Employment and Labor Law 9th edition Cihon Solutions Manual

SKU: 9781305580015-SOLUTIONS

Chapter 2
EMPLOYMENT CONTRACTS AND WRONGFUL DISCHARGE

INTRODUCTION

The second chapter focuses on employment contracts, employment at will, and wrongful discharge. The chapter begins with a discussion of employment at will; a term first introduced in chapter one. The student should have an understanding of employment at will, and the chapter proceeds to identify all of the many exceptions to this legal theory and when they apply. Generally, the exceptions to employment at will are when the termination violates a public policy, an implied employment contract, a covenant of good faith and fair dealing, or one of the many federal, state, or municipal statutes that protect employees from termination based on basis of some protected characteristic. Termination under any of these situations is called a "wrongful discharge." An employee who has been wrongfully discharged may be entitled to redress.

CHAPTER OUTLINE

2-1 EMPLOYMENT-AT-WILL AND ITS EXCEPTIONS

Employment-at-will is both the employee and the employer are free to unilaterally terminate the relationship at any time and for any legally permissible reason, or for no reason at all.

A. Historical Roots

i. The doctrine of employment-at-will in its purest (and harshest) form held that an employee without a contract could be fired at any time, for any, or no, reason.

ii. While legislation has limited the employment-at-will doctrine in some areas—such as the NLRA's prohibition on terminating an employee for engaging in concerted activities and Title VII's prohibition of any discharge for racially discriminatory reasons—these laws still leave a zone of discretion to private sector employers.

iii. Advocates of employment-at-will point out that the employee is free to sever employment at any time, and that employees can use bargaining power to attempt to demand an employment contract covering a specific term.

1. However, individuals often lack the bargaining power to demand such a set contract—that's one reason why they join unions.

2. But the freedom of employees to quit the employment relationship is an important issue underlying the employment-at-will doctrine.

Whistleblower is an employee who reports or attempts to report employer wrongdoing or actions threatening public health or safety to government authorities.

2-2 WRONGFUL DISCHARGE BASED ON PUBLIC POLICY

A. The most common limitation on employment-at-will is the public policy exception.

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Public policy exception, although the employee is employed at-will, termination is illegal if a clear and significant mandate of law (statutory or common) is damaged if the firing is permitted to stand unchallenged.

i. Most state courts have adopted this exception, although some state courts restrict the "public policy" to some right or duty clearly spelled out in a statute.

ii. Case: *Geary v. U.S. Steel* (PA Supreme, 1978) is an example from Pennsylvania.

iii. Also, if the statute provides for a remedy or cause of action, the courts are reluctant to allow the employee another remedy in the form of a suit alleging wrongful discharge.

Tort is a private or civil wrong or injury, caused by one party to another, either intentionally or negligently.

CASE 2.1 MENDOZA V. WESTERN MEDICAL CENTER SANTA ANA
222 Cal. App. 4th 1334, 166 Cal.Rptr.3d 720 (2014)

Facts: Mendoza was discharged by his employers after Mendoza accused a supervisor of sexual harassment. The court entered judgment in favor of Mendoza and against the employers. The employers appealed.

Issue: Mendoza claims his report of sexual harassment caused his employers to fire him. The employers cite their belief that Mendoza willingly participated in sexual misconduct on the job as their motivation for firing Mendoza.

Decision: The Court found that substantial evidence supported the judgment for Mendoza. Thus, on remand, it will be up to a jury to decide whether the expert's characterization of the investigation is accurate and whether to infer from that characterization that the defendants had retaliatory animus.

ANSWERS TO CASE QUESTIONS

1. The Superior Court held that the state legislature intended that the Crime Victims' Employment Protection Act provide employees with a cause of action for wrongful termination. The court did not, and would not, hold that the employee-plaintiff here was entitled to reinstatement. That is for the trial court to determine on remand, possibly after a trial on the merits of the plaintiff's claim.

2. The plaintiff will have to prove that the employer in fact fired him for exercising his rights under the Crime Victims' Employment Protection Act.

3. Neither act preempted the other. The Workers' Compensation Act's "exclusivity" provision prevented the plaintiff from pursuing his negligent-supervision claim; the essence of that claim was that he got hurt on the job because of the employer's failure to exercise due care in the hiring and supervision of the plaintiff's co-worker, who assaulted and injured him. On the other hand, the Workers' Comp Act did not shield the defendant-employer from all of the plaintiff's claims. Although the job termination grew out of the assault and related to the injury in that regard, plaintiff's firing was not the sort of consequential injury that falls under the comp act's exclusivity shield.

