discharge claims.\textsuperscript{57} However, the Court held that although the plaintiff stated a cause of action both under Title VII and the New Hampshire wrongful discharge provisions, she would only be entitled recovery under one.\textsuperscript{58} Recognition by these and other states that sexual discrimination violates public policy is further evidence favoring the expansion of Oklahoma’s public policy exception to include sexual discrimination.

3. Other Forms of Discrimination That Could Be Included in the Public Policy Exception

Not only is there good reason for including handicap and sexual discrimination in the public policy exception, but there is also opportunity for the inclusion of other forms of discrimination as well. The \textit{Tate} decision expounded that a lack of legislative intent in making statutory remedies exclusive will allow an employee to pursue common law remedies under the public policy exception.\textsuperscript{59} Literally interpreted, this statement reveals the Court’s willingness to expand application of the public policy exception to all forms of statutorily

\begin{itemize}
\item \textsuperscript{53} \textit{Id.} at 1294.
\item \textsuperscript{54} \textit{Id.} at 1300.
\item \textsuperscript{55} 915 F.2d 777 (1st Cir. 1990).
\item \textsuperscript{56} \textit{Id.} at 783.
\item \textsuperscript{57} \textit{Id.} at 786.
\item \textsuperscript{58} \textit{Id.}
\item \textsuperscript{59} \textit{Tate v. Browning-Ferris, Inc.}, 833 P.2d 1218, 1230 (Okla. 1992).
\end{itemize}
prohibited discrimination that are not remedy exclusive.\textsuperscript{60} Examination of other state statutes reveals this approach has been accepted by other jurisdictions.\textsuperscript{61}

A prime example of this theory is found in California’s anti-discrimination statutes. A complaint filed under the California Fair Employment Housing Act does not automatically “prejudice” a person’s right to pursue private remedies for employment and housing discrimination of all types.\textsuperscript{62} In Arizona, the statutes regulating discrimination in the workplace are very similar. These statutes allow an aggrieved employee to seek common law as well as statutory remedies against the employer for a wide variety of discriminatory acts.\textsuperscript{63} These rights and remedies are set forth clearly in the statutes by the Arizona legislature, supporting the \textit{Tate} Court’s theory that absent a “textually demonstrable legislative intent” to prevent exclusive remedies, multiple remedies are merely cumulative.\textsuperscript{64}

A third and final example of this theory in practice is found in Michigan. The Elliott-Larsen Civil Rights Act prohibits a variety of discriminatory acts in several settings, specifically allowing private as well as public actions for remedies.\textsuperscript{65} The Michigan Supreme Court has held that according to state discrimination statutes and the state constitution, it is in the interests of public policy to allow cumulative remedies.\textsuperscript{66}

The presence of case law interpreting various state anti-discrimination statutes is a positive sign of support for the \textit{Tate} Court’s theory of allowing statutory and common law remedies to coexist. Because of this widespread support, employees in Oklahoma may remain hopeful that its courts will allow cumulative common law and statutory remedies for all forms of discrimination when there is a lack of “textually demonstrable legislative intent” to make the statutory remedies exclusive.

\textsuperscript{60} It can be argued that all forms of discrimination listed in \textit{OKLA. STAT. tit. 25, § 1302} (1991), might conceivably be included in the public policy exception because: (1) the statute clearly declares those forms of discrimination to be against public policy, and (2) the statute does not provide exclusive remedies.

\textsuperscript{61} \textit{See supra} note 1.

\textsuperscript{62} \textit{CAL. GOV'T CODE} §§ 12964\textsuperscript{-}12984 (West 1992 & Supp. 1993); \textit{see also} \textit{CAL. CONST. art. 1, § 8}.


\textsuperscript{64} \textit{Tate v. Browning-Ferris, Inc.}, 833 P.2d 1218, 1230 (Okla. 1992).


\textsuperscript{66} \textit{Pompey v. General Motors Corp.}, 189 N.W.2d 243 (Mich. 1971).
D. The Model Employment Termination Act

Examination of currently existing employment law in Oklahoma would not be complete without an analysis of the potential effect of the Model Employment Termination Act upon situations such as the one presented in Tate. Though this recent Act has not yet been adopted in any state, it represents a significant effort to simplify and unify a procedure of redress for aggrieved employees who have been wrongfully terminated. Close examination of the Act reveals several ways that it could affect Tate situations if it is accepted and implemented in Oklahoma.

