# Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **7th day of January, 2022** are as follows:

**BY Weimer, C.J.:**

*2021-CC-01601* *JASON HAYES, ET AL. VS. UNIVERSITY HEALTH SHREVEPORT, LLC D/B/A OCHSNER LSU HEALTH SHREVEPORT AND OCHSNER LSU HEALTH SHREVEPORT - ST. MARY MEDICAL CENTER, LLC (Parish of Caddo)*

Reversed; Trial court judgment reinstated.

# SUPREME COURT OF LOUISIANA

**No. 2021-CC-01601**

**JASON HAYES, ET AL.**

**VS.**

**UNIVERSITY HEALTH SHREVEPORT, LLC D/B/A OCHSNER LSU HEALTH SHREVEPORT AND OCHSNER LSU HEALTH SHREVEPORT-ST. MARY MEDICAL CENTER, LLC**

*On Writ of Certiorari to the Court of Appeal, Second Circuit, Parish of Caddo*

**WEIMER, C.J.**

At issue is a COVID-19 vaccine mandate implemented by an employer-healthcare provider. This matter is resolved by the application of the employment-at-will doctrine, which is rooted in Louisiana Civil Code article 2747.[1] This provision has been uniformly held to reflect employment at will—which means an employer is at liberty to dismiss an at-will employee and, reciprocally, the employee is at liberty to leave the employment to seek other opportunities. However, these rights are tempered by federal and state provisions, both statutory and constitutional, but no such exceptions apply here. Employees have no statutory claim under La. R.S. 40:1159.7 because there is no healthcare provider-patient relationship alleged

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[1] Utilizing archaic language, La. C.C. art. 2747 provides: "A man is at liberty to dismiss a hired servant attached to his person or family, without assigning any reason for so doing. The servant is also free to depart without assigning any cause."

Louisiana courts began citing this article in the early 1960s in applying the employment-at-will doctrine. See **Baker v. Union Tank Car Co.**, 140 So.2d 397, 402 (La. App. 1 Cir. 1962). The doctrine was previously jurisprudentially recognized in **Russel v. White Oil Corp.**, 162 La. 9, 110 So. 70 (1926), which cited common law authorities.

here. Employees likewise have no constitutional claim under La. Const. art. I, § 5 because the employer is a private actor, and this constitutional provision only limits governmental actors.[2] Accordingly, the decision of the court of appeal is reversed, and the judgment of the trial court is reinstated.

## FACTS AND PROCEDURAL HISTORY

In the latter part of August 2021,[3] University Health Shreveport, LLC d/b/a Ochsner LSU Health Shreveport and LSU Health-St. Mary Medical Center, LLC (Employer) notified all employees[4] that they were required to be fully vaccinated by October 29, 2021. Employees not vaccinated within the specified time were subject to disciplinary action, including mandatory use of leave time and, ultimately, termination. Employer's policy permitted exemptions to the vaccine requirement for valid religious and medical reasons.

Thereafter, 39 plaintiffs[5] (Employees) filed suit against Employer, challenging the employee vaccine mandate and requesting injunctive and declaratory relief, including a temporary restraining order (TRO).[6] After a hearing, the trial court denied Employees' request for a TRO, and Employer was ordered to show cause on October 19, 2021, why preliminary injunctive relief should not be granted.

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[2] The issue of whether a state actor can implement a similar mandate is not before this court.

[3] At that time, the state had been operating in a declared state of emergency due to COVID-19, a highly contagious virus that spread throughout the world, resulting in economic turmoil, a public health crisis, a substantial burden on the healthcare system, and a significant number of infections and deaths.

[4] The notice was directed to all "physicians, APPs [advanced practice providers,] and all employees, vendors, contracted staff, medical and allied health students, residents, fellows, and agency staff."

[5] Employees alleged in their petition that "33 of the 39 Plaintiffs submitted a request for exemption." They further alleged that "22 exemptions have been granted, two have been denied, and the status of 8 is unknown."

[6] Notably, cases are pending in the federal courts involving vaccine mandates, which present issues of federal law, and do not directly affect the instant case, which is based solely on state law.