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2-3 EXPRESS AND IMPLIED CONTRACTS OF EMPLOYMENT

A. While some employees are covered by a collective bargaining agreement or an individual contract of employment, many are not. Those employees have sometimes attempted to persuade the courts that an implied contract of employment has been created.

B. Contracts may be implied from the firm's personnel manual or the statement of disciplinary procedures that will be followed.

Express contract is a contract in which the terms are explicitly stated, usually in writing.

Implied contract is a relationship between the parties, the behavior of which leads to an inference of a contract.

CASE 2.2 SERRI V. SANTA CLARA UNIVERSITY
226 Cal. App. 4th 830, 172 Cal.Rptr.3d 732 (2014)

Facts: A university's former director of affirmative action, Conchita Franco Serri, brought her action against the university and the university's officers and attorneys for breach of her employment contract, among other claims, after being terminated from her position. The university claimed it terminated her employment because she failed to meet the requirements of her job.

Issue: Serri alleged that the university breached her employment contract when it terminated her without good cause and without an opportunity to correct any improper conduct.

Decision: Based on all of the admissible evidence in the case, the court concluded that the university met its burden of establishing that it acted in good faith and had reasonable grounds for believing Serri engaged in gross misconduct, when it decided to terminate her and that its decision was based on "fair and honest reasons."

CASE 2.3 KILLINGSWORTH V. HOUSING AUTHORITY OF CITY OF DALLAS
447 S.W.3d 480 Tex. App. Dallas (2014)

Facts: A prospective employee, Jerry Killingsworth, contended that the Housing Authority of the City of Dallas (DHA) backed out of a deal to hire him as the DHA's President and Chief Executive Officer. Killingsworth claimed that despite having a written employment contract offering him the position, the DHA yielded to political pressure to retain then-DHA President Ann Lott and refused to allow him to assume the duties of the position. He sued the DHA for breach of an employment contract and violations of his civil rights.

Issue: Did the alleged employment agreement constitute an enforceable contract? And did DHA breach an employment contract by rescinding its offer of employment?

Decision: The court concluded that the letter agreement required subsequent approval by the DHA Board after it was presented to Killingsworth. The summary-judgment evidence conclusively demonstrated that the Board did not approve the letter agreement, and so Killingsworth could not prove the existence of a valid contract.

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CASE 2.4 STEGALL V. ORR MOTORS OF LITTLE ROCK, INC.
121 So.3d 684 La. App. 2d Cir. (2013)

Facts: A car dealership owner unilaterally modified an employee's pay plan in writing, but it was unsigned by the parties. The new pay plan removed the manager's base salary provision and set out that his compensation would be based solely on commissions from exceeding net profit goals, as well as the opportunity to earn other commissions based on certain benchmark sales numbers. The manager brought an action for breach of employment contract, seeking unpaid wages.

Issue: Can the employer apply modifications to the employment contract unilaterally, without a formal written contract?

Decision: No. The finding by the trial court that the owner improperly modified the manager's pay plan was not manifestly erroneous or clearly wrong.

THE WORKING LAW
Model Employment Termination Act

The Model Employment Termination Act is not a real success story. The purpose of the act is to offer the states a uniform law protecting employees from being terminated except for good cause. The committee charged with developing the act do not agree on it's terms. If adopted by many states, this law would fundamentally change the employment at will culture that defines employment in the United States. Only one state (Montana) has adopted a form of this law.

2-4 PROTECTION FOR CORPORATE WHISTLEBLOWERS

A. In the wake of the Enron and Worldcom scandals, the Sarbanes Oxley Act (SOX) was passed. Among other things, SOX amended the Security Exchange Act and several other statutes to include criminal and civil protection of employees who report improper conduct concerning securities fraud and corruption by corporate officials. Following the 2008-10 Great Recession, the Obama Administration and the Democratically dominated Congress at that time enacted the Dodd-Frank Act, which reinstated some regulatory restrictions on the U.S. financial industry that had been antiquated in the 1990s, and added additional whistleblower provisions that apply to employees in the realm of banking and investments.

i. Many other employment laws such as Occupational Safety and Health Act (OSHA) and Title VII contain anti-retaliation provisions.

ii. Additionally, many states have passed laws protecting employees who engage in whistleblower type activities.

iii. Where there is not a federal, state, or municipal law directly protecting whistleblower activities, employees may still seek protection under the theory of public policy, where an employee provides proof that termination of employment was in retaliation for reporting or restricting supervisory illegal activity.

iv. Despite this, many who seek to be protected by whistleblower laws find that enforcement is lacking and remedies are ineffective.