The Act is designed to operate alongside state and federal discriminatory legislation, and it does not preempt recovery under state statutes. However, its method of settling an employee's claim filed with the federal or state commission created to handle this litigation is quite different. Under the Act, Mr. Tate's federal claim could be subject to arbitration. At the conclusion of the arbitration, the arbitrator would make awards for any termination violating the Act. These damage awards for Mr. Tate could include backpay, lump-sum severance, reasonable attorney's fees and costs, and equitable relief. Unlike the 1991 CRA, the arbitrator cannot award Mr. Tate typical tort damages, and the damages awarded under this Act would be subject to reduction for any monetary recovery by him in other forums.

Another pertinent section of the Act addresses the potential for common law actions. The Act generally extinguishes all common law rights, but provides for limited exceptions. According to the Comments to sections 2(d) and 2(e), Mr. Tate's common law tort claim would probably be valid under this Act, thus allowing potential recovery of extensive damages under tort theory. Finally, it should be noted that if Mr. Tate was discharged in retaliation for filing a complaint under this Act, the remedies would be substantial. These damages include punitive damages and reasonable attorney's fees, and the

68. Id. § 2(e).
69. Id. § 6.
70. Id. § 7.
71. Model Act, § 7(b)(1) - (4) and Comment.
72. Id. § 7(d).
73. Id. § 2(e).
74. Id. § 2(d). Mr. Tate's termination is not subject to the exclusionary sections listed within this section.
Act provides for a separate civil action to enforce the liability. Consequently, if this Act was recognized in Oklahoma at the time Mr. Tate filed his claims, the potential for greater recovery would have existed.

E. Potential Problems Arising from Tate

Although the Tate opinion is clearly a formative victory for private employees in Oklahoma who suffer racial discrimination in the workplace, the Court's decision may present some possible problems. One of these is the potential for an employee to engage in forum shopping. This shopping could occur when an employee files multiple related claims in various courts or with different agencies to increase the chances of complete recovery. For example, Mr. Tate could have filed a federal claim, a state claim, a common law tort claim, and a claim under the Model Employment Termination Act, if it was recognized in Oklahoma. Because the burdens of proof would differ among these claims, Mr. Tate would only continue to pursue those claims with the greatest likelihood of success and the largest amount of recovery. However, the administrative and procedural costs of filing all these claims, as well as the time and expense upon the various courts and agencies, would place an unnecessary burden upon these systems if his intentions were not to pursue seriously all his claims. Consequently, the main justification for courts' dislike of forum shopping is the time and expense involved in pursuing multiple claims.

The concern over potential forum shopping is closely related to the problem of double recovery. Whenever there are cumulative remedies available, there is the chance the plaintiff could be awarded damages in excess of one complete recovery. This is clearly contrary to the law in Oklahoma. The availability of statutory and common law damages for Mr. Tate greatly increases the potential for double recovery. However, the Tate Court clearly stated that if multiple remedies could result in excessive damages for a single harm, the trial courts should be able to establish the necessary devices in each case to prevent double recovery. Thus, although the availability of multiple

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75. Id. § 10.
76. See Wikman v. City of Novi, 322 N.W.2d 103, 106, 112 (Mich. 1982) (stating “[t]he proliferation of ... available remedies created problems of forum shopping ...”).
77. See Cotner v. Lon Jacobs Grocery Co., 202 P. 997, 1001-02 (Okla. 1921) (stating there cannot be “two satisfactions of the same debt”).
remedies increases both the chance of forum shopping and the potential for double recovery, the courts must exercise some control to prevent abuse of the system by the plaintiff.

V. CONCLUSION

The Tate decision is another positive step forward by the Court in providing appropriate remedies for employment discrimination. The expansion of the public policy exception to include racial discrimination signifies judicial recognition of the need to ensure the discriminated employee complete recovery. The Court’s decision was a logical expansion of the public policy exception and was certainly prompted by similar policies in other jurisdictions. The impact of this decision allows greater remedies for the employee while at the same time requiring highly stringent standards of acceptable behavior by employers. Hopefully, the Court’s decision in Tate will soon lead to the inclusion of handicap, sexual, and other forms of discrimination within this public policy exception in order to adequately remedy the vast problems of discrimination in society today. Finally, despite the potential problems of forum shopping and cumulative remedies, the Tate decision will certainly have a profound and progressive impact upon employment law in Oklahoma.

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