The Thirteenth Amendment, the Right to Quit, and Constitutionalizing State Employment Law

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Abstract

The Thirteenth Amendment of the United States Constitution provided all employees with the right to quit employment that they found objectionable. Its purpose is “relieve a harsh overlordship or unwholesome conditions of work.” As the Court has said, “in general the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers.” The significance and meaning of this fundamental, constitutional, and substantive right to quit has not been fully realized in state common law decisions. In fact, the employee’s right to quit is often thought to be on a parallel with the employing firm’s right to terminate employees under the “employment at will” doctrine.

This paper will explore several dimensions of the false arguments of mutuality when the constitutional right of employees to quit is paired with the employer’s, at most prudential, privilege to expel an employee from the workplace.