

IN THE SUPREME COURT OF OHIO

PIONEER NATIONAL LATEX, et al.

Appellants,

vs.

MARLENE LEININGER,

Appellee.

On Appeal from the Ashland
County Court of Appeals, Fifth
Appellate District

Ohio Supreme Court
Case No. 06-1304

Court of Appeals
Case No. 05-COA-048

REPLY BRIEF OF APPELLANTS' PIONEER NATIONAL LATEX, MELISSA
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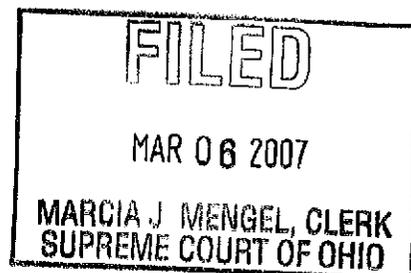


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SUMMARY OF ARGUMENT

Appellants, once again, urge this Court to reiterate the limited nature of the public policy exception to the employment at will doctrine by reversing the decision of the Fifth District Court of Appeals and adopting Appellants' Proposition of Law No. 1—that “a plaintiff cannot state a separate cause of action for wrongful discharge in violation of public policy based upon the policy against age discrimination in employment embodied in Ohio Revised Code Chapter 4112, as Chapter 4112 provides adequate legal remedies”.

In the alternative, Appellants urge this Court to reaffirm the force and effect of its prior decision in *Contreras v. Ferro Corp.* (1995), 73 Ohio St.3d 244; 652 N.E.2d 940, by adopting Appellants' Proposition of Law No. 2—that a plaintiff cannot state a cause of action for wrongful discharge in violation of public policy based upon a statute unless the plaintiff has strictly complied with the procedural requirements of the underlying statute, including applicable statutes of limitation.

Ohio Revised Code Chapter 4112 adequately and sufficiently protects the public policy of the state of Ohio to prohibit and eliminate all forms of employment discrimination, including age discrimination. Accordingly, a common law wrongful discharge claim for violation of public policy prohibiting age discrimination based upon Chapter 4112 is unnecessary. To that end, this Court should find that Appellee's common law cause of action premised upon the age discrimination provisions in Chapter 4112 fails as a matter of law. This result is in harmony with this Court's recent pronouncement in *Wiles v. Medina Auto Parts* (2004), 96 Ohio St.3d 240.

In addition, recognition of a common law tort claim premised upon Chapter 4112 allows individual claimants to bypass the legislative scheme, including applicable statutes of limitations. Such a result is unjustifiable and Appellants, therefore, submit that this Court should restore the proper balance between the legislative and judicial function by holding that Appellee cannot

state a claim for wrongful termination premised upon Chapter 4112 because she failed to comply with the procedural requirements of that Chapter.

In sum, Appellants ask this Court to reverse the erroneous decision of the Fifth District and unmistakably hold that Ohio does not recognize a wrongful termination claim premised upon Chapter 4112 or any similar statute that contains sufficient remedial provisions. In so holding, this Court can set forth a bright line rule that affirms the primacy of the employment-at-will doctrine in Ohio and resolves the current division among the lower courts regarding the proper limits of the public policy exception.

LAW AND ARGUMENT

I. **Proposition of Law No. 1: A plaintiff cannot state a separate cause of action for wrongful discharge in violation of public policy based upon the policy against age discrimination in employment embodied in Ohio Revised Code Chapter 4112, as Chapter 4112 provides adequate legal remedies.**

A. **This Court Should Reaffirm the Primacy of the Employment-At-Will Doctrine by Refusing to Recognize Public Policy Claims Premised Upon a Statute That Creates a Substantive Right and Provides a Remedial Scheme Sufficient to Redress Violations of that Right.**

Appellants' argument that the employment at-will doctrine has served as the foundation of employment relations in Ohio for more than a century is well supported by the decisions of this Court. *See, e.g., Henkel v. Educ. Research Council* (1976), 45 Ohio St. 2d 249, 255, 344 N.E.2d 118 (discussing the well-established doctrine of employment-at-will in Ohio); *Mers v. Dispatch Printing Company* (1985), 19 Ohio St.3d 100, 103, 483 N.E.2d 150 (expressly holding that employment-at-will is the general rule in Ohio). In fact, in its most recent pronouncement on the public policy exception, which is at the core of the present appeal, this Court reiterated that "[t]he common-law doctrine of employment at will generally governs employment relationships in Ohio." *Wiles v. Medina Auto Parts* (2004), 96 Ohio St.3d 240, 773 N.E.2d 526 (citing *Mers v. Dispatch Printing Company* (1985), 19 Ohio St.3d 100, 103). Thus, Appellee's suggestion that this state does not, or should not, adhere to the employment-at-will doctrine finds no support in the decisions of this Court.

Appellee characterizes Appellants' argument as "championing" a "frontier era at-will doctrine" and dedicates the first five pages of her argument to a litany of the evils that flow from the application of the at-will employment doctrine. (Brief of Appellee at 11-15) To clarify, Appellants' are not suggesting that this Court apply the employment-at-will doctrine as it existed one hundred and twenty, or even fifty, years ago. It goes without saying that the at-will-employment doctrine as it existed one hundred and twenty years ago would be neither

appropriate nor advantageous in the modern workplace. Additionally, Appellants can scarcely deny this Court's unmistakable efforts to mitigate the harsh effects of the employment-at-will doctrine through recognition certain limited exceptions to the at-will rule, including the public policy exception. Notwithstanding its recognition of certain limited exceptions, this Court has never deviated from the principle that employment relationships in Ohio are generally presumed to be "at-will". Appellants reiterate their position that the current construction of the at-will-employment doctrine—as a general presumption with narrow exceptions—continues to serve as a valuable tool in balancing the interests of employers and employees in this state.

To summarize, Appellants are not asking this Court to either adopt a new rule or to return to outmoded notions regarding the rights of employees and employers. Rather, Appellants are asking this Court to apply well-settled legal principles to the facts of this case and, in so doing, establish a bright line rule that affirms the primacy of the employment-at-will doctrine in Ohio and expressly prohibits application of the public policy exception to claims premised a statute that both creates a right and provides a remedial scheme to redress violations of that right.

B. This Court Should Not Recognize a Private Cause of Action, Sounding in Tort, for Wrongful Discharge in Violation of Public Policy Premised Upon Ohio Revised Code Chapter 4112.

As Appellants' argued in their Merit Brief, this Court has long recognized that it is not appropriate for the judiciary to substitute its own opinion for that of the General Assembly in discerning the appropriate means for individuals to vindicate legislatively created rights. *See, e.g., Fletcher v. Coney Island, Inc.* (1956), 165 Ohio St. 150 at 154, 134 N.E. 2d 371 (holding that it is for the General Assembly alone to determine the method by which individuals may seek redress for the violation of statutorily created rights).

Consistent with this sound prohibition on judicial legislation, this Court has consistently exercised restraint in the recognition of private common law torts premised upon the public

policy embodied in valid statutory enactments. In fact, this Court's prior decisions evidence a deliberate effort to limit the reach of the public policy exception to those circumstances in which the discharged employee lacks a statutory remedy sufficient to redress the alleged injury. In the case at bar, this Court should apply these principles and hold that public policy claims premised upon Chapter 4112, or analogous federal statutes, are not recognized in Ohio because the underlying statutes provide a sufficient statutory remedy for any alleged violation.

As discussed in detail in Appellants' Merit Brief, a general theme running through the decisions of this Court, with respect to the viability of claims for wrongful termination in violation of public policy, is the absence of any other meaningful remedy for the discharged employee. See *Greeley v. Miami Valley Maint. Cont. Inc.* (1990), 49 Ohio St.3d 228, 551 N.E.2d 981; *Painter v. Graley* (1994), 70 Ohio St.3d 377, 639 N.E.2d 51; *Collins v. Rizkana* (1995), 73 Ohio St.3d 65, 652 N.E.2d 653; *Kulch v. Structural Fibers Inc.* (1997), 78 Ohio St.3d 134, 677 N.E.2d 308. In fact, the tort was created so that the prospect of the "remediless" employee would not allow an employer to undercut the policies and goals that other laws sought to further. *Greeley*, 49 Ohio St.3d at 232-35. Consistent with its prior decisions, this Court has expressly held that a public policy claim is not available if the statute providing the public policy also contains an adequate remedial scheme. *Wiles*, 96 Ohio St.3d 240.

Appellee would like this Court to analogize her claims to the claims of Robert Greeley, Shirley Painter, James Kulch, and Rebecca Collins. Unfortunately, Appellee ignores the fact that none of these claimants had a statutory remedy sufficient to redress their alleged injury. More importantly, several of these claimants, including Mr. Greeley and Ms. Collins, would have been left without any legal means to challenge the circumstances under which they were discharged if this Court had refused to allow their common law wrongful termination claims. This is simply

not the case for Appellee. To the contrary, she was entitled to seek redress for her injury through a comprehensive statutory scheme that was specifically enacted to promote and protect the very public policy underlying her wrongful termination claim. Considering the comprehensive statutory remedies available to victims of employment discrimination, and the fact that nothing prohibited Appellee from pursuing a statutory claim under either Chapter 4112 or the ADEA, it is indisputable that the present case is factually and legally distinct from *Greeley, Painter, Kulch, and Collins*.

C. **This Court Has Conclusively Established That A Public Policy Claim Is Not Available If The Statute Providing The Public Policy Contains An Adequate Remedial Scheme.**

On the authority of *Wiles*, Appellants' argued in their Merit Brief that a public policy claim is not available if the statute providing the public policy contains an adequate remedial scheme. As this Court wisely acknowledged in *Wiles*, "there is no need to recognize a common-law action for wrongful discharge if there already exists a statutory remedy that adequately protect society's interests." *Wiles*, 96 Ohio St.3d at 244. Applying the *Wiles* framework to the facts of this case compels the conclusion that claims based upon the public policy embodied in Chapter 4112 must fail as a matter of law because that Chapter provides more than adequate remedies to redress any injury allegedly caused by the discriminatory acts of an employer. In fact, to advance and protect the public policy prohibiting age discrimination, the General Assembly enacted a comprehensive statutory scheme to shield older employees from unlawful discrimination on the basis of age.¹

¹ To that end, Ohio Revised Code Sections 4112.02(N), 4112.14 and 4112.99 provide a variety of remedies for employees who are discriminated against on the basis of age, including compensatory damages, punitive damages, injunctive relief, reinstatement, reasonable attorneys' fees, costs, and compensation for lost wages and benefits. See *Rice v. Certaineed Corp.* (1999), 84 Ohio St.3d 417, 704 N.E.2d 1217; *Taylor v. Nat'l Group of Co.'s, Inc.* (1992), 65 Ohio St.3d 482, 605 N.E.2d 45.

Appellee, and her *Amici*, seek to avoid application of the *Wiles* framework, and salvage her wrongful termination claim, by arguing that her claim is premised upon “multiple sources” of public policy and, therefore, survives because the Ohio General Assembly failed to expressly preempt common law claims when it enacted Chapter 4112.

1. Appellee’s Public Policy Claim Derives from a Single Statutory Source and Wiles, not Kulch or Collins, Provides the Appropriate Framework for Evaluating Her Claim.

Both Appellee and *Amicus Curiae* OELA argue that *Wiles* is inapposite because Appellee’s claim is predicated on multiple sources of public policy and, as a result, the remedial scheme in Chapter 4112 cannot foreclose recognition of her claim. (Brief of Appellee at 15-18; Brief of OELA at 4). Appellee and *Amicus* OELA maintain that there is a material distinction between public policy cases in which one statute forms the basis of the tort claim and public policy cases in which multiple sources of public policy underlie the tort claim. (*Id.*). Appellee and *Amicus* OELA, therefore, conclude that *Wiles* does not apply to claims premised upon multiple sources of public policy and further argue that because Appellee’s claim is premised upon multiple sources, it should not be dismissed under the holding of *Wiles*. Assuming, *arguendo*, that *Wiles* does not apply if the wrongful termination claim is premised upon multiple sources of public policy, Appellee’s claim still fails as a matter of law because the public policy prohibiting age discrimination does not truly emanate from multiple sources and application of the ‘multiple source’ analysis from *Collins* and *Kulch* is therefore unwarranted.

a) A Common Law Public Policy Prohibiting Age Discrimination Does Not Exist Under Ohio Law and Cannot Form the Basis for Appellee’s Wrongful Termination Claim.

Appellee makes the following unequivocal statement on page 34 of her Merit Brief: “[a]gain, for the nth time, the Appellee’s case is not based upon a violation of R.C. 4112.02, but

an independent and broader Ohio common law policy tort remedying age discrimination”² Appellee argues, for the first time in her Merit Brief, that “a common law public policy against age discrimination exists independently and in advance of the enactment of Ohio R.C. 4112.02” (Brief of Appellee at 16). Notably, Appellee provides no legal authority whatsoever to support her new argument that her wrongful termination claim is premised upon an independent common law public policy prohibiting age discrimination. As this Court is well aware, Ohio had no historical common law prohibition on employment discrimination, in general, or age discrimination, in particular.³

Claiming to have identified a common law source for the public policy underlying her wrongful termination claim, Appellee then draws the conclusion that, in the absence of express legislative preemption, her wrongful termination claim survives under the authority of *Kulch*. Notwithstanding Appellee’s unfounded assertions to the contrary, no common claim for age discrimination existed at the time Chapter 4112 was enacted, therefore, the General Assembly’s failure to include express preemption language in Chapter 4112 is of no consequence. After all, the legislature cannot preempt non-existent common law claims. Additionally, the argument that legislative silence since *Greeley* was decided somehow confirms a legislative intent to allow common law wrongful termination claims predicated upon, and in addition to, Chapter 4112 is also without merit. This Court has repeatedly held that legislative silence is insignificant. *Rice v. Certainteed Corp.* (1999), 84 Ohio St.3d 417, 421, 704 N.E.2d 1217 (quoting *United States v. Estate of Romani*, 523 U.S. 517, 535) (“A legislature does not, however, express its will by

² This is in direct contradiction with Appellee’s Complaint, which states “[t]he public policy underpinning the Plaintiff’s case is found in Ohio R.C. 4112.02.” (Complaint at ¶¶ 21, 24).

³ Appellee’s argument that her wrongful termination claim is based upon a common law prohibition against age discrimination, rather than Chapter 4112, also calls into question whether Appellee can satisfy the “clarity” element of her wrongful termination claim.

failing to legislate. ‘The act of refusing to enact a law . . . has utterly no legal effect, and thus has utterly no place in a serious discussion of the law’”).

- b) *Chapter 4112 and the Federal Age Discrimination in Employment Act Do Not Constitute Multiple Sources of Public Policy Sufficient to Warrant Application of the Multiple Source Rule from Collins and Kulch.*

Amicus OELA asserts an equally unpersuasive argument that Appellee’s wrongful termination claim is premised upon multiple sources of public policy. According to OELA, Chapter 4112 and the ADEA constitute separate sources of public policy prohibiting age discrimination.⁴ (OELA Brief at 7-8). *Amicus* OELA urges this Court to ignore its admonition in *Wiles* “that there is no need to recognize a common-law action for wrongful discharge if there already exists a statutory remedy that adequately protect society’s interests” because Appellee had two separate comprehensive remedial schemes available to redress her alleged injury. Such an argument defies both reason and common sense and should be summarily rejected by this Court.

Amicus OELA’s misplaced reliance on the “multiple source” analysis from *Collins* and *Kulch* ignores critical distinctions between those cases and the case at bar. First, the “multiple sources” in *Collins* and *Kulch* were separate and distinct pieces of legislation, emanating from different areas of the law, and aimed at different purposes. See *Kulch*, 78 Ohio St.3d at 152-53; *Collins*, 73 Ohio St.3d 65, 71-75. In *Collins*, for example, the Court derived the underlying public policy from Chapter 4112 in addition to criminal statutes prohibiting sexual imposition (R.C. 2907.06) and prohibiting prostitution (R.C. 2907.21-2907.25). *Collins*, 73 Ohio St.3d 65, 71-75. From these multiple sources, one antidiscrimination statute and two criminal statutes, the Court concluded that there was a sufficiently clear public policy prohibiting sexual harassment in

⁴ As a preliminary matter, *Amicus* OELA’s argument ignores the fact that the ADEA and Chapter 4112 are, for all practical purposes, separate versions of the same statute.

the workplace. *Id.* at 75. Similarly, in *Kulch*, the Court derived the public policy prohibiting termination of employees who report safety violations in the workplace from Ohio's Whistleblower Statute (R.C. 4123.52) and the federal Occupational Safety and Health Act (29 U.S.C.A. §660). *Kulch*, 78 Ohio St.3d at 152-53. Thus, the "multiple sources" in *Collins* and *Kulch* were not analogous federal and state statutes like Chapter 4112 and the ADEA.

More importantly, in *Collins* and *Kulch*, the "secondary source" of the relevant public policy provided no private right of action to an aggrieved individual. *See Kulch*, 78 Ohio St.3d at 152-53; *Collins*, 73 Ohio St.3d 65, 71-75. In this case, the two sources of public policy upon which Appellee seeks to rely are both antidiscrimination statutes, both protect the same rights, both provide a private cause of action by the employee against the employer, and both provide comprehensive, and nearly identical, remedies for any violation of the enumerated statutory rights.

Given the complete absence of any legal authority to support its claim that the mere existence of both a state and federal statute warrants a finding that the public policy is derived from multiple sources, *Amicus* OELA's argument that *Wiles* is inapplicable is untenable and should be rejected. To that end, this Court should cutoff similar arguments in the future by clearly holding that the *Wiles* framework applies even if the public policy is expressed in both state and federal antidiscrimination statutes and that the relevant inquiry is whether, taken alone or together, the statutory enactments are sufficient to protect the underlying public policy.

D. Appellee Cannot Establish The Elements Of Her Claim For Wrongful Termination in Violation Of Public Policy Because The Public Policy Underlying Her Claim Is Not In Jeopardy.

As Appellants argued in detail in their Merit Brief, Chapter 4112 contains a comprehensive remedial scheme, which is more than adequate to protect alleged victims of employment discrimination. Considering the substantial rights and remedies available to

employees under Chapter 4112, no significant public policy is furthered by allowing terminated employees, like Appellee, to pursue a common law tort claim premised upon the public policy embodied in the antidiscrimination statutes. Thus, applying the rule from *Wiles* that “there is no need to recognize a common-law action for wrongful discharge if there already exists a statutory remedy that adequately protects society’s interests” compels the conclusion that Appellee cannot state a claim for wrongful discharge in violation of public policy premised upon the age discrimination provisions in Chapter 4112. *Id.* at 384.

Appellee and *Amicus* AARP attack Appellants’ argument that the public policy prohibiting age discrimination is not in jeopardy by arguing that the remedies afforded by that chapter are “insufficient”. However, upon closer examination, Appellee and *Amicus* AARP are merely dissatisfied with certain legislative choices relative to the age discrimination statute.

In fact, *Amicus* AARP concedes that “R.C. 4112.02(N) and R.C. 4112.99 provide a panoply of remedies,” but proceeds to outline a litany of complaints about the procedure for availing oneself of those remedies. (Brief of *Amicus* AARP at 4). *Amicus* AARP goes on to describe Ohio’s age discrimination statute as “a complex array of independent statutory provisions with inconsistent and unclear time limits and an equally confusing election of remedies requirement” and complains at length about the “extremely short statute of limitations”. (*Id.* at 4, 10). Finally, *Amicus* AARP suggests that age discrimination victims are incapable of comprehending the “bewildering labyrinth of legal provisions” and therefore are not adequately protected by the statute. (Brief of *Amicus* AARP at 2). Appellee similarly argues that “plaintiffs in age discrimination cases are not lawyers and they should not be treated as if they are” to support her argument that the wrongful termination tort is necessary to protect victims of age discrimination. (Brief of Appellee at 34).

It appears that both Appellee and *Amicus* AARP are suggesting that a wrongful termination tort is necessary to protect victims of age discrimination because the comprehensive statute protecting age discrimination victims is “confusing” and “complicated” and “too strict”. Nothing in the *Wiles* decision, or any other decision of this Court, suggests that potential “confusion” about how to pursue statutory remedies is a sufficient basis to warrant recognition of a public policy tort claim. To the contrary, the focus is, and should be, on the statutory remedy available rather than on the particularized method for pursuing such remedies.

Moreover, notwithstanding the dissatisfaction of Appellee and *Amicus* AARP about the choices of the General Assembly, it is exclusively the right of the legislature to determine the method by which an aggrieved individual may vindicate statutorily created rights. In fact, nearly every court, including the United States Supreme Court, has held that the judiciary is strictly limited in its remedy creating abilities when the legislature has already specified a specific remedy for violation of the right. *See, e.g., Switchmen’s Union of North America v. National Mediation Bd.*, 320 U.S. 297, 301, 64 S.Ct. 95 (1943). Under this well-established legal principle this Court may conclude that it would have made different choices in establishing the Ohio age discrimination statute, but that conclusion would not permit this Court to impose its will over the will of the legislature.

As this Court has aptly noted, it is not the role of the courts to establish the procedure whereby an individual can vindicate legislatively created rights. If this Court were to adopt Appellee’s position that “elderly people” or “unsophisticated people” or “non-lawyers” can simply file a wrongful termination tort action in lieu of complying with the procedure set out in Chapter 4112, this Court would effectively deem Chapter 4112 to be a meaningless nullity. Appellants, therefore, urge this Court to follow its sound reasoning in *Wiles* and hold that

Chapter 4112 provides an adequate opportunity for full and fair relief from any alleged employment discrimination and. As a result, a separate tort cause of action premised upon the public policy embedded in Chapter 4112 is unnecessary and improper.

E. **The Majority of Ohio Courts of Appeal Have Reached The Same Conclusion Advanced By Appellant's And Dismissed Public Policy Claims Premised Upon Alleged Acts of Employment Discrimination.**

It is true that the majority of the Ohio courts of appeal to consider the effect of *Wiles* on the continued viability of wrongful termination claims premised on Chapter 4112 have supported the proposition of law advanced by Appellants in this case. (Merit Brief of Appellants at 26-28 and Appellants' Memorandum in Support of Jurisdiction at 2). Appellee's response is largely semantic and seeks to quibble over what is a "majority". It is enough to say that the appellate courts in this state have reached inconsistent results regarding the continued viability of wrongful termination claims premised upon Chapter 4112 following this Court's decision in *Wiles*. This undisputed split among the appellate districts serves only to reinforce Appellants' position that this Court needs to issue a bright line rule of law establishing *Wiles* as the appropriate framework for analyzing public policy tort claims.

F. **The Majority of Other Jurisdictions Throughout The United States Apply The Rule Advanced By Appellant's And Refuse To Permit A Wrongful Discharge Claim If Statutory Remedies Are Sufficient To Redress The Alleged Injury.**

Again, Appellee's only response to this portion of Appellants brief is to state that it is a ridiculous argument because "the law of eight states out of fifty does not make for a majority of anything". (Brief of Appellee at 31). To be clear, **thirty nine states** currently recognize a public policy exception that is as restricted, or more restricted, than the rule advanced by Appellants in

this case.⁵ On the other hand, only four states, Oklahoma, Arizona, Nevada, and North Carolina, have expressly adopted the position urged by Appellee, that the public policy exception is a separate and distinct claim is not barred by the existence of a remedial statute.⁶ Of the eight remaining states, seven have no clear rule of law on this issue, and one (Montana) has adopted a just cause statute, which renders this issue largely irrelevant in that state.⁷

Appellee has come forward with no justification, legal or otherwise, for Ohio to adopt a rule that is opposition with the law of thirty-eight other states. Moreover, Appellants cannot conceive of any reasonable justification of such a result.

II. **Proposition of Law No. 2: A plaintiff cannot state a cause of action for wrongful discharge in violation of public policy embodied in a statute unless the plaintiff has strictly complied with the procedural requirements of the underlying statute, including the applicable statute of limitations.**

A. **This Court Should Respect The Province Of The Legislature And Prohibit The Use Of The Wrongful Termination Tort To Subvert The Statute Of Limitations Established By The General Assembly In Enacting Chapter 4112.**

In their Merit Brief, Appellants argued that this Court should not permit alleged victims of age discrimination to bypass the statute of limitations laid out in Chapter 4112 by recasting their statutory age discrimination claim as a wrongful termination claim. Appellants' argument was aimed at the abuse of the wrongful termination tort by Plaintiffs, like Appellee, who are time barred from asserting their statutory discrimination claims and choose to resurrect their time barred claim as a wrongful termination tort "premised upon the antidiscrimination statute." This is an unacceptable use of what was originally intended to be a limited exception to the employment-at-will doctrine to protect otherwise remediless employees.

⁵ See, e.g., Paul H. Tobias, *Litigating Wrongful Discharge Claims*, Chapter 5 at Appendix 5A (Appendix at 1 - 32); Lionel J. Prastic, *Wrongful Termination: A State by State Survey*, Introduction (Appendix 33 - 39).

⁶ *Id.*

⁷ *Id.*

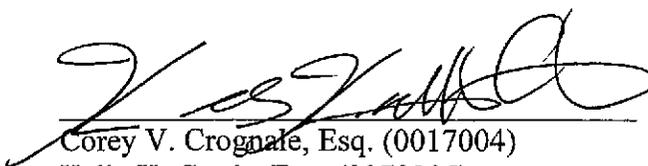
B. This Court Has Affirmatively Held That A Claim For Wrongful Termination Premised Upon A Statute Will Not Lie Unless the Plaintiff Strictly Complied With The Statutory Prerequisites.

Allowing a public policy claim for individuals who fail to bring their claim in time to take advantage of the more comprehensive remedies of Ohio Revised Code §4112.02(N) and §4112.99 would effectively nullify the statutory prerequisites established by the General Assembly. Many courts in Ohio, including this Court, have recognized the well-reasoned rule that claimants must comply with the statutory requirements in order to bring a public policy claim based on the statute. Therefore, Appellee should not be permitted to pursue her public policy claim unless she strictly complied with the dictates set forth in the statute embodying that particular public policy, which she cannot do. Based upon the authority of *Contreras v. Ferro Corp.* (1995), 73 Ohio St.3d 244; 652 N.E.2d 940 and *Kulch v. Structural Fibers Inc.* (1997), 78 Ohio St.3d 134, this Court must hold that an employee who fails to strictly comply with the procedural requirements of Ohio Revised Code §4112.02 cannot pursue a tort claim based solely upon the public policy embodied in the age discrimination statute.

III. CONCLUSION

For the reasons set forth above, Appellants request that the Court follow its reasoning in *Kulch* and *Wiles* and adopt Appellants' Proposition of Law No. 1, thereby holding that a plaintiff cannot state a separate cause of action, sounding in tort, for wrongful termination in violation of public policy premised upon Chapter 4112 because Chapter 4112 provides sufficient legal remedies. In the alternative, Appellant's respectfully request that this Court follow its reasoning in *Contreras* and adopt Appellants' Proposition of Law No. 2, thereby limiting the reach of public policy claims premised upon Chapter 4112 by requiring claimants to strictly comply with the statutory prerequisites contained in that Chapter, including the statutes of limitations.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this foregoing Reply Brief of Appellants Pioneer National Latex, Melissa McCormic, and Jerry Meyer was served via ordinary U.S. mail to counsel for Appellee, Michael T. Conway, Attorney at Law, 180 Aster Place, Brunswick, Ohio 44212 on March 6, 2007.


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Litigating Wrongful Discharge Claims
Database updated December 2006

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Part I. Substantive Law
Chapter 5. "Public Policy" Tort: Retaliatory Discharges that Violate Public Policy
AppendicesAPPENDIX 5A. State-By-State Compendium Of Leading And Representative Decisions Concerning The
Public Policy Tort Doctrine

Alabama

The Alabama Supreme Court continues to refuse to recognize a common law public policy exception to the at-will rule, most recently in Wright v. Dothan Chrysler Plymouth Dodge, Inc., 658 So. 2d 428, 129 Lab. Cas. (CCH) ¶ 57861 (Ala. 1995). Note, however, that an Alabama statutory cause of action exists for discharge in retaliation for the filing of a workers' compensation claim: Ala Code 1975 § 25-5-11.1; see, e.g., Ex parte Breitsprecher, 772 So. 2d 1125, 16 I.E.R. Cas. (BNA) 557 (Ala. 2000) (holding that statutory cause of action may be stated for constructive as well as for actual discharge).

The Alabama statutory cause of action for workers' compensation retaliation extends protection to an employee who is discharged because he or she filed a worker's compensation claim against a previous employer, it was held in Scott Bridge Co. v. Wright, 883 So. 2d 1221, 20 I.E.R. Cas. (BNA) 1359 (Ala. 2003).

In Phillips v. Sentinel Consumer Products, Inc., 21 I.E.R. Cas. (BNA) 1499, 2004 WL 1178356 (Ala. Civ. App. 2004), it was held that evidence that the employer had been aware of the plaintiff's work-related injury was insufficient to establish a prima facie case of workers' compensation retaliation.

Alaska

In Luedtke v. Nabors Alaska Drilling, Inc., 768 P.2d 1123, 4 I.E.R. Cas. (BNA) 129, 116 Lab. Cas. (CCH) ¶ 56337, 79 A.L.R.4th 75 (Alaska 1989), the Alaska Supreme Court, recognized a version of the public policy tort doctrine that is "largely encompassed within" the doctrine that an at-will employee may assert a cause of action for the employer's breach of the implied covenant of good faith and fair dealing. (See Ch 6 § § 27 to 32) (The Luedtke case involved the discharge of an employee for failing a drug test that had assertedly violated his privacy rights.) According to the court's reasoning, an employer's violation of public policy may amount to a violation of the implied covenant. The concept was further explained in Luedtke v. Nabors Alaska Drilling, Inc., 834 P.2d 1220, 7 I.E.R. Cas. (BNA) 834, 126 Lab. Cas. (CCH) ¶ 57532 (Alaska 1992), and Lincoln v. Interior Regional Housing Authority, 30 P.3d 582, 17 I.E.R. Cas. (BNA) 1638 (Alaska 2001).

In Kinzel v. Discovery Drilling, Inc., 93 P.3d 427 (Alaska 2004), in the context of allegations that the plaintiff had been discharged in retaliation for filing a health and safety complaint and/or for filing a workers' compensation claim, the Alaska Supreme Court recognized and discussed the "public policy exception" in its generally recognized form, as a cause of action analytically distinct from a cause of action for breach of the implied covenant of good faith and fair dealing.

In Reust v. Alaska Petroleum Contractors, Inc., 127 P.3d 807, 23 I.E.R. Cas. (BNA) 1065, 151 Lab. Cas. (CCH) P 60089 (Alaska 2005), the Alaska Supreme Court affirmed a judgment in favor of a former employee discharged for giving testimony adverse to his employer in litigation involving a coworker.

Arizona

Arizona courts have held public policy tort causes of action to have been stated in a number of factual contexts: Wagenseller v. Scottsdale Memorial Hosp., 147 Ariz. 370, 710 P.2d 1025, 1 I.E.R. Cas. (BNA) 526, 119 L.R.R.M. (BNA) 3166, 103 Lab. Cas. (CCH) ¶ 55511 (1985) (discharge for refusal to commit illegal act); Douglas v. Wilson, 160 Ariz. 566, 774 P.2d 1356, 50 Fair Empl. Prac. Cas. (BNA) 97 (Ct. App. Div. 2 1989) (discharge in retaliation for filing workers' compensation claim); Murcott v. Best Western Intern., Inc., 198 Ariz. 349, 9 P.3d 1088, 16 I.E.R. Cas. (BNA) 1277 (Ct. App. Div. 1 2000) (discharge for whistleblowing). Compare Hart v. Seven Resorts Inc., 190 Ariz. 272, 947 P.2d 846, 12 I.E.R. Cas. (BNA) 1411 (Ct. App. Div. 1 1997), review granted, (Dec. 16, 1997) and review dismissed, 191 Ariz. 297, 955 P.2d 534 (1998) (no cause of action could be stated against private employer who had discharged plaintiff for refusing to submit to drug test since privacy provision of Arizona Constitution applies only to public entities).