In response, Employer filed an exception urging that Employees failed to state a cause of action on the following grounds:[7] (1) the vaccine mandate does not violate a constitutional right to privacy as Employer is a private actor; (2) even assuming a cause of action exists against private actors, Employer's vaccine mandate does not violate any constitutional rights to privacy as this is not a forcible injection case; (3) the vaccine mandate does not violate statutory law; and (4) pursuant to the at-will employment doctrine, Employer can terminate Employees for failing to receive the vaccine. These exceptions were set for hearing on October 19, 2021, with the request for a preliminary injunction.

During the hearing, the trial court observed "the employees and employers employment at-will is just that. [The Employer] can fire them [e]xcept if it's based on a protected class such as sex or race." Because Employees "have a right to refuse healthcare," Employees argued that "on the face of the petition, [Employees have] clearly pled facts that, if true, would make this an unreasonable policy," urging that "[t]his case involves the threat of a firing in violation of the law." Employer urged this case involves the relationship between an employer and employee, and the threat of being discharged from at-will employment does not constitute duress. At the close of arguments, the trial court noted that this issue presents itself in an "employer/employee context" and found:

> [In] an at-will state, [employees] do have a choice. They can choose to get [vaccinated] or not ... . Yes, I understand there are repercussions if you don't get [vaccinated]. Like in the **Tate** case.[8]... Employers have this right, just like employers have the right if somebody wants to wear this particular T-shirt or they don't want to wear the uniform, which is a freedom of speech, an employer can say ... you're wearing our uniform or you're not working here.

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[7] Employer also filed exceptions raising the objections of no right of action and prematurity.

[8] **Tate v. Woman's Hosp. Found.**, 10-0425 (La. 1/19/11), 56 So.3d 194.

Accordingly, the trial court sustained Employer's exception raising the objection of no cause of action, dismissed Employees' claims with prejudice, and denied Employees' request for a preliminary injunction as moot.

Subsequently, Employees filed a writ application with the court of appeal and this court,[9] as well as an appeal. Employees' writ application was granted by the court of appeal, and the trial court's ruling was reversed based on the following reasons:

> After a *de novo* review of this well-pled petition, we conclude that [Employees] stated a cause of action for preliminary injunction and declaratory relief on the claim that disciplinary action including termination of employment by defendants, notwithstanding the employment at-will doctrine, would unlawfully abridge certain alleged constitutional rights and that [Employees] are entitled to a hearing thereon. Moreover, we find that the exception of no cause of action is not the appropriate procedure to dispose of this important constitutional issue. Thus, the denial of the request for temporary restraining order which would have allowed for a hearing under the appropriate legal process was in error, as was the sustaining of the exception of no cause of action and dismissal of the petition with prejudice.
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> Accordingly, this writ is granted and the October 12, 2021, and October 20, 2021, rulings are reversed. The matter is remanded to the trial court with instructions to enter a temporary restraining order enjoining any disciplinary action including termination of employment for unvaccinated employees on October 29, 2021,[10] as requested and to conduct a hearing on the request for preliminary injunction and declaratory relief within the timeframe provided by law.

**Hayes v. University Health Shreveport, LLC**, 54,445 (La.App. 2 Cir. 10/28/21) (unpublished writ action).[11]

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[9] **Hayes v. University Health Shreveport, LLC**, 21-1542, currently pending before this court.

[10] The court of appeal erred factually. The employment of Employees was not scheduled to be terminated on October 29, 2021. Instead, "[i]ndividuals not fully vaccinated by the deadline [Friday, October 29, 2021] will be placed on leave and removed from the schedule beginning Monday November 1, for 30 days or until fully vaccinated." "Any employee not fully vaccinated following the 30-day leave period ending Monday, November 29, will be terminated for policy violation." Exemptions were provided for legitimate medical reasons and religious beliefs.