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v. SOX protections are not limited to the reporting of securities fraud. It covers the reporting of any federal offense.

B. Civil Liability Under SOX

i. SOX only protects employees of publically traded companies.

CASE 2.5 LAWSON V. FMR LLC
134 S.Ct. 1158 U.S. (2014)

Facts: In two separate cases, employees of nonpublic companies in the mutual fund industry sought the protection of the Sarbanes-Oxley Act's (SOX) whistleblower provision, alleging that their employers unlawfully retaliated against them after they complained of employers' improper business activities. The United States District Court for the District of Massachusetts partially granted and partially denied the motions, certified a controlling question of law to the appellate court, and stayed the cases. The parties' cross-petitioned for interlocutory review, and those petitions were granted.

Issue: Are the plaintiffs covered by the SOX whistleblower provisions?

Decision: The Supreme Court held that whistleblower protection under Sarbanes-Oxley extended to employees of private contractors and subcontractors serving public companies.

ANSWERS TO CASE QUESTIONS

1. The trial judge first decided that private companies, which are sub-contractors of SOX-covered publicly traded companies, ought to be covered by SOX too. Then, having some second thoughts about how far this stretched the law, the judge tightened up the basis on employees of the sub-contractor could sue under SOX's whistleblower provisions. The First Circuit disagreed with the district court on both points.

2. "Employee" for purposes of a cause of action means someone employed by a publicly traded company. While the plaintiffs certainly were "employees" in the common-law sense of that term, they were not "employees" for purposes of the SOX whistleblower provisions.

3. This and the two questions that follow create opportunities for class discussion and debate. The statutory provision at issue clearly states that no "officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee " in exercising her/his whistleblower rights. The plaintiffs contended that this clearly means they were protected by SOX. The defendants retorted that only the employees of the publicly traded company were protected, albeit that protection extended to adverse actions perpetrated by a subcontractor of the publicly trader firm.

4. Here the discussion might center around whether Congress had reason to single out publicly traded companies, leaving private firms alone. The court noted that Congress could have been clearer, if it really intended to extend rights to persons, such as the plaintiffs. The judges noted that in other sections of SOX, the Congress was more explicit about being expansive in extending rights and remedies. When it wanted to extend a portion of the act to private investment advisors, it did so. The court does not speculate on Congressional motives, but we are free to do so. Perhaps some Congressmen succumbed to lobbyists. Or perhaps the sponsors of the bills saw reasons why

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privately held firms should not be subjected to the same levels of liability as publicly traded entities. Or perhaps the relative size of the companies was a consideration.

5. The answer to this question may depend upon whom we mean by the "investing public." If we mean all pension funds, individual investors and others who buy securities, the plaintiffs' position might best protect them (i.e., all of "us"). But if we mean the shareholders of publicly held financial institutions, then private firms might very well be excluded since they do not have shareholders, other than those insiders who own the stock of such closely held entities.

ETHICAL DILEMMA
The First Amendment and Unprotected Employee Speech

A director of a community youth program conducted an audit of the program's expenses, and in doing so, discovered that a state legislator on the program's payroll has not been reporting for work, and terminated the lawmaker's employment. Soon after, federal authorities indicted the state representative on charges of mail fraud and theft concerning a program receiving federal funds. The director testified, under subpoena, regarding the events that led to his terminating the state legislator.

Meanwhile, the youth program experienced significant budget shortfalls. The president of the program's sponsoring university terminated the director along with 28 other employees in a claimed effort to address the financial difficulties. A few days later, the president rescinded all but two of the 29 terminations—those of the director and one other employee. The director sued the president in his individual and official capacities, alleging that the president violated the First Amendment by firing him in retaliation for testifying in court. The president made a motion for summary judgment, claiming that the director's testimony was not entitled to First Amendment protection. He claimed the director spoke as an employee and not as a citizen because he acted pursuant to his official duties when he investigated and terminated the state representative's employment.