Wagenseller, supra, held that the cognizable sources of public policy include judicial opinions as well as state statutes and constitutional provisions. However, according to Torrez v. City of Scottsdale, 13 I.E.R. Cas. (BNA) 316, 1997 WL 580326 (Ariz. Super. Ct. 1997), neither federal statutes nor municipal ordinances are cognizable sources.

Concerning the viability of a claim in the whistleblowing context, it was held in Murcott, supra, that internal complaints are sufficient, and that a plaintiff is not required to show that actual violations of law occurred.

Arkansas

In Sterling Drug, Inc. v. Oxford, 294 Ark. 239, 743 S.W.2d 380, 3 I.E.R. Cas. (BNA) 1060 (1988), the Arkansas Supreme Court accorded first-time recognition to the public policy tort, in the context of an employee discharged for reporting his employer's pricing violations in connection with General Service Administration contracts. The court held that Arkansas public policy is violated when an at-will employee is discharged for reporting violations of either state or federal law, statutory or constitutional, and that the cause of action may be maintained even if discharge was only constructive, not actual. The court held, however, that the cause of action sounds only in contract, not tort.

And in Webb v. HCA Health Services of Midwest, Inc., 300 Ark. 613, 780 S.W.2d 571, 4 I.E.R. Cas. (BNA) 1869 (1989), the Arkansas Supreme Court reversed summary judgment on a claim brought by a hospital employee who alleged that she had been discharged for refusing to falsify patient records. The court reasoned that the claim implicated federal statutory and regulatory rules designed to contain medical costs, and explained that the Arkansas version of the public policy tort protects from retaliation employees who have exercised statutory rights, performed statutory duties, or refused to commit illegal acts.

Prior to Sterling Drugs, supra, the Eighth Circuit, in Lucas v. Brown & Root, Inc., 736 F.2d 1202, 35 Fair Empl. Prac. Cas. (BNA) 1855, 1 I.E.R. Cas. (BNA) 388, 116 L.R.R.M. (BNA) 2744, 34 Empl. Prac. Dec. (CCH) ¶ 34419, 101 Lab. Cas. (CCH) ¶ 55474 (8th Cir. 1984), relied on dictum in M. B. M. Co., Inc. v. Counce, 268 Ark. 269, 596 S.W.2d 681, 118 L.R.R.M. (BNA) 2925 (1980) in holding that a cause of action was stated by the allegation that the plaintiff had been discharged for rejecting a supervisor's sexual advances.

Compare Smith v. American Greetings Corp., 304 Ark. 596, 804 S.W.2d 683, 6 I.E.R. Cas. (BNA) 1039, 121 Lab. Cas. (CCH) ¶ 56815 (1991) (affirming dismissal; no public policy was violated by discharge of plaintiff for arguing with supervisor); Mansfield v. American Telephone & Telegraph Corp., 747 F. Supp. 1329, 5 I.E.R. Cas. (BNA) 1383 (W.D. Ark. 1990) (distinguishing Sterling Drug, supra, on ground that plaintiff-whistleblower had complained only internally, not to outside authorities).

California

In 1959, a California Court of Appeal, in Petermann v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 396, 174 Cal. App. 2d 184, 344 P.2d 25, 1 I.E.R. Cas. (BNA) 5, 44 L.R.R.M. (BNA) 2968, 38 Lab. Cas. (CCH) ¶ 65861 (2d Dist. 1959), was apparently the first court in the United States to recognize a public policy limitation on an employer's at-will discharge power, reversing the dismissal of a

tort claim brought by an employee who alleged that he had been discharged for refusing to commit perjury on his employer's behalf in front of a state legislative committee. The court's analysis involved the importance of the public policy expressed by state penal statutes. Twenty-one years later, the California version of the "public policy exception" was systematized by the state supreme court in Tameny v. Atlantic Richfield Co., 27 Cal. 3d 167, 164 Cal. Rptr. 839, 610 P.2d 1330, 1 I.E.R. Cas. (BNA) 102, 115 L.R.R.M. (BNA) 3119, 121 Lab. Cas. (CCH) ¶ 56822, 9 A.L.R.4th 314 (1980), a case involving a similar fact situation—the discharge of an employee for his refusal to participate in an illegal price-fixing scheme.

Subsequently, California courts have issued dozens of opinions concerning the scope and application of the public policy exception. Among the most significant state supreme court decision have been the following: Gantt v. Sentry Insurance, 1 Cal. 4th 1083, 4 Cal. Rptr. 2d 874, 824 P.2d 680, 7 I.E.R. Cas. (BNA) 289, 59 Empl. Prac. Dec. (CCH) ¶ 41597, 121 Lab. Cas. (CCH) ¶ 56853 (1992), overruled on other grounds by, Green v. Ralee Engineering Co., 19 Cal. 4th 66, 78 Cal. Rptr. 2d 16, 960 P.2d 1046, 14 I.E.R. Cas. (BNA) 449, 136 Lab. Cas. (CCH) ¶ 58448 (1998) (affirming judgment for employee discharged for refusing to commit perjury at administrative hearing; doctrine of workers' compensation exclusivity does not apply to public policy tort claim, but public policy asserted as basis for claim must have statutory or constitutional basis); Reno v. Baird, 18 Cal. 4th 640, 76 Cal. Rptr. 2d 499, 957 P.2d 1333, 8 A.D. Cas. (BNA) 563, 73 Empl. Prac. Dec. (CCH) ¶ 45450 (1998) (supervisors are not subject to individual liability); Stevenson v. Superior Court, 16 Cal. 4th 880, 66 Cal. Rptr. 2d 888, 941 P.2d 1157, 74 Fair Empl. Prac. Cas. (BNA) 1623, 13 I.E.R. Cas. (BNA) 321, 72 Empl. Prac. Dec. (CCH) ¶ 45272 (1997) (cause of action may be supported by public policy against age discrimination expressed by California's Fair Employment and Housing Act); Jennings v. Marralle, 8 Cal. 4th 121, 32 Cal. Rptr. 2d 275, 876 P.2d 1074, 65 Fair Empl. Prac. Cas. (BNA) 850, 9 I.E.R. Cas. (BNA) 1768 (1994) (California Fair Employment and Housing Act is not sufficient source of antidiscrimination public policy to support common law claims against employers too small to be subject to statute itself); Turner v. Anheuser-Busch, Inc., 7 Cal. 4th 1238, 32 Cal. Rptr. 2d 223, 876 P.2d 1022, 9 I.E.R. Cas. (BNA) 1185, 128 Lab. Cas. (CCH) ¶ 57746 (1994) (internal company policies and provisions of collective bargaining agreement were insufficiently fundamental sources of public policy to support wrongful discharge claim); Little v. Auto Stiegler, Inc., 29 Cal. 4th 1064, 130 Cal. Rptr. 2d 892, 63 P.3d 979, 19 I.E.R. Cas. (BNA) 1239 (2003) (pre-dispute arbitration provisions that purport to cover public policy claims are subject to same heightened standards of fairness that apply with respect to arbitration of statutory discrimination claims)

In Haney v. Aramark Uniform Services, Inc., 121 Cal. App. 4th 623, 17 Cal. Rptr. 3d 336, 175 L.R.R.M. (BNA) 2585 (5th Dist. 2004), review denied, (Dec. 1, 2004), it was held that a union-represented employee discharged for complaining about the employer's fraudulent billing of customers stated a common law public policy claim that was not preempted by federal labor law.

In Cocchi v. Circuit City Stores, 2006 WL 870736 (N.D. Cal. 2006), a federal district court denied an employers motion for summary judgment in an action in which a salesman alleged that he had been discharged after an altercation with customers, in violation of the public policy guaranteeing the right to self defense expressed in the California Constitution.

Colorado

The public policy tort was first accorded recognition by a Colorado court in Cronk v. Intermountain Rural Elec. Ass'n, 765 P.2d 619, 3 I.E.R. Cas. (BNA) 1049 (Colo. Ct. App. 1988), reversing summary judgment on a claim by employees who alleged that they had been discharged for refusing to violate several public utility statutes. The Colorado Supreme Court systematized the doctrine four years later in Martin Marietta Corp. v. Lorenz, 823 P.2d 100, 7 I.E.R. Cas. (BNA) 77, 120 Lab. Cas. (CCH) ¶ 56773 (Colo. 1992), explaining that the doctrine applies where an employee has been discharged for refusing to commit an illegal act; for performing an important public obligation such as jury duty; or for exercising a statutory right or privilege.

The doctrine was subsequently refined or limited in significant respects in the following decisions: Rocky Mountain Hosp. and Medical Service v. Mariani, 916 P.2d 519, 11 I.E.R. Cas. (BNA) 1153, 52 A.L.R.5th 857 (Colo. 1996) (recognizing professional codes of ethics as cognizable sources of public policy); Jones v. Stevinson's Golden Ford, 36 P.3d 129, 17 I.E.R. Cas. (BNA) 865 (Colo. Ct. App. 2001), cert. denied, (Nov. 19, 2001) (deriving public policy from Colorado consumer protection statutes and affirming judgment for employee discharged for refusing to sell unnecessary automobile repair services); Wisniewski v. Medical Action Ind., Inc., 16 I.E.R. Cas.

(BNA) 1496, 2000 WL 1679612 (D. Colo. 2000) (holding that common law claims may not be based on public policy expressed by Colorado's anti-discrimination statute).

Connecticut

The Connecticut Supreme Court first recognized the public policy tort in Sheets v. Teddy's Frosted Foods, Inc., 179 Conn. 471, 427 A.2d 385, 115 L.R.R.M. (BNA) 4626 (1980), a case involving the discharge of an employee for internally reporting violations of the Connecticut Uniform Food, Drug and Cosmetic Act and insisting that the employer comply. The court declined to decide whether the doctrine was applicable to other factual paradigms. In Faulkner v. United Technologies Corp., Sikorsky Aircraft Div., 240 Conn. 576, 693 A.2d 293, 12 I.E.R. Cas. (BNA) 1334, 135 Lab. Cas. (CCH) ¶ 58408 (1997), the court held indistinguishable from Sheets a situation involving the discharge of an employee for refusing to engage in conduct that would have subjected him to criminal sanctions under the federal Major Frauds Act. It was not necessary, the court emphasized, for the plaintiff to allege an explicit connection between the federal statute and Connecticut public policy.

Subsequent significant Connecticut decisions have included: Thibodeau v. Design Group One Architects, LLC, 260 Conn. 691, 802 A.2d 731, 89 Fair Empl. Prac. Cas. (BNA) 271, 18 I.E.R. Cas. (BNA) 1442 (2002) (no common law claim based on public policy against pregnancy discrimination may be asserted against employer too small to be covered by Connecticut anti-discrimination statute); Bumham v. Karl and Gelb, P.C., 252 Conn. 153, 745 A.2d 178, 16 I.E.R. Cas. (BNA) 1 (2000) (remedies available under state whistleblower statute and OSHA were exclusive of common law remedies sought by employee discharged for reporting sanitary violations); Sorrentino v. All Seasons Services, Inc., 245 Conn. 756, 717 A.2d 150, 14 I.E.R. Cas. (BNA) 421 (1998) (affirming judgment for plaintiff and award of \$115,000 for emotional distress in action alleging retaliation for filing of workers' compensation claim).

Delaware

In Schuster v. Derocili, 775 A.2d 1029, 85 Fair Empl. Prac. Cas. (BNA) 1786, 17 I.E.R. Cas. (BNA) 1159, 85 I.E.R. Cas. (BNA) 1159 (Del. 2001), the Delaware Supreme Court recognized the public policy tort for the first time, reversing summary judgment on a claim based on the public policy against sexual harassment expressed by Delaware's anti-discrimination statute. The plaintiff alleged that she had been discharged for refusing to submit to her supervisor's sexual demands. Prior to Schuster, a Delaware Court of Chancery, in Shearin v. E.F. Hutton Group, Inc., 652 A.2d 578, 9 I.E.R. Cas. (BNA) 1317 (Del. Ch. 1994), had acknowledged the absence of Delaware authority, but had concluded that a cause of action was stated by the allegation that the plaintiff, an in-house attorney, had been discharged in retaliation for conduct that was required of her under the Delaware Rules of Professional Conduct. Compare Lord v. Souder, 748 A.2d 393, 16 I.E.R. Cas. (BNA) 373 (Del. 2000) (affirming summary judgment; secretary discharged for reporting executive's illegal conduct could not state cause of action because she had not occupied position with responsibility for advancing relevant public policy interest).

District of Columbia

Long a hold out, the courts of the District of Columbia finally recognized a version of the public policy tort in 1991, when the Court of Appeals issued its opinion in Adams v. George W. Cochran & Co., Inc., 597 A.2d 28, 6 I.E.R. Cas. (BNA) 1392, 120 Lab. Cas. (CCH) ¶ 56767 (D.C. 1991). The court affirmed a judgment in favor of a truck driver who had been discharged for refusing to drive a vehicle that lacked a current inspection sticker. In Carl v. Children's Hosp., 702 A.2d 159, 13 I.E.R. Cas. (BNA) 563 (D.C. 1997), rejecting the contention that the doctrine was limited to situations involving refusals to violate the law, the court extended the doctrine to protect a nurse who had been discharged for taking a public position in opposition to the "tort reform" effort to limit damages in medical malpractice cases.

Also involving the whistleblowing context, see Washington v. Guest Services, Inc., 718 A.2d 1071, 14 I.E.R. Cas. (BNA) 643 (D.C. 1998) (recognizing cause of action on behalf of employee discharged for complaining about co-worker's safety violations); Fingerhut v. Children's Nat. Medical Center, 738 A.2d 799, 17 I.E.R. Cas. (BNA) 1139 (D.C. 1999) (holding that it was not fatal to whistleblower's claim that he had initially participated in illegal conduct he later decided to report); Liberatore v. Melville Corp., 168 F.3d 1326, 14 I.E.R. Cas. (BNA) 1545, 137 Lab. Cas. (CCH) ¶ 58596 (D.C. Cir. 1999) (holding that doctrine protects whistleblowers who only threaten to report violations of law as well as those who actually make such reports).

Concerning the cognizable sources of public policy, the court in Wallace v. Skadden, Arps, Slate, Meagher & Flom, 715 A.2d 873, 14 I.E.R. Cas. (BNA) 851 (D.C. 1998), appeared to regard professional rules of conduct as theoretically sufficient, while finding that no such rule had required the plaintiff's whistleblowing conduct in the present case.

Florida

Florida courts are among the small minority that have refused to recognize any common law, public policy-based exception to the at-will rule. See Jarvinen v. HCA Allied Clinical Laboratories, Inc., 552 So. 2d 241, 113 Lab. Cas. (CCH) ¶ 56127 (Fla. Dist. Ct. App. 4th Dist. 1989); Mitchell v. Consolidated Freightways Corp. of Delaware, 747 F. Supp. 1446 (M.D. Fla. 1990).

Note, however, that in Smith v. Piezo Technology and Professional Adm'rs, 427 So. 2d 182, 117 L.R.R.M. (BNA) 3378 (Fla. 1983) the Florida Supreme Court recognized the existence of a private right of action, implied by the state workers' compensation statute, in favor of an employer discharged in retaliation for the filing of a claim.

In Bruner v. GC-GW, Inc., 880 So. 2d 1244, 21 I.E.R. Cas. (BNA) 1277 (Fla. Dist. Ct. App. 1st Dist. 2004), it was held that Florida's implied statutory private cause of action extends to situations in which an employee has been discharged because of a workers' compensation claim filed against a previous employer.

Georgia

Although the Georgia Supreme Court has occasionally appeared to leave open the possibility that it might under proper facts be prepared to recognize some version of the public policy tort, it has not yet done so. See A.L. Williams & Associates v. Faircloth, 259 Ga. 767, 386 S.E.2d 151 (1989); Reilly v. Alcan Aluminum Corp., 272 Ga. 279, 528 S.E.2d 238, 82 Fair Empl. Prac. Cas. (BNA) 483, 16 I.E.R. Cas. (BNA) 211 (2000); Eckhardt v. Yerkes Regional Primate Center, 254 Ga. App. 38, 561 S.E.2d 164, 18 I.E.R. Cas. (BNA) 1302 (2002), cert. dismissed, (June 10, 2002).

Hawaii

In Parnar v. Americana Hotels, Inc., 65 Haw. 370, 652 P.2d 625, 115 L.R.R.M. (BNA) 4817 (1982), the Hawaii Supreme Court adopted a markedly liberal version of the public policy tort with a wide range of cognizable public policy sources—not only statutes and constitutional provisions, but also judicial decisions and administrative regulations. The court even suggested that a court might, with caution, announce public policy "on the spot," (in the absence of relevant legislation or prior decisional law). The case involved allegations that the plaintiff had been discharged to prevent her from testifying at administrative hearings concerning the employer's suspected anti-trust violations.

Subsequent Hawaii decisions have included: Smith v. Chaney Brooks Realty, Inc., 10 Haw. App. 250, 865 P.2d 170, 10 I.E.R. Cas. (BNA) 1111 (1994) (reversing summary judgment; claim by employee discharged for inquiring about propriety of certain paycheck deductions could be based on public policy expressed by statute requiring employers to inform employees accurately concerning compensation); and Pagdilao v. Maui Intercontinental Hotel, 703 F. Supp. 863, 3 I.E.R. Cas. (BNA) 1628, 123 Lab. Cas. (CCH) ¶ 57105 (D. Haw. 1988) (public policy favoring free speech did not protect employee discharged for shouting obscenities at company picnic).

Idaho

In 1977, in Jackson v. Minidoka Irrigation Dist., 98 Idaho 330, 563 P.2d 54, 115 L.R.R.M. (BNA) 5040 (1977), the Idaho Supreme Court expressed an abstract willingness to recognize some unspecified version of the public policy "exception," but actual recognition did not occur until the court's 1991 decision in Ray v. Nampa School Dist. No. 131, 120 Idaho 117, 814 P.2d 17, 68 Ed. Law Rep. 1149 (1991). In that case, the court held that a cause of action was stated by the allegation that the plaintiff had been discharged for reporting electrical and building code violations.

In a subsequent case involving a whistleblower, Crea v. FMC Corporation, 135 Idaho 175, 16 P.3d 272, 17 I.E.R. Cas. (BNA) 112 (2000), the strong public policy favoring the disclosure and investigation of criminal activity was relied upon by the Idaho Supreme Court in holding that a cause of action was stated by an employee who alleged that he had been discharged for disclosing his employer's responsibility for the arsenic contamination of ground water.

And in Hummer v. Evans, 129 Idaho 274, 923 P.2d 981, 113 Ed. Law Rep. 452, 12 I.E.R. Cas. (BNA) 122 (1996), the Idaho Supreme Court affirmed a judgment in favor of an AIDS education consultant who had been discharged by the state department of education because of the content of a letter she had written in compliance with a court-issued subpoena in connection with a criminal sentencing proceeding. The court based its holding on the public policy favoring the courts' access to candid information.

Illinois

In 1978, in Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 23 Ill. Dec. 559, 384 N.E.2d 353, 115 L.R.R.M. (BNA) 4371 (1978), the Illinois Supreme Court issued an important early decision recognizing the public policy exception in the context of an employee discharged in retaliation for the filing of a workers' compensation claim. Among the significant subsequent Illinois decisions involving the workers' compensation retaliation have been: Midgett v. Sackett-Chicago, Inc., 105 Ill. 2d 143, 85 Ill. Dec. 475, 473 N.E.2d 1280, 1 I.E.R. Cas. (BNA) 889, 117 L.R.R.M. (BNA) 2807, 102 Lab. Cas. (CCH) ¶ 55492 (1984) (common law cause of action exists independent of any contract remedy under collective bargaining agreement); Darnell v. Impact Industries, Inc., 105 Ill. 2d 158, 85 Ill. Dec. 336, 473 N.E.2d 935, 117 L.R.R.M. (BNA) 3371, 122 Lab. Cas. (CCH) ¶ 56929 (1984) (retaliatory discharge cause of action was stated even though worker's compensation claim had been filed against former employer); Richardson v. Illinois Bell Telephone Co., 156 Ill. App. 3d 1006, 109 Ill. Dec. 513, 510 N.E.2d 134, 3 I.E.R. Cas. (BNA) 1448, 128 L.R.R.M. (BNA) 2851 (2d Dist. 1987) (causation could be inferred from temporal proximity, and it was not fatal that workers' compensation claim had not actually been filed at time of discharge); Veit v. Village of Round Lake Park, 167 Ill. App. 3d 350, 118 Ill. Dec. 77, 521 N.E.2d 145, 3 I.E.R. Cas. (BNA) 437 (2d Dist. 1988) (there is no cause of action for retaliatory harassment short of discharge); Zimmerman v. Buchheit of Sparta, Inc., 164 Ill. 2d 29, 206 Ill. Dec. 625, 645 N.E.2d 877, 10 I.E.R. Cas. (BNA) 72 (1994) (there is no cause of action for retaliatory acts short of discharge); Hartlein v. Illinois Power Co., 151 Ill. 2d 142, 176 Ill. Dec. 22, 601 N.E.2d 720, 7 I.E.R. Cas. (BNA) 1387 (1992) (given employee's post-injury inability to perform job, employee's filing of workers' compensation claim did not require employer to retain him); Wieseman v. Kienstra, Inc., 237 Ill. App. 3d 721, 178 Ill. Dec. 603, 604 N.E.2d 1126, 126 Lab. Cas. (CCH) ¶ 57507 (5th Dist. 1992) (no cause of action was stated by allegation that employer had discharged new employee out of fear of future workers' compensation claims after physical exam revealed structural knee problem); Motsch v. Pine Roofing Co., Inc., 178 Ill. App. 3d 169, 127 Ill. Dec. 383, 533 N.E.2d 1 (1st Dist. 1988) (jury was entitled to find that employer's refusal to recall plaintiff after layoff was act of workers' compensation retaliation); Slane v. Mariah Boats, Inc., 164 F.3d 1065, 14 I.E.R. Cas. (BNA) 1291 (7th Cir. 1999) (sufficient evidence supported finding that employer discharged hospitalized employee to avoid increase in workers' compensation premiums rather than for pretextual reason that employee had refused to submit to drug test); Spearman v. Exxon Coal USA, Inc., 16 F.3d 722, 9 I.E.R. Cas. (BNA) 408 (7th Cir. 1994) (employee may be discharged for excessive absenteeism even if absences are necessitated by compensable injury); Bilinski v. Foote-Jones/Bilinski v. Foote-Jones/Illinois Gear, 1994 WL 53767 (N.D. Ill. 1994) (claim is stated by allegation that employer discharged plaintiff in anticipation of workers' compensation claim)

The overall contours of the Illinois version of the public policy tort were first outlined by the state supreme court in 1981, in Palmateer v. International Harvester Co., 85 Ill. 2d 124, 52 Ill. Dec. 13, 421 N.E.2d 876, 115 L.R.R.M. (BNA) 4165 (1981). The court held: (1) public policy may be adduced from the state's constitution, statutes, and judicial decisions; (2) to provide the basis of a wrongful discharge claim, the public policy assertedly violated must be one that "strikes at the heart of a citizen's social rights, duties, and responsibilities;" (3) in the present case, a cause of action was stated by the allegation that the plaintiff had been discharged for giving law enforcement authorities information concerning a co-worker's suspected criminal activities. No specific statute had required the plaintiff to make the report, the court conceded, but public policy nonetheless favors the work of "citizen crime fighters." See also Brandon v. Anesthesia & Pain Management Associates, Ltd., 277 F.3d 936, 18 I.E.R. Cas. (BNA) 412, 147 Lab. Cas. (CCH) ¶ 59671 (7th Cir. 2002) (predicting that Illinois Supreme Court would recognize that Illinois public policy may be derived from federal criminal statutes). Subsequent Illinois decisions involving the "citizen crime fighter" paradigm have included: Vornpapel v. Maxell Corp. of America, 333 Ill. App. 3d

51. 266 Ill. Dec. 818, 775 N.E.2d 658, 19 I.E.R. Cas. (BNA) 209 (2d Dist. 2002), appeal denied, 202 Ill. 2d 664, 272 Ill. Dec. 355, 787 N.E.2d 170 (2002) (reversing dismissal of claim by employee discharged for telling police about supervisor's self-incriminating statement; claims was viable despite fact that crime in question had no relation to workplace); Belline v. K-Mart Corp., 940 F.2d 184, 6 I.E.R. Cas. (BNA) 1121, 120 Lab. Cas. (CCH) ¶ 56774 (7th Cir. 1991) (cause of action was stated by allegation that plaintiff had been discharged for reporting to management suspicious behavior of supervisor); Vance v. Dispatch Management Service, 122 F. Supp. 2d 910, 15 I.E.R. Cas. (BNA) 1776 (N.D. Ill. 2000) (cause of action was stated by allegation that plaintiff had been discharged for seeking protective order against violent co-worker).

The Illinois version of the public policy tort has subsequently been held applicable in a number of other factual settings: (1) discharge for health or safety complaints: Wheeler v. Caterpillar Tractor Co., 108 Ill. 2d 502, 92 Ill. Dec. 561, 485 N.E.2d 372, 121 L.R.R.M. (BNA) 3186, 103 Lab. Cas. (CCH) ¶ 55536 (1985); Sherman v. Kraft General Foods, Inc., 272 Ill. App. 3d 833, 209 Ill. Dec. 530, 651 N.E.2d 708 (4th Dist. 1995); Fredrick v. Simmons Airlines, Inc., 144 F.3d 500, 13 I.E.R. Cas. (BNA) 1729 (7th Cir. 1998) (holding, inter alia, that plaintiff did not forfeit claim by choosing to make public statements rather using internal complaint channels); (2) discharge in retaliation for internal reporting of suspected corporate embezzlement; Petrik v. Monarch Printing Corp., 111 Ill. App. 3d 502, 67 Ill. Dec. 352, 444 N.E.2d 588, 115 L.R.R.M. (BNA) 4520 (1st Dist. 1982); (3) discharge for whistleblowing in furtherance of the public policy expressed by statutes relative to nuclear safety: Stebbings v. University of Chicago, 312 Ill. App. 3d 360, 244 Ill. Dec. 825, 726 N.E.2d 1136, 144 Ed. Law Rep. 575, 17 I.E.R. Cas. (BNA) 1079 (1st Dist. 2000); (4) discharge for refusing to make actuarial computations that would have violated federal tax laws: Russ v. Pension Consultants Co., Inc., 182 Ill. App. 3d 769, 131 Ill. Dec. 318, 538 N.E.2d 693, 4 I.E.R. Cas. (BNA) 509, 116 Lab. Cas. (CCH) ¶ 56378 (1st Dist. 1989).

Compare Pratt v. Caterpillar Tractor Co., 149 Ill. App. 3d 588, 102 Ill. Dec. 900, 500 N.E.2d 1001, 1 I.E.R. Cas. (BNA) 1201, 107 Lab. Cas. (CCH) ¶ 55803 (3d Dist. 1986) (no cause of action was stated by allegation that plaintiff had been discharged for refusing to engage in conduct that violated federal Foreign Corrupt Practices Act and federal Export Administration Act; those statutes were not "clear mandates" of Illinois public policy and plaintiff's actions did not "impact on general welfare of Illinois citizens"); Fellhauer v. City of Geneva, 142 Ill. 2d 495, 154 Ill. Dec. 649, 568 N.E.2d 870, 6 I.E.R. Cas. (BNA) 395 (1991) (official misconduct statute contained its own strong deterrents to violation, and recognition of common law wrongful discharge action was not necessary to vindicate statute's underlying public policy); Jacobson v. Knepper & Moga, P.C., 185 Ill. 2d 372, 235 Ill. Dec. 936, 706 N.E.2d 491, 78 Fair Empl. Prac. Cas. (BNA) 1160, 14 I.E.R. Cas. (BNA) 1160, 137 Lab. Cas. (CCH) ¶ 58562 (1998) (no cause of action was stated by attorney discharged for reporting employer's unlawful debt collection practices; public's interest in enforcement of debt collection laws was adequately protected by professional rule of conduct that required plaintiff to act as he did); Barr v. Kelso-Burnett Co., 106 Ill. 2d 520, 88 Ill. Dec. 628, 478 N.E.2d 1354, 120 L.R.R.M. (BNA) 3401, 102 Lab. Cas. (CCH) ¶ 55499 (1985) (cause of action does not extend to situations involving only constructive discharge); Cipov v. International Harvester Co., 134 Ill. App. 3d 522, 89 Ill. Dec. 670, 481 N.E.2d 22 (1st Dist. 1985) (cause of action could not be stated in connection with discharge for polygraph test refusal); Abrams v. Echlin Corp., 174 Ill. App. 3d 434, 123 Ill. Dec. 884, 528 N.E.2d 429, 3 I.E.R. Cas. (BNA) 1191, 29 Wage & Hour Cas. (BNA) 39 (1st Dist. 1988) (no cause of action was stated by allegation that plaintiff was discharged for threatening to enforce rights under Illinois Wage Payment and Collection Act); Dijkstra v. Crestwood Bank, 117 Ill. App. 3d 821, 73 Ill. Dec. 307, 454 N.E.2d 51, 37 Fair Empl. Prac. Cas. (BNA) 954, 119 L.R.R.M. (BNA) 2058 (1st Dist. 1983) (administrative remedies under Illinois Human Rights Act are exclusive of common law remedy for discriminatory discharge); Shearson Lehman Bros., Inc. v. Hedrich, 266 Ill. App. 3d 24, 203 Ill. Dec. 189, 639 N.E.2d 228, 9 I.E.R. Cas. (BNA) 1826 (1st Dist. 1994) (only private interests were implicated when employee was discharged in retaliation for (1) his intention to arbitrate compensation dispute; (2) his attempt to examine company's books in role of shareholder; and (3) his submission of health insurance claims); Eisenbach v. Esformes, 221 Ill. App. 3d 440, 163 Ill. Dec. 930, 582 N.E.2d 196, 124 Lab. Cas. (CCH) ¶ 57261 (2d Dist. 1991) (no cause of action was stated by allegation that plaintiff had been discharged for filing lawsuit against employer); Villegas v. Princeton Farms, Inc., 893 F.2d 919, 134 L.R.R.M. (BNA) 2180, 114 Lab. Cas. (CCH) ¶ 11812, 15 Fed. R. Serv. 3d 850 (7th Cir. 1990) (affirming dismissal; protection of union activities is not "clearly mandated" public policy); Hamros v. Bethany Homes and Methodist Hosp. of Chicago, 894 F. Supp. 1176, 10 I.E.R. Cas. (BNA) 1750, 67 Empl. Prac. Dec. (CCH) ¶ 43759, 131 Lab. Cas. (CCH) ¶ 33299 (N.D. Ill. 1995) (no public policy tort claim may be stated for discharge in retaliation for exercise of rights under Family and Medical Leave Act since rights created by statute are basically personal in nature and since statute contains its own remedies).

