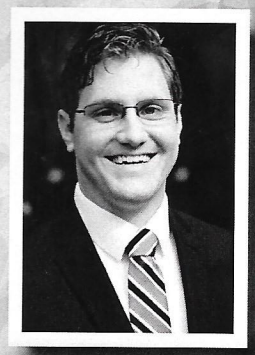

Employment Termination in an "At-Will" Jurisdiction

BY: STANTON P. GALDYS

Your boss comes into work today and approaches you. She says, "You're fired." Now what?

Michigan is an "at-will" employment jurisdiction. This means, that absent contrary evidence, your employment relationship is presumed to be terminable by the will the employer, or the employee, for any reason or no reason at all.[1] However, Michigan does provide some common-law remedies to certain terminated employees.

A terminated employee can allege wrongful termination based upon three public policy exceptions.[2] First, the employee acted in accordance with an explicit statutory right or duty. Second, the employee was terminated because the employee refused to violate a law. Third, the employee was terminated when the employee exercised a right conferred by a well-established legislative enactment. But, in order to properly allege an exception, the terminated employee cannot have some other statutory right to sue.[3]

Some common employee "right to sue" statutes include: The Wagner Act, 29 USC 151, Title VII of the Civil Rights Act of 1964, 42 USC 2000e, the Age Discrimination in Employment Act, 29 USC 621, The Americans with Disability Act, 42 USC 12101, The Elliott-Larsen Civil Rights Act, MCL 37.2101, The Michigan Persons with Disabilities Civil Rights Act, MCL 37.1101, and The Whistleblowers' Protection Act, MCL 15.361. Thus, the public policy exception is most likely to be raised when the termination was based upon the employee's refusal to violate a law.

An employee may also allege wrongful termination in two other circumstances. First, when the employer limited their termination right by an oral or written contract.[4] This limitation exists when there is evidence that the employee negotiated with the employer for job protection, and there is clear and unequivocal evidence of a mutual agreement to limit discharge for cause only.[5] Another option by the employee is to allege that the employer created legitimate "just-cause" employment expectations. This expectation exists when the employer makes a promise to the employee and that promise is reasonably capable of instilling a legitimate expectation of "just-cause" employment.[6] If the employee can prove either of these circumstances exist, the employee succeeds in raising the standard for a lawful termination by their employer. Therefore, the employer may only terminate for "just cause" and not simply "a cause."

Overall, when assessing potential claims for terminated employees, be sure to consider other factors such as: the actual basis for the employee's termination, whether the terminating employer is a public or private entity, whether the employee is unionized, or whether the employment period is for a specific period of time or an indefinite period of time.

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Rood v General Dynamics Corp, 444 Mich 107, 116, 507 NW2d 591 (1993).

Vagts v Perry Drug Stores, 204 Mich App 481, 484, 516 NW2d 102 (1994).

Vagts v Perry Drug Stores, 204 Mich App at 485.

Toussaint v Blue Cross & Blue Shield of Michigan, 408 Mich 579, 598, 292 NW2d 880 (1980)

Rowe v Montgomery Ward & Co, 437 Mich 627, 641, 473 NW2d 268 (1991).

Rood v General Dynamics Corp, 444 Mich at 138-139.

** This article is not a substitute for fact-specific legal advice and contains only a brief summary of common-law remedies for terminated Michigan employees.