QUESTIONS:

Should the First Amendment protect a public employee who provides truthful sworn testimony, compelled by subpoena, of an organization's corruption? Or was the director's testimony unprotected employee speech? What are some policy considerations pushing in each direction?

ANSWERS TO END OF CHAPTER PROBLEMS

QUESTIONS

1. Students may suggest that the courts wished to protect emerging American industries from employee litigation. Control of the judicial appointments of many states and the federal courts by upper and upper-middle class interests may be another reason. Disdain for immigrant workers may be yet another suggestion.

2. Employers often defend the doctrine on the ground that they have built their businesses, they create jobs and they ought to be free to decide whom they will employ. Jurists sometimes point to the fact that employees are free to come and go as they please; it's only fair that employers have he same freedom of contract. President Obama directly challenged the first of these propositions during the 2012 presidential campaign, when he pointed out that no so-called self-made businessperson has achieved success without support from both government and her/his employees. The second position ignores the disparate bargaining leverage enjoyed by employers on one hand and employees on the

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other. The U.S. is the only developed nation that still adheres to employment-at-will, which since the 19th century has been a uniquely American common-law doctrine,

3. (1) Contract: This exception includes express, written contracts; oral contracts under some circumstances; and implied contracts, notably handbooks, again under appropriate circumstances; (2) Public Policy: An adverse employment action will not stand, where it offends a clear mandate of public policy; (3) Statutory: A federal or state statute specifically forbids an adverse action, such as termination.

4. The advantage of the common law may be that it is more adaptable and amenable to fine-tuning than a statute, which requires the often difficult chore of legislative amendment. On the other hand, a statute presumably will provide the parties to an employment relationship with a clearer, plainer, and more predictable expression of the law and the likely legal outcomes of their actions.

5. As discussed under the case, above, we can speculate about Congress's motives for limited SOX's whistleblower provisions to publicly traded companies.

CASE PROBLEMS

6. No, he does not. The Court held that the intent of the parties was very important in the decision and that if the handbook contains clear language that employment is at will, then the reasonable employee would understand that is the employer's intent. The Court also said that longevity of employment and promotions or raises do not create an implied contract. This would discourage employers from retaining employees over the long run. In the case in this hypothetical, the company's handbook clearly stated that the employment was at will. Therefore, the handbook does not constitute an employment contract.

7. According to the decision in *Horne v. Cumberland County Hosp. System, Inc.*, 746 S.E.2d 13 (N.C. App. 2013), the court concluded that the plaintiff failed to state a claim for breach of contract. Nowhere in the plaintiff's complaint did she allege that the employee handbook stated that an employee could be terminated only for cause. Thus, the court was obliged to base its ruling on *Harris v. Duke Power Co*., 319 N.C. 627, 356 S.E.2d 357 (1987), wherein the Supreme Court found that the plaintiff's failure to include in her complaint a "specific no-discharge-except-for-cause allegation" was fatal to the claim.

8. The former employee equated the provisions of the Procedure Manual to "rules and regulations" and contended they were the basis of a property right in his employment, but no designated evidence showed that the Procedure Manual's provisions were promulgated as legally binding rules and regulations of the town. The court entered summary judgment in favor of the town, finding that, under Indiana law, the former employee did not possess a cognizable property right in his position; rather, he remained an employee-at-will. As such, he had no property interest entitled to procedural due process protection.

9. The court found that the documents did not create an implied contract, as they contained a conspicuous disclaimer of contractual rights, stating: "This process instruction does not constitute a contract or contractual obligation, and the company reserves the right, in its sole discretion, to amend, modify, or discontinue its use without prior notice, notwithstanding any person's acts, omissions, or statements to the contrary." The employee was aware of the disclaimer. Without evidence of a promise that modified the employee's at-will employment status, his theories of breach of implied contract and equitable reliance on a promise of specific treatment must fail.

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10. It is a violation of public policy, according to Wisconsin law, to terminate an employee for refusing to violate any law, regardless of the origination of the law (state or federal). The payroll clerk has an action for wrongful discharge in violation of public policy. This may be an opportunity to discuss with the students that not all states recognize the public policy exception to employment at will, and even the states that do are not all in agreement of what reasons for termination may violate public policy.