Concerning the protected nature of whistleblowing activities, it was held in Bourbon v. Kmart Corp., 223 F.3d 469, 16 I.E.R. Cas. (BNA) 1032, 141 Lab. Cas. (CCH) ¶ 59002 (7th Cir. 2000), that the whistleblower does not need to prove an actual violation of law, only that when making his or her report he or she had a reasonable belief that unlawful conduct had occurred or was occurring. Accord, Parr v. Triplett Corp., 727 F. Supp. 1163 (N.D. Ill. 1989) (denying motion to dismiss despite fact that plaintiff's suspicions of criminal activity had proved groundless, and despite fact that he had never contacted outside authorities).

Carter v. Tennant Co., 383 F.3d 673, 21 I.E.R. Cas. (BNA) 1313 (7th Cir. 2004), it was held that the Illinois Right To Privacy in Workplace Act prohibits questioning of applicants about past workers' compensation claims but permits questioning concerning applicants' history of injuries.

Indiana

Recognizing a common law tort cause of action on behalf of an employee discharged in retaliation for the filing of a workers' compensation claim, the Indiana Supreme Court's 1973 decision in Frampton v. Central Indiana Gas Co., 260 Ind. 249, 297 N.E.2d 425, 115 L.R.R.M. (BNA) 4611, 63 A.L.R.3d 973 (1973); Wior v. Anchor Industries, Inc., 641 N.E.2d 1275 (Ind. Ct. App. 1st Dist. 1994), opinion vacated, 669 N.E.2d 172, 11 I.E.R. Cas. (BNA) 1742, 132 Lab. Cas. (CCH) ¶ 58147 (Ind. 1996) (no claim was stated by allegation that plaintiff had been discharged for refusing to carry out discharge of subordinate who had filed workers' compensation claim); Smith v. Electrical System Div. of Bristol Corp., 557 N.E.2d 711, 5 I.E.R. Cas. (BNA) 1033, 124 Lab. Cas. (CCH) ¶ 57319 (Ind. Ct. App. 3d Dist. 1990) (discharge of employee for prolonged absence due to compensable injury was not actionable); Stivers v. Stevens, 581 N.E.2d 1253, 122 Lab. Cas. (CCH) ¶ 57025 (Ind. Ct. App. 4th Dist. 1991) (retaliatory discharge is actionable even where employee has only expressed intention to file workers' compensation claim).

Subsequent to Frampton, however, the Indiana courts allowed the doctrine to expand only gradually beyond the workers' compensation retaliation context. See, e.g., Campbell v. Eli Lilly and Co., 413 N.E.2d 1054, 115 L.R.R.M. (BNA) 4417 (Ind. Ct. App. 1st Dist. 1980) (rejecting doctrine in whistleblowing context); Morgan Drive Away, Inc. v. Brant, 489 N.E.2d 933, 1 I.E.R. Cas. (BNA) 961, 122 L.R.R.M. (BNA) 2130, 106 Lab. Cas. (CCH) ¶ 55720 (Ind. 1986) (no cause of action was stated by allegation that plaintiff was discharged for filing small claims court action against employer); Hamann v. Gates Chevrolet, Inc., 723 F. Supp. 63, 4 I.E.R. Cas. (BNA) 890, 114 Lab. Cas. (CCH) ¶ 56207 (N.D. Ind. 1989), decision aff'd, 910 F.2d 1417, 5 I.E.R. Cas. (BNA) 1099, 116 Lab. Cas. (CCH) ¶ 56379 (7th Cir. 1990) (collecting authorities and summarizing conclusion that Indiana law does not recognize doctrine in whistleblower context); Reeder-Baker v. Lincoln Nat. Corp., 644 F. Supp. 983, 1 I.E.R. Cas. (BNA) 963 (N.D. Ind. 1986) (predicting that Indiana court would not recognize public policy tort doctrine in employment discrimination context covered by Title VII).

In 1988, however, the doctrine was extended to protect employees against discharge in retaliation for their refusals to commit unlawful acts for which they might be found personally liable: McClanahan v. Remington Freight Lines, Inc., 517 N.E.2d 390, 2 I.E.R. Cas. (BNA) 1888 (Ind. 1988). See also Remington Freight Lines, Inc. v. Larkey, 644 N.E.2d 931, 10 I.E.R. Cas. (BNA) 593 (Ind. Ct. App. 2d Dist. 1994), as clarified on denial of reh'g, (Apr. 4, 1995); Haas Carriage, Inc. v. Berna, 651 N.E.2d 284, 131 Lab. Cas. (CCH) ¶ 58117 (Ind. Ct. App. 1st Dist. 1995).

Iowa

In Springer v. Weeks and Leo Co., Inc., 429 N.W.2d 558, 3 I.E.R. Cas. (BNA) 1345, 122 Lab. Cas. (CCH) ¶ 57047 (Iowa 1988), the Iowa Supreme Court recognized the public policy tort doctrine in connection with the discharge of an employee for the filing of a workers' compensation claim, and also indicated that the cause of action would extend to any discharge in contravention of a public policy articulated in a statutory scheme. Subsequent decisions affirming judgments for employees in the workers' compensation retaliation context have included: Niblo v. Parr Mfg., Inc., 445 N.W.2d 351, 4 I.E.R. Cas. (BNA) 1142 (Iowa 1989); Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682, 6 I.E.R. Cas. (BNA) 73, 117 Lab. Cas. (CCH) ¶ 56528 (Iowa 1990); and Springer v. Weeks & Leo Co., Inc., 475 N.W.2d 630, 7 I.E.R. Cas. (BNA) 1573, 122 Lab. Cas. (CCH) ¶ 57048 (Iowa 1991). See also Frazier v. Iowa Beef Processors, Inc., 200 F.3d 1190, 5 Wage & Hour Cas. 2d (BNA) 1445, 140 Lab. Cas. (CCH) ¶ 58822 (8th Cir. 2000) (affirming judgment for employee who proved that he had been discharged in retaliation for expressing intent to file workers' compensation claim). Compare Below v. Skarr, 569 N.W.2d 510, 13 I.E.R. Cas.

(BNA) 662 (Iowa 1997) (no cause of action could be based on allegation that employer had merely threatened to discharge plaintiff if he were to file workers' compensation claim).

In Fitzgerald v. Salsbury Chemical, Inc., 613 N.W.2d 275, 16 I.E.R. Cas. (BNA) 994 (Iowa 2000), the Iowa Supreme Court cited criminal statutes as a public policy basis adequate to support a cause of action in favor of an employee who alleged that he had been discharged because of his expressed intent to give truthful testimony adverse to the employer in a co-worker's wrongful discharge action.

In a number of other factual situations, however, it has been held that no public policy tort cause of action could be stated under Iowa law: Benishek v. Cody, 441 N.W.2d 399, 113 Lab. Cas. (CCH) ¶ 56123 (Iowa Ct. App. 1989) (discharge because of unsubstantiated accusation of theft); Vaughn v. Ag Processing, Inc., 459 N.W.2d 627, 57 Fair Empl. Prac. Cas. (BNA) 1227, 7 I.E.R. Cas. (BNA) 1679, 55 Empl. Prac. Dec. (CCH) ¶ 40555 (Iowa 1990) (discriminatory discharge, as to which claim was preempted by Iowa Civil Rights Act); Born v. Blockbuster Videos, Inc., 941 F. Supp. 868, 12 I.E.R. Cas. (BNA) 154 (S.D. Iowa 1996) (explaining that because no statute, constitutional provision, or common law principle protects free speech or associational rights against private infringement, no claim could be stated by employees who had been discharged for violating company rule against dating between supervisors and subordinates).

Kansas

In Murphy v. City of Topeka-Shawnee County Dept. of Labor Services, 6 Kan. App. 2d 488, 630 P.2d 186, 115 L.R.R.M. (BNA) 4433 (1981), a Kansas court accorded first-time recognition to the public policy tort, but only in the context of workers' compensation retaliation, and without discussion of the parameters of the doctrine or its applicability in other contexts. Concerning workers' compensation retaliation, see also: Sanjuan v. IBP, Inc., 275 F.3d 1290, 18 I.E.R. Cas. (BNA) 420 (10th Cir. 2002) (employee is not required to demonstrate that he or she was able to perform regular duties on day of discharge; employer violates public policy if it discharges injured employee in absence of adequate evidence that employee will be unable to resume former duties); Brigham v. Dillon Companies, Inc., 262 Kan. 12, 935 P.2d 1054, 12 I.E.R. Cas. (BNA) 1339 (1997) (recognizing cause of action for retaliatory demotion in workers' compensation claim context); Brown v. United Methodist Homes For The Aged, 249 Kan. 124, 815 P.2d 72, 121 Lab. Cas. (CCH) ¶ 56851 (1991) (jury was correctly instructed that employee had to prove that retaliation was sole cause for discharge).

Two years later, another intermediate court of appeals construed Murphy as requiring a "very clear" public policy mandate which it found lacking relative to the plaintiff's allegation that he had been discharged by the Kansas Corporations Commission because of his outspoken advocacy on behalf of the interests of consumers and investors. Cain v. Kansas Corp. Com'n, 9 Kan. App. 2d 100, 673 P.2d 451, 115 L.R.R.M. (BNA) 2381 (1983).

In 1988, the state supreme court addressed the whistleblowing context, holding that a cause of action was stated by the allegation that the plaintiff, a medical technician, had been discharged for reporting her employer's improper medicaid billing procedures. Palmer v. Brown, 242 Kan. 893, 752 P.2d 685, 3 I.E.R. Cas. (BNA) 177, 109 Lab. Cas. (CCH) ¶ 55904 (1988). That decision was cited and followed by the Tenth Circuit in White v. General Motors Corp., Inc., 908 F.2d 669, 6 I.E.R. Cas. (BNA) 231, 116 Lab. Cas. (CCH) ¶ 56357 (10th Cir. 1990), where it was held that a cause of action was stated by employees discharged for complaining to management about defects in brake installations at the employer's automobile plant. Compare Masters v. Daniel Intern. Corp., 917 F.2d 455, 5 I.E.R. Cas. (BNA) 1454, 118 Lab. Cas. (CCH) ¶ 56549 (10th Cir. 1990) (employees discharged for reporting nuclear safety violations could not assert common law claims because Energy Reorganization Act, though not preemptive, contained "adequate" remedies).

In Flenker v. Willamette Industries, Inc., 162 F.3d 1083, 14 I.E.R. Cas. (BNA) 1210 (10th Cir. 1998), the Tenth Circuit rejected the argument that OSHA statutory remedies preempt common law claims for discharge in retaliation for safety complaints.

Two federal district courts have reached different conclusions concerning whether, under Kansas law, a public policy tort claim may be asserted in connection with a discriminatory discharge: Wynn v. Boeing Military Airplane Co., 595 F. Supp. 727, 51 Fair Empl. Prac. Cas. (BNA) 530, 120 L.R.R.M. (BNA) 3229 (D. Kan. 1984) (common law cause of action may be asserted); Rupp v. Purolator Courier Corp., 790 F. Supp. 1069, 66 Fair Empl. Prac. Cas.

(BNA) 1365, 126 Lab. Cas. (CCH) ¶ 57535 (D. Kan. 1992) (exclusive remedies are provided by Title VII and Kansas Act Against Discrimination).

The allocations of the burdens of production and proof in retaliatory discharge cases were discussed at length in Ortega v. IBP, Inc., 255 Kan. 513, 874 P.2d 1188, 10 I.E.R. Cas. (BNA) 855, 128 Lab. Cas. (CCH) ¶ 57726 (1994).

Kentucky

In Firestone Textile Co. Div., Firestone Tire and Rubber Co. v. Meadows, 666 S.W.2d 730, 1 I.E.R. Cas. (BNA) 1800, 114 L.R.R.M. (BNA) 3559, 103 Lab. Cas. (CCH) ¶ 55540 (Ky. 1983), the Kentucky Supreme Court recognized a public policy tort cause of action on behalf of an employee discharged in retaliation for the filing of a workers' compensation claim. Subsequent decisions relating to the workers' compensation retaliation context have included: Willoughby v. GenCorp, Inc., 809 S.W.2d 858, 118 Lab. Cas. (CCH) ¶ 56555 (Ky. Ct. App. 1990) (common law cause of action was not preempted despite existence of collective bargaining agreement); Nelson Steel Corp. v. McDaniel, 898 S.W.2d 66, 10 I.E.R. Cas. (BNA) 737 (Ky. 1995) (no cause of action exists for discharge in retaliation for filing of workers' compensation claims against previous employers).

In Grzyb v. Evans, 700 S.W.2d 399, 1 I.E.R. Cas. (BNA) 1125, 122 L.R.R.M. (BNA) 2561, 103 Lab. Cas. (CCH) ¶ 55538 (Ky. 1985), the court noted the existence of adequate statutory remedies and refused to recognize a common law cause of action on behalf of an employee whose discharge had been motivated by sex discrimination. The court emphasized the narrowness of Kentucky's version of the common law doctrine, holding that it applies only in situations involving an employee's discharge in retaliation for his or her refusal to violate the law, or in retaliation for his or her exercise of a statutory right. Compare Northeast Health Management, Inc. v. Cotton, 56 S.W.3d 440, 18 I.E.R. Cas. (BNA) 208 (Ky. Ct. App. 2001) (affirming judgment for employees constructively discharged because they had refused to commit perjury on supervisor's behalf in non-work-related matter).

Louisiana

Until the early 1990s, it appeared clear that Louisiana law recognized no version of the public policy tort doctrine. See, e.g., Gil v. Metal Service Corp., 412 So. 2d 706, 115 L.R.R.M. (BNA) 4460 (La. Ct. App. 4th Cir. 1982), writ denied, 414 So. 2d 379, 1 I.E.R. Cas. (BNA) 936 (La. 1982); Cheramic v. J. Wayne Plaisance, Inc., 583 So. 2d 921, 126 Lab. Cas. (CCH) ¶ 57482 (La. Ct. App. 1st Cir. 1991), writ granted, 588 So. 2d 91 (La. 1991) and judgment rev'd, 595 So. 2d 619 (La. 1992); Guillory v. St. Landry Parish Police Jury, 802 F.2d 822, 42 Fair Empl. Prac. Cas. (BNA) 66, 1 I.E.R. Cas. (BNA) 926, 42 Empl. Prac. Dec. (CCH) ¶ 36782 (5th Cir. 1986).

At least two more recent decisions, however, have recognized the doctrine in certain situations. See Bartlett v. Reese, 569 So. 2d 195 (La. Ct. App. 1st Cir. 1990), writ denied, 572 So. 2d 72 (La. 1991) (reversing dismissal of complaint alleging that plaintiff truck driver had been discharged for reporting possible environmental violation to state agency); Baker v. Starwood Hotel and Resort Worldwide, Inc., 78 Fair Empl. Prac. Cas. (BNA) 897, 14 I.E.R. Cas. (BNA) 1369, 1998 WL 849297 (E.D. La. 1998) (denying motion to dismiss claim by employee discharged for refusing to acquiesce to pattern of sexual harassment that violated Title VII).

Louisiana's workers' compensation statute prescribes penalties for retaliatory discharge. See Turner v. Winn Dixie Louisiana, Inc., 474 So. 2d 966 (La. Ct. App. 5th Cir. 1985), writ denied, 478 So. 2d 147 (La. 1985); Locksey v. Capitol Mfg. Co., 517 So. 2d 1102, 3 I.E.R. Cas. (BNA) 448 (La. Ct. App. 3d Cir. 1987), writ denied, 519 So. 2d 106 (La. 1987).

Maine

The Maine Supreme Court has expressed willingness to recognize a public policy tort cause of action given appropriate facts involving contravention of some "strong" public policy. See Larrabee v. Penobscot Frozen Foods, Inc., 486 A.2d 97, 118 L.R.R.M. (BNA) 2489, 104 Lab. Cas. (CCH) ¶ 55577 (Me. 1984) (holding that present facts involved only private dispute involving discharge on account of personal animosity). In two other cases, the court similarly referred to the doctrine but declined to reach the question of its recognition: MacDonald v. Eastern Fine Paper, Inc., 485 A.2d 228, 119 L.R.R.M. (BNA) 3437, 104 Lab. Cas. (CCH) ¶ 55597 (Me. 1984); Pooler v. Maine Coal Products, 532 A.2d 1026, 3 I.E.R. Cas. (BNA) 1007 (Me. 1987).

Maryland

In 1981, the Maryland Supreme Court gave first-time recognition to the public policy tort doctrine in State v. Magwood, 290 Md. 615, 432 A.2d 446 (1981), a case involving allegations of discharge for whistleblowing. The court included a liberal list of the cognizable sources of public policy, including judicial decisions and administrative regulations as well as statutes and constitutional provisions. The court even suggested that, in the absence of any external source, a court might itself appropriately pronounce public policy. In the same litigation, the Fourth Circuit, in Adler v. American Standard Corp., 830 F.2d 1303, 2 I.E.R. Cas. (BNA) 961, 107 Lab. Cas. (CCH) ¶ 55814 (4th Cir. 1987), ultimately reversed a jury verdict for the plaintiff, holding that Maryland's version of the public policy tort doctrine did not cover the present facts. The Fourth Circuit emphasized that the plaintiff alleged only that he had possessed knowledge of illegal activities and had intended to report them, but that he had never even threatened to make a report to law enforcement agencies or to anyone outside the corporate group. Compare McKelvey v. Canteen Corp., 9 I.E.R. Cas. (BNA) 642, 128 Lab. Cas. (CCH) ¶ 57750, 1994 WL 149606 (D. Md. 1994) (although sufficient public policy nexus was absent in present case, internal complaints may be sufficient basis for whistleblower's retaliation cause of action).

Concerning discriminatory discharges, Maryland courts have generally held that statutory remedies are exclusive of a public policy tort action. See Chappell v. Southern Maryland Hosp., Inc., 320 Md. 483, 578 A.2d 766, 60 Fair Empl. Prac. Cas. (BNA) 1300, 55 Empl. Prac. Dec. (CCH) ¶ 40502, 117 Lab. Cas. (CCH) ¶ 56443 (1990) (Title VII and state anti-discrimination statute provided sole remedies for employee discharged for attempting to correct discriminatory hiring policies); Makovi v. Sherwin-Williams Co., 316 Md. 603, 561 A.2d 179, 59 Fair Empl. Prac. Cas. (BNA) 1651, 4 I.E.R. Cas. (BNA) 1364 (1989) (statutory remedies were exclusive of common law claim for discriminatory discharge); Childers v. Chesapeake and Potomac Telephone Co., 881 F.2d 1259, 4 I.E.R. Cas. (BNA) 1069, 131 L.R.R.M. (BNA) 3217, 112 Lab. Cas. (CCH) ¶ 11370 (4th Cir. 1989) (statutory remedies were exclusive of common law claim for handicap discrimination); Conkwright v. Westinghouse Elec. Corp., 739 F. Supp. 1006, 59 Fair Empl. Prac. Cas. (BNA) 321, 55 Empl. Prac. Dec. (CCH) ¶ 40484, 125 Lab. Cas. (CCH) ¶ 57324 (D. Md. 1990), decision aff'd, 933 F.2d 231, 13 Employee Benefits Cas. (BNA) 2202, 59 Fair Empl. Prac. Cas. (BNA) 333, 56 Empl. Prac. Dec. (CCH) ¶ 40767 (4th Cir. 1991) (statutory remedies were exclusive of common law claim for age discrimination). Molesworth v. Brandon, 341 Md. 621, 672 A.2d 608, 70 Fair Empl. Prac. Cas. (BNA) 524, 11 I.E.R. Cas. (BNA) 961 (1996), the court held that a public policy tort claim was maintainable against an employer too small to be covered by the Maryland Fair Employment Practices Act. Accord, Owen v. Carpenters' Dist. Council, 161 F.3d 767, 78 Fair Empl. Prac. Cas. (BNA) 669, 14 I.E.R. Cas. (BNA) 1116, 159 L.R.R.M. (BNA) 2897, 75 Empl. Prac. Dec. (CCH) ¶ 45817, 137 Lab. Cas. (CCH) ¶ 58526 (4th Cir. 1998). In Insignia Residential Corp. v. Ashton, 359 Md. 560, 755 A.2d 1080, 83 Fair Empl. Prac. Cas. (BNA) 589, 16 I.E.R. Cas. (BNA) 988 (2000), it was held that a discharge for refusing a supervisor's sexual advances could be the basis of a public policy tort claim as well as statutory claims, since relevant public policy could be derived from anti-prostitution statutes as well as from anti-discrimination legislation. And in Watson v. Peoples Sec. Life Ins. Co., 322 Md. 467, 588 A.2d 760, 60 Fair Empl. Prac. Cas. (BNA) 1320, 123 Lab. Cas. (CCH) ¶ 57116 (1991), affirming a judgment for the plaintiff, it was held that although no clear public policy prevents the discharge of an employee for bringing a lawsuit against the employer, the jury in the present case could have found that the plaintiff had been discharged for seeking legal redress against a co-worker for sexual harassment culminating in assault and battery. The plaintiff had been discharged in retaliation for filing a sexual harassment claim.

Concerning statutory exclusivity in other contexts, see Silkworth v. Ryder Truck Rental, Inc., 70 Md. App. 264, 520 A.2d 1124, 2 I.E.R. Cas. (BNA) 1015, 13 O.S.H. Cas. (BNA) 1474, 1986-1987 O.S.H. Dec. (CCH) ¶ 27816 (1987) (administrative complaint pursuant to Maryland OSHA was sole remedy for employee who alleged he had been discharged for refusing to perform dangerous task for which he lacked adequate training); Chappell v. Southern Maryland Hosp., Inc., 320 Md. 483, 578 A.2d 766, 60 Fair Empl. Prac. Cas. (BNA) 1300, 55 Empl. Prac. Dec. (CCH) ¶ 40502, 117 Lab. Cas. (CCH) ¶ 56443 (1990) (Fair Labor Standards Act provided sole remedy for discharge in retaliation for reporting minimum wage violations). Compare Ewing v. Koppers Co., Inc., 312 Md. 45, 537 A.2d 1173, 108 Lab. Cas. (CCH) ¶ 10391 (1988) (affirming summary judgment on factual grounds, but stating that common law public policy claims may be maintained for workers' compensation retaliation despite existence of collective bargaining remedies).

In a number of Maryland decisions involving a variety of factual contexts, courts have concluded that the

necessary mandate of public policy was absent: Wholey v. Sears Roebuck, 370 Md. 38, 803 A.2d 482, 18 I.E.R. Cas. (BNA) 1313 (2002) (theft statute was insufficient public policy basis to support claim by security supervisor discharged for investigating suspected theft by store manager; plaintiff's duty to protect store had been owed to owner not to public); Bagwell v. Peninsula Regional Medical Center, 106 Md. App. 470, 665 A.2d 297 (1995) (public policy favoring self-defense was inadequate to support claim by employee discharged for fighting); Szaller v. American Nat. Red Cross, 293 F.3d 148, 18 I.E.R. Cas. (BNA) 1232 (4th Cir. 2002) (federal FDA regulations did not represent clear mandate of Maryland public policy for purposes of claim by employee discharged for reporting deficiencies in employer's blood handling procedures).

Massachusetts

The Massachusetts courts' first references to public policy violations in connection with claims for wrongful termination appeared in cases involving claims for breaches of the implied covenant of good faith and fair dealing. In a way that was never quite coherently explained, public policy violations were treated as elements of "bad faith" claims, not as the basis for a separate tort theory as in most other jurisdictions. See, e.g., Maddaloni v. Western Mass. Bus Lines, Inc., 386 Mass. 877, 438 N.E.2d 351 (1982); Cort v. Bristol-Myers Co., 385 Mass. 300, 431 N.E.2d 908, 115 L.R.R.M. (BNA) 5127 (1982); Gram v. Liberty Mut. Ins. Co., 384 Mass. 659, 429 N.E.2d 21, 115 L.R.R.M. (BNA) 4152 (1981); Siles v. Travenol Laboratories, Inc., 13 Mass. App. Ct. 354, 433 N.E.2d 103, 115 L.R.R.M. (BNA) 4178 (1982).

Subsequently, however, Massachusetts courts began to employ more standard analysis, and apparently to treat the public policy tort doctrine as creating a separate and distinct cause of action. See Smith-Pfeffer v. Superintendent of the Walter E. Fernald State School, 404 Mass. 145, 533 N.E.2d 1368, 51 Ed. Law Rep. 1035, 4 I.E.R. Cas. (BNA) 289 (1989) (stating that Massachusetts law provides redress for employees discharged "for asserting a legally guaranteed right..., for doing what the law requires..., or refusing to do that which the law forbids," though no redress was available, as here, merely for engaging in "socially desirable" conduct); Flesner v. Technical Communications Corp., 410 Mass. 805, 575 N.E.2d 1107, 6 I.E.R. Cas. (BNA) 1530 (1991) (cause of action was stated by allegation that plaintiff had been constructively discharged for cooperating with criminal investigation of employer's activities); Korb v. Raytheon Corp., 410 Mass. 581, 574 N.E.2d 370, 6 I.E.R. Cas. (BNA) 1002 (1991) (free-speech provision of state constitution did not provide adequate public policy basis for claim by employee discharged for publicly advocating reduced national defense budget; employer, as defense contractor, had legitimate interest in issue and plaintiff's position made him ineffective employee); Mistishen v. Falcone Piano Co., Inc., 36 Mass. App. Ct. 243, 630 N.E.2d 294, 9 I.E.R. Cas. (BNA) 550 (1994) (affirming summary judgment on claim by plaintiff discharged for complaining to supervisor that company was misrepresenting quality of product; public policy would have been violated in this context only if product had created threat to public health or safety); Shea v. Emmanuel College, 425 Mass. 761, 682 N.E.2d 1348, 120 Ed. Law Rep. 254, 13 I.E.R. Cas. (BNA) 308 (1997) (holding that although in present case plaintiff had failed to prove causative nexus, whistleblowers who report criminal conduct are protected even if their reports were only internal); GTE Products Corp. v. Stewart, 421 Mass. 22, 653 N.E.2d 161, 10 I.E.R. Cas. (BNA) 1507 (1995) (affirming summary judgment on claim by discharged in-house counsel who failed to allege that he had been discharged in circumstances that involved "square conflict" with professional and ethical duties); Hutson v. Analytic Sciences Corp., 860 F. Supp. 6, 9 I.E.R. Cas. (BNA) 1420, 129 Lab. Cas. (CCH) ¶ 57770 (D. Mass. 1994) (denying motion to dismiss; Massachusetts law would recognize federal statutes regulating defense contractors as sufficient public policy basis to support whistleblower's retaliatory discharge claim).

Michigan

Sventko v. Kroger Co., 69 Mich. App. 644, 245 N.W.2d 151, 115 L.R.R.M. (BNA) 4613 (1976), was the second of the trilogy of pioneering decisions recognizing the public policy tort in the context of retaliation for the filing of a workers' compensation claim. (The Indiana Supreme Court was first, with Frampton v. Central Indiana Gas Co., 260 Ind. 249, 297 N.E.2d 425, 115 L.R.R.M. (BNA) 4611, 63 A.L.R.3d 973 (1973); and the Illinois Supreme Court was third in 1978, with Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 23 Ill. Dec. 559, 384 N.E.2d 353, 115 L.R.R.M. (BNA) 4371 (1978)).

In Clifford v. Cactus Drilling Corp., 419 Mich. 356, 353 N.W.2d 469, 104 Lab. Cas. (CCH) ¶ 55553 (1984), the Michigan Supreme Court declined to interpret Sventko as prohibiting the discharge of an employee for excessive

absence due to a compensable injury. But in Goins v. Ford Motor Co., 131 Mich. App. 185, 347 N.W.2d 184, 116 L.R.R.M. (BNA) 3231 (1983), order vacated without opin., it was held that in this context an employee has to show only show that retaliation was a "significant factor," not the "sole cause" for discharge.

In 1995, in Phillips v. Butterball Farms Co., Inc., 448 Mich. 239, 531 N.W.2d 144, 10 I.E.R. Cas. (BNA) 729 (1995), the Michigan Supreme Court resolved a split of authority when it held that the cause of action sounds in tort, not contract. (The court's reasoning seems to apply to all public policy tort claims, regardless of factual context.)

Other Michigan decisions in a variety of contexts have included: Suchodolski v. Michigan Consol. Gas Co., 412 Mich. 692, 316 N.W.2d 710, 115 L.R.R.M. (BNA) 4449, 99 Lab. Cas. (CCH) ¶ 55416 (1982) (public policy basis to support claim by auditor discharged for questioning accounting practices could not be found in code of ethics of private auditors association nor in Public Service Commission regulations; sufficient public policy mandates may be found only in penal statutes or statutes conferring rights or imposing duties on employees); Trombetta v. Detroit, Toledo & Ironton R. Co., 81 Mich. App. 489, 265 N.W.2d 385, 115 L.R.R.M. (BNA) 4361 (1978) (cause of action was stated by employee's allegation that he had been discharged for refusing to falsify pollution reports; appearing to construe Sventko as requiring violation of statute as prerequisite); Garavaglia v. Centra, Inc., 211 Mich. App. 625, 536 N.W.2d 805, 11 I.E.R. Cas. (BNA) 308, 150 L.R.R.M. (BNA) 2443 (1995) (affirming judgment for employee discharged as employer's bargaining representative because of union pressure; N.L.R.A., even though federal statute, provided sufficient Michigan public policy basis); Schroeder v. Dayton-Hudson Corp., 448 F. Supp. 910, 22 Fair Empl. Prac. Cas. (BNA) 1149, 115 L.R.R.M. (BNA) 4365, 23 Wage & Hour Cas. (BNA) 1046, 17 Empl. Prac. Dec. (CCH) ¶ 8540 (E.D. Mich. 1977), opinion amended, 456 F. Supp. 650, 22 Fair Empl. Prac. Cas. (BNA) 1156, 17 Empl. Prac. Dec. (CCH) ¶ 8541 (E.D. Mich. 1978) (declining to apply public policy tort doctrine in employment discrimination context).

Minnesota

The Minnesota courts accorded first-time recognition to the public policy tort doctrine in Phipps v. Clark Oil & Refining Corp., 408 N.W.2d 569, 2 I.E.R. Cas. (BNA) 341, 107 Lab. Cas. (CCH) ¶ 55788 (Minn. 1987). The Minnesota Supreme Court held that a cause of action was stated by the plaintiff's allegation that he had been discharged for refusing to violate the federal Clean Air Act, which makes it illegal to pump leaded gasoline into a vehicle designed for unleaded fuel. The court rejected the argument that the statute's own remedies should be deemed exclusive. (As the court noted, the public policy tort doctrine, to the extent that it relates to discharges for refusals to commit illegal acts, has subsequently been embodied in Minnesota legislation, codified at Minn. Stat. § 181.932(1); see Parten v. Consolidated Freightways Corp. of Delaware, 923 F.2d 580, 6 I.E.R. Cas. (BNA) 129, 14 O.S.H. Cas. (BNA) 2084, 123 Lab. Cas. (CCH) ¶ 57059, 1991 O.S.H. Dec. (CCH) ¶ 29204 (8th Cir. 1991)).

Clough v. Ertz, 442 N.W.2d 798 (Minn. Ct. App. 1989) represented an extension of the public policy tort doctrine to the whistleblowing context, though it was subsequently held in Michaelson v. Minnesota Min. & Mfg. Co., 474 N.W.2d 174, 6 I.E.R. Cas. (BNA) 1146, 122 Lab. Cas. (CCH) ¶ 57028 (Minn. Ct. App. 1991), review granted, (Sept. 25, 1991) and decision aff'd, 479 N.W.2d 58 (Minn. 1992), that no such cause of action could be maintained where the plaintiff had never reported his suspicions to anyone outside the company.