[11] Notably, the judgment upon which the trial court ruled was a final, appealable judgment (see **Everything on Wheels Subaru, Inc. v. Subaru South, Inc.**, 616 So.2d 1234, 1239 (La. 1993)); the court of appeal, instead, handled the case on an application for supervisory review, on an expedited basis, without giving Employer an opportunity to be heard. However, because Employer is granted relief herein, this court declines to address the procedural irregularities with the court of appeal opinion.

In light of a hearing scheduled for November 9, 2021, on Employees' petition for preliminary injunction, Employer filed a writ application with this court, requesting that the court of appeal's decision be stayed, which was granted "pending further orders of this court." **Hayes v. University Health Shreveport, LLC**, 21-1601 (La. 11/6/21). Subsequently, Employer's writ application was granted for the purpose of determining whether Employees of a private healthcare provider stated a cause of action for a constitutional violation caused by the Employer's vaccination mandate with medical and religious exceptions, entitling Employees to injunctive and declaratory relief.[12] **Hayes v. University Health Shreveport, LLC**, 21-1601 (La. 11/17/21), __ So.3d __.

## DISCUSSION

In deciding an exception raising the objection of no cause of action, this court is guided by the well-settled principle that the function of an exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. **Darville v. Texaco, Inc.**, 447 So.2d 473, 474-75 (La. 1984). No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. La. C.C.P. art. 931. Therefore, the court reviews the petition and accepts well-pleaded allegations of fact as true, and the issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. **Everything on Wheels Subaru, Inc. v. Subaru South, Inc.**, 616 So.2d 1234, 1235 (La. 1993).

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[12] In **Nelson v. Ochsner Lafayette General**, 21-1453, consolidated with the instant case and decided in a separate opinion issued on the same day, 47 employees filed suit against Lafayette General Health System, Inc., seeking to enjoin the employer-healthcare provider from enforcing a COVID-19 vaccine mandate. In **Nelson**, the trial court denied the employees' request for a temporary restraining order, sustained the employer's exception raising the objection of no cause of action, and dismissed employees' action. The appellate court denied employees' writ application, finding "no error in the trial court's ruling." **Nelson v. Ochsner Lafayette General**, 21-0648 (La.App. 3 Cir. 10/27/21) (unpublished writ action).

The salient allegations of the petition are as follows. The plaintiffs are employees, staff, and contract workers of Employer, which they allege to be a "private employer." Employer is attempting to require Employees to be vaccinated against COVID-19 by October 29, 2021, or face "disciplinary action." Employees object to the mandate based on their "fundamental right" to make autonomous, informed decisions regarding medical treatment.

"The employer-employee relationship is a contractual relationship." **Quebedeaux v. Dow Chem. Co.**, 01-2297, p. 4 (La. 6/21/02), 820 So.2d 542, 545. "As such, an employer and employee may negotiate the terms of an employment contract and agree to any terms not prohibited by law or public policy." ***Id***., 01-2297 at 4-5, 820 So.2d at 545. "When the employer and employee are silent on the terms of the employment contract, the [Louisiana Civil Code] provides the default rule of employment-at-will." ***Id***., 01-2297 at 5, 820 So.2d at 545. "This default rule is contained in LSA-C.C. art. 2747," which has been in the Civil Code since 1808–over 213 years. This code article sets forth the fundamental framework for Louisiana's at-will employment doctrine—which means that, generally, "an employer is at liberty to dismiss an [at-will] employee at any time for any reason." See **Quebedeaux**, 01-2297 at 5, 820 So.2d at 545. Reciprocally, at-will employees are at liberty to leave the employment to seek other opportunities for any reason or no reason at any time.

However, an employer's right to terminate an at-will employee "is tempered by numerous federal and state laws which proscribe certain reasons for dismissal of an at-will employee." **Quebedeaux**, 01-2297 at 5, 820 So.2d at 545. As long as the termination does not violate any statutory or constitutional provisions, the employer is not liable for wrongful termination. For example, laws prohibit discrimination against anyone based on "race, sex or religious beliefs," and protect employees from termination "for exercising certain statutory rights." See ***id***., 01-2297 at 5, 820 So.2d

at 545-46 & nn.8 & 9 (citing 42 U.S.C.A. § 2000e, et seq.; 42 U.S.C.A. § 1981; La. R.S. 23:301, et seq.; La. R.S. 23:1361). "Aside from [these limited] federal and state statutory exceptions, there are no broad policy considerations creating exceptions to employment at will." ***Id.***, 01-2297 at 5, 820 So.2d at 545-46.