11. The former employee's main argument was that because upholding criminal laws is important and socially desirable conduct, the court should find a public-policy exception to the at-will employment doctrine for a private security guard who tried to effectuate an arrest of a suspected criminal. The court found that there was no clearly defined public policy to support the former employee's claim. In the decision for *Lloyd v. Drake University*, 686 N.W.2d 225 (Iowa 2004) the court stated: "The point is simply this: while we might be persuaded that society would be better off if private security personnel investigated and attempted to stop crimes in progress, we are not convinced it is a clear and well recognized public policy of this state 'that we all become citizen crime fighters.'"

12. The "whistleblowing" in this case did not meet the requirements for a violation of public policy. Because the relevant statute leaves the parameters of "mismanagement" undefined, it is an amorphous term that essentially includes any decision of an employer that's challenged by an employee with a different opinion about the way an organization should be managed. The term falls short of being sufficiently specific and clear for purposes of articulating an established and well-defined public policy against discharging employees for reporting mismanagement. Thus, the statute cannot be used to support a common law claim.

13. The court's analysis began with a finding that the local's secretary was a "confidential" employee capable of thwarting implementation of the union's policies and programs. Since the plaintiff had access to the local's confidential information, including attorneys' opinions, membership and dues records, and disciplinary matters, she was in a position to further her own political views and to thwart the aims of her superiors. These facts placed her squarely under the provisions of the LMRDA dealing with "confidential employees." Therefore her common law, wrongful discharge claim was preempted by federal law.

HYPOTHETICAL SCENARIOS

14. Constructive discharge occurs when the employer has made the employment environment so intolerable that the employee feels no other choice but to quit. In order for the constructive discharge to become wrongful termination, the motivation for making the workplace intolerable must be illegal, such discrimination in violation of one of the employment laws. Constructive discharge is viewed as the equivalent of termination of employment. The same analysis is used as to determine whether or not the employer had wrongfully terminated the employee is used to determine whether or not the constructive discharge was wrongful. In our case, Deborah appears to be employed at will. Students can debate whether termination for participation or non-participation in extra curricular work activities should be protected under public policy exceptions. Generally, public policy exceptions are those instances where it would serve the public good, such as when an employee is punished for exercising a legal right or duty. It is unlikely that protection from refusing to participate in team building exercises, regardless of how silly and demeaning would be considered important to public policy.

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15. Since Dr. Boris is an at will employee, he does not have a claim for wrongful discharge. Although according to the law, the hospital had abandoned the property, the hospital apparently did not intend for anyone to possess the equipment after them. There are a myriad of logical reasons why the hospital would not want employees to take things, even things that they planned to dispose of, without permission, the least of which is not liability issues. If a piece of equipment were damaged and the subsequent purchaser/user suffered an injury, the hospital could be liable for having sold damaged goods, if the buyer could prove that it had a reasonable belief that Dr. Boris was acting as their agent. (If students have not had business law prior to this class, they may not recognize the issue of agency liability.)

    The answer does not change if the handbook said that employees would only be fired for good cause. First, this might be enough to satisfy good cause. Second, since we know that Dr. Boris is an employee at will, we can assume that there is likely a disclaimer in the handbook stating that it does not constitute a contract or change the employment at will arrangement. And third, even if the handbook does not contain such a disclaimer, the discipline clause would need to be specific enough that a reasonable person would construe it as a binding agreement. "For Cause" is not a very descriptive term.

    If Dr. Boris had salvaged equipment before, and was acting under a misunderstanding, he still does not have a claim. In order to claim wrongful discharge he would need to prove some sort of public policy exceptions. He was not exercising a legal right or duty.

16. Unfortunately, Stanley does not have a case. Although Stanley was concerned with safety, there is no indication that Stanley has any expertise or specialized knowledge related to why the other shed collapsed or to refute the company's claims that it was due to incorrect assembly.

    If OSHA had a regulation and Stanley had a good faith belief that the regulation was being violated, then he may be protected under a whistleblower statute or public policy, in absence of a whistleblower statute.

17. Mindy and Fred do not have a wrongful discharge claim, if they are employees at will. An employer is free to terminate an employee for a good reason, bad reason, or no reason at all. There is no public policy protecting people from being fired for having sex with someone who are not their spouse. Whether or not they knew about the policy is not relevant.