Mississippi

It was not until 1993, in McArm v. Allied Bruce-Terminix Co., Inc., 626 So. 2d 603, 8 I.E.R. Cas. (BNA) 1314, 127 Lab. Cas. (CCH) ¶ 57573 (Miss. 1993), that the Mississippi courts clearly accorded recognition to a version of the public policy tort doctrine. The facts, held actionable, involved the allegation that the plaintiff had been discharged for refusing to falsify reports and to cheat customers. The state supreme court recognized a "narrow" exception to the at-will rule applicable in "at least" two situations: (1) where an employee is discharged for refusing to participate in an illegal act; and (2) where an employee is discharged for reporting illegal acts of his employer "to his employer or anyone else." See also Drake v. Advance Const. Service, Inc., 117 F.3d 203, 12 I.E.R. Cas. (BNA) 1813, 134 Lab. Cas. (CCH) ¶ 58279 (5th Cir. 1997) (reversing summary judgment; cause of action was stated by allegation that plaintiff had been discharged for refusing to conceal deficiencies in employer's government contract performance that violated 18 U.S.C.A. § 1001).

Mississippi law does not recognize a public policy tort cause of action in the context of retaliation for the filing

of a workers' compensation claim. See Stone v. Starnes and Jitney-Jungle Stores of America, Inc., 13 I.E.R. Cas. (BNA) 766, 1997 WL 735425 (Miss. Cir. Ct. 1997); Gann v. Fruehauf Corp., 52 F.3d 1320, 32 Fed. R. Serv. 3d 959 (5th Cir. 1995).

Mississippi

In Wheeler v. BL Development Corp., 415 F.3d 399 (5th Cir. 2005), cert. denied, 126 S. Ct. 798, 163 L. Ed. 2d 627 (U.S. 2005), the Fourth Circuit held a whistleblowers good faith belief that his or her employer is engaging in illegal activity is insufficient by itself to invoke the public policy exception to Mississippi at-will doctrine.

Missouri

Although the Missouri Supreme Court's references to the public policy tort doctrine have been ambiguous, (see Dake v. Tuell, 687 S.W.2d 191, 2 I.E.R. Cas. (BNA) 594, 118 L.R.R.M. (BNA) 3449, 104 Lab. Cas. (CCH) ¶ 55569 (Mo. 1985); Johnson v. McDonnell Douglas Corp., 745 S.W.2d 661, 2 I.E.R. Cas. (BNA) 1799 (Mo. 1988)), the doctrine has been recognized and applied in a number of intermediate appellate court and federal court decisions. In Boyle v. Vista Eyewear, Inc., 700 S.W.2d 859, 2 I.E.R. Cas. (BNA) 768, 122 L.R.R.M. (BNA) 2327, 106 Lab. Cas. (CCH) ¶ 55731 (Mo. Ct. App. W.D. 1985), the court held that a cause of action was stated by the allegation that the plaintiff had been discharged in retaliation for her threats to report violations of federal regulations prohibiting the manufacture and sale of non-shatterproof eyeglasses. In general, the court stated, the doctrine should be applied where an at-will employee is discharged for refusal "to violate the law or any well established and clear mandate of public policy as expressed in the constitution, statutes, and regulations promulgated pursuant to statute, or because the employee reported to his superiors or to public authorities serious misconduct that constitutes violations of the law and of such well established and clearly mandated public policy..."

Agreeing that Missouri law does indeed recognize the public policy tort, see Petersimes v. Crane Co., 835 S.W.2d 514, 7 I.E.R. Cas. (BNA) 1014, 127 Lab. Cas. (CCH) ¶ 57594 (Mo. Ct. App. E.D. 1992) (cause of action was stated by allegation that plaintiff had been discharged for refusing to certify shipment that was not in compliance with employer's contract with United States Postal Service and that assertedly was in violation of federal statute); Beasley v. Affiliated Hosp. Products, 713 S.W.2d 557, 1 I.E.R. Cas. (BNA) 601 (Mo. Ct. App. E.D. 1986) (cause of action was stated by allegation that plaintiff had been discharged for refusing to criminally pre-determine winner of advertised raffle); Brenneke v. Department of Missouri, Veterans of Foreign Wars of U.S. of America, 984 S.W.2d 134, 14 I.E.R. Cas. (BNA) 992, 137 Lab. Cas. (CCH) ¶ 58590 (Mo. Ct. App. W.D. 1998) (internal complaints are sufficient to satisfy "reporting" element of claim by whistleblower); Lynch v. Blanke Baer & Bowey Krimko, Inc., 901 S.W.2d 147, 11 I.E.R. Cas. (BNA) 808 (Mo. Ct. App. E.D. 1995) (explaining that Missouri version of public policy tort is applicable in four situations: discharge for refusal to commit illegal act; discharge for reporting violations of law or public policy to supervisors or authorities; discharge for performing public duty; and discharge for exercise of workers' compensation rights); Olinger v. General Heating & Cooling Co., 896 S.W.2d 43 (Mo. Ct. App. W.D. 1994) (affirming judgment for employee who was discharged for reporting employer's acts of mail fraud to FBI); Schweiss v. Chrysler Motors Corp., 922 F.2d 473, 6 I.E.R. Cas. (BNA) 110, 14 O.S.H. Cas. (BNA) 2039, 117 Lab. Cas. (CCH) ¶ 10469, 1991 O.S.H. Dec. (CCH) ¶ 29199 (8th Cir. 1990) (cause of action was stated by allegation that plaintiff had been discharged for reporting safety violations to Occupational Safety and Health Administration, and claim was not preempted by federal OSHA's administrative remedies).

While accepting that Missouri law recognizes public policy tort claims under appropriate facts, claims were held not to be maintainable in the following cases: Faust v. Ryder Commercial Leasing & Services, 954 S.W.2d 383, 13 I.E.R. Cas. (BNA) 226 (Mo. Ct. App. W.D. 1997) (confronting manager with accusation of theft did not constitute protected whistleblowing activity); Prewitt v. Factory Motor Parts, Inc., 747 F. Supp. 560, 6 I.E.R. Cas. (BNA) 1780, 30 Wage & Hour Cas. (BNA) 491, 117 Lab. Cas. (CCH) ¶ 35433 (W.D. Mo. 1990) (whistleblower's exclusive remedies were those available under Fair Labor Standards Act); Stevens v. St. Louis University Medical Center, 831 F. Supp. 737, 62 Fair Empl. Prac. Cas. (BNA) 1004, 8 I.E.R. Cas. (BNA) 1277, 1 Wage & Hour Cas. 2d (BNA) 989 (E.D. Mo. 1993), judgment aff'd, 97 F.3d 268, 71 Fair Empl. Prac. Cas. (BNA) 1820 (8th Cir. 1996) (Missouri version of public policy tort did not protect employee discharged for complaining about gender discrimination in compensation).

Montana

The Montana Wrongful Discharge from Employment Act of 1987 codifies (and expressly preempts) the common law public policy tort doctrine and the implied-in-fact contract doctrine, and provides all non-probationary employees with protection against discharge except for good cause. Mont. Code Ann. § 39-2-901 et seq. § 39-2-904 of the Act specifies that a discharge is wrongful if "it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy." The cognizable sources of public policy are not defined. See Whidden v. John S. Nerison, Inc., 1999 MT 110, 294 Mont. 346, 981 P.2d 271, 15 I.E.R. Cas. (BNA) 250, 143 Lab. Cas. (CCH) ¶ 59222 (1999), clarifying that the Montana At-Will Act, (Mont. Code Ann. 39-2-503) was impliedly repealed.

Nebraska

The Nebraska courts appear to recognize only the narrowest version of the public policy tort, limited to situations "...where the discharge infringes upon a constitutionally protected interest of the employee and where a statute...prohibits an employer from discharging an employee for a particular reason..." Blair v. Physicians Mut. Ins. Co., 242 Neb. 652, 656-57, 496 N.W.2d 483, 8 I.E.R. Cas. (BNA) 562, 125 Lab. Cas. (CCH) ¶ 57378 (1993). The Blair decision primarily involved an implied contract claim relating to the discharge of the plaintiff for drug use. In rejecting the applicability of the public policy exception, the court cited Mueller v. Union Pacific R.R., 220 Neb. 742, 371 N.W.2d 732, 121 L.R.R.M. (BNA) 2292 (1985); and Johnston v. Panhandle Co-op. Ass'n, 225 Neb. 732, 408 N.W.2d 261, 2 I.E.R. Cas. (BNA) 1080, 107 Lab. Cas. (CCH) ¶ 55815 (1987).

In a 1987 decision not cited in Blair, the Nebraska Supreme Court recognized the public policy tort in the context of an employee who had been discharged for refusing a polygraph test, and explained that the doctrine is limited to situations involving the violation of statutory proscriptions and "those instances where a very clear mandate of public policy has been violated." Ambroz v. Cornhusker Square Ltd., 226 Neb. 899, 416 N.W.2d 510, 515, 2 I.E.R. Cas. (BNA) 1185 (1987).

In Jackson v. Morris Communications Corp., 265 Neb. 423, 657 N.W.2d 634, 19 I.E.R. Cas. (BNA) 1256 (2003) the Nebraska Supreme Court extended the public policy tort doctrine to protect employees who are discharged in retaliation for the filing of workers' compensation claims.

Nevada

In 1984 the Nevada Supreme recognized the public policy tort doctrine for the first time, in the context of discharge in retaliation for the filing of a workers' compensation claim. Hansen v. Harrah's, 100 Nev. 60, 675 P.2d 394, 115 L.R.R.M. (BNA) 3024, 105 Lab. Cas. (CCH) ¶ 55663 (1984). The decision did not address the doctrine's applicability to other factual contexts. Five years later, in Sands Regent v. Valgardson, 105 Nev. 436, 777 P.2d 898, 5 I.E.R. Cas. (BNA) 381, 51 Empl. Prac. Dec. (CCH) ¶ 39389 (1989), the court refused to extend the doctrine to a discharge situation involving allegations of age discrimination. Bigelow v. Bullard, 111 Nev. 1178, 901 P.2d 630, 10 I.E.R. Cas. (BNA) 1635, 130 Lab. Cas. (CCH) ¶ 57981 (1995) (no claim was stated by allegation that plaintiff had been discharged for expressing to co-worker his disagreement with employer's racial policies, but claim would have been maintainable if plaintiff had alleged that he was discharged for refusing to carry out discriminatory acts).

In Wiltsie v. Baby Grand Corp., 105 Nev. 291, 774 P.2d 432, 4 I.E.R. Cas. (BNA) 638, 116 Lab. Cas. (CCH) ¶ 56402 (1989), the Nevada Supreme Court, while affirming summary because the plaintiff whistleblower had complained only internally, held that the Nevada version of the public policy tort doctrine protects whistleblowers who report their employers' illegal activities to outside authorities.

In D'Angelo v. Gardner, 107 Nev. 704, 819 P.2d 206, 6 I.E.R. Cas. (BNA) 1545, 123 Lab. Cas. (CCH) ¶ 57099, 1993 O.S.H. Dec. (CCH) ¶ 30083 (1991), concerning the safety complaint context, the Nevada Supreme Court affirmed a judgment, including \$100,000 in punitive damages, in favor of an employee who proved that he had been discharged for refusing to work in close proximity to cyanide while suffering from an unclosed surgical wound.

New Hampshire

After some initial confusion concerning the relation of the public policy tort doctrine and the cause of action for breach of the implied covenant of good faith and fair dealing, (see Monge v. Beebe Rubber Co., 114 N.H. 130, 316 A.2d 549, 115 L.R.R.M. (BNA) 4755, 25 Empl. Prac. Dec. (CCH) ¶ 31643, 62 A.L.R.3d 264 (1974), the New Hampshire version of the public policy tort doctrine was clarified in Howard v. Dorr Woolen Co., 120 N.H. 295, 414 A.2d 1273, 29 Fair Empl. Prac. Cas. (BNA) 1397, 115 L.R.R.M. (BNA) 4578 (1980); it applies where an employee has been discharged for performing an act that public policy would encourage or for refusing to perform an act that public policy would condemn. It does not apply, the court held in Howard, in the employment discrimination context. Compare Chamberlin v. 101 Realty, Inc., 915 F.2d 777, 54 Fair Empl. Prac. Cas. (BNA) 101, 54 Empl. Prac. Dec. (CCH) ¶ 40282 (1st Cir. 1990) (claim was stated by allegation that plaintiff had been discharged for refusing supervisor's sexual advances.)

The doctrine was further defined in Cloutier v. Great Atlantic & Pac. Tea Co., Inc., 121 N.H. 915, 436 A.2d 1140, 115 L.R.R.M. (BNA) 4329, 11 O.S.H. Cas. (BNA) 1149, 96 Lab. Cas. (CCH) ¶ 55378 (1981), where the court found a sufficient public policy basis in New Hampshire's OSHA legislation to support a claim by a store manager who had been discharged for refusing to place his subordinates in jeopardy by sending them to the bank after dark with the day's receipts. The court also clarified that public policy may be adduced from "nonstatutory" as well as statutory sources, and that in most cases the sufficiency of a claim's public policy basis is a jury question. That latter point was also emphasized in Cilley v. New Hampshire Ball Bearings, Inc., 128 N.H. 401, 514 A.2d 818, 1 I.E.R. Cas. (BNA) 521 (1986) (reversing summary judgment; evidence could support jury conclusion that plaintiff had been discharged for refusing to lie to company president on supervisor's behalf and that public policy supported such truth-telling).

In Bliss v. Stow Mills, Inc., 146 N.H. 550, 786 A.2d 815, 17 I.E.R. Cas. (BNA) 1248, 145 Lab. Cas. (CCH) ¶ 59524 (2001), the state supreme court held that a cause of action was stated by the allegation that the plaintiff truck driver had been discharged for safety complaints, and that the claim was not preempted by the Surface Transportation & Assistance Act of 1982, (29 U.S.C.A. § 31101 et seq.). Nor was a public policy tort claim preempted by the statutory remedies for bankruptcy discrimination, it was held in Wemmers v. Great State Beverages, Inc., 140 N.H. 100, 663 A.2d 623, 10 I.E.R. Cas. (BNA) 1649, 131 Lab. Cas. (CCH) ¶ 58016 (1995).

The unusual "hybrid" nature of the New Hampshire doctrine, (combining elements of bad faith analysis and public policy analysis), was explained and discussed in O'Brien v. Papa Gino's of America, Inc., 780 F.2d 1067, 1 I.E.R. Cas. (BNA) 458, 121 L.R.R.M. (BNA) 2321, 39 Empl. Prac. Dec. (CCH) ¶ 36034, 104 Lab. Cas. (CCH) ¶ 55547, 20 Fed. R. Evid. Serv. 448 (1st Cir. 1986); Vandegrift v. American Brands Corp., 572 F. Supp. 496, 115 L.R.R.M. (BNA) 2317 (D.N.H. 1983); and Tsetseranos v. Tech Prototype, Inc., 893 F. Supp. 109, 9 A.D.D. 458, 4 A.D. Cas. (BNA) 1635, 68 Fair Empl. Prac. Cas. (BNA) 1790, 130 Lab. Cas. (CCH) ¶ 57948 (D.N.H. 1995).

New Jersey

In 1980, in Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58, 417 A.2d 505, 1 I.E.R. Cas. (BNA) 109, 115 L.R.R.M. (BNA) 3044, 101 Lab. Cas. (CCH) ¶ 55477, 12 A.L.R.4th 520 (1980), the New Jersey Supreme Court endorsed version of the public policy tort doctrine that recognizes a wide range of public policy sources-not only statutes and constitutional provisions, but also administrative rules and regulations, judicial decisions, and even some professional codes of ethics. The court did not list the factual situations covered by the doctrine, only summarizing it as providing a remedy to an employee whose discharge was "contrary to a clear mandate of public policy." In the present case the court found that there was no sufficient public policy basis to support a claim by a research doctor who had been demoted for refusing to continue work on a saccharin-rich infant drug.

Pierce was cited and followed in Kalman v. Grand Union Co., 183 N.J. Super. 153, 443 A.2d 728, 115 L.R.R.M. (BNA) 4803 (App. Div. 1982), where the court held that a cause of action was stated by the allegation that the plaintiff pharmacist had been discharged for refusing an order that would have violated state regulations and provisions of the pharmacist's professional organization. The court found those regulations and provisions to be sufficiently related to the public interest to support the cause of action. Compare Warthen v. Toms River Community Memorial Hosp., 199 N.J. Super. 18, 488 A.2d 229, 118 L.R.R.M. (BNA) 3179 (App. Div. 1985) (affirming summary judgment; nurse's professional code of ethics did not provide adequate public policy basis for claim that plaintiff had been discharged for refusing to perform procedure to which she had moral, medical, and philosophical objections; sufficiency of asserted public policy basis is threshold question for court).

One year later, in Lally v. Copygraphics, 85 N.J. 668, 428 A.2d 1317, 115 L.R.R.M. (BNA) 4634 (1981), the doctrine was held applicable in the context of discharge in retaliation for the filing of a workers' compensation claim. Compare Galante v. Sandoz, Inc., 192 N.J. Super. 403, 470 A.2d 45, 115 L.R.R.M. (BNA) 3370 (Law Div. 1983), judgment aff'd, 196 N.J. Super. 568, 483 A.2d 829 (App. Div. 1984) (declining to extend Lally to protect employee discharged for absences due to compensable injury).

In Ballinger v. Delaware River Port Authority, 172 N.J. 586, 800 A.2d 97, 18 I.E.R. Cas. (BNA) 1336 (2002), the state supreme court reversed summary judgment on a claim by a bi-state agency police officer who had been discharged for reporting suspected criminal activity. The plaintiff had not forfeited his common law claim, the court held, by having attempted to assert a claim under the New Jersey Conscientious Employee Protection Act.

It was unlikely, the Third Circuit reasoned in Blum v. Witco Chemical Corp., 829 F.2d 367, 8 Employee Benefits Cas. (BNA) 2600, 46 Fair Empl. Prac. Cas. (BNA) 306, 3 I.E.R. Cas. (BNA) 320, 44 Empl. Prac. Dec. (CCH) ¶ 37392, 110 Lab. Cas. (CCH) ¶ 55944, 99 A.L.R. Fed. 1 (3d Cir. 1987), that the New Jersey courts would extend the public policy tort doctrine to situations involving age discrimination. Compare Velantzas v. Colgate-Palmolive Co., Inc., 109 N.J. 189, 536 A.2d 237, 54 Fair Empl. Prac. Cas. (BNA) 1285, 6 I.E.R. Cas. (BNA) 259 (1988) (cause of action was stated by allegation that plaintiff had been discharged for requesting to see her personnel records to substantiate suspicion of sex discrimination in promotion decisions).

Concerning issues of statutory exclusivity or preemption, see: Cerracchio v. Alden Leeds, Inc., 223 N.J. Super. 435, 538 A.2d 1292, 3 I.E.R. Cas. (BNA) 726, 13 O.S.H. Cas. (BNA) 1723, 1988 O.S.H. Dec. (CCH) ¶ 28193, 75 A.L.R.4th 1 (App. Div. 1988) (employees may maintain private actions in tort for discharge in retaliation for filing of OSHA complaints); Lepore v. National Tool and Mfg. Co., 224 N.J. Super. 463, 540 A.2d 1296, 4 I.E.R. Cas. (BNA) 862, 131 L.R.R.M. (BNA) 2741, 13 O.S.H. Cas. (BNA) 1798, 111 Lab. Cas. (CCH) ¶ 56041, 1988 O.S.H. Dec. (CCH) ¶ 28252 (App. Div. 1988), judgment aff'd, 115 N.J. 226, 557 A.2d 1371, 4 I.E.R. Cas. (BNA) 871, 131 L.R.R.M. (BNA) 2749, 117 Lab. Cas. (CCH) ¶ 56488, 1989 O.S.H. Dec. (CCH) ¶ 28562 (1989) (employee discharged for refusing to falsify mine safety reports was not required to exhaust state or federal administrative remedies).

A discharged whistleblower may only assert a public policy tort claim if he or she reported the violation or suspected violation to outside authorities, not merely internally, it was held in House v. Carter-Wallace, Inc., 232 N.J. Super. 42, 556 A.2d 353, 4 I.E.R. Cas. (BNA) 587, 112 Lab. Cas. (CCH) ¶ 56067 (App. Div. 1989).

Other New Jersey Supreme Court decisions concerning the public policy tort doctrine have included: MacDougall v. Weichert, 144 N.J. 380, 677 A.2d 162, 11 I.E.R. Cas. (BNA) 1411 (1996) (claim was stated by allegation that plaintiff salesman had been discharged in retaliation for his vote as member of town council in favor of ordinance that was opposed by one of his employer's clients); Hennessey v. Coastal Eagle Point Oil Co., 129 N.J. 81, 609 A.2d 11, 7 I.E.R. Cas. (BNA) 1057, 122 Lab. Cas. (CCH) ¶ 57033 (1992) (recognizing that under circumstances not present here mandatory drug testing by private employers may constitute invasion of privacy sufficient to breach public policy for purposes of wrongful discharge action).

New Mexico

In 1983, a New Mexico court of appeals issued the state's first decision recognizing the public policy tort, in the context of the allegation that the plaintiff had been discharged for complaining about his employer's misuse of public funds. Vigil v. Arzola, 102 N.M. 682, 699 P.2d 613, 2 I.E.R. Cas. (BNA) 377 (Ct. App. 1983), judgment rev'd in part on other grounds, 101 N.M. 687, 687 P.2d 1038, 2 I.E.R. Cas. (BNA) 394, 120 L.R.R.M. (BNA) 2908 (1984), and overruled on other grounds by Chavez v. Manville Products Corp., 108 N.M. 643, 777 P.2d 371, 4 I.E.R. Cas. (BNA) 833, 122 Lab. Cas. (CCH) ¶ 56927 (1989). The court did not attempt to define the limits of the doctrine, but did suggest that sources of public policy other than statutes are cognizable.

In Chavez v. Manville Products Corp., 108 N.M. 643, 777 P.2d 371, 4 I.E.R. Cas. (BNA) 833, 122 Lab. Cas. (CCH) ¶ 56927 (1989), the New Mexico Supreme Court reversed the dismissal of claim alleging that the plaintiff had been discharged for objecting to the employer's unauthorized use of his name in a lobbying campaign. The court overruled two aspects of Vigil v. Arzola, supra., holding (1) that the standard of proof in retaliatory discharge cases

is only a preponderance of the evidence, (not clear and convincing evidence), and (2) that emotional distress damages are available.

In 1994, the New Mexico Supreme Court recognized the doctrine in the context of workers' compensation retaliation, reasoning that the statutory remedies were inadequate and therefore non-exclusive. Michaels v. Anglo American Auto Auctions, Inc., 117 N.M. 91, 869 P.2d 279, 9 I.E.R. Cas. (BNA) 420 (1994).

And in 1994, the New Supreme Court held that the anti-discrimination remedies in the New Mexico Human Rights Act are not exclusive of a common law claim based on the public policy expressed by the Act. Gandy v. Wal-Mart Stores, Inc., 117 N.M. 441, 872 P.2d 859, 9 I.E.R. Cas. (BNA) 682, 128 Lab. Cas. (CCH) ¶ 57762 (1994).

In Silva v. American Federation of State, County and Mun. Employees, 2001 -NMSC- 038, 131 N.M. 364, 37 P.3d 81, 18 I.E.R. Cas. (BNA) 552, 145 Lab. Cas. (CCH) ¶ 59499 (2001), the court emphasized that the public policy tort doctrine, in general, may only be invoked by at-will employees, not by employees covered by collective bargaining agreements.

New York

In 1983, the New York Court of Appeals flatly rejected the public policy tort in Murphy v. American Home Products Corp., 58 N.Y.2d 293, 461 N.Y.S.2d 232, 448 N.E.2d 86, 31 Fair Empl. Prac. Cas. (BNA) 782, 115 L.R.R.M. (BNA) 4953, 31 Empl. Prac. Dec. (CCH) ¶ 33607, 98 Lab. Cas. (CCH) ¶ 55407 (1983), and for almost ten years thereafter, New York continued to be classified as one of the few states holding out against the growing trend toward recognition of the doctrine. In 1992, however, the New York Court of Appeals issued its decision in Wieder v. Skala, 80 N.Y.2d 628, 593 N.Y.S.2d 752, 609 N.E.2d 105, 8 I.E.R. Cas. (BNA) 132 (1992), holding that a wrongful discharge claim could be based on the ethical rules of the legal profession. The case involved the discharge of a law firm associate for his insistence that the firm report the professional misconduct of another associate. In Horn v. The New York Times, 293 A.D.2d 1, 739 N.Y.S.2d 679, 18 I.E.R. Cas. (BNA) 743, 30 Media L. Rep. (BNA) 1759 (1st Dep't 2002), order rev'd on other grounds, 19 I.E.R. Cas. (BNA) 1262, 2003 WL 443259 (N.Y. 2003), an appellate court relied on in holding that the trial court had correctly denied a motion to dismiss a claim by an in-house physician who was discharged for refusing to violate patients' confidentiality by disclosing the contents of their medical records relating to workers' compensation claims.

North Carolina

In 1978, in Dockery v. Lampart Table Co., 36 N.C. App. 293, 244 S.E.2d 272, 115 L.R.R.M. (BNA) 4307 (1978), recognition of the public policy tort was refused in the workers' compensation retaliation context. (In response, the legislature promptly enacted legislation creating a statutory cause of action: N.C. Gen. Stat. § 97-6.1. See, Abels v. Renfro Corp., 335 N.C. 209, 436 S.E.2d 822, 9 I.E.R. Cas. (BNA) 30 (1993).)

In 1985, another intermediate court of appeals held that a cause of action was stated by the allegation that the nurse plaintiff had been discharged in retaliation for her decision to give truthful testimony in a malpractice action against one of her hospital's physicians. Sides v. Duke University, 74 N.C. App. 331, 328 S.E.2d 818, 24 Ed. Law Rep. 1033, 1 I.E.R. Cas. (BNA) 512, 120 L.R.R.M. (BNA) 2091, 103 Lab. Cas. (CCH) ¶ 55512 (1985), disapproved of on other grounds by Kurtzman v. Applied Analytical Industries, Inc., 347 N.C. 329, 493 S.E.2d 420, 13 I.E.R. Cas. (BNA) 798 (1997).

Subsequent North Carolina decisions have included: Coman v. Thomas Mfg. Co., Inc., 325 N.C. 172, 381 S.E.2d 445, 4 I.E.R. Cas. (BNA) 987, 113 Lab. Cas. (CCH) ¶ 56135 (1989) (reinstating claim by truck driver discharged for refusing to violate Department of Transportation regulations); Amos v. Oakdale Knitting Co., 331 N.C. 348, 416 S.E.2d 166, 7 I.E.R. Cas. (BNA) 714, 30 Wage & Hour Cas. (BNA) 1467, 123 Lab. Cas. (CCH) ¶ 57108 (1992) (reversing dismissal of claim by employee discharged for refusing to work for less than minimum wage); Daniel v. Carolina Sunrock Corp., 335 N.C. 233, 436 S.E.2d 835 (1993) (no cause of action was stated by allegation that plaintiff had been discharged after expressing willingness to testify in co-worker's breach of contract action where co-worker's suit had settled and plaintiff never actually testified); Harrison v. Edison Bros. Apparel Stores, Inc., 924 F.2d 530, 61 Fair Empl. Prac. Cas. (BNA) 1501, 8 I.E.R. Cas. (BNA) 1585, 56 Empl. Prac. Dec. (CCH) ¶ 40632, 123 Lab. Cas. (CCH) ¶ 57058, 21 Fed. R. Serv. 3d 1033 (4th Cir. 1991) (North Carolina law

would extend doctrine to protect employee discharged for refusing to accede to employer's sexual demands); Haburjak v. Prudential Bache Securities, Inc., 759 F. Supp. 293 (W.D. N.C. 1991) (granting employer's motion for summary judgment on stockbroker's claim alleging that he had been discharged for disclosing insider trading violations; public policy exception applies only to situations where employee is discharged for refusing to violate law); Percell v. International Business Machines, Inc., 765 F. Supp. 297, 61 Fair Empl. Prac. Cas. (BNA) 1056 (E.D. N.C. 1991), aff'd, 23 F.3d 402 (4th Cir. 1994) (no common claim may be based on public policy underlying North Carolina Equal Employment Practices Act); Considine v. Compass Group USA, Inc., 145 N.C. App. 314, 551 S.E.2d 179, 18 I.E.R. Cas. (BNA) 300 (2001), aff'd, 354 N.C. 568, 557 S.E.2d 528 (2001) (in absence of allegation that any express statutory or constitutional provision was violated, no cause of action was stated by in-house counsel discharged for reporting unlawful billing practices that assertedly violated compliance program in connection with government service contracts).

In Brackett v. SGI Carbon Corp., 158 N.C. App. 252, 580 S.E.2d 757, 20 I.E.R. Cas. (BNA) 1869 (2003), it was held that a claim may be stated by an employee discharged *in anticipation of his or her filing of a workers' compensation claim*.

In Whitt v. Harris Teeter, Inc., 359 N.C. 625, 643, 614 S.E.2d 531 (2005), the North Carolina Supreme Court rejected the argument that a claim for wrongful discharge in violation of public may be stated by the allegation that the plaintiff was *constructively* discharged by virtue of a hostile work environment or retaliation.

North Dakota

North Dakota law has insisted on the strict necessity of a constitutional or statutory basis for a public policy tort claim, and has recognized the doctrine in only two contexts: Krein v. Marian Manor Nursing Home, 415 N.W.2d 793, 45 Fair Empl. Prac. Cas. (BNA) 979, 2 I.E.R. Cas. (BNA) 1188, 45 Empl. Prac. Dec. (CCH) ¶ 37806 (N.D. 1987) (discharge in retaliation for filing workers' compensation claim); Ressler v. Humane Soc. of Grand Forks, 480 N.W.2d 429, 7 I.E.R. Cas. (BNA) 152, 125 Lab. Cas. (CCH) ¶ 57396 (N.D. 1992) (discharge in retaliation for giving truthful testimony pursuant to subpoena). Compare Jose v. Norwest Bank North Dakota, N.A., 1999 ND 175, 599 N.W.2d 293, 15 I.E.R. Cas. (BNA) 892, 139 Lab. Cas. (CCH) ¶ 58760 (N.D. 1999) (affirming summary judgment on claim by employee who alleged that he had been discharged for participating in internal investigation of other workers' job performance.)

Ohio

In Fawcett v. G. C. Murphy & Co., 46 Ohio St. 2d 245, 75 Ohio Op. 2d 291, 348 N.E.2d 144, 16 Fair Empl. Prac. Cas. (BNA) 1413 (1976), the Ohio Supreme Court took a position representing strict adherence to the at-will doctrine unmodified by common law causes of action such as the public policy exception. That position was basically reasserted in Phung v. Waste Management, Inc., 23 Ohio St. 3d 100, 491 N.E.2d 1114, 2 I.E.R. Cas. (BNA) 786, 122 L.R.R.M. (BNA) 2163, 104 Lab. Cas. (CCH) ¶ 55602 (1986), and was only modified for the first time in 1990, in Greeley v. Miami Valley Maintenance Contractors, Inc., 49 Ohio St. 3d 228, 551 N.E.2d 981, 5 I.E.R. Cas. (BNA) 257, 115 Lab. Cas. (CCH) ¶ 56231 (1990), overruled in part by Tulloch v. Goodyear Atomic Corp., 62 Ohio St. 3d 541, 584 N.E.2d 729, 7 I.E.R. Cas. (BNA) 309 (1992), when the court recognized a public policy tort cause of action in favor an employee who had been discharged in response to a child support garnishment. The court emphasized that the employer conduct in question was specifically prohibited by statute, Ohio Rev. Code § 3113.213(D).