Here, whether Employees have stated a cause of action depends on whether federal or state law limits Employer's right to terminate an at-will employee for failure to comply with the vaccine mandate. This case does not involve allegations of constitutionally prohibited discrimination based on race, sex, or religious belief, nor does it involve a statute that was adopted for the purpose of protecting an employee from termination under these circumstances. Rather, Employees argue that Employer's ability to dismiss them as at-will employees is tempered by an existing statute and the Louisiana Constitution—namely, La. R.S. 40:1159.1, et seq., and La. Const. art. I, § 5. Both of these arguments are unavailing.

With respect to their statutory argument, Employees point to La. R.S. 40:1159.7 of the Louisiana Medical Consent Law (La. R.S. 40:1159.1, et seq.), which governs the right of an adult to refuse medical treatment and provides:

> Nothing contained herein shall be construed to abridge any right of a person eighteen years of age or over to refuse to consent to medical or surgical treatment as to his own person.

Employees' statutory claim against Employer fails. The medical informed consent provision on which Employees rely applies to the relationship between a healthcare provider, a patient, or a patient's lawful representative.[13] See La. R.S. 40:1157.1(A) and 40:1159.4. Indeed, the Subchapter of the "Healthcare Provisions: Health Care" Chapter within which the consent law is found is titled "Healthcare

[13] "The informed consent doctrine is based on the principle that every human being of adult years and sound mind has a right to determine what shall be done to his or her own body." **Snider v. Louisiana Med. Mut. Ins. Co.**, 13-0579, p. 8 (La. 12/10/13), 130 So.3d 922, 930. "Surgeons and other doctors are thus required to provide their patients with sufficient information to permit the patient himself to make an informed and intelligent decision on whether to submit to a proposed course of treatment." ***Id***.

Consumers." Employees have not alleged that Employer is their healthcare provider or that they are patients of Employer. Instead, their cause of action is based on an employer-employee relationship. This court, therefore, finds Employees have not alleged a cause of action based on the Medical Consent Law.[14]

Employees' claim under La. Const. art. I, § 5 is likewise unavailing. Employees invoke their right to privacy under La. Const. art. I, § 5, which they liken to their right to be free from discrimination based on race, sex, and religious beliefs in the workforce. La. Const. art. I, § 5 states, in pertinent part:

> Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy.

In **Hondroulis v. Schuhmacher**, 553 So.2d 398, 415 (La. 1988) (on reh'g), in the context of informed consent, this court recognized that the right to privacy contained in La. Const. art. I, § 5 provides the right to decide whether to obtain or reject medical treatment. While Employer does not dispute that Louisiana recognizes a constitutional right to reject medical treatment, Employer asserts this remedy is limited to state actors. Stated differently, because Employer is a private entity, Employer contends La. Const. art. I, § 5 is not applicable. Here, Employer has been sued in its capacity as a "private employer." There is no allegation or even the barest insinuation that Employer is a state actor; indeed, the parties in this case stipulated that Employer is a private actor.

Louisiana courts have consistently required governmental action to trigger the application of La. Const. art. I, § 5. See **Allen v. La. State Bd. of Dentistry**, 543 So.2d 908, 911-12 (La. 1989) (the prohibitions against illegal searches and seizures in La. Const. art. I, § 5 "are aimed at governmental conduct rather than the actions

[14] Employees further assert the right to refuse medical treatment is also embodied in the Louisiana Advanced Directive laws, see La. R.S. 40:1151.2; the Louisiana Military Advanced Directive Act, see La. R.S. 40:1153.2; and the nursing home residents' bill of rights, La. R.S. 40:2010.8(6). However, none of these statutes are relevant to the employment context.