18. Unless the student has had a business law class, the student will not possess the background to analyze a breach of contract claim. For example, if the company knew that the deal with Wells Fargo was upcoming and elected not to renew the contract, despite good performance, simply as a means to avoid the stock option exercise, Janice may have a claim. The court may determine the "active member of management team" clause to be unconscionable, and reform that part of the contract. However, if the company can show that Janice had ample opportunity to review the contract with a lawyer and understood that even if the sales mark was reached due to her efforts, if it occurred after her contract had expired, she would not be entitled to exercise the stock options, then she would lose. She does not have a wrongful discharge claim against the company because she was not terminated during the term of employment. She simply reached the end of the term of her contract.

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Chapter 2: Employment Contracts and Wrongful Discharge

Employment & Labor Law

9th Edition

Cihon & Castagnera

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Common Law

- The federal and state legislatures have not fully populated the field with statutes and, therefore, the courts are still, by and large, sovereign
- Common Law: Judge-made law as opposed to statutes and ordinances enacted by legislative bodies
- Common Law includes:
  - Employment-at-will and wrongful discharge
  - Express and implied employment contracts

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Employment-at-Will

- An employee who has not been hired for an express period of time can be fired at any time for any reason or for no reason at all
  - **Employment-at-will:** Both the employee and the employer are free to unilaterally terminate the relationship at any time and for any legally permissible reason, or for no reason at all
- Justifications:
  - The employee is likewise free to sever the working relationship at any time
  - In a free market, the worker with sufficient bargaining power can demand an employment contract for a set period of time if so desired

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Employment-at-Will (con.)

- State and federal laws have narrowed this sweeping doctrine in many ways:
  - The National Labor Relations Act (NLRA) forbids firing employees for engaging in protected concerted activities
  - Title VII forbids discharge on the basis of race, color, gender, creed, or national origin
  - The Age Discrimination in Employment Act (ADEA) protects older workers from discriminatory discharge
  - The Occupational Safety and Health Act (OSHA) makes it illegal to fire an employee in retaliation for filing a safety complaint.

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Exceptions to Employment-at-Will

- **Whistleblower:** An employee who reports his/her employer's illegal activities to the appropriate governmental entity or, under some state statutes, to the board of directors or senior management of the firm

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Wrongful Discharge Based on Public Policy

- **Public Policy Exception:** Although the employee is employed at-will, termination is illegal if a clear and significant mandate of law (statutory or common) is damaged if the firing is permitted to stand unchallenged
  - If a statute creates a right or a duty for the employee, he or she may not be fired for exercising that legal right or fulfilling that legal duty

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Wrongful Discharge Based on Public Policy (con.)

- Many courts hold that the right or duty must be clearly spelled out by statute. For instance, in the seminal case of *Geary v. United States Steel Corporation*, the Pennsylvania Supreme Court upheld the dismissal of a lawsuit brought by a salesman who was fired for refusing to sell what he insisted was an unsafe product.
- Additionally, if the statute itself provides the employee with a cause of action, the courts are reluctant to recognize an alternative remedy in the form of a lawsuit for wrongful discharge.
- **Tort:** A private or civil wrong or injury, caused by one party to another, either intentionally or negligently

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Mendoza v. Western Medical Center Santa Ana

- **Facts:**
  - Mendoza was discharged by his employers after Mendoza accused a supervisor of sexual harassment. The court entered judgment in favor of Mendoza and against the employers. The employers appealed.
- **Issue:**
  - Mendoza claims his report of sexual harassment caused his employers to fire him. The employers cite their belief that Mendoza willingly participated in sexual misconduct on the job as their motivation for firing Mendoza.
- **Decision:**
  - The Court found that substantial evidence supported the judgment for Mendoza. Thus, on remand, it will be up to a jury to decide whether the expert's characterization of the investigation is accurate and whether to infer from that characterization that the defendants had retaliatory animus.

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Express and Implied Contracts of Employment

- **Express Contract:** A contract in which the terms are explicitly stated, usually in writing but perhaps only verbally, and often in great detail. In interpreting such a contract, the judge and/ or the jury is asked only to determine what the explicit terms are and to interpret them according to their plain meaning
- **Implied Contract:** A contractual relationship, the terms and conditions of which must be inferred from the contracting parties' behavior toward one another

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Serri v. Santa Clara University

- **Facts**
  - A university's former director of affirmative action, Conchita Franco Serri, brought her action against the university and the university's officers and attorneys for breach of her employment contract, among other claims, after being terminated from her position. The university claimed it terminated her employment because she failed to meet the requirements of her job.
- **Issue**
  - Serri alleged that the university breached her employment contract when it terminated her without good cause and without an opportunity to correct any improper conduct.
- **Decision**
  - Based on all of the admissible evidence in the case, the court concluded that the university met its burden of establishing that it acted in good faith and had reasonable grounds for believing Serri engaged in gross misconduct, when it decided to terminate her and that its decision was based on "fair and honest reasons."