The applicability of the Ohio version of the public policy tort has subsequently been recognized in a large number of other contexts: Pytlinski v. Brocar Prod., Inc., 94 Ohio St. 3d 77, 2002 -Ohio- 66, 760 N.E.2d 385, 18 I.E.R. Cas. (BNA) 487, 145 Lab. Cas. (CCH) ¶ 59495 (2002) (public policy favoring workplace safety provided basis for common law claim independent of statutory whistle-blower claim on behalf of employee discharged in retaliation for his safety complaints); Kulch v. Structural Fibers, Inc., 78 Ohio St. 3d 134, 1997-Ohio-219, 677 N.E.2d 308, 12 I.E.R. Cas. (BNA) 1484, 1997 O.S.H. Dec. (CCH) ¶ 31325 (1997) (because of inadequacy of statutory remedies, common law claims may be maintained for discharge in violation of Ohio whistle-blower statute, Ohio Rev. Code § 4113.52); Collins v. Rizkana, 73 Ohio St. 3d 65, 1995 -Ohio- 135, 652 N.E.2d 653, 68 Fair Empl. Prac. Cas. (BNA) 1043, 10 I.E.R. Cas. (BNA) 1835, 66 Empl. Prac. Dec. (CCH) ¶ 43663 (1995) (cause of action was stated by allegation that plaintiff was discharged in retaliation for resisting sexual harassment); Sabo v.

Schott, 70 Ohio St. 3d 527, 1994 -Ohio- 249, 639 N.E.2d 783 (1994) (cause of action was stated by allegation that plaintiff was discharged for testifying truthfully and unfavorably to employer); Jenkins v. Parkview Counseling Center Inc., 2001 -Ohio- 3151, 17 I.E.R. Cas. (BNA) 484, 2001 WL 15938 (Ohio Ct. App. 7th Dist. Mahoning County 2001) (cause of action was stated by allegation that plaintiff was discharged in retaliation for filing lawsuit relative to wage dispute); Boyd v. Winton Hills Med. & Health Ctr., Inc., 133 Ohio App. 3d 150, 727 N.E.2d 137, 16 I.E.R. Cas. (BNA) 550 (1st Dist. Hamilton County 1999); (statutory remedy for workers' compensation retaliation is not exclusive of public policy tort claim); Woods v. Phoenix Soc. of Cuyahoga County, 10 A.D. Cas. (BNA) 1086, 2000 WL 640566 (Ohio Ct. App. 8th Dist. Cuyahoga County 2000) (cause of action was stated by allegation that employer had engaged in "reverse" discrimination by discharging mental health worker who lacked any history of mental health problems); Powers v. Springfield City Schools, 14 I.E.R. Cas. (BNA) 172, 1998 WL 336782 (Ohio Ct. App. 2d Dist. Clark County 1998) (whistleblower stated cause of action for retaliatory denial of promotion); Bidwell v. Children's Medical Center, 13 I.E.R. Cas. (BNA) 896, 1997 WL 736497 (Ohio Ct. App. 2d Dist. Montgomery County 1997) (public policy expressed by whistleblower statute (Ohio Rev. Code § 4113.52) supported claim by employee discharged for reporting co-worker's threats against her); Chapman v. Adia Services, Inc., 116 Ohio App. 3d 534, 688 N.E.2d 604, 13 I.E.R. Cas. (BNA) 656 (1st Dist. Hamilton County 1997) (cause of action was stated by allegation that employee was discharged for consulting attorney about merits of possible slip-and-fall claim against employer's client); Trader v. People Working Cooperatively, Inc., 104 Ohio App. 3d 690, 663 N.E.2d 335, 11 I.E.R. Cas. (BNA) 1350 (1st Dist. Hamilton County 1994), appeal allowed, 72 Ohio St. 3d 1415, 647 N.E.2d 1389 (1995) and appeal dismissed as improvidently allowed, 74 Ohio St. 3d 1286, 1996 -Ohio- 255, 660 N.E.2d 737, 11 I.E.R. Cas. (BNA) 1355, 131 Lab. Cas. (CCH) ¶ 58081 (1996) (cause of action was stated by allegation that employee was discharged for reporting marijuana use by co-workers); Simonelli v. Anderson Concrete Co., 99 Ohio App. 3d 254, 650 N.E.2d 488, 11 I.E.R. Cas. (BNA) 236 (10th Dist. Franklin County 1994) (cause of action was stated by allegation that employee was discharged for consulting attorney about disciplinary warning); Stephenson v. Litton Sys., Inc., 97 Ohio App. 3d 125, 646 N.E.2d 259, 10 I.E.R. Cas. (BNA) 759 (2d Dist. Montgomery County 1994) (cause of action was stated by allegation that employee was discharged for reporting to police that supervisor was planning to drive while intoxicated); Smith v. Troy Moose Lodge No. 1044, 96 Ohio App. 3d 814, 645 N.E.2d 1352, 10 I.E.R. Cas. (BNA) 845 (2d Dist. Miami County 1994) (cause of action was stated by allegation that plaintiff was discharged in retaliation for exercise of right to participate in Unemployment Compensation Fund); Delaney v. Skyline Lodge, Inc., 95 Ohio App. 3d 264, 642 N.E.2d 395, 76 Fair Empl. Prac. Cas. (BNA) 547 (1st Dist. Hamilton County 1994), dismissed, appeal not allowed, 70 Ohio St. 3d 1465, 640 N.E.2d 527 (1994) (affirming judgment for employee discharged for complaining about restaurant manager's check-padding practices); Courtney v. Landair Transport, Inc., 227 F.3d 559, 83 Fair Empl. Prac. Cas. (BNA) 1529, 79 Empl. Prac. Dec. (CCH) ¶ 40229, 2000 FED App. 0285P (6th Cir. 2000) (non-preempted common law claim was maintainable for discharge in violation of public policy against employment discrimination).

In the following cases, on the other hand, Ohio courts have declined to recognize the applicability of the public policy tort doctrine, or have held that the claim was factually deficient: Painter v. Graley, 75 Ohio St. 3d 1405, 661 N.E.2d 755 (1996) (no clear public policy mandate was violated by discharge of employee because she became candidate for partisan elected office); Seta v. Reading Rock, Inc., 100 Ohio App. 3d 731, 654 N.E.2d 1061, 131 Lab. Cas. (CCH) ¶ 58030 (12th Dist. Butler County 1995) (no cognizable public policy mandate was violated by discharge of employee who failed mandatory drug test); Thomas v. Mastership Corp., 108 Ohio App. 3d 91, 670 N.E.2d 265, 12 I.E.R. Cas. (BNA) 382 (8th Dist. Cuyahoga County 1995), cause dismissed, 75 Ohio St. 3d 1415, 661 N.E.2d 762 (1996) (although obligation of taxpayers to file accurate returns was cognizable public policy mandate, plaintiff failed to show causal nexus between his discharge and his inquiries to IRS concerning his tax status); Roberts v. Alan Ritchey, Inc., 962 F. Supp. 1028, 12 I.E.R. Cas. (BNA) 1449 (S.D. Ohio 1997) (truck driver discharged after arrest on DUI charge of which he was later acquitted could not base claim on public policy favoring presumption of innocence); Sorensen v. Wise Management Services, Inc., 2003 -Ohio- 767, 19 I.E.R. Cas. (BNA) 1161, 2003 WL 361286 (Ohio Ct. App. 8th Dist. Cuyahoga County 2003) (public policy against Medicaid fraud was not "jeopardized" by discharge of billing clerk who admitted she was uncertain of illegality of order she disobeyed.)

Ohio

In Howell v. Whitehurst Co., 2005-Ohio-6136, 2005 WL 3078196 (Ohio Ct. App. 6th Dist. Lucas County 2005), an Ohio Court of Appeals held that the public policy against race discrimination could support a non-preempted wrongful discharge claim, though in the present case the plaintiff had failed to raise triable issue of pretext with respect to the employers proffered nondiscriminatory explanation for the challenged action.

Oklahoma

Burk v. K-Mart Corp., 1989 OK 22, 770 P.2d 24, 4 I.E.R. Cas. (BNA) 182, 113 Lab. Cas. (CCH) ¶ 56100 (Okla. 1989), the Oklahoma Supreme Court recognized the public policy tort doctrine for the first time, stating that it applies where the discharge of an employee violates a clear mandate of public policy as articulated by constitutional, statutory, or decisional law. (The decision, issued in response to a federal district court's certified question, addressed the doctrine only in the abstract, without application to any particular fact pattern.) The court referred to its own earlier decision in Hinson v. Cameron, 1987 OK 49, 742 P.2d 549, 4 I.E.R. Cas. (BNA) 266, 108 Lab. Cas. (CCH) ¶ 55849 (Okla. 1987), which discussed in some detail the doctrine as recognized in other jurisdictions, but declined to take a position.

Subsequently, the doctrine has been held applicable in a variety of factual settings. See Collier v. Insignia Financial Group, 1999 OK 49, 981 P.2d 321, 17 I.E.R. Cas. (BNA) 1292 (Okla. 1999) (statutory remedies were not adequate nor exclusive of common law claim relative to constructive discharge of employee subjected to quid pro quo sexual harassment); Groce v. Foster, 1994 OK 88, 880 P.2d 902, 9 I.E.R. Cas. (BNA) 1287, 9 I.E.R. Cas. (BNA) 1768, 128 Lab. Cas. (CCH) ¶ 57727 (Okla. 1994) (cause of action was stated by allegation that employee was discharged for suing employer's customer for on-the-job injury); Wilson v. Hess-Sweitzer & Brant, Inc., 1993 OK 156, 864 P.2d 1279, 9 I.E.R. Cas. (BNA) 40, 128 Lab. Cas. (CCH) ¶ 57686 (Okla. 1993) (affirming judgment for employee; trial court did not err in giving constructive discharge instruction where evidence showed that plaintiffs had been deprived of work assignments after being subpoenaed to testify in co-worker's suit for workers' compensation retaliation); Todd v. Frank's Tong Service, Inc., 1989 OK 121, 784 P.2d 47, 4 I.E.R. Cas. (BNA) 1535, 117 Lab. Cas. (CCH) ¶ 56487, 1989 O.S.H. Dec. (CCH) ¶ 28671 (Okla. 1989) (cause of action was stated by allegation that truck driver was discharged for refusing to drive truck that had safety defects); Davies v. American Airlines, Inc., 971 F.2d 463, 7 I.E.R. Cas. (BNA) 1071, 140 L.R.R.M. (BNA) 2986, 122 Lab. Cas. (CCH) ¶ 10272 (10th Cir. 1992) (reinstating judgment for employee who was discharged in retaliation for union activities; common law claim could be asserted notwithstanding existence of collective bargaining agreement); Bishop v. Federal Intermediate Credit Bank of Wichita, 908 F.2d 658, 5 I.E.R. Cas. (BNA) 870, 116 Lab. Cas. (CCH) ¶ 56351 (10th Cir. 1990) (cause of action was stated by allegation that employee was discharged for testimony at congressional hearing)

In the following cases, however, Oklahoma courts declined to apply the public policy tort doctrine under particular circumstances: Barker v. State Ins. Fund, 2001 OK 94, 40 P.3d 463, 18 I.E.R. Cas. (BNA) 1840 (Okla. 2001), as corrected, (Nov. 7, 2001) (affirming summary judgment; although doctrine may protect whistleblower who complains only internally, it did not protect plaintiff who had merely expressed personal opinions concerning company mismanagement); Clinton v. State ex rel. Logan County Election Bd., 2001 OK 52, 29 P.3d 543, 17 I.E.R. Cas. (BNA) 1217 (Okla. 2001) (federal statutory remedies were exclusive of common law claim in connection with discharge motivated by pregnancy discrimination); Wheless v. Willard Grain & Feed, Inc., 1998 OK 84, 964 P.2d 204, 14 I.E.R. Cas. (BNA) 275 (Okla. 1998) (no cause of action was stated by allegation that employee had been ordered to falsify data in environmental reports and then been discharged for that misconduct); Gilmore v. Enogex, Inc., 1994 OK 76, 878 P.2d 360, 9 I.E.R. Cas. (BNA) 1295, 10 Lab. Cas. (CCH) ¶ 57875, 130 Lab. Cas. (CCH) ¶ 57875 (Okla. 1994) (no clear public policy precluded employee's discharge for refusing to participate in mandatory drug testing program); Brown v. Ford, 1995 OK 101, 905 P.2d 223, 76 Fair Empl. Prac. Cas. (BNA) 985, 68 Empl. Prac. Dec. (CCH) ¶ 44162 (Okla. 1995) (no common-law claim may be based on public policy against sexual harassment against employers too small to be subject to state's anti-discrimination statute); Marshall v. OK Rental & Leasing, Inc., 1997 OK 34, 939 P.2d 1116, 12 I.E.R. Cas. (BNA) 1283, 70 Empl. Prac. Dec. (CCH) ¶ 44734 (Okla. 1997), disapproved of on other grounds by Collier v. Insignia Financial Group, 1999 OK 49, 981 P.2d 321, 17 I.E.R. Cas. (BNA) 1292 (Okla. 1999) (no claim was stated by allegation that employee was constructively discharged as result of co-worker's campaign of sexual harassment); Hall v. Noble Public Schools, 1993 OK 20, 848 P.2d 1157, 81 Ed. Law Rep. 1123, 8 I.E.R. Cas. (BNA) 619 (Okla. 1993) (where plaintiff had been originally laid off as part of legitimate RIF, he stated no cause of action for wrongful refusal to rehire even if refusal was motivated by fact that he had filed workers' compensation claim); Wiles v. Michelin North America, Inc., 173 F.3d 1297, 15 I.E.R. Cas. (BNA) 42 (10th Cir. 1999) (absenteeism was legitimate reason for discharge and employee failed to prove that employer's true motive was retaliation for his filing of workers' compensation claim).

Significant issues relating to damages and to the "after-acquired evidence" defense were addressed in Wallace v.

Halliburton Co., 1993 OK 24, 850 P.2d 1056, 8 I.E.R. Cas. (BNA) 620 (Okla. 1993) (recognizing availability of punitive damages in action for workers' compensation retaliation, though not attorneys' fees); and Mosley v. Truckstops Corp. of America, 1993 OK 79, 891 P.2d 577, 8 I.E.R. Cas. (BNA) 974, 9 I.E.R. Cas. (BNA) 1761 (Okla. 1993), as modified on reh'g, (May 9, 1994) (rejecting argument that employer may be relieved of liability for retaliatory discharge on basis of after-acquired evidence of misconduct).

Oregon

The Oregon Supreme Court's decision in Nees v. Hocks, 272 Or. 210, 536 P.2d 512, 115 L.R.R.M. (BNA) 4571 (1975), affirming a judgment in favor of an employee discharged for missing work to perform jury duty, represented the Oregon courts' first recognition of the public policy tort doctrine. The "clear mandate" of public policy required to support such a cause of action, the court said, may be found in statutes, rules, and court decisions. (In Bratcher v. Sky Chefs, Inc., 308 Or. 501, 783 P.2d 4, 4 I.E.R. Cas. (BNA) 1771, 117 Lab. Cas. (CCH) ¶ 56527 (1989), it was held that the doctrine applies to constructive discharge as well as to actual discharge situations.)

Subsequent Oregon cases holding the doctrine applicable have included: Thorson v. State ex rel. Dept. of Justice, 171 Or. App. 704, 15 P.3d 1005, 17 I.E.R. Cas. (BNA) 90 (2000) (affirming judgment for employee discharged for refusing to make false sexual harassment accusation against co-worker); Howard v. Waremart, Inc., 147 Or. App. 135, 935 P.2d 432, 12 I.E.R. Cas. (BNA) 1188 (1997) (affirming judgment for employee discharged for reporting violations of health and safety regulations); Holien v. Sears, Roebuck and Co., 66 Or. App. 911, 677 P.2d 704, 115 L.R.R.M. (BNA) 3230 (1984), review allowed, 297 Or. 124, 681 P.2d 134 (1984) and decision aff'd and remanded, 298 Or. 76, 689 P.2d 1292, 36 Fair Empl. Prac. Cas. (BNA) 137, 117 L.R.R.M. (BNA) 2853, 35 Empl. Prac. Dec. (CCH) ¶ 34801, 105 Lab. Cas. (CCH) ¶ 55605 (1984) (cause of action was stated, and statutory remedies were not exclusive, in connection with discharge motivated by sex discrimination; but see Kofoid v. Woodrow Hotels, Inc., *infra.*); McQuary v. Bel Air Convalescent Home, Inc., 69 Or. App. 107, 684 P.2d 21, 120 L.R.R.M. (BNA) 3129 (1984) (cause of action was stated by allegation that employee was discharged for reporting suspected violation of policies expressed by statutory scheme known as Nursing Home Patients' Bill of Rights; employee was required to show only good faith belief that violation occurred); Crosby v. SAIF Corp., 73 Or. App. 372, 699 P.2d 198 (1985) (cause of action was stated by allegation that employer and insurer had conspired to deprive plaintiff of workers' compensation benefits and to terminate his employment; statutory remedies for workers' compensation retaliation were not exclusive, and alleged conduct went beyond statute's coverage in any event); Anderson v. Evergreen Intern. Airlines, Inc., 131 Or. App. 726, 886 P.2d 1068, 10 I.E.R. Cas. (BNA) 309 (1994) (cause of action was stated by allegation that employee was discharged for refusing to acquiesce in violations of FAA regulations); Banaitis v. Mitsubishi Bank, Ltd., 129 Or. App. 371, 879 P.2d 1288, 9 I.E.R. Cas. (BNA) 1481 (1994), review allowed, 320 Or. 407, 887 P.2d 791 (1994) and review dismissed as improvidently granted, 321 Or. 511, 900 P.2d 508 (1995) (affirming judgment for employee discharged in retaliation for refusing to disclose confidential customer information); Dalby v. Sisters of Providence in Oregon, 125 Or. App. 149, 865 P.2d 391, 9 I.E.R. Cas. (BNA) 56 (1993) (cause of action was stated by allegation that pharmacy employee was constructively discharged in retaliation for objecting to violations of state regulations concerning control of drug inventories); Carlson v. Crater Lake Lumber Co., 105 Or. App. 314, 804 P.2d 511 (1991) (fact issues were raised as to constructive discharge in retaliation for resistance to sexual harassment); Goldshorough v. Eagle Crest Partners, Ltd., 105 Or. App. 499, 805 P.2d 723 (1991), aff'd, 314 Or. 336, 838 P.2d 1069 (1992) (emphasizing that statutory remedies were not exclusive and affirming judgment for employee discharged in retaliation for filing administrative complaint concerning sexual harassment); McCool v. Hillhaven Corp., 97 Or. App. 536, 777 P.2d 1013, 4 I.E.R. Cas. (BNA) 1026 (1989) (remedies available under whistle-blower statute were not exclusive and cause of action was stated by allegation that convalescent home employee was discharged for attempting to enforce compliance with state laws regarding patient care); Dias v. Sky Chefs, Inc., 919 F.2d 1370, 54 Fair Empl. Prac. Cas. (BNA) 852, 6 I.E.R. Cas. (BNA) 1860, 55 Empl. Prac. Dec. (CCH) ¶ 40398 (9th Cir. 1990), judgment vacated on other grounds, 501 U.S. 1201, 111 S. Ct. 2791, 115 L. Ed. 2d 965, 55 Fair Empl. Prac. Cas. (BNA) 1544, 6 I.E.R. Cas. (BNA) 1868, 56 Empl. Prac. Dec. (CCH) ¶ 40805 (1991) (affirming judgment for employee discharged for resisting sexual harassment); Delaney v. Taco Time Intern., Inc., 297 Or. 10, 681 P.2d 114, 1 I.E.R. Cas. (BNA) 367, 116 L.R.R.M. (BNA) 2168, 105 Lab. Cas. (CCH) ¶ 55606 (1984) (employer was liable for wrongfully discharging an at-will employee where employee was discharged for fulfilling a societal obligation by refusing to sign a false and arguably tortious statement casting aspersions on the work habits and moral behavior of a former employee).

In the following cases, however, Oregon courts declined to apply the public policy tort doctrine under particular

circumstances: Babick v. Oregon Arena Corp., 333 Or. 401, 40 P.3d 1059, 18 I.E.R. Cas. (BNA) 593 (2002) (no state statute imposes substantial duty on private citizens to take law enforcement action against lawbreakers and therefore no cause of action was stated by allegation that security guards were discharged for lawfully arresting unruly concert-goers); Campbell v. Ford Industries, Inc., 274 Or. 243, 546 P.2d 141, 115 L.R.R.M. (BNA) 4837, 84 A.L.R.3d 1093 (1976) (no cause of action was stated by employee-stockholder who was discharged for requesting information relative to suspected corporate misdealing; right of inspection had direct relation only to plaintiff's capacity as stockholder, not as employee); Walsh v. Consolidated Freightways, Inc., 278 Or. 347, 563 P.2d 1205, 115 L.R.R.M. (BNA) 5045 (1977) (given adequacy of statutory remedies, no cause of action was stated by employee discharged for health and safety complaints); Kofoid v. Woodard Hotels, Inc., 78 Or. App. 283, 716 P.2d 771, 59 Fair Empl. Prac. Cas. (BNA) 1633, 8 I.E.R. Cas. (BNA) 1661 (1986) (no cause of action was stated by allegation that employee's discharge was motivated by sex discrimination); Patton v. J.C. Penney Co., Inc., 75 Or. App. 638, 707 P.2d 1256, 120 L.R.R.M. (BNA) 3131 (1985), *aff'd in part, rev'd in part on other grounds*, 301 Or. 117, 719 P.2d 854, 122 L.R.R.M. (BNA) 2445, 43 Empl. Prac. Dec. (CCH) ¶ 37117, 105 Lab. Cas. (CCH) ¶ 55650 (1986) (no cause of action was stated by allegation that employee was discharged for refusing to discontinue social relationship with co-worker); Downs v. Walmart, Inc., 137 Or. App. 119, 903 P.2d 888, 10 I.E.R. Cas. (BNA) 1817 (1995), *aff'd in part, rev'd in part on other grounds*, 324 Or. 307, 926 P.2d 314, 12 I.E.R. Cas. (BNA) 324, 132 Lab. Cas. (CCH) ¶ 58174 (1996) (no cause of action was stated by allegation that employee was discharged because he asked for attorney during police investigation of theft); Farrimond v. Louisiana-Pacific Corp., 103 Or. App. 563, 798 P.2d 697, 5 I.E.R. Cas. (BNA) 1462 (1990) (statute provides exclusive remedies for discharge in retaliation for filing of workers' compensation claim); Cross v. Eastlund, 103 Or. App. 138, 796 P.2d 1214, 59 Fair Empl. Prac. Cas. (BNA) 473, 8 I.E.R. Cas. (BNA) 1788 (1990) (no cause of action was stated in connection with discharge motivated by pregnancy discrimination); Elliott v. Tektronix, Inc., 102 Or. App. 388, 796 P.2d 361, 118 Lab. Cas. (CCH) ¶ 56553 (1990) (no cause of action was stated by allegation that employee was discharged for protesting perceived breach of employment contract); Sieverson v. Allied Stores Corp., 97 Or. App. 315, 776 P.2d 38, 4 I.E.R. Cas. (BNA) 785, 124 Lab. Cas. (CCH) ¶ 57173 (1989) (public policy was not sufficiently implicated by allegation that employee was discharged for writing letter to management protesting unjust accusation of theft against co-worker).

Pennsylvania

In Geary v. U. S. Steel Corp., 456 Pa. 171, 319 A.2d 174, 115 L.R.R.M. (BNA) 4665 (1974) the Pennsylvania Supreme Court held the present facts insufficient, but recognized in theory that a tort cause of action might be maintained by an employee whose discharge violated some "recognized facet" or "clear mandate" of public policy. (The court reasoned that the discharge of the plaintiff in the present case, for pointing out safety defects in his employer's products, had involved only an internal dispute.)

Subsequently, the doctrine has been held applicable in the following leading and representative cases: Shick v. Shirey, 552 Pa. 590, 716 A.2d 1231, 14 I.E.R. Cas. (BNA) 480, 136 Lab. Cas. (CCH) ¶ 58472 (1998) (cause of action was stated by allegation that employee was discharged in retaliation for filing of workers' compensation claim; courts may discern public policy in absence of legislative pronouncements); Rothrock v. Rothrock Motor Sales, Inc., 2002 PA Super 303, 810 A.2d 114, 19 I.E.R. Cas. (BNA) 214 (Pa. Super. Ct. 2002) (affirming judgment for employee discharged for refusing to dissuade subordinate from filing workers' compensation claim); Reuther v. Fowler & Williams, Inc., 255 Pa. Super. 28, 386 A.2d 119, 115 L.R.R.M. (BNA) 4690, 85 Lab. Cas. (CCH) ¶ 55178 (1978) (cause of action was stated by allegation that employee was discharged for performing jury duty); Perks v. Firestone Tire & Rubber Co., 611 F.2d 1363, 115 L.R.R.M. (BNA) 4592 (3d Cir. 1979) (cause of action was stated by allegation that employee was discharged for refusing to submit to polygraph test); Hoopes v. City of Chester, 473 F. Supp. 1214 (E.D. Pa. 1979) (cause of action was stated by allegation that employee was discharged for testifying truthfully in criminal proceeding); Novosel v. Nationwide Ins. Co., 721 F.2d 894, 1 I.E.R. Cas. (BNA) 286, 1 I.E.R. Cas. (BNA) 329, 114 L.R.R.M. (BNA) 3105, 115 L.R.R.M. (BNA) 2426, 99 Lab. Cas. (CCH) ¶ 55419 (3d Cir. 1983) (cause of action was stated by allegation that employee was discharged because of his political beliefs); Radicke v. Fenton, 17 I.E.R. Cas. (BNA) 603, 2001 WL 229936 (E.D. Pa. 2001) (cause of action was stated by allegation that employee was discharged for refusing to submit to polygraph test); Sorge v. Wright's Knitwear Corp., 832 F. Supp. 118, 8 I.E.R. Cas. (BNA) 1274, 128 Lab. Cas. (CCH) ¶ 57696, 1994 O.S.H. Dec. (CCH) ¶ 30,324 (E.D. Pa. 1993) (federal OSHA provides public policy sufficient to support cause of action by employee discharged for complaining to either state or federal agency about workplace hazards). But see, concerning safety complaints: King v. Fox Grocery Co., 642 F. Supp. 288, 111 Lab. Cas. (CCH) ¶ 11168 (W.D. Pa. 1986) (OSHA provides exclusive remedy for discharge in retaliation for safety complaints). And compare McLaughlin v.

Gastrointestinal Specialists, Inc., 561 Pa. 307, 750 A.2d 283, 17 I.E.R. Cas. (BNA) 336 (2000) (no cause of action was stated by allegation that employee was discharged for health complaint; in attempting to rely on federal OSHA regulation, employee failed to articulate particular way in which Pennsylvania public policy was implicated).

In the following cases, on the other hand, Pennsylvania courts declined to apply the public policy tort doctrine under particular circumstances: Wehr v. Burroughs Corp., 438 F. Supp. 1052, 20 Fair Empl. Prac. Cas. (BNA) 527, 115 L.R.R.M. (BNA) 4978 (E.D. Pa. 1977) (statutory remedies are exclusive in connection with discriminatory discharges); Wolk v. Saks Fifth Ave. Inc., 728 F.2d 221, 34 Fair Empl. Prac. Cas. (BNA) 193, 1 I.E.R. Cas. (BNA) 361, 115 L.R.R.M. (BNA) 3064, 33 Empl. Prac. Dec. (CCH) ¶ 34201, 100 Lab. Cas. (CCH) ¶ 55453 (3d Cir. 1984) (same); Scott v. Extracorporeal, Inc., 376 Pa. Super. 90, 545 A.2d 334, 3 I.E.R. Cas. (BNA) 999 (1988) (asserted public policy favoring right to self defense was inadequate to support cause of action by employee discharged for fighting); Drohan v. Sorbus, Inc., 401 Pa. Super. 29, 584 A.2d 964, 119 Lab. Cas. (CCH) ¶ 56714, R.I.C.O. Bus. Disp. Guide (CCH) ¶ 7671 (1990) (no cause of action was stated by allegation that employee was discharged for voicing internal opposition to suspected unlawful practices); Holewinski v. Children's Hosp. of Pittsburgh, 437 Pa. Super. 174, 649 A.2d 712 (1994) (Pennsylvania version of public policy tort doctrine does not extend to whistleblowing context); Clark v. Modern Group Ltd., 9 F.3d 321, 8 I.E.R. Cas. (BNA) 1803, 126 Lab. Cas. (CCH) ¶ 57557 (3d Cir. 1993), reh'g and reh'g in banc denied, (Dec. 22, 1993) (same); Beach v. Burns Intern. Sec. Services, 406 Pa. Super. 160, 593 A.2d 1285, 122 Lab. Cas. (CCH) ¶ 57008 (1991) (no cause of action was stated by allegation that employee was discharged for refusing to sign jury trial waiver in connection with all employment-related disputes); Borse v. Piece Goods Shop, Inc., 758 F. Supp. 263, 6 I.E.R. Cas. (BNA) 847 (E.D. Pa. 1991), order vacated on other grounds, 963 F.2d 611, 7 I.E.R. Cas. (BNA) 698, 7 I.E.R. Cas. (BNA) 800, 7 I.E.R. Cas. (BNA) 977, 121 Lab. Cas. (CCH) ¶ 56894, 122 Lab. Cas. (CCH) ¶ 57001 (3d Cir. 1992) (neither First nor Fourth Amendment provided sufficient public policy basis to support cause of action by employee discharged for refusing to submit to drug test); Durham v. Fleming Companies, Inc., 727 F. Supp. 179 (E.D. Pa. 1989) (no cause of action was stated by allegation that employee was discharged for warning deliveryperson that he risked violence from picketing strikers).

Pennsylvania

In Weaver v. Harpster, 2005 PA Super 359, 885 A.2d 1073, 96 Fair Empl. Prac. Cas. (BNA) 1629, 23 I.E.R. Cas. (BNA) 1149 (2005), it was held that the public policy against sexual harassment expressed by antidiscrimination statutes may support a common law public policy claim against an employer too small to be covered by the statutes themselves.

Rhode Island

In Volino v. General Dynamics, 539 A.2d 531, 3 I.E.R. Cas. (BNA) 306 (R.I. 1988), the Rhode Island Supreme Court discussed the public policy tort doctrine at length before concluding that in the present case the plaintiff, a whistle-blower, had failed to make the showing necessary to counter the employer's evidence pointing to his absenteeism as the real and legitimate cause for his discharge. In 1988, a federal district court, in Cummins v. EG & G Sealol, Inc., 690 F. Supp. 134, 3 I.E.R. Cas. (BNA) 705, 50 Empl. Prac. Dec. (CCH) ¶ 39062 (D.R.I. 1988), construed Volino as "...indicating that a cause of action in tort exists for wrongful discharge in cases where employees at-will are terminated in retaliation for reporting employer conduct that is contrary to expressly stated legislative policy." The court accordingly permitted the plaintiff to amend his complaint to add a cause of action based on the allegation that his discharge had been motivated, in part, by retaliation for his complaints about the employer's pricing practices relative to defense contracts. Besides reading Volino as recognizing the cause of action under appropriate facts, the court surveyed the status of the law nationwide and concluded that "...it is clear that giving a whistleblowing employee a cause of action in tort for retaliatory discharge is the wave of the future." (The court noted that the present facts were very similar to those in Tameny v. Atlantic Richfield Co., 27 Cal. 3d 167, 164 Cal. Rptr. 839, 610 P.2d 1330, 1 I.E.R. Cas. (BNA) 102, 115 L.R.R.M. (BNA) 3119, 121 Lab. Cas. (CCH) ¶ 56822, 9 A.L.R.4th 314 (1980).)