of private citizens operating independently of the government or its agents"). See also, e.g., **Guilbeaux v. Guilbeaux**, 08-17, p. 7 (La.App. 3 Cir. 4/30/08), 981 So.2d 913, 917 ("Insofar as [defendants] are not state actors, we find that [plaintiff] does not have an invasion of privacy claim under Article I, § 5."); **Johansen v. La. High Sch. Athletic Ass'n**, 04-0937, p. 12 (La.App. 1 Cir. 6/29/05), 916 So.2d 1081, 1090 ("[T]he protection extended by Article I, § 5 does not extend so far as to protect private citizens against the actions of private parties."); **Brennan v. Bd. of Trustees for Univ. of La. Syst.,** 95-2396 (La.App. 1 Cir. 3/27/97), 691 So.2d 324, 328 ("The Louisiana Constitution's protection of privacy provisions contained in Article I, § 5 does not extend so far as to protect private citizens against the actions of private parties."); **Carr v. City of New Orleans**, 622 So.2d 819, 822 n.3 (La.App. 4 Cir. 7/27/93) (the plaintiff "states that she is asserting a claim for breach of privacy under Article 1, Section 5 of the Louisiana Constitution. [The plaintiff's] constitutional claim is inapplicable here, where the defendants are private parties."); **Casse v. La. Gen. Servs., Inc**., 531 So.2d 554, 555 (La.App. 5 Cir. 1988) (quoting Louis "Woody" Jenkins, The Declaration of Rights, 21 Loyola L. Rev. 9, 28) ("The Section (Art. I, Sec. 5) is intended to apply solely to government action, in accord with the view of the committee that a bill of rights cannot reach private action.").[15] Federal courts applying Louisiana law have reached the same conclusion. See **Parks v. Terrebone Parish Consol. Gov.**, No. CV 16-15466, 2017 WL 699838 at *11 (E.D. La. 2017) (quoting **Brennan**, 95-2396 at 7, 691 So.2d at 328) ("[N]either state constitutional provision 'extend[s] so far as to protect private citizens against the

[15] Many cases addressing the right to privacy under La. Const. art. I, § 5 involve the legality of police action (often in the context of searches and seizures), and the court has likewise indicated in those cases that the right to privacy protects against governmental action. See, e.g., **State v. Tucker**, 626 So.2d 707, 710 (La. 1993) (recognizing "the citizen's right to be free from governmental interference"); **State v. Belton**, 441 So.2d 1195, 1199 (La. 1983) (recognizing the "right to be free from government interference"); **State v. McHugh**, 630 So.2d 1259, 1264 (La. 1994) (an individual's "right to be left alone, to be free of unjustified governmental interference with his mind, body or autonomy, is also protected by Article I, § 5's reasonableness clause, which secures an individual from *any* unreasonable invasion of privacy.").

actions of private parties.'"); **Ponder v. Pfizer, Inc**., 522 F.Supp.2d 793, 798 (M.D. La. 2007) (dismissing a privacy claim against an employer and holding: "While courts have found [La. Const. art. I, § 5] applicable to government conduct, Louisiana courts have not applied it to private action.").[16] Therefore, the validity of these cases is upheld, and this court declines the invitation to extend the scope of La. Const. art. I, § 5 to restrict private actors.[17]

Employees' primary argument in favor of their position that Section 5 applies to private actors is this court's recognition in **Hondroulis**[18] that La. Const. art. I, § 5 establishes an "**affirmative right** to privacy impacting non-criminal areas of law and establishing the principles of the Supreme Court decisions in explicit statement instead of depending on analogical development." ***Id.***, 553 So.2d at 415 (on reh'g) (emphasis added; citations omitted). According to Employees, the use of the phrase "affirmative right" means the protection afforded by Section 5 goes beyond state action to create a cause of action against private parties. Contrary to Employees' arguments, and considering the context in which this statement was made in **Hondroulis**, this court interprets that language as a simple statement of the obvious, that is, what was previously an unwritten right was made express in the 1974 Louisiana Constitution and is no longer derived by implication. See Lee Hargrave,