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Employment and Labor Law 9th edition Cihon Solutions Manual

KillingsWorth v. Housing Authority of City of Dallas

- **Facts**
  - A prospective employee, Jerry Killingsworth, contended that the Housing Authority of the City of Dallas (DHA) backed out of a deal to hire him as the DHA's President and Chief Executive Officer. Killingsworth claimed that despite having a written employment contract offering him the position, the DHA yielded to political pressure to retain then-DHA President Ann Lott and refused to allow him to assume the duties of the position. He sued the DHA for breach of an employment contract and violations of his civil rights.
- **Issue**
  - Did the alleged employment agreement constitute an enforceable contract? And did DHA breach an employment contract by rescinding its offer of employment?
- **Decision**
  - The court concluded that the letter agreement required subsequent approval by the DHA Board after it was presented to Killingsworth. The summary-judgment evidence conclusively demonstrated that the Board did not approve the letter agreement, and so Killingsworth could not prove the existence of a valid contract.

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Stegall v. Orr Motors of Little Rock, Inc.

- **Facts**
  - A car dealership owner unilaterally modified an employee's pay plan in writing, but it was unsigned by the parties. The new pay plan removed the manager's base salary provision and set out that his compensation would be based solely on commissions from exceeding net profit goals, as well as the opportunity to earn other commissions based on certain benchmark sales numbers.The manager brought an action for breach of employment contract, seeking unpaid wages.
- **Issue**
  - Can the employer apply modifications to the employment contract unilaterally, without a formal written contract?
- **Decision**
  - No. The finding by the trial court that the owner improperly modified the manager's pay plan was not manifestly erroneous or clearly wrong.

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The Working Law:
Model Employment Termination Act

- In 1987, the National Conference of Commissioners established a drafting committee to create a Uniform Employment Termination Act to provide employees with statutory protection against wrongful discharge
- The heart and soul of the Model Employment Termination Act (META) in its present form is Section 3(a), which states that "an employer may not terminate the employment of an employee without good cause"
- Section3(b) limits application of the "good cause" limitation on employment-at-will to workers who have been with the particular employer for at least one year

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The Working Law:
Model Employment Termination Act (con.)

- Section 4(c) adds another possible exception, stating that employer and employee may substitute a severance pay agreement for the good cause standard, and the good cause standard is inapplicable to situations where termination comes at the expiration of an express oral or written contract containing a fixed duration for the employment relationship
- Section 10 forbids retaliation against employees who make claims or who testify under the procedural provisions of the META

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Protection for Corporate Whistleblowers

- Occupational Safety and Health Act (OSHA) and Title VII, protect employees who blow the whistle on illegal practices or who cooperate in investigations and testify at hearings from employer retaliation, such as employment termination
- Civil Liability Under the Sarbanes-Oxley Act (SOX)
  - SOX's legislative history indicates that its whistleblower provisions are intended primarily to protect employees of publicly traded companies acting in the public interest to try to prevent officer/director wrongdoing and "to encourage and protect those who report fraudulent activity that can damage innocent investors in publicly traded companies."

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Lawson v. FMR LLC

- **Facts**
  - In two separate cases, employees of nonpublic companies in the mutual fund industry sought the protection of the Sarbanes-Oxley Act's (SOX) whistleblower provision, alleging that their employers unlawfully retaliated against them after they complained of employers' improper business activities. The United States District Court for the District of Massachusetts partially granted and partially denied the motions, certified a controlling question of law to the appellate court, and stayed the cases. The parties' cross-petitioned for interlocutory review, and those petitions were granted.
- **Issue**
  - Are the plaintiffs covered by the SOX whistleblower provisions?
- **Decision**
  - The Supreme Court held that whistleblower protection under Sarbanes-Oxley extended to employees of private contractors and subcontractors serving public companies.

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Ethical Dilemma:

The First Amendment and Unprotected Employee Speech

Should the First Amendment protect a public employee who provides truthful sworn testimony, compelled by subpoena, of an organization's corruption? Or was the director's testimony unprotected employee speech? What are some policy considerations pushing in each direction?

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