South Carolina

In 1985, the South Carolina Supreme Court, in Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213, 1 I.E.R. Cas. (BNA) 1099, 120 L.R.R.M. (BNA) 3446, 103 Lab. Cas. (CCH) ¶ 55535 (1985),

recognized the public policy tort doctrine in the context of a complaint alleging that the plaintiff had been discharged for disobeying the employer's order that she ignore a subpoena from the state Employment Security Commission. The doctrine was clarified in Garner v. Morrison Knudsen Corp., 318 S.C. 223, 456 S.E.2d 907, 10 I.E.R. Cas. (BNA) 819, 130 Lab. Cas. (CCH) ¶ 57923 (1995) where the court emphasized that it is not limited to situations involving employer orders which, if carried out, would have exposed an employee to criminal liability. Here a cause of action was stated, the court held, by the allegation that the plaintiff had been discharged for reporting nuclear safety concerns to a government agency and to the media. See also Stiles v. American General Life Ins. Co., 335 S.C. 222, 516 S.E.2d 449, 15 I.E.R. Cas. (BNA) 238 (1999) (whistleblower could maintain claim even though employer had complied with 30-day notice provision for discharge); Culler v. Blue Ridge Elec. Co-op., Inc., 309 S.C. 243, 422 S.E.2d 91, 123 Lab. Cas. (CCH) ¶ 57084 (1992) (if plaintiff had to been able to support claim factually, cause of action would have been stated by allegation that employee was discharged for refusing to contribute to political action fund). Compare Dockins v. Ingles Markets, Inc., 306 S.C. 496, 413 S.E.2d 18, 7 I.E.R. Cas. (BNA) 125, 30 Wage & Hour Cas. (BNA) 1215, 122 Lab. Cas. (CCH) ¶ 35686, 125 Lab. Cas. (CCH) ¶ 57320 (1992) (statutory remedies were exclusive of tort claim in situation involving discharge for filing FLSA complaint); Epps v. Clarendon County, 304 S.C. 424, 405 S.E.2d 386, 6 I.E.R. Cas. (BNA) 725 (1991) (42 U.S.C.A. § 1983 provided exclusive remedies for public employee discharged because of political association with former department director).

South Carolina Court of Appeals decisions construing and applying the doctrine have included: Nolte v. Gibbs Intern., Inc., 14 I.E.R. Cas. (BNA) 958, 137 Lab. Cas. (CCH) ¶ 58604, 1998 WL 727253 (S.C. Ct. App. 1998), opinion withdrawn and superseded on denial of reh'g, 335 S.C. 72, 515 S.E.2d 101 (Ct. App. 1999) (cause of action was stated by allegation that accountant was discharged for refusing to participate in unlawful and unethical conduct); Keiger v. Citgo, Coastal Petroleum, Inc., 326 S.C. 369, 482 S.E.2d 792, 12 I.E.R. Cas. (BNA) 1054 (Ct. App. 1997) (trial court should not have resolved on motion to dismiss question whether plaintiff's discharge for attempting to assert rights under South Carolina Payment of Wages Act violated "clear mandate" of public policy); Evans v. Taylor Made Sandwich Co., 337 S.C. 95, 522 S.E.2d 350, 139 Lab. Cas. (CCH) ¶ 58754 (Ct. App. 1999) (affirming judgment for employees discharged for filing complaints under South Carolina Payment of Wages Act); Miller v. Fairfield Communities, Inc., 299 S.C. 23, 382 S.E.2d 16, 4 I.E.R. Cas. (BNA) 997, 118 Lab. Cas. (CCH) ¶ 56550 (Ct. App. 1989), cert. dismissed, 302 S.C. 518, 397 S.E.2d 377 (1990) (no cause of action was stated by allegation that employee was discharged for refusing to agree that spouse would resign from job with competitor). See also Merck v. Advanced Drainage Systems, Inc., 921 F.2d 549, 6 I.E.R. Cas. (BNA) 102, 119 Lab. Cas. (CCH) ¶ 56685 (4th Cir. 1990) (insufficient public policy basis supported claim that employee was discharged for refusing to certify that inferior polyethylene pipe met standards of American Association of State Highway Officials).

South Dakota

In 1988, the South Dakota Supreme Court accorded first-time recognition to the public policy tort in the context of discharge for a refusal to commit a "criminal or unlawful" act. Johnson v. Kreiser's, Inc., 433 N.W.2d 225, 3 I.E.R. Cas. (BNA) 1767 (S.D. 1988). The plaintiff alleged that he had been discharged for refusing to allow the company president to convert corporate property to his own personal use. (The court specified that the cause of action sounds only in contract, not in tort.) The doctrine was subsequently extended to cover the situation of employees discharged in retaliation for the filing of workers' compensation claims (Niesent v. Homestake Min. Co. of California, 505 N.W.2d 781, 8 I.E.R. Cas. (BNA) 1414, 144 L.R.R.M. (BNA) 2479, 127 Lab. Cas. (CCH) ¶ 57579 (S.D. 1993)); and to the situation of employees discharged for reporting criminal or unlawful conduct to outside authorities (Dahl v. Combined Ins. Co., 2001 SD 12, 621 N.W.2d 163, 17 I.E.R. Cas. (BNA) 389 (S.D. 2001)).

Compare Peterson v. Glory House of Sioux Falls, 443 N.W.2d 653, 4 I.E.R. Cas. (BNA) 912, 112 Lab. Cas. (CCH) ¶ 56078 (S.D. 1989) (no cause of action was stated by allegation that halfway house director had been discharged for warning resident about sexual harassment to be expected from another employee).

Tennessee

In 1984, in Clanton v. Cain-Sloan Co., 677 S.W.2d 441, 117 L.R.R.M. (BNA) 2789, 105 Lab. Cas. (CCH) ¶ 55641 (Tenn. 1984), the Tennessee Supreme Court abandoned its former strict adherence to the at-will rule and recognized a public policy tort cause of action in the context of employees discharged in retaliation for the filing of

workers' compensation claims. (In Leatherwood v. United Parcel Service, 708 S.W.2d 396 (Tenn. Ct. App. 1985), the court distinguished workers' compensation retaliation from a situation in which the employer had merely been unable to provide work that the recently disabled employee could perform.) See also Coffey v. Fayette Tubular Products, 929 S.W.2d 326, 12 I.E.R. Cas. (BNA) 37, 132 Lab. Cas. (CCH) ¶ 58167 (Tenn. 1996) (court of appeals erred in reducing punitive damages award from \$500,000 to \$150,000 where employee had proved that employer followed general practice of workers' compensation retaliation); Hayes v. Computer Sciences Corp., 19 I.E.R. Cas. (BNA) 936, 2003 WL 113457 (Tenn. Ct. App. 2003) (employee stated claim for retaliatory discharge motivated by workers' compensation claim he had filed against previous employer).

In Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 7 I.E.R. Cas. (BNA) 650, 123 Lab. Cas. (CCH) ¶ 57150 (Tenn. 1992), the court affirmed a judgment in favor of an employee who had been discharged for performing jury duty, emphasizing that statutory remedies were not exclusive. (The court remanded for a new trial relative to the jury's award of \$375,000 in punitive damages, however, and clarified several evidentiary and instructional issues.)

Other Tennessee Supreme Court decisions have included: Reynolds v. Ozark Motor Lines, Inc., 887 S.W.2d 822, 10 I.E.R. Cas. (BNA) 100, 129 Lab. Cas. (CCH) ¶ 57839 (Tenn. 1994) (affirming judgment in favor of truck driver discharged for refusing to violate safety provisions of Tennessee Motor Carriers Act); Guy v. Mutual of Omaha Ins. Co., 79 S.W.3d 528, 18 I.E.R. Cas. (BNA) 1459 (Tenn. 2002) (cause of action was stated by allegation that insurance company employee had been discharged for reporting to state officials that co-worker had stolen customer's annuity payment; common law claim was not preempted by Tennessee Whistle-Blower Act); Crews v. Buckman Laboratories Intern., Inc., 78 S.W.3d 852, 18 I.E.R. Cas. (BNA) 1246 (Tenn. 2002) (based on Code of Professional Responsibility, cause of action was stated by allegation that corporation's associate general counsel had been constructively discharged for reporting that General Counsel did not possess Tennessee law license; in-house counsel may reveal confidences when necessary to establish claim or defense in controversy with employer.)

The doctrine has also been addressed in the following Tennessee Court of Appeals decisions: Hackney v. DRI Management, Inc., 16 I.E.R. Cas. (BNA) 359, 1999 WL 1577977 (Tenn. Ct. App. 1999) (no cause of action was stated by employee discharged for failing drug test notwithstanding allegation that employer had failed to comply with statutory chain-of-custody procedures); Moskal v. First Tennessee Bank, 815 S.W.2d 509, 6 I.E.R. Cas. (BNA) 1080, 6 I.E.R. Cas. (BNA) 1082, 122 Lab. Cas. (CCH) ¶ 56914 (Tenn. Ct. App. 1991) (cause of action was stated by allegation that employee had been discharged for reporting banking irregularities and for refusing to falsify reports to Tennessee Student Assistance Corporation). See also Deiters v. Home Depot U.S.A., Inc., 842 F. Supp. 1023, 9 I.E.R. Cas. (BNA) 923, 127 Lab. Cas. (CCH) ¶ 57678 (M.D. Tenn. 1993) (predicting that Tennessee Supreme Court would not recognize state constitution's "open courts" provision as sufficient public policy basis to support claim by employee discharged for filing suit against employer); Bloom v. General Elec. Supply Co., 702 F. Supp. 1364, 3 I.E.R. Cas. (BNA) 1842, 122 Lab. Cas. (CCH) ¶ 56950 (M.D. Tenn. 1988) (no cause of action was stated by allegation that employee was discharged because her husband had taken job with competitor; analyzing Tennessee doctrine as requiring that public policy have statutory basis).

Texas

In Sabine Pilot Service, Inc. v. Hauck, 687 S.W.2d 733, 1 I.E.R. Cas. (BNA) 733, 119 L.R.R.M. (BNA) 2187, 102 Lab. Cas. (CCH) ¶ 55493 (Tex. 1985), the Texas Supreme Court announced recognition of a "narrow" version of the public policy tort doctrine, limited to situations in which an employee is discharged for refusing to commit an illegal act. (The plaintiff in the present case had refused to engage in illegal bilge-pumping.) Prior to the Sabine Pilot decision, an intermediate court of appeals, in Currey v. Lone Star Steel Co., 676 S.W.2d 205 (Tex. App. Fort Worth 1984), had refused to recognize the doctrine on behalf of an employee discharged for filing suit against his employer.

The doctrine has subsequently been addressed by the Texas Supreme Court in the following cases: Winters v. Houston Chronicle Pub. Co., 795 S.W.2d 723, 5 I.E.R. Cas. (BNA) 1185, 117 Lab. Cas. (CCH) ¶ 56494 (Tex. 1990) (no cause of action was stated by newspaper employee who was discharged in retaliation for reporting to management illegal schemes being engaged in by his supervisors); Wornick Co. v. Casas, 856 S.W.2d 732, 8 I.E.R. Cas. (BNA) 1058, 127 Lab. Cas. (CCH) ¶ 57575 (Tex. 1993) (no cause of action was stated by employee discharged because he possessed information implicating employer in criminal activities); Austin v. HealthTrust, Inc.-The Hosp. Co., 967 S.W.2d 400, 13 I.E.R. Cas. (BNA) 1707, 135 Lab. Cas. (CCH) ¶ 58402 (Tex. 1998)

(declining to extend public policy tort doctrine to protect employees who report illegal activity in the workplace).

The doctrine has been held applicable in the following Texas Court of Appeals decisions: Johnston v. Del Mar Distributing Co., Inc., 776 S.W.2d 768, 115 Lab. Cas. (CCH) ¶ 56265 (Tex. App.—Corpus Christi 1989, writ denied) (cause of action was stated by allegation that employee was discharged for making inquiries to government agency concerning possible illegality of assignment she had been given); Higginbotham v. Allwaste, Inc., 889 S.W.2d 411 (Tex. App.—Houston [14th Dist.] 1994, writ denied) (cause of action was stated by allegation that employee was discharged for request that she cooperate in filing inaccurate statements with SEC); Libasco Constructors, Inc. v. Rex, 923 S.W.2d 694, 11 I.E.R. Cas. (BNA) 1030 (Tex. App.—Corpus Christi 1996, writ denied) (affirming judgment for employee discharged for refusing to engage in construction work that did not conform to Nuclear Regulatory Commissions regulations).

In the following cases, on the other hand, Texas courts of appeal and federal courts applying Texas law have declined to apply the public policy tort doctrine under particular circumstances, or have found fatal proof deficiencies: Thompson v. El Centro Del Barrio, 905 S.W.2d 356, 131 Lab. Cas. (CCH) ¶ 58059 (Tex. App.—San Antonio 1995, writ denied) (emphasizing that doctrine does not extend to whistleblowing context); Paul v. P.B.-K.B.B., Inc., 801 S.W.2d 229, 124 Lab. Cas. (CCH) ¶ 57285 (Tex. App.—Houston [14th Dist.] 1990, writ denied) (affirming judgment for employer; jury was correctly instructed that employee must show that retaliation for refusal to perform illegal act was employer's sole motivation for discharge, not merely "producing cause"); Hancock v. Express One Intern., Inc., 800 S.W.2d 634, 125 Lab. Cas. (CCH) ¶ 57418 (Tex. App. Dallas 1990, writ denied, (Nov. 11, 1992) (no cause of action was stated by allegation that plaintiff was discharged for refusing to violate statute that carried only civil not criminal penalties); Burt v. City of Burkburnett, 800 S.W.2d 625 (Tex. App. Fort Worth 1990), writ denied, (Mar. 27, 1991) (no cause of action was stated by allegation that police officer had been discharged for arresting prominent citizen for public intoxication); Unida v. Levi Strauss & Co., 986 F.2d 970, 16 Employee Benefits Cas. (BNA) 1833, 8 I.E.R. Cas. (BNA) 601 (5th Cir. 1993) (employer did not "discriminate" against workers' who had exercised workers' compensation rights even if high workers' compensation costs had been factor in employer's decision to close plant); Guthrie v. Tifco Industries, 941 F.2d 374, 56 Fair Empl. Prac. Cas. (BNA) 1438, 7 I.E.R. Cas. (BNA) 284, 57 Empl. Prac. Dec. (CCH) ¶ 41038, 121 Lab. Cas. (CCH) ¶ 56883, 20 Fed. R. Serv. 3d 912 (5th Cir. 1991) (no cause of action was stated by allegation that employee was discharged for refusing to violate customs regulations and therefore to perform act that was merely "unlawful," not criminal); Spiller v. Ella Smithers Geriatric Center, 919 F.2d 339, 57 Fair Empl. Prac. Cas. (BNA) 99, 55 Empl. Prac. Dec. (CCH) ¶ 40460, 18 Fed. R. Serv. 3d 768 (5th Cir. 1990) (Texas version of public policy tort doctrine does not apply in connection with discharges motivated by race discrimination).

Utah

In 1989, in Berube v. Fashion Centre, Ltd., 771 P.2d 1033, 4 I.E.R. Cas. (BNA) 353, 111 Lab. Cas. (CCH) ¶ 56061 (Utah 1989), the Utah Supreme Court abandoned its former strict adherence to the at-will rule and, in dictum, recognized a version of the public policy tort doctrine limited to situations involving "substantial and important" public policies. (The actual holding in Berube involved first-time recognition of the contractual effect of guarantees of job security contained in personnel manuals.) The dictum relating to the public policy tort was subsequently acted upon in Hodges v. Gibson Products Co., 811 P.2d 151 (Utah 1991), in which the court affirmed a judgment in favor of an employee who had been discharged on the basis of a knowingly false accusation of theft. The court identified the public policy basis for the claim in statutes proscribing extortion and false criminal accusation.

The public policy tort doctrine was further explained and defined in Peterson v. Browning, 832 P.2d 1280, 7 I.E.R. Cas. (BNA) 801, 123 Lab. Cas. (CCH) ¶ 57086 (Utah 1992), holding that a cause of action was stated by the allegation that the plaintiff was discharged after he refused to be coerced into violating Missouri tax law and federal customs statutes. Answering certified questions from a federal district court, the Utah Supreme Court stated: (1) the cause of action sounds in tort, not contract; and (2) employees discharged for refusing to engage in illegal activities that implicate clear and substantial Utah public policy are protected regardless whether the actual law at issue is that of Utah, the federal government, or another state. See also Rackley v. Fairview Care Centers, Inc., 2001 UT 32, 23 P.3d 1022, 17 I.E.R. Cas. (BNA) 895, 143 Lab. Cas. (CCH) ¶ 59207 (Utah 2001) (explaining that cognizable public policy may be derived from constitutional provisions, statutes, and judicial decisions, but not from administrative regulations); Fox v. MCI Communications Corp., 931 P.2d 857, 12 I.E.R. Cas. (BNA) 769, 134 Lab. Cas. (CCH) ¶ 58300 (Utah 1997) (no cause of action was stated by allegation that employee was discharged for reporting co-

workers' misrepresentations of accounts in violation of Utah criminal fraud law, where reports had been made only internally and where misconduct could not have done significant harm to public); Heslop v. Bank of Utah, 839 P.2d 828, 7 I.E.R. Cas. (BNA) 1279 (Utah 1992) (jury question was raised and trial court erred in dismissing claim that was based on allegation that employer had been substantially motivated in discharging plaintiff by desire to retaliate for his internally-expressed objections to violations of Utah banking law).

Vermont

As early as 1979, the Vermont Supreme Court, in Jones v. Keogh, 137 Vt. 562, 409 A.2d 581, 115 L.R.R.M. (BNA) 4193 (1979) discussed the public policy tort doctrine and appeared willing to accept it under appropriate facts. (The facts before the court involved only a dispute concerning the existence and nature of the employer's vacation and sick leave policies.) Appropriate facts were presented seven years later, and in Payne v. Rozendaal, 147 Vt. 488, 520 A.2d 586, 41 Fair Empl. Prac. Cas. (BNA) 1748, 1 I.E.R. Cas. (BNA) 800, 42 Empl. Prac. Dec. (CCH) ¶ 36886 (1986), the court held that a cause of action was stated by the allegation that the plaintiff's discharge had been motivated by age discrimination. The court noted that no statutory prohibition against age discrimination had been in effect at the time of the discharge, but held that no statutory directive is necessary in order for a court to adduce and enforce public policy in the wrongful discharge context. Vermont's Fair Employment Practices Act, (Vt. Stat. Ann. tit. 21, § 495), had been amended in 1981 to prohibit age-based discrimination, and the court expressed no opinion as to whether a common law claim was still maintainable with respect to discharges that occurred subsequent to that amendment.

Madden v. Omega Optical, Inc., 165 Vt. 306, 683 A.2d 386, 11 I.E.R. Cas. (BNA) 1606, 132 Lab. Cas. (CCH) ¶ 58145 (1996) (no sufficiently fundamental mandate of public policy was implicated by allegation that employee had been discharged for refusing to sign unenforceable non-compete agreement).

In LoPresti v. Rutland Regional Health Services, Inc., 865 A.2d 1102, 21 I.E.R. Cas. (BNA) 1669 (Vt. 2004), the Vermont Supreme Court held that a code of professional ethics provided an adequate public policy basis to support a cause of action by a discharged physician).

Virginia

In 1985, the Virginia Supreme Court recognized the public policy tort doctrine for the first time in Bowman v. State Bank of Keysville, 229 Va. 534, 331 S.E.2d 797, 1 I.E.R. Cas. (BNA) 437, 119 L.R.R.M. (BNA) 3095, 102 Lab. Cas. (CCH) ¶ 55510 (1985). The plaintiffs, who were shareholders as well as employees, had been discharged for voting their shares in opposition to the directors' wishes. In Miller v. SEVAMP, Inc., 234 Va. 462, 362 S.E.2d 915, 2 I.E.R. Cas. (BNA) 1202, 108 Lab. Cas. (CCH) ¶ 55854 (1987), the court refused to extend the doctrine to protect an employee who had been discharged for appearing as a witness at a co-worker's grievance hearing. The court analyzed the retaliatory act as having implicated only private rights established by the employer's internal policies. In the two years subsequent to the Bowman decision, however, two federal district court decisions held the doctrine applicable under particular facts. See Fielder v. Southco, Inc. of South Carolina, 699 F. Supp. 577, 48 Fair Empl. Prac. Cas. (BNA) 1895 (W.D. Va. 1988) (cause of action was stated by allegation that employee was discharged in retaliation for refusal to participate in illegal price-fixing scheme); Miller v. SEVAMP, Inc., 234 Va. 462, 362 S.E.2d 915, 2 I.E.R. Cas. (BNA) 1202, 108 Lab. Cas. (CCH) ¶ 55854 (1987) (cause of action was stated by allegation that employee was discharged for reporting supervisor's sexual harassment of other employees).

In the consolidated cases Lockhart v. Commonwealth Educ. Systems Corp., 247 Va. 98, 439 S.E.2d 328, 63 Fair Empl. Prac. Cas. (BNA) 993, 9 I.E.R. Cas. (BNA) 277 (1994), the Virginia Supreme Court held in 1994 that a cause of action by employees who allege that they were the victims of a discriminatory discharge, because in such situations the employer violated the public policy expressed by the Virginia Human Rights Act. But three years later, in Doss v. Jamco, Inc., 254 Va. 362, 492 S.E.2d 441, 75 Fair Empl. Prac. Cas. (BNA) 281, 13 I.E.R. Cas. (BNA) 740, 72 Empl. Prac. Dec. (CCH) ¶ 45030 (1997) the court revisited that issue and held that such common-law actions were abrogated by legislature when it amended the Act in 1995. Compare Mitchem v. Counts, 259 Va. 179, 523 S.E.2d 246, 81 Fair Empl. Prac. Cas. (BNA) 1123, 15 I.E.R. Cas. (BNA) 1543, 140 Lab. Cas. (CCH) ¶ 58841 (2000) (although common law claim by employee discharged in retaliation for rejecting employer's sexual propositions could not be based on public policy expressed by Virginia Human Rights Act, claim could be based on public policy expressed by statutes criminalizing fornication and lewd and lascivious behavior).

The Virginia Court has subsequently addressed the public policy tort doctrine in the following decisions: Rowan v. Tractor Supply Co., 263 Va. 209, 559 S.E.2d 709, 18 I.E.R. Cas. (BNA) 788 (2002) (no cause of action was stated by allegation that plaintiff was for refusing to drop criminal assault charge against co-worker; Virginia obstruction of justice statute did not provide sufficient public policy basis); Dray v. New Market Poultry Products, Inc., 258 Va. 187, 518 S.E.2d 312, 15 I.E.R. Cas. (BNA) 938, 140 Lab. Cas. (CCH) ¶ 58842 (1999) (affirming dismissal; because statute did not confer any private rights or impose any private duties on employees, Virginia Meat and Poultry Products Inspection Act did not provide sufficient public policy basis for claim by employee discharged for reporting sanitary deficiencies to government inspectors); Jordan v. Clay's Rest Home, Inc., 253 Va. 185, 483 S.E.2d 203, 12 I.E.R. Cas. (BNA) 1121 (1997) (affirming summary judgment where employee failed to establish prima facie case that retaliation for his filing of workers' compensation claim had been sole cause for his discharge; burden-shifting framework used in statutory discrimination actions is not applicable to common law wrongful discharge claims); Lawrence Chrysler Plymouth Corp. v. Brooks, 251 Va. 94, 465 S.E.2d 806, 11 I.E.R. Cas. (BNA) 523 (1996) (no cause of action was stated by employee who failed to specify statutory basis for claim that he was wrongfully discharged for refusing to perform auto repairs using method he believed unsafe). See also Anderson v. ITT Industries Corp., 92 F. Supp. 2d 516, 16 I.E.R. Cas. (BNA) 494 (E.D. Va. 2000) (cause of action was stated by allegation that employee was discharged for refusing to falsify resumes submitted with bid on government contract).

Washington

Early Washington decisions recognized a private right of action in favor of an employee discharged for labor union activities, (Krystad v. Lau, 65 Wash. 2d 827, 400 P.2d 72, 59 L.R.R.M. (BNA) 2129, 51 Lab. Cas. (CCH) ¶ 51297 (1965)), but declined to recognize the doctrine in the context of a discriminatory discharge, (Roberts v. Atlantic Richfield Co., 88 Wash. 2d 887, 568 P.2d 764, 115 L.R.R.M. (BNA) 4699 (1977)).

In Thompson v. St. Regis Paper Co., 102 Wash. 2d 219, 685 P.2d 1081, 1 I.E.R. Cas. (BNA) 392, 116 L.R.R.M. (BNA) 3142, 105 Lab. Cas. (CCH) ¶ 55616 (1984), the Washington Supreme Court endorsed a version of the public policy tort doctrine that recognizes judicial decisions and administrative regulations, in addition to constitutional and statutory provisions, as cognizable sources of public policy. The court held that a cause of action was stated in the present case by the allegation that the plaintiff had been discharged for instituting an accurate accounting procedure to further the objectives of the Foreign Corrupt Practices Act of 1977, (relating to the bribery of foreign officials).

In Cagle v. Burns and Roe, Inc., 106 Wash. 2d 911, 726 P.2d 434, 1 I.E.R. Cas. (BNA) 785 (1986), the state supreme court, (answering a certified question from a federal district court), held that the plaintiff in a public policy tort action may receive emotional distress damages without the necessity of showing that emotional distress was intended or reasonably foreseeable. The question arose following a judgment for an employee who proved that she had been discharged for threatening to report to the Nuclear Regulatory Commission that she had been given orders that violated safety regulations.

Subsequent Washington decisions have included: Bennett v. Hardy, 113 Wash. 2d 912, 784 P.2d 1258, 57 Fair Empl. Prac. Cas. (BNA) 771, 7 I.E.R. Cas. (BNA) 1709, 53 Empl. Prac. Dec. (CCH) ¶ 39811, 117 Lab. Cas. (CCH) ¶ 56526 (1990) (cause of action was stated by allegation that employee was discharged because of his age, in retaliation for his complaints about employer's discriminatory treatment of other employees, and because he had consulted attorney about employer's discriminatory practices); Wilmot v. Kaiser Aluminum and Chemical Corp., 118 Wash. 2d 46, 821 P.2d 18, 7 I.E.R. Cas. (BNA) 29 (1991) (common law cause of action, independent of statutory remedies, was stated by allegation that employee was discharged in retaliation for filing of workers' compensation claim); Warnek v. ABB Combustion Engineering Services, Inc., 137 Wash. 2d 450, 972 P.2d 453, 14 I.E.R. Cas. (BNA) 1537 (1999) (no cause of action was stated by allegation by former employees that employer had refused to rehire them because of their history of filing workers' compensation claims); Lins v. Children's Discovery Centers of America, Inc., 95 Wash. App. 486, 976 P.2d 168, 15 I.E.R. Cas. (BNA) 160, 104 A.L.R.5th 639 (Div. 2 1999) (cause of action was stated by manager's allegation that he had been discharged for disobeying order to fire employees who had filed workers' compensation claims); Gardner v. Loomis Armored Inc., 128 Wash. 2d 931, 913 P.2d 377, 11 I.E.R. Cas. (BNA) 993, 131 Lab. Cas. (CCH) ¶ 58112 (1996) (cause of action was stated by allegation that employee had been discharged for leaving his company truck unattended while attempting to assist people being chased by man with knife; relevant public policy was "clearly evidenced by countless statutes and judicial

decisions" encouraging citizens to rescue persons from life-threatening situations); Ellis v. City of Seattle, 142 Wash. 2d 450, 13 P.3d 1065, 17 I.E.R. Cas. (BNA) 1, 142 Lab. Cas. (CCH) ¶ 59107 (2000) (in situations involving public safety where imminent harm is present, as in, employee needs only to show objectively reasonable belief that law would have been violated in absence of action he or she took); Roberts v. Dudley, 140 Wash. 2d 58, 993 P.2d 901, 82 Fair Empl. Prac. Cas. (BNA) 27, 15 I.E.R. Cas. (BNA) 1825 (2000) (cause of action was stated by allegation that employee's discharge had been motivated by pregnancy discrimination; public policy expressed by state's anti-discrimination statute supports common law claims against employers too small to be subject to statute itself); Sedlacek v. Hillis, 145 Wash. 2d 379, 36 P.3d 1014, 18 I.E.R. Cas. (BNA) 425 (2001) (although Americans with Disabilities Act includes associational protection provision, because Washington's disability discrimination statute lacks such provision no public policy tort cause of action was stated by allegation that employee was discharged because of his association with disabled person); Hubbard v. Spokane County, 146 Wash. 2d 699, 50 P.3d 602, 18 I.E.R. Cas. (BNA) 1564 (2002) (no cause of action was stated by whistleblower who had been discharged for disclosing suspected statutory violation by supervisor in budgeting of state funds; though retaliation for whistleblowing is possible basis for public policy tort claim, it is necessary to balance degree of employer wrongdoing against reasonableness of employee's protest, and here employee's actions were "tenuous" because based on debatable interpretation of statute); Farnam v. CRISTA Ministries, 116 Wash. 2d 659, 807 P.2d 830 (1991) (no cause of action was stated by allegation that plaintiff nurse was discharged for making report to state ombudsman concerning hospital's removal of patient's feeding tube, where removal was in compliance with Washington Natural Death Act and plaintiff's concern appeared to be directed at urging her own ethical view rather than furthering public good).

Washington

In Korslund v. Dyncorp Tri-Cities Services, Inc., 156 Wash. 2d 168, 125 P.3d 119, 23 I.E.R. Cas. (BNA) 1607, 152 Lab. Cas. (CCH) P 60128 (2005), the Washington Supreme Court held that a public policy cause of action may be asserted by employees covered by collective bargaining agreements. The court also held, however, that the administrative whistleblower protections in the Energy Reorganization Act adequately protect against waste and fraud in the nuclear energy industry, obviating the need to recognize a common law remedy in that context.

In Gaspar v. Peshastin Hi-Up Growers, 131 Wash. App. 630, 128 P.3d 627, 24 I.E.R. Cas. (BNA) 210 (Div. 3 2006), a Washington Court of Appeals held that the public policy that encourages cooperation with law enforcement provided a cognizable basis for a cause of action alleging that the plaintiff had been discharged for assisting a police investigation of suspected theft by one of his coworkers.

West Virginia

In Harless v. First Nat. Bank in Fairmont, 162 W. Va. 116, 246 S.E.2d 270, 115 L.R.R.M. (BNA) 4380 (1978), the West Virginia Supreme Court of Appeals issued an opinion that was a landmark in the early history of the public policy tort, reversing the dismissal of a claim by a bank employee who alleged that he had been discharged for his efforts to require his employer to comply with state and federal consumer credit protection laws. The court did not discuss the contours of the public policy exception, explaining only that a clearly discernable public policy protects consumers of credit, and that permitting discharges such as the plaintiff's would frustrate that policy.