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[16] This conclusion is consistent with the Fourth Amendment of the United States Constitution as interpreted by the Supreme Court, which has been applied only as a restraint on the government and not as a limitation on nongovernmental actors. **Burdeau v. McDowell**, 256 U.S. 465, 475 (1921); **U.S. v. Jacobsen**, 466 U.S. 109, 113 (1984); **Katz v. U.S**., 389 U.S. 347, 350 (1967). See also **Moresi v. State Dept. of Wildlife and Fisheries**, 567 So.2d 1081, 1092 (La. 1990) (noting the "strong resemblance between our state guaranty and that of the Fourth Amendment").

[17] There is dicta in **Parish National Bank v. Lane**, 397 So.2d 1282, 1286 n.8 (La. 1981), and **Jaubert v. Crowley Post-Signal, Inc.**, 375 So.2d 1386, 1387 n.2 (La. 1979), regarding the contention that the right to privacy in La. Const. art. I, § 5 extends to private entities. In **Moresi v. State, Dep't of Wildlife & Fisheries**, 567 So.2d 1081, 1092 (La. 1990), which involved the actions of a state actor, this court noted that the protection afforded by La. Const. art. I, § 5 "goes beyond limiting state action." With this holding, that dicta is rejected by this court.

[18] The sole issue in **Hondroulis** was a narrow one, which is not at issue here: "Does a medical consent form, which tracks the language of [former] LSA-R.S. 40:1299.40 A., have to specify all known risks of a particular surgical procedure?" ***Id.***, 553 So.2d at 400. The court's holding did not involve constitutional rights or the employment-at-will doctrine, but instead involved interpretation of former La. R.S. 40:1299.40, which was Louisiana's informed consent statute at that time.

The Declaration of Rights of the Louisiana Constitution of 1974, 35 La.L.Rev. 1, 1 & 21 (1975) (stating that La. Const. art. I, § 5 "establishes" the protection of privacy "in an explicit statement instead of depending on reasoning from other [constitutional] provisions for its establishment").

## CONCLUSION

For the foregoing reasons, no exception to this state's at-will employment doctrine applies in this matter.[19] In the absence of the existence of any statutory or constitutional rights that temper the application of that doctrine, as explained in **Quebedeaux**, this court finds Employer is entitled to terminate Employees for failure to comply with the vaccine mandate. Employees have not stated a cause of action under La. Const. art. I, § 5 or Louisiana statutory law for injunctive or declaratory relief.

## DECREE

The decision of the court of appeal is reversed, and the trial court's judgment sustaining an exception of no cause of action filed by University Health Shreveport, LLC d/b/a Ochsner LSU Health Shreveport and LSU Health-St. Mary Medical Center, LLC, denying injunctive relief,[20] and dismissing the plaintiffs' action is reinstated.

**REVERSED; TRIAL COURT JUDGMENT REINSTATED.**

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[19] A corollary of the employment-at-will doctrine is that courts are not quasi-human resources departments that re-evaluate personnel decisions or the wisdom of those determinations, so long as there is no violation of "federal and state laws which proscribe certain reasons for dismissal of an at-will employee." See **Quebedeaux**, 01-2297 at 5, 820 So.2d at 545. "The role of the courts is not to judge whether an employer's personnel decisions are fair or good business decisions." **Hook v. Georgia-Gulf Corp.**, 99-2791, p. 14 (La.App. 1 Cir. 1/12/01), 788 So.2d 47, 56. "Broad policy considerations creating exceptions to employment at will and affecting relations between employer and employee should not be considered by this court." **Quebedeaux**, 01-2297 at 5, 820 So.2d at 546 (citing **Gil v. Metal Serv. Corp.**, 412 So.2d 706, 708 (La.App. 4 Cir. 1982)).

[20] Although the right to amend is ordinarily afforded, this court cannot perceive of an amendment that could establish a cause of action under the circumstances of this case. See La. C.C.P. art. 934. Indeed, counsel for Employees conceded as such at the hearing in this matter.