The West Virginia version of the public policy tort doctrine has subsequently been addressed in the following decisions: Shanholtz v. Monongahela Power Co., 165 W. Va. 305, 270 S.E.2d 178, 115 L.R.R.M. (BNA) 4387 (1980) (cause of action was stated by allegation that employee was discharged in retaliation for filing of workers' compensation claim); Cordle v. General Hugh Mercer Corp., 174 W. Va. 321, 325 S.E.2d 111, 116 L.R.R.M. (BNA) 3447, 35 Empl. Prac. Dec. (CCH) ¶ 34818, 101 Lab. Cas. (CCH) ¶ 55481 (1984) (despite absence of statutory proscription, common law cause of action was stated by employee's allegation that he was discharged for refusing to submit to polygraph test); Gillespie v. Elkins Southern Baptist Church, 177 W. Va. 88, 350 S.E.2d 715 (1986) (reversing judgment in favor of discharged pastor because analysis of his wrongful discharge claim had required prohibited judicial inquiry into church doctrine); McClung v. Marion County Com'n., 178 W. Va. 444, 360 S.E.2d 221 (1987) (reinstating judgment in favor of county employee discharged because he sued county for overtime wages; sufficient public policy basis was expressed by state constitutional provision guaranteeing right of access to courts); Wiggins v. Eastern Associated Coal Corp., 178 W. Va. 63, 357 S.E.2d 745, 118 Lab. Cas. (CCH) ¶ 56568 (1987) (notwithstanding existence of statutory remedies under state and federal mine safety laws, common law

cause of action was stated by allegation that mine foreman was discharged for refusing to operate machine under unsafe conditions); Shell v. Metropolitan Life Ins. Co., 183 W. Va. 407, 396 S.E.2d 174, 117 Lab. Cas. (CCH) ¶ 56516 (1990) (ERISA remedies preempted common law cause of action by insurance agent who alleged that he had been discharged for purpose of depriving of right to retirement income) Powell v. Wyoming Cablevision, Inc., 184 W. Va. 700, 403 S.E.2d 717, 6 I.E.R. Cas. (BNA) 813 (1991) (affirming judgment in favor of employee discharged in retaliation for filing of workers' compensation claim and discussing several evidentiary and damages issues); Lilly v. Overnight Transp. Co., 188 W. Va. 538, 425 S.E.2d 214, 8 I.E.R. Cas. (BNA) 267, 125 Lab. Cas. (CCH) ¶ 57372 (1992) (cause of action was stated by allegation that employee was discharged for refusing to operate with brakes so unsafe as to create substantial danger to public safety); Page v. Columbia Natural Resources, Inc., 198 W. Va. 378, 480 S.E.2d 817, 13 I.E.R. Cas. (BNA) 944, 134 Lab. Cas. (CCH) ¶ 58280 (1996) (affirming judgment in favor of employee discharged for testifying in legal proceeding); Kanagy v. Fiesta Salons, Inc., 208 W. Va. 526, 541 S.E.2d 616, 17 I.E.R. Cas. (BNA) 345, 142 Lab. Cas. (CCH) ¶ 59108 (2000) (administrative regulations provided sufficient public policy basis to support cause of action by employee discharged because he provided information to state agency concerning employer's use of unlicensed hair stylists); Skaggs v. Eastern Associated Coal Corp., 212 W. Va. 248, 569 S.E.2d 769, 18 I.E.R. Cas. (BNA) 1716 (2002), cert. denied, 123 S. Ct. 977, 154 L. Ed. 2d 895, 19 I.E.R. Cas. (BNA) 992 (U.S. 2003) (reversing summary judgment on claim by employee who alleged that he had been discharged because he had voluntarily accepted workers' compensation rehabilitation services; question of fact was raised as to whether discharge was part of pretextual scheme to terminate employees who received workers' compensation benefits).

West Virginia

In Lontz v. Tharp, 413 F.3d 435, 177 L.R.R.M. (BNA) 2715, 151 Lab. Cas. (CCH) P 60017 (4th Cir. 2005), the Fourth Circuit held that the NLRA did not completely preempt public policy claims under West Virginia law relating to allegations that the plaintiff had been discharged for unionizing activity.

Wisconsin

In Brockmeyer v. Dun & Bradstreet, 113 Wis. 2d 561, 335 N.W.2d 834, 115 L.R.R.M. (BNA) 4484, 98 Lab. Cas. (CCH) ¶ 55398 (1983), the Wisconsin adopted a "narrow" version of the public policy tort doctrine, but declined to apply it to the present facts which involved the discharge of an employee because of his social relationship with a co-worker. To be actionable, the court explained, a discharge must have clearly contravened the public welfare, and the public policy involved must have a basis in a constitutional or statutory provision.

Three years later, in Wandry v. Bull's Eye Credit Union, 129 Wis. 2d 37, 384 N.W.2d 325, 104 Lab. Cas. (CCH) ¶ 55555 (1986), the court held that a cause of action was stated by the allegation that the plaintiff had been discharged for refusing to reimburse the employer for the loss suffered on a forged check which the employee had accepted with his supervisor's approval. The claim had a sufficient public policy basis, the court held, in a statute proscribing economic coercion on an employee to bear the burden of a work-related loss. Compare Batteries Plus, LLC v. Mohr, 244 Wis. 2d 559, 2001 WI 80, 628 N.W.2d 364, 17 I.E.R. Cas. (BNA) 1269, 144 Lab. Cas. (CCH) ¶ 59348 (2001), reconsideration dismissed, 249 Wis. 2d 585, 2002 WI 2, 638 N.W.2d 593 (2001) (no cause of action was stated by allegation that employee was discharged for refusing to return alleged overpayment of expense reimbursements).

Other cases in which the doctrine has been successfully invoked have included: Winkelman v. Beloit Memorial Hosp., 168 Wis. 2d 12, 483 N.W.2d 211, 7 I.E.R. Cas. (BNA) 686 (1992) (affirming judgment in favor of nurse discharged for refusing to work in hospital unit for which she lacked qualifications); Wilcox v. Niagara of Wisconsin Paper Corp., 965 F.2d 355, 7 I.E.R. Cas. (BNA) 812, 122 Lab. Cas. (CCH) ¶ 56987 (7th Cir. 1992) (based on public policy expressed by Wis. Stat. Ann. § 103.02, cause of action was stated by allegation that employee was discharged for refusing to work Saturday and Sunday after having worked 35 hours during preceding two days); Kempfer v. Automated Finishing, Inc., 211 Wis. 2d 100, 564 N.W.2d 692, 12 I.E.R. Cas. (BNA) 1686 (1997) (affirming judgment in favor of employee discharged for refusing to drive truck because he lacked commercial driver's license); Strozinsky v. School Dist. of Brown Deer, 237 Wis. 2d 19, 2000 WI 97, 614 N.W.2d 443, 146 Ed. Law Rep. 470, 16 I.E.R. Cas. (BNA) 879 (2000) (cause of action was stated by allegation that clerical employee had been constructively discharged for refusing to issue payroll check without proper tax deductions).

Declining to extend the Wisconsin version of the public policy doctrine to protect whistle-blowers, see Bushko v. Miller Brewing Co., 134 Wis. 2d 136, 396 N.W.2d 167, 105 Lab. Cas. (CCH) ¶ 55621 (1986); Jensen v. Christensen & Lee Ins., Inc., 157 Wis. 2d 758, 460 N.W.2d 441, 121 Lab. Cas. (CCH) ¶ 56866 (Ct. App. 1990).

And declining to apply the doctrine in other factual situations, see: Bammert v. Don's Super Valu, Inc., 254 Wis. 2d 347, 2002 WI 85, 646 N.W.2d 365, 18 I.E.R. Cas. (BNA) 1480 (2002) (no cause of action was stated by allegation that employee was discharged because her police officer husband had arrested employer's wife for DUI); Mackenzie v. Miller Brewing Co., 241 Wis. 2d 700, 2001 WI 23, 623 N.W.2d 739, 17 I.E.R. Cas. (BNA) 759, 143 Lab. Cas. (CCH) ¶ 59188 (2001) (no cause of action was stated by allegation that employee was discharged as result of co-worker's sexual harassment complaint); Reilly v. Waukesha County, 193 Wis. 2d 527, 535 N.W.2d 51, 10 I.E.R. Cas. (BNA) 821 (Ct. App. 1995) (no sufficiently fundamental public policy supported claim by child care worker who alleged that she was discharged for refusing to carry out order that violated regulations but did not jeopardize children's safety).

Wyoming

In Griess v. Consolidated Freightways Corp. of Delaware, 776 P.2d 752, 4 I.E.R. Cas. (BNA) 839 (Wyo. 1989), the Wyoming Supreme Court accorded first-time recognition to the public policy tort doctrine in the context of discharge in retaliation for the filing of a workers' compensation claim. The doctrine was further defined in Boone v. Frontier Refining, Inc., 987 P.2d 681, 15 I.E.R. Cas. (BNA) 1047, 140 Lab. Cas. (CCH) ¶ 58909 (Wyo. 1999), in which the court explained that the public policy at issue must be "well established," and that there must be no other remedy available to the plaintiff. In the present case, the court found insufficient proof of causation and therefore did not reach the question whether the doctrine applies in the context of an employee discharged for reporting unsafe working conditions.

Wyoming decisions declining to apply the doctrine in contexts other than workers' compensation retaliation have included: Allen v. Safeway Stores Inc., 699 P.2d 277, 120 L.R.R.M. (BNA) 2987, 104 Lab. Cas. (CCH) ¶ 55564 (Wyo. 1985) (no cause of action was stated by allegation that employee was discharged for speaking abusively to customers, and statutory remedies were exclusive of common law remedy in connection with second allegation involving sex discrimination); Drake v. Cheyenne Newspapers, Inc., 891 P.2d 80, 130 Lab. Cas. (CCH) ¶ 57932 (Wyo. 1995) (no cause of action was stated by allegation that employee was discharged for refusing order to wear anti-union campaign button); Greco v. Halliburton Co., 674 F. Supp. 1447, 2 I.E.R. Cas. (BNA) 1281, 45 Empl. Prac. Dec. (CCH) ¶ 37739 (D. Wyo. 1987) (no cause of action was stated by allegation that employee was discharged for refusing to submit to drug test); Nelson v. Crimson Enterprises, Inc., 777 P.2d 73, 4 I.E.R. Cas. (BNA) 914, 112 Lab. Cas. (CCH) ¶ 56077 (Wyo. 1989) (declining to recognize doctrine in whistleblowing context); McLean v. Hyland Enterprises, Inc., 2001 WY 111, 34 P.3d 1262, 19 I.E.R. Cas. (BNA) 183 (Wyo. 2001) (state OSHA remedies were exclusive in context of discharge for safety complaints).

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LITWDCS APP 5A

END OF DOCUMENT

TABLE I. SUMMARY OF STATE INFORMATION

Jurisdiction	Exceptions to the At-Will Doctrine ¹				Employment-Related Torts ²			
	Public Policy	Oral Assurances	Handbook	Implied Covenant of Good Faith and Fair Dealing	Fraud	Intentional Infliction of Emotional Distress	Intentional Interference With a Contract	Defamation
Alabama	Rejected	Implied	Accepted	Very Limited	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Alaska	Accepted	Implied	Accepted	Narrow	No Opinion	No Opinion	Accepted	Accepted • Conditional Privilege
Arizona	Accepted	Accepted	Accepted	Very Limited	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Arkansas	Accepted	Implied	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Conditional Privilege Rejected • Self-Publication

California	Broad	Broad	Broad	Broad	Accepted	Workers' Compensation Defense	Accepted	Accepted • Conditional Privilege
Colorado	Accepted	Accepted	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege • Self-Publication
Connecticut	Accepted	Accepted	Accepted	Accepted	No Opinion	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Delaware	Accepted	Rejected	Rejected	Narrow	Accepted	Workers' Compensation Defense	No Opinion	Accepted • Conditional Privilege
District of Columbia	Very Limited	Accepted	Accepted	Rejected	No Opinion	Accepted	Accepted	Accepted • Conditional Privilege

TABLE I. SUMMARY OF STATE INFORMATION—CONT'D.

Jurisdiction	Exceptions to the At-Will Doctrine ¹				Employment-Related Torts ²			
	Public Policy	Oral Assurances	Handbook	Implied Covenant of Good Faith and Fair Dealing	Fraud	Intentional Infliction of Emotional Distress	Intentional Interference With a Contract	Defamation
Florida	Rejected	Rejected	Rejected	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Georgia	Rejected	Implied	Implied	Rejected	Implied	Accepted	No Opinion	Accepted • Conditional Privilege Rejected • Self-Publication
Hawaii	Accepted	Accepted	Accepted	Rejected	Accepted	Possible Workers' Compensation Defense	No Opinion	Accepted • Conditional Privilege
Idaho	Accepted	Accepted	Accepted	Accepted	Accepted	Accepted	No Opinion	Accepted • Absolute Privilege • Conditional Privilege

Illinois	Accepted	Accepted	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege Rejected • Self-Publication
Indiana	Accepted	Accepted	Accepted	Rejected	Accepted	No Opinion	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Iowa	Accepted	Accepted	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Conditional Privilege
Kansas	Accepted	Accepted	Accepted	Rejected	No Opinion	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Kentucky	Accepted	Accepted	Accepted	Rejected	No Opinion	Accepted	No Opinion	Accepted • Conditional Privilege

TABLE I. SUMMARY OF STATE INFORMATION—CONT'D.

Jurisdiction	Exceptions to the At-Will Doctrine ¹				Employment-Related Torts ²			
	Public Policy	Oral Assurances	Handbook	Implied Covenant of Good Faith and Fair Dealing	Fraud	Intentional Infliction of Emotional Distress	Intentional Interference With a Contract	Defamation
Louisiana	Rejected	Accepted	Accepted	Rejected	No Opinion	Accepted	Accepted	Accepted • Conditional Privilege
Maine	Implied	Accepted	Accepted	No Opinion	Accepted	Accepted	No Opinion	Accepted • Conditional Privilege
Maryland	Accepted	No Opinion	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Massachusetts	Accepted	Accepted	Accepted	Very Limited	Accepted	Workers' Compensation Defense	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Michigan	Accepted	Accepted	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege

Minnesota	Accepted	Accepted	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Mississippi	Accepted	Accepted	Accepted	Rejected	No Opinion	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Missouri	Accepted	Rejected	Rejected	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Montana	Accepted by Statute	Accepted by Statute	Accepted by Statute	Preempted by Statute	Accepted	Accepted	Accepted	Accepted
Nebraska	No Opinion	Accepted	Accepted	Rejected	Accepted	No Opinion	Accepted	Accepted • Conditional Privilege

TABLE 1. SUMMARY OF STATE INFORMATION—CONT'D.

Jurisdiction	Exceptions to the At-Will Doctrine ¹				Employment-Related Torts ²			
	Public Policy	Oral Assurances	Handbook	Implied Covenant of Good Faith and Fair Dealing	Fraud	Intentional Infliction of Emotional Distress	Intentional Interference With a Contract	Defamation
Nevada	Accepted	Accepted	Accepted	Rejected	No Opinion	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
New Hampshire	Accepted	No Opinion	Implied	Rejected	Accepted	Workers' Compensation Defense	Accepted	Accepted • Absolute Privilege • Conditional Privilege
New Jersey	Accepted	Accepted	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege

New Mexico	Accepted	Accepted	Accepted	Rejected	No Opinion	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
New York	Very Limited	Very Limited	Very Limited	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
North Carolina	Broad	Accepted	Accepted	No Opinion	No Opinion	Accepted	Accepted	Accepted • Conditional Privilege
North Dakota	Accepted	No Opinion	Accepted	Rejected	No Opinion	Accepted	Accepted	Accepted • Conditional Privilege
Ohio	Accepted	Accepted	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Conditional Privilege
Oklahoma	Accepted	Accepted	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege

TABLE 1. SUMMARY OF STATE INFORMATION—CONT'D.

Jurisdiction	Exceptions to the At-Will Doctrine ¹				Employment-Related Torts ²			
	Public Policy	Oral Assurances	Handbook	Implied Covenant of Good Faith and Fair Dealing	Fraud	Intentional Infliction of Emotional Distress	Intentional Interference With a Contract	Defamation
Oregon	Accepted	Accepted	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Pennsylvania	Accepted	Accepted	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege Rejected • Self-Publication
Rhode Island	Rejected	No Opinion	No Opinion	Rejected	No Opinion	Accepted	Accepted	Accepted • Conditional Privilege

South Carolina	Accepted	Accepted	Accepted	Rejected	No Opinion	Workers' Compensation Defense	Accepted	Accepted • Absolute Privilege • Conditional Privilege
South Dakota	Accepted	Accepted	Accepted	Rejected	Accepted	Accepted	No Opinion	Accepted • Conditional Privilege
Tennessee	Accepted	Accepted	Accepted	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Texas	Very Limited	Very Limited	Very Limited	Rejected	Accepted	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege Rejected • Self-Publication

TABLE 1. SUMMARY OF STATE INFORMATION—CONT'D.

Jurisdiction	Exceptions to the At-Will Doctrine ¹				Employment-Related Torts ²			
	Public Policy	Oral Assurances	Handbook	Implied Covenant of Good Faith and Fair Dealing	Fraud	Intentional Infliction of Emotional Distress	Intentional Interference With a Contract	Defamation
Utah	Accepted	Accepted	Accepted	Accepted	No Opinion	Accepted	Accepted	Accepted • Conditional Privilege
Vermont	Accepted	No Opinion	Accepted	No Opinion	No Opinion	Accepted	Accepted	Accepted • Conditional Privilege
Virginia	Accepted	Rejected	Implied	Rejected	Accepted	Accepted	Accepted	Accepted • Conditional Privilege
Washington	Accepted	No Opinion	Accepted	Rejected	No Opinion	Accepted	Accepted	Accepted • Conditional Privilege
West Virginia	Accepted	Accepted	Accepted	No Opinion	No Opinion	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege

Wisconsin	Accepted	Accepted	Accepted	Rejected	No Opinion	Accepted	Accepted	Accepted • Absolute Privilege • Conditional Privilege
Wyoming	Accepted	No Opinion	Accepted	Rejected	No Opinion	Accepted	Accepted	No Opinion

¹This section of the table indicates in abbreviated form the exceptions to the at-will doctrine adopted by the various jurisdictions. Readers should consult information in the state of concern to them for more specific details, and for more information on burdens of proof, just cause, at-will disclaimers, damages, and applicable state statutes. The terms used in the table have the following meanings:

- "No opinion" The issue has not been considered in this state.
- "Rejected" The exception has been considered and disapproved.
- "Accepted" The exception as applied is typical of that in most jurisdictions.
- "Broad" The exception is accepted, and applied in a way that is broader than in most jurisdictions.
- "Narrow" The exception is accepted, but is applied in a way that is more restricted than in most jurisdictions.
- "Very Limited" The exception is accepted, but is applied in a way that is much more restricted than in most jurisdictions.
- "Implied" The jurisdiction has indicated that it is willing to adopt the exception, but no reported case has arisen that has been found to form a just cause employment contract under the exception.

TABLE 1. SUMMARY OF STATE INFORMATION—CONT'D.

²This section of the table indicates in abbreviated form the torts recognized by the various jurisdictions. Readers should consult information in the state of concern to them for more specific details. The terms used in the table have the following meanings:

- "Accepted" The tort as applied is typical of that in most jurisdictions.
- "Implied" The jurisdiction has indicated that it is willing to adopt the tort, but no reported case has arisen that has been found to constitute such a tort.
- "No Opinion" The issue has not been considered in this State in this context.
- "Workers' Compensation Defense" A suit against the employer is barred by the exclusivity provision of the State workers' compensation statute. The employee may be able to bring a claim against a co-employee, however.
- "Absolute Privilege" The state court has held that in some situations there is an absolute privilege for an employer to make statements that would otherwise subject the employer to liability for defamation. A conditional privilege also may exist, if so noted, in other situations.
- "Conditional Privilege" The state court has held that in some situations there is a conditional or qualified privilege for an employer to make statements that would otherwise subject the employer to liability for defamation. The conditional privilege is lost if it is abused, or if the statements were made in bad faith or with malice. An absolute privilege also may exist, if so noted, in other situations.
- "Self-Publication" An employer can be held liable for defamatory statements republished by the plaintiff which were originally made by the employer concerning the plaintiff.
- "Rejected Self-Publication" The jurisdiction has considered whether self-publication by the plaintiff of defamatory statements originally made by the employer can subject the employer to liability for defamation, and has rejected it.

Document Retrieval Result

29 U.S.C.A. § 660
§ 660. Judicial review
Effective: [See Text Amendments]

C 29 U.S.C.A. § 660

United States Code Annotated Currentness
Title 29. Labor

Chapter 15. Occupational Safety and Health (Refs & Annos)

→ § 660. Judicial review

(a) Filing of petition by persons adversely affected or aggrieved; orders subject to review; jurisdiction; venue; procedure; conclusiveness of record and findings of Commission; appropriate relief; finality of judgment

Any person adversely affected or aggrieved by an order of the Commission issued under subsection (c) of section 659 of this title may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of Title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of Title 28.

(b) Filing of petition by Secretary; orders subject to review; jurisdiction; venue; procedure; conclusiveness of record and findings of Commission; enforcement of orders; contempt proceedings

The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) of this section shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a) of this section, is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 659 of this title, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a) of this section, the court of appeals may assess the penalties provided in section 666 of this title, in addition to invoking any other available remedies.

(c) Discharge or discrimination against employee for exercise of rights under this chapter; prohibition; procedure for relief

(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph (2) of this subsection.

CREDIT(S)

(Pub.L. 91-596, § 11, Dec. 29, 1970, 84 Stat. 1602; Pub.L. 98-620, Title IV, § 402(32), Nov. 8, 1984, 98 Stat. 3360.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1970 Acts. Senate Report No. 91-1282 and Conference Report No. 91-1765, see 1970 U.S. Code Cong. and Adm. News, p. 5177.

1984 Acts. House Report No. 98-1062, see 1984 U.S. Code Cong. and Adm. News, p. 5708.

References in Text

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29 U.S.C.A. § 621

Effective: [See Text Amendments]

UNITED STATES CODE ANNOTATED
TITLE 29. LABOR
CHAPTER 14—AGE DISCRIMINATION IN EMPLOYMENT
→ § 621. Congressional statement of findings and purpose

(a) The Congress hereby finds and declares that—

- (1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;
- (2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;
- (3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;
- (4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

Current through P.L. 109-382 (excluding P.L. 109-304, P.L. 109-364)
approved 12-01-06

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29 U.S.C.A. § 623

Effective: August 17, 2006

UNITED STATES CODE ANNOTATED
 TITLE 29. LABOR
 CHAPTER 14—AGE DISCRIMINATION IN EMPLOYMENT
 → § 623. Prohibition of age discrimination

(a) Employer practices

It shall be unlawful for an employer—

- (1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
- (2) to limit, segregate, or classify his employees 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 age; or
- (3) to reduce the wage rate of any employee in order to comply with this chapter.

(b) Employment agency practices

It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

(c) Labor organization practices

It shall be unlawful for a labor organization—

- (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;
- (2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;
- (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for

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membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

(e) Printing or publication of notice or advertisement indicating preference, limitation, etc.

It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

(f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause

It shall not be unlawful for an employer, employment agency, or labor organization--

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section--

(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

(B) to observe the terms of a bona fide employee benefit plan--

(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this chapter.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title, because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this chapter; or

(3) to discharge or otherwise discipline an individual for good cause.

(g) Repealed. Pub.L. 101-239, Title VI, § 6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233

(h) Practices of foreign corporations controlled by American employers; foreign employers not controlled by

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American employers; factors determining control

(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

(3) For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the—

- (A) interrelation of operations,
- (B) common management,
- (C) centralized control of labor relations, and
- (D) common ownership or financial control,

of the employer and the corporation.

(i) Employee pension benefit plans; cessation or reduction of benefit accrual or of allocation to employee account; distribution of benefits after attainment of normal retirement age; compliance; highly compensated employees

(1) Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits—

(A) in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or

(B) in the case of a defined contribution plan, the cessation of allocations to an employee's account, or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing any provision of an employee pension benefit plan to the extent that such provision imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(3) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(A) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

(B) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title and section 401(a)(14)(C) of Title 26, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year

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pursuant to section 1053(a)(3)(B) of this title or section 411(a)(3)(B) of Title 26, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The provisions of this paragraph shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations shall provide for the application of the preceding provisions of this paragraph to all employee pension benefit plans subject to this subsection and may provide for the application of such provisions, in the case of any such employee, with respect to any period of time within a plan year.

(4) Compliance with the requirements of this subsection with respect to an employee pension benefit plan shall constitute compliance with the requirements of this section relating to benefit accrual under such plan.

(5) Paragraph (1) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of Title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of Title 26.

(6) A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals or it is a plan permitted by subsection (m) of this section.. [FN1]

(7) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of Title 26 and subparagraphs (C) and (D) of section 411(b)(2) of Title 26 shall apply with respect to the requirements of this subsection in the same manner and to the same extent as such regulations apply with respect to the requirements of such sections 411(b)(1)(H) and 411(b)(2).

(8) A plan shall not be treated as failing to meet the requirements of this section solely because such plan provides a normal retirement age described in section 1002(24)(B) of this title and section 411(a)(8)(B) of Title 26.

(9) For purposes of this subsection--

(A) The terms "employee pension benefit plan", "defined benefit plan", "defined contribution plan", and "normal retirement age" have the meanings provided such terms in section 1002 of this title.

(B) The term "compensation" has the meaning provided by section 414(s) of Title 26.

(10) Special rules relating to age

(A) Comparison to similarly situated younger individual

(i) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.

(ii) Similarly situated

For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant

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is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(iii) Disregard of subsidized early retirement benefits

In determining the accrued benefit as of any date for purposes of this clause, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

(iv) Accrued benefit

For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

(B) Applicable defined benefit plans

(i) Interest credits

(I) In general

An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

(II) Preservation of capital

An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

(III) Market rate of return

The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I).

(ii) Special rule for plan conversions

If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

(iii) Rate of benefit accrual

Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of—

- (I) the participant's accrued benefit for years of service before the effective date of the amendment,

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determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

(iv) Special rules for early retirement subsidies

For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) Applicable plan amendment

For purposes of this subparagraph--

(I) In general

The term "applicable plan amendment" means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

(II) Special rule for coordinated benefits

If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

(III) Multiple amendments

The Secretary of the Treasury shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

(IV) Applicable defined benefit plan

For purposes of this subparagraph, the term "applicable defined benefit plan" has the meaning given such term by section 1053(f)(3) of this title.

(vi) Termination requirements

An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan--

(I) if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

(II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

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(C) Certain offsets permitted

A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides offsets against benefits under the plan to the extent such offsets are allowable in applying the requirements of section 401(a) of Title 26.

(D) Permitted disparities in plan contributions or benefits

A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) of Title 26 are met.

(E) Indexing permitted**(i) In general**

A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides for indexing of accrued benefits under the plan.

(ii) Protection against loss

Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

(iii) Indexing

For purposes of this subparagraph, the term "indexing" means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

(F) Early retirement benefit or retirement-type subsidy

For purposes of this paragraph, the terms "early retirement benefit" and "retirement-type subsidy" have the meaning given such terms in section 1053(g)(2)(A) of this title.

(G) Benefit accrued to date

For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

(j) Employment as firefighter or law enforcement officer

It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken--

(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer, the employer has complied with section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996 if the individual was discharged after the date described in such section, and the individual has attained--

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(A) the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

(B)(i) if the individual was not hired, the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after September 30, 1996; or

(ii) if applicable State or local law was enacted after September 30, 1996, and the individual was discharged, the higher of--

(I) the age of retirement in effect on the date of such discharge under such law; and

(II) age 55; and

(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

(k) Seniority system or employee benefit plan; compliance

A seniority system or employee benefit plan shall comply with this chapter regardless of the date of adoption of such system or plan.

(l) Lawful practices; minimum age as condition of eligibility for retirement benefits; deductions from severance pay; reduction of long-term disability benefits

Notwithstanding clause (i) or (ii) of subsection (f)(2)(B) of this section--

(1)(A) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because--

(i) an employee pension benefit plan (as defined in section 1002(2) of this title) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

(ii) a defined benefit plan (as defined in section 1002(35) of this title) provides for--

(I) payments that constitute the subsidized portion of an early retirement benefit; or

(II) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

(B) A voluntary early retirement incentive plan that--

(i) is maintained by--

(I) a local educational agency (as defined in section 7801 of Title 20, or

(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c) (5) or (6) of Title 26 and exempt from taxation under section 501(a) of Title 26, and

(ii) makes payments or supplements described in subclauses (I) and (II) of subparagraph (A)(ii) in coordination with a defined benefit plan (as so defined) maintained by an eligible employer described in

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section 457(e)(1) (A) of Title 26 or by an education association described in clause (i)(II),

shall be treated solely for purposes of subparagraph (A)(ii) as if it were a part of the defined benefit plan with respect to such payments or supplements. Payments or supplements under such a voluntary early retirement incentive plan shall not constitute severance pay for purposes of paragraph (2).

(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because following a contingent event unrelated to age--

(i) the value of any retiree health benefits received by an individual eligible for an immediate pension;

(ii) the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension; or

(iii) the values described in both clauses (i) and (ii);

are deducted from severance pay made available as a result of the contingent event unrelated to age.

(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of Title 26) that--

(i) constitutes additional benefits of up to 52 weeks;

(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

(D) For purposes of this paragraph and solely in order to make the deduction authorized under this paragraph, the term "retiree health benefits" means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)--

(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act; or

(iii) the package of benefits provided by the employer is as described in clauses (i) and (ii).

(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of \$3,000 per year for benefit years before age 65, and \$750 per year for benefit years beginning at age 65 and above.

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(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of \$48,000 for individuals below age 65, and \$24,000 for individuals age 65 and above.

(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on October 16, 1990, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after October 16, 1990, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

(3) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)—

(A) paid to the individual that the individual voluntarily elects to receive; or

(B) for which an individual who has attained the later of age 62 or normal retirement age is eligible.

(m) Voluntary retirement incentive plans

Notwithstanding subsection (f)(2)(b) of this section, it shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because a plan of an institution of higher education (as defined in section 1001 of Title 20) offers employees who are serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) supplemental benefits upon voluntary retirement that are reduced or eliminated on the basis of age, if—

(1) such institution does not implement with respect to such employees any age-based reduction or cessation of benefits that are not such supplemental benefits, except as permitted by other provisions of this chapter;

(2) such supplemental benefits are in addition to any retirement or severance benefits which have been offered generally to employees serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure), independent of any early retirement or exit-incentive plan, within the preceding 365 days; and

(3) any employee who attains the minimum age and satisfies all non-age-based conditions for receiving a benefit under the plan has an opportunity lasting not less than 180 days to elect to retire and to receive the maximum benefit that could then be elected by a younger but otherwise similarly situated employee, and the plan does not require retirement to occur sooner than 180 days after such election.

[FN1] So in original.

Current through P.L. 109-382 (excluding P.L. 109-304, P.L. 109-364)
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BALDWIN'S OHIO REVISED CODE ANNOTATED
 TITLE XLI. LABOR AND INDUSTRY
 CHAPTER 4112. CIVIL RIGHTS COMMISSION
 GENERAL PROVISIONS
 →4112.02 Unlawful discriminatory practices

It shall be an unlawful discriminatory practice:

(A) For any employer, because of the race, color, religion, sex, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

(B) For an employment agency or personnel placement service, because of race, color, religion, sex, national origin, disability, age, or ancestry, to do any of the following:

(1) Refuse or fail to accept, register, classify properly, or refer for employment, or otherwise discriminate against any person;

(2) Comply with a request from an employer for referral of applicants for employment if the request directly or indirectly indicates that the employer fails to comply with the provisions of sections 4112.01 to 4112.07 of the Revised Code.

(C) For any labor organization to do any of the following:

(1) Limit or classify its membership on the basis of race, color, religion, sex, national origin, disability, age, or ancestry;

(2) Discriminate against, limit the employment opportunities of, or otherwise adversely affect the employment status, wages, hours, or employment conditions of any person as an employee because of race, color, religion, sex, national origin, disability, age, or ancestry.

(D) For any employer, labor organization, or joint labor-management committee controlling apprentice training programs to discriminate against any person because of race, color, religion, sex, national origin, disability, or ancestry in admission to, or employment in, any program established to provide apprentice training.

(E) Except where based on a bona fide occupational qualification certified in advance by the commission, for any employer, employment agency, personnel placement service, or labor organization, prior to employment or admission to membership, to do any of the following:

(1) Elicit or attempt to elicit any information concerning the race, color, religion, sex, national origin, disability, age, or ancestry of an applicant for employment or membership;

(2) Make or keep a record of the race, color, religion, sex, national origin, disability, age, or ancestry of any applicant for employment or membership;

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(3) Use any form of application for employment, or personnel or membership blank, seeking to elicit information regarding race, color, religion, sex, national origin, disability, age, or ancestry; but an employer holding a contract containing a nondiscrimination clause with the government of the United States, or any department or agency of that government, may require an employee or applicant for employment to furnish documentary proof of United States citizenship and may retain that proof in the employer's personnel records and may use photographic or fingerprint identification for security purposes;

(4) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination, based upon race, color, religion, sex, national origin, disability, age, or ancestry;

(5) Announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race, color, religion, sex, national origin, disability, age, or ancestry of that group;

(6) Utilize in the recruitment or hiring of persons any employment agency, personnel placement service, training school or center, labor organization, or any other employee-referring source known to discriminate against persons because of their race, color, religion, sex, national origin, disability, age, or ancestry.

(F) For any person seeking employment to publish or cause to be published any advertisement that specifies or in any manner indicates that person's race, color, religion, sex, national origin, disability, age, or ancestry, or expresses a limitation or preference as to the race, color, religion, sex, national origin, disability, age, or ancestry of any prospective employer.

(G) For any proprietor or any employee, keeper, or manager of a place of public accommodation to deny to any person, except for reasons applicable alike to all persons regardless of race, color, religion, sex, national origin, disability, age, or ancestry, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.

(H) For any person to do any of the following:

(1) Refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status, ancestry, disability, or national origin;

(2) Represent to any person that housing accommodations are not available for inspection, sale, or rental, when in fact they are available, because of race, color, religion, sex, familial status, ancestry, disability, or national origin;

(3) Discriminate against any person in the making or purchasing of loans or the provision of other financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations, or any person in the making or purchasing of loans or the provision of other financial assistance that is secured by residential real estate, because of race, color, religion, sex, familial status, ancestry, disability, or national origin or because of the racial composition of the neighborhood in which the housing accommodations are located, provided that the person, whether an individual, corporation, or association of any type, lends money as one of the principal aspects or incident to the person's principal business and not only as a part of the purchase price of an owner-occupied residence the person is selling nor merely casually or occasionally to a relative or friend;

(4) Discriminate against any person in the terms or conditions of selling, transferring, assigning, renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations, including the sale of fire, extended coverage, or homeowners insurance, because of race, color, religion, sex, familial status, ancestry, disability, or national origin

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or because of the racial composition of the neighborhood in which the housing accommodations are located;

(5) Discriminate against any person in the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations because of race, color, religion, sex, familial status, ancestry, disability, or national origin or because of the racial composition of the neighborhood in which the housing accommodations are located;

(6) Refuse to consider without prejudice the combined income of both husband and wife for the purpose of extending mortgage credit to a married couple or either member of a married couple;

(7) Print, publish, or circulate any statement or advertisement, or make or cause to be made any statement or advertisement, relating to the sale, transfer, assignment, rental, lease, sublease, or acquisition of any housing accommodations, or relating to the loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations, that indicates any preference, limitation, specification, or discrimination based upon race, color, religion, sex, familial status, ancestry, disability, or national origin, or an intention to make any such preference, limitation, specification, or discrimination;

(8) Except as otherwise provided in division (H)(8) or (17) of this section, make any inquiry, elicit any information, make or keep any record, or use any form of application containing questions or entries concerning race, color, religion, sex, familial status, ancestry, disability, or national origin in connection with the sale or lease of any housing accommodations or the loan of any money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations. Any person may make inquiries, and make and keep records, concerning race, color, religion, sex, familial status, ancestry, disability, or national origin for the purpose of monitoring compliance with this chapter.

(9) Include in any transfer, rental, or lease of housing accommodations any restrictive covenant, or honor or exercise, or attempt to honor or exercise, any restrictive covenant;

(10) Induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that a change has occurred or may occur with respect to the racial, religious, sexual, familial status, or ethnic composition of the block, neighborhood, or other area in which the housing accommodations are located, or induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that the presence or anticipated presence of persons of any race, color, religion, sex, familial status, ancestry, disability, or national origin, in the block, neighborhood, or other area will or may have results including, but not limited to, the following:

(a) The lowering of property values;

(b) A change in the racial, religious, sexual, familial status, or ethnic composition of the block, neighborhood, or other area;

(c) An increase in criminal or antisocial behavior in the block, neighborhood, or other area;

(d) A decline in the quality of the schools serving the block, neighborhood, or other area.

(11) Deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting housing accommodations, or discriminate against any person in the terms or conditions of that access, membership, or participation, on account of race, color, religion, sex, familial status, national origin, disability, or ancestry;

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(12) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person's having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by division (H) of this section;

(13) Discourage or attempt to discourage the purchase by a prospective purchaser of housing accommodations, by representing that any block, neighborhood, or other area has undergone or might undergo a change with respect to its religious, racial, sexual, familial status, or ethnic composition;

(14) Refuse to sell, transfer, assign, rent, lease, sublease, or finance, or otherwise deny or withhold, a burial lot from any person because of the race, color, sex, familial status, age, ancestry, disability, or national origin of any prospective owner or user of the lot;

(15) Discriminate in the sale or rental of, or otherwise make unavailable or deny, housing accommodations to any buyer or renter because of a disability of any of the following:

(a) The buyer or renter;

(b) A person residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;

(c) Any individual associated with the person described in division (H)(15)(b) of this section.

(16) Discriminate in the terms, conditions, or privileges of the sale or rental of housing accommodations to any person or in the provision of services or facilities to any person in connection with the housing accommodations because of a disability of any of the following:

(a) That person;

(b) A person residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;

(c) Any individual associated with the person described in division (H)(16)(b) of this section.

(17) Except as otherwise provided in division (H)(17) of this section, make an inquiry to determine whether an applicant for the sale or rental of housing accommodations, a person residing in or intending to reside in the housing accommodations after they are sold, rented, or made available, or any individual associated with that person has a disability, or make an inquiry to determine the nature or severity of a disability of the applicant or such a person or individual. The following inquiries may be made of all applicants for the sale or rental of housing accommodations, regardless of whether they have disabilities:

(a) An inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(b) An inquiry to determine whether an applicant is qualified for housing accommodations available only to persons with disabilities or persons with a particular type of disability;

(c) An inquiry to determine whether an applicant is qualified for a priority available to persons with disabilities or persons with a particular type of disability;

(d) An inquiry to determine whether an applicant currently uses a controlled substance in violation of section 2925.11 of the Revised Code or a substantively comparable municipal ordinance;

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(e) An inquiry to determine whether an applicant at any time has been convicted of or pleaded guilty to any offense, an element of which is the illegal sale, offer to sell, cultivation, manufacture, other production, shipment, transportation, delivery, or other distribution of a controlled substance.

(18)(a) Refuse to permit, at the expense of a person with a disability, reasonable modifications of existing housing accommodations that are occupied or to be occupied by the person with a disability, if the modifications may be necessary to afford the person with a disability full enjoyment of the housing accommodations. This division does not preclude a landlord of housing accommodations that are rented or to be rented to a disabled tenant from conditioning permission for a proposed modification upon the disabled tenant's doing one or more of the following:

(i) Providing a reasonable description of the proposed modification and reasonable assurances that the proposed modification will be made in a workerlike manner and that any required building permits will be obtained prior to the commencement of the proposed modification;

(ii) Agreeing to restore at the end of the tenancy the interior of the housing accommodations to the condition they were in prior to the proposed modification, but subject to reasonable wear and tear during the period of occupancy, if it is reasonable for the landlord to condition permission for the proposed modification upon the agreement;

(iii) Paying into an interest-bearing escrow account that is in the landlord's name, over a reasonable period of time, a reasonable amount of money not to exceed the projected costs at the end of the tenancy of the restoration of the interior of the housing accommodations to the condition they were in prior to the proposed modification, but subject to reasonable wear and tear during the period of occupancy, if the landlord finds the account reasonably necessary to ensure the availability of funds for the restoration work. The interest earned in connection with an escrow account described in this division shall accrue to the benefit of the disabled tenant who makes payments^b into the account.

(b) A landlord shall not condition permission for a proposed modification upon a disabled tenant's payment of a security deposit that exceeds the customarily required security deposit of all tenants of the particular housing accommodations.

(19) Refuse to make reasonable accommodations in rules, policies, practices, or services when necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including associated public and common use areas;

(20) Fail to comply with the standards and rules adopted under division (A) of section 3781.111 of the Revised Code;

(21) Discriminate against any person in the selling, brokering, or appraising of real property because of race, color, religion, sex, familial status, ancestry, disability, or national origin;

(22) Fail to design and construct covered multifamily dwellings for first occupancy on or after June 30, 1992, in accordance with the following conditions:

(a) The dwellings shall have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site.

(b) With respect to dwellings that have a building entrance on an accessible route, all of the following apply:

(i) The public use areas and common use areas of the dwellings shall be readily accessible to and usable by persons with a disability.

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(ii) All the doors designed to allow passage into and within all premises shall be sufficiently wide to allow passage by persons with a disability who are in wheelchairs.

(iii) All premises within covered multifamily dwelling units shall contain an accessible route into and through the dwelling; all light switches, electrical outlets, thermostats, and other environmental controls within such units shall be in accessible locations; the bathroom walls within such units shall contain reinforcements to allow later installation of grab bars; and the kitchens and bathrooms within such units shall be designed and constructed in a manner that enables an individual in a wheelchair to maneuver about such rooms.

For purposes of division (H)(22) of this section, "covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

(I) For any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

(J) For any person to aid, abet, incite, compel, or coerce the doing of any act declared by this section to be an unlawful discriminatory practice, to obstruct or prevent any person from complying with this chapter or any order issued under it, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful discriminatory practice.

(K)(1) Nothing in division (H) of this section shall bar any religious or denominational institution or organization, or any nonprofit charitable or educational organization that is operated, supervised, or controlled by or in connection with a religious organization, from limiting the sale, rental, or occupancy of housing accommodations that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference in the sale, rental, or occupancy of such housing accommodations to persons of the same religion, unless membership in the religion is restricted on account of race, color, or national origin.

(2) Nothing in division (H) of this section shall bar any bona fide private or fraternal organization that, incidental to its primary purpose, owns or operates lodgings for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.

(3) Nothing in division (H) of this section limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations. Nothing in that division prohibits the owners or managers of housing accommodations from implementing reasonable occupancy standards based on the number and size of sleeping areas or bedrooms and the overall size of a dwelling unit, provided that the standards are not implemented to circumvent the purposes of this chapter and are formulated, implemented, and interpreted in a manner consistent with this chapter and any applicable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations.

(4) Nothing in division (H) of this section requires that housing accommodations be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(5) Nothing in division (H) of this section pertaining to discrimination on the basis of familial status shall be construed to apply to any of the following:

(a) Housing accommodations provided under any state or federal program that have been determined under the "Fair Housing Amendments Act of 1988," 102 Stat. 1623, 42 U.S.C.A. 3607, as amended, to be specifically

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designed and operated to assist elderly persons;

(b) Housing accommodations intended for and solely occupied by persons who are sixty-two years of age or older;

(c) Housing accommodations intended and operated for occupancy by at least one person who is fifty-five years of age or older per unit, as determined under the "Fair Housing Amendments Act of 1988," 102 Stat. 1623, 42 U.S.C.A. 3607, as amended.

(L) Nothing in divisions (A) to (E) of this section shall be construed to require a person with a disability to be employed or trained under circumstances that would significantly increase the occupational hazards affecting either the person with a disability, other employees, the general public, or the facilities in which the work is to be performed, or to require the employment or training of a person with a disability in a job that requires the person with a disability routinely to undertake any task, the performance of which is substantially and inherently impaired by the person's disability.

(M) Nothing in divisions (H)(1) to (18) of this section shall be construed to require any person selling or renting property to modify the property in any way or to exercise a higher degree of care for a person with a disability, to relieve any person with a disability of any obligation generally imposed on all persons regardless of disability in a written lease, rental agreement, or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations, of the lease, agreement, or contract.

(N) An aggrieved individual may enforce the individual's rights relative to discrimination on the basis of age as provided for in this section by instituting a civil action, within one hundred eighty days after the alleged unlawful discriminatory practice occurred, in any court with jurisdiction for any legal or equitable relief that will effectuate the individual's rights.

A person who files a civil action under this division is barred, with respect to the practices complained of, from instituting a civil action under section 4112.14 of the Revised Code and from filing a charge with the commission under section 4112.05 of the Revised Code.

(O) With regard to age, it shall not be an unlawful discriminatory practice and it shall not constitute a violation of division (A) of section 4112.14 of the Revised Code for any employer, employment agency, joint labor-management committee controlling apprenticeship training programs, or labor organization to do any of the following:

(1) Establish bona fide employment qualifications reasonably related to the particular business or occupation that may include standards for skill, aptitude, physical capability, intelligence, education, maturation, and experience;

(2) Observe the terms of a bona fide seniority system or any bona fide employee benefit plan, including, but not limited to, a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this section. However, no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual, because of the individual's age except as provided for in the "Age Discrimination in Employment Act Amendment of 1978," 92 Stat. 189, 29 U.S.C.A. 623, as amended by the "Age Discrimination in Employment Act Amendments of 1986," 100 Stat. 3342, 29 U.S.C.A. 623, as amended.

(3) Retire an employee who has attained sixty-five years of age who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if the employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equals, in the aggregate, at least forty-four thousand dollars, in accordance with the conditions of the "Age Discrimination in

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R.C. § 4112.02

Employment Act Amendment of 1978," 92 Stat. 189, 29 U.S.C.A. 631, as amended by the "Age Discrimination in Employment Act Amendments of 1986," 100 Stat. 3342, 29 U.S.C.A. 631, as amended;

(4) Observe the terms of any bona fide apprenticeship program if the program is registered with the Ohio apprenticeship council pursuant to sections 4139.01 to 4139.06 of the Revised Code and is approved by the federal committee on apprenticeship of the United States department of labor.

(P) Nothing in this chapter prohibiting age discrimination and nothing in division (A) of section 4112.14 of the Revised Code shall be construed to prohibit the following:

(1) The designation of uniform age the attainment of which is necessary for public employees to receive pension or other retirement benefits pursuant to Chapter 145., 742., 3307., 3309., or 5505. of the Revised Code;

(2) The mandatory retirement of uniformed patrol officers of the state highway patrol as provided in section 5505.16 of the Revised Code;

(3) The maximum age requirements for appointment as a patrol officer in the state highway patrol established by section 5503.01 of the Revised Code;

(4) The maximum age requirements established for original appointment to a police department or fire department in sections 124.41 and 124.42 of the Revised Code;

(5) Any maximum age not in conflict with federal law that may be established by a municipal charter, municipal ordinance, or resolution of a board of township trustees for original appointment as a police officer or firefighter;

(6) Any mandatory retirement provision not in conflict with federal law of a municipal charter, municipal ordinance, or resolution of a board of township trustees pertaining to police officers and firefighters;

(7) Until January 1, 1994, the mandatory retirement of any employee who has attained seventy years of age and who is serving under a contract of unlimited tenure, or similar arrangement providing for unlimited tenure, at an institution of higher education as defined in the "Education Amendments of 1980," 94 Stat. 1503, 20 U.S.C.A. 1141(a).

(Q)(1)(a) Except as provided in division (Q)(1)(b) of this section, for purposes of divisions (A) to (E) of this section, a disability does not include any physiological disorder or condition, mental or psychological disorder, or disease or condition caused by an illegal use of any controlled substance by an employee, applicant, or other person, if an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee acts on the basis of that illegal use.

(b) Division (Q)(1)(a) of this section does not apply to an employee, applicant, or other person who satisfies any of the following:

(i) The employee, applicant, or other person has successfully completed a supervised drug rehabilitation program and no longer is engaging in the illegal use of any controlled substance, or the employee, applicant, or other person otherwise successfully has been rehabilitated and no longer is engaging in that illegal use.

(ii) The employee, applicant, or other person is participating in a supervised drug rehabilitation program and no longer is engaging in the illegal use of any controlled substance.

(iii) The employee, applicant, or other person is erroneously regarded as engaging in the illegal use of any controlled substance, but the employee, applicant, or other person is not engaging in that illegal use.

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R.C. § 4112.02

(2) Divisions (A) to (E) of this section do not prohibit an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee from doing any of the following:

(a) Adopting or administering reasonable policies or procedures, including, but not limited to, testing for the illegal use of any controlled substance, that are designed to ensure that an individual described in division (Q)(1)(b)(i) or (ii) of this section no longer is engaging in the illegal use of any controlled substance;

(b) Prohibiting the illegal use of controlled substances and the use of alcohol at the workplace by all employees;

(c) Requiring that employees not be under the influence of alcohol or not be engaged in the illegal use of any controlled substance at the workplace;

(d) Requiring that employees behave in conformance with the requirements established under "The Drug-Free Workplace Act of 1988," 102 Stat. 4304, 41 U.S.C.A. 701, as amended;

(e) Holding an employee who engages in the illegal use of any controlled substance or who is an alcoholic to the same qualification standards for employment or job performance, and the same behavior, to which the employer, employment agency, personnel placement service, labor organization, or joint labor-management committee holds other employees, even if any unsatisfactory performance or behavior is related to an employee's illegal use of a controlled substance or alcoholism;

(f) Exercising other authority recognized in the "Americans with Disabilities Act of 1990," 104 Stat. 327, 42 U.S.C.A. 12101, as amended, including, but not limited to, requiring employees to comply with any applicable federal standards.

(3) For purposes of this chapter, a test to determine the illegal use of any controlled substance does not include a medical examination.

(4) Division (Q) of this section does not encourage, prohibit, or authorize, and shall not be construed as encouraging, prohibiting, or authorizing, the conduct of testing for the illegal use of any controlled substance by employees, applicants, or other persons, or the making of employment decisions based on the results of that type of testing.

[FN1] See Notes of Decisions and Opinions, *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (Ohio 1999), 86 Ohio St.3d 451, 715 N.E.2d 1062.

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R.C. § 4112.14

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXI. LABOR AND INDUSTRY
CHAPTER 4112. CIVIL RIGHTS COMMISSION
MISCELLANEOUS PROVISIONS

→4112.14 Discrimination because of age by employers; civil action

(A) No employer shall discriminate in any job opening against any applicant or discharge without just cause any employee aged forty or older who is physically able to perform the duties and otherwise meets the established requirements of the job and laws pertaining to the relationship between employer and employee.

(B) Any person aged forty or older who is discriminated against in any job opening or discharged without just cause by an employer in violation of division (A) of this section may institute a civil action against the employer in a court of competent jurisdiction. If the court finds that an employer has discriminated on the basis of age, the court shall order an appropriate remedy which shall include reimbursement to the applicant or employee for the costs, including reasonable attorney's fees, of the action, or to reinstate the employee in the employee's former position with compensation for lost wages and any lost fringe benefits from the date of the illegal discharge and to reimburse the employee for the costs, including reasonable attorney's fees, of the action. The remedies available under this section are coexistent with remedies available pursuant to sections 4112.01 to 4112.11 of the Revised Code; except that any person instituting a civil action under this section is, with respect to the practices complained of, thereby barred from instituting a civil action under division (N) of section 4112.02 of the Revised Code or from filing a charge with the Ohio civil rights commission under section 4112.05 of the Revised Code.

(C) The cause of action described in division (B) of this section and any remedies available pursuant to sections 4112.01 to 4112.11 of the Revised Code shall not be available in the case of discharges where the employee has available to the employee the opportunity to arbitrate the discharge or where a discharge has been arbitrated and has been found to be for just cause.

[FN1] See Notes of Decisions and Opinions, *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (Ohio 1999), 86 Ohio St.3d 451, 715 N.E.2d 1062.

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R.C. § 4112.99
4112.99 Civil action for violations

▷ R.C. § 4112.99

Baldwin's Ohio Revised Code Annotated Currentness
Title XLI. Labor and Industry

Chapter 4112. Civil Rights Commission (Refs & Annos)

Civil Action for Violations

►4112.99 Civil action for violations

Whoever violates this chapter is subject to a civil action for damages, injunctive relief, or any other appropriate relief.

(2001 S 108, § 2.01, eff. 7-6-01; 2001 S 108, § 2.02, eff. 7-6-01; 1996 H 350, eff. 1-27-97 [FN1]; 1987 H 5, eff. 9-28-87; 1976 S 162; 1969 H 432; 128 v 12)

[FN1] See Notes of Decisions and Opinions, *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (Ohio 1999), 86 Ohio St.3d 451, 715 N.E.2d 1062.

UNCODIFIED LAW

2001 S 108, § 1: See Uncodified Law under 4112.02.

2001 S 108, § 3, eff. 7-6-01, reads, in part:

(A) In Section 2.01 of this act:

(4) Sections 163.17, 723.01, 1343.03, 1775.14, 2305.01, 2305.11, 2305.35, 2307.33, 2307.71, 2307.72, 2307.73, 2307.78, 2315.20, 2317.62, 2323.51, 2744.04, 4112.99, 4909.42, 5591.36, and 5591.37 of the Revised Code are revived and supersede the versions of the same sections that are repealed by Section 2.02 of this act.

HISTORICAL AND STATUTORY NOTES

Ed. Note: The amendment of this section by 1996 H 350, eff. 1-27-97, was repealed by 2001 S 108, § 2.02, eff. 7-6-01. See *Baldwin's Ohio Legislative Service Annotated*, 1996, page 10/L-3457, and 2001, page 6/L-1441, or the OH-LEGIS or OH-LEGIS-OLD database on Westlaw, for original versions of these Acts.

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R.C. § 4123.52

4123.52 Industrial commission has continuing jurisdiction

Ⓒ R.C. § 4123.52

Baldwin's Ohio Revised Code Annotated Currentness
Title XLI. Labor and Industry

Chapter 4123. Workers' Compensation (Refs & Annos)

Claims and Appeals

➔4123.52 Industrial commission has continuing jurisdiction

The jurisdiction of the Industrial commission and the authority of the administrator of workers' compensation over each case is continuing, and the commission may make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion is justified. No modification or change nor any finding or award in respect of any claim shall be made with respect to disability, compensation, dependency, or benefits, after five years from the date of injury in the absence of the payment of medical benefits under this chapter or in the absence of payment of compensation under section 4123.57, 4123.58, or division (A) or (B) of section 4123.56 of the Revised Code or wages in lieu of compensation in a manner so as to satisfy the requirements of section 4123.84 of the Revised Code, in which event the modification, change, finding, or award shall be made within five years from the date of the last payment of compensation or from the date of death, nor unless written notice of claim for the specific part or parts of the body injured or disabled has been given as provided in section 4123.84 or 4123.85 of the Revised Code. The commission shall not make any modification, change, finding, or award which shall award compensation for a back period in excess of two years prior to the date of filing application therefor. This section does not affect the right of a claimant to compensation accruing subsequent to the filing of any such application, provided the application is filed within the time limit provided in this section.

This section does not deprive the commission of its continuing jurisdiction to determine the questions raised by any application for modification of award which has been filed with the commission after June 1, 1932, and prior to the expiration of the applicable period but in respect to which no award has been granted or denied during the applicable period.

The commission may, by general rules, provide for the destruction of files of cases in which no further action may be taken.

The commission and administrator of workers' compensation each may, by general rules, provide for the retention and destruction of all other records in their possession or under their control pursuant to section 121.211 and sections 149.34 to 149.36 of the Revised Code. The bureau of workers' compensation may purchase or rent required equipment for the document retention media, as determined necessary to preserve the records. Photographs, microphotographs, microfilm, films, or other direct document retention media, when properly identified, have the same effect as the original record and may be offered in like manner and may be received as evidence in proceedings before the Industrial commission, staff hearing officers, and district hearing officers, and in any court where the original record could have been introduced.

(2006 S 7, eff. 6-30-06; 2000 H 611, eff. 6-14-00; 1993 H 107, eff. 10-20-93; 1989 H 222; 1985 H 238; 1978 H 1282, H 876; 132 v H 268; 1953 H 1; GC 1465-86)

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: 122 v S 262; 118 v 410; 115 v 423; 114 v 38; 103 v 88; 102 v 524

Amendment Note: 2006 S 7, in the second sentence, substituted "five" for "six" after "benefits, after", deleted ", in which event the modification, change, finding, or award shall be made within six years after the payment of medical benefits,", substituted "five" for "ten" after "shall be made within", and substituted ".The" for ", and the" after "of the Revised Code".

Amendment Note: 2000 H 611 inserted "proceedings before the industrial commission, staff hearing officers, and district hearing officers, and in" in the fourth paragraph.

Amendment Note: 1993 H 107 inserted "and the authority of the administrator of workers' compensation" in the first sentence of, and substituted "medical benefits under this chapter, in which event the modification, change, finding, or award shall be made within six years after the payment of medical benefits, or in the absence of payment of compensation under section 4123.57, 4123.58, or division (A) or (B) of section 4123.56" for "compensation for total disability under section 4123.56" and substituted "in which event the modification, change, finding, or award shall be made within ten years" for "except in cases where compensation has been paid under section 4123.56, 4123.57, or 4123.58 of the Revised Code, then ten years" in, the first paragraph.

OHIO ADMINISTRATIVE CODE REFERENCES

Jurisdictional principles applicable to payments to health care providers, 4123-6-23, 4123-7-01

LIBRARY REFERENCES

Workers' Compensation ⇄1085, 1687 to 1803.

Westlaw Topic No. 413.

C.J.S. Workmen's Compensation § 383, 581 to 600, 604 to 613, 615, 618, 620 to 621, 623 to 668.

Baldwin's Ohio Legislative Service, 1993 Laws of Ohio, H 107--LSC Analysis, p 5-941

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 222--LSC Analysis, p 5-832

RESEARCH REFERENCES

Encyclopedias

OH Jur. 3d Administrative Law § 129, Concurrent and Exclusive Jurisdiction; Remedy as Lying in Administrative or Judicial Forum.

OH Jur. 3d Workers' Compensation § 58, Other Particular Rules.

OH Jur. 3d Workers' Compensation § 207, Temporary Total Disability.

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R.C. § 2907.06
2907.06 Sexual imposition

• R.C. § 2907.06

Baldwin's Ohio Revised Code Annotated Currentness
Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)

Chapter 2907. Sex Offenses

Sexual Assaults

➔**2907.06 Sexual imposition**

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.

(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree.

(1990 H 44, eff. 7-24-90; 1977 H 134; 1972 H 511)

R.C. § 2907.06, OH ST § 2907.06

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R.C. § 2907.21
2907.21 Compelling prostitution

• R.C. § 2907.21

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Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)

Chapter 2907. Sex Offenses

Prostitution

→**2907.21 Compelling prostitution**

(A) No person shall knowingly do any of the following:

(1) Compel another to engage in sexual activity for hire;

(2) Induce, procure, solicit, or request a minor to engage in sexual activity for hire, whether or not the offender knows the age of the minor;

(3) Pay or agree to pay a minor, either directly or through the minor's agent, so that the minor will engage in sexual activity, whether or not the offender knows the age of the minor;

(4) Pay a minor, either directly or through the minor's agent, for the minor having engaged in sexual activity, pursuant to a prior agreement, whether or not the offender knows the age of the minor.

(B) Whoever violates this section is guilty of compelling prostitution, a felony of the third degree.

(1988 H 51, eff. 3-17-89; 1972 H 511)

R.C. § 2907.21, OH ST § 2907.21

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R.C. § 2907.22
2907.22 Promoting prostitution

• R.C. § 2907.22

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Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)

Chapter 2907. Sex Offenses

Prostitution

→2907.22 Promoting prostitution

(A) No person shall knowingly:

(1) Establish, maintain, operate, manage, supervise, control, or have an interest in a brothel;

(2) Supervise, manage, or control the activities of a prostitute in engaging in sexual activity for hire;

(3) Transport another, or cause another to be transported across the boundary of this state or of any county in this state, in order to facilitate such other person's engaging in sexual activity for hire;

(4) For the purpose of violating or facilitating a violation of this section, induce or procure another to engage in sexual activity for hire.

(B) Whoever violates this section is guilty of promoting prostitution, a felony of the fourth degree. If any prostitute in the brothel involved in the offense, or the prostitute whose activities are supervised, managed, or controlled by the offender, or the person transported, induced, or procured by the offender to engage in sexual activity for hire, is a minor, whether or not the offender knows the age of the minor, then promoting prostitution is a felony of the second degree.

(1988 H 51, eff. 3-17-89; 1972 H 511)

R.C. § 2907.22, OH ST § 2907.22

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R.C. § 2907.23
2907.23 Procuring

• R.C. § 2907.23

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Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)

Chapter 2907. Sex Offenses

Prostitution

➔**2907.23 Procuring**

(A) No person, knowingly and for gain, shall do either of the following:

(1) Entice or solicit another to patronize a prostitute or brothel;

(2) Procure a prostitute for another to patronize, or take or direct another at his or her request to any place for the purpose of patronizing a prostitute.

(B) No person, having authority or responsibility over the use of premises, shall knowingly permit such premises to be used for the purpose of engaging in sexual activity for hire.

(C) Whoever violates this section is guilty of procuring, a misdemeanor of the first degree.

(1972 H 511, eff. 1-1-74)

R.C. § 2907.23, OH ST § 2907.23

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R.C. § 2907.24
2907.24 Soliciting; solicitation after positive HIV test

• R.C. § 2907.24

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Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)

Chapter 2907. Sex Offenses

Prostitution

→2907.24 Soliciting; solicitation after positive HIV test

(A) No person shall solicit another to engage with such other person in sexual activity for hire.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall engage in conduct in violation of division (A) of this section.

(C)(1) Whoever violates division (A) of this section is guilty of soliciting, a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of engaging in solicitation after a positive HIV test. If the offender commits the violation prior to July 1, 1996, engaging in solicitation after a positive HIV test is a felony of the second degree. If the offender commits the violation on or after July 1, 1996, engaging in solicitation after a positive HIV test is a felony of the third degree.

(1996 H 40, eff. 5-30-96; 1972 H 511, eff. 1-1-74)

R.C. § 2907.24, OH ST § 2907.24

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R.C. § 2907.25
2907.25 Prostitution; prostitution after positive HIV test

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Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)

Chapter 2907. Sex Offenses

Prostitution

➔**2907.25 Prostitution; prostitution after positive HIV test**

(A) No person shall engage in sexual activity for hire.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall engage in sexual activity for hire.

(C)(1) Whoever violates division (A) of this section is guilty of prostitution, a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of engaging in prostitution after a positive HIV test. If the offender commits the violation prior to July 1, 1996, engaging in prostitution after a positive HIV test is a felony of the second degree. If the offender commits the violation on or after July 1, 1996, engaging in prostitution after a positive HIV test is a felony of the third degree.

(1996 H 40, eff. 5-30-96; 1972 H 511, eff. 1-1-74)

R.C. § 2907.25, OH ST § 2907.25

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