PITT, DOWTY, McGEHEE & MIRER, P.C.

IV.

Terminated Employee issues

1. The At-Will Doctrine:

Most employees in Michigan are considered "at-will" employees. This means that in the absence of a specific written or oral promise not to terminate employment without just cause or to continue to employment for a definite duration, the employer is not legally required to have a reason, valid or otherwise, for an employee's termination. Employees without the protection of such a written or oral agreement are known as "at-will" employees. At-will employees may be terminated by an employer without the employer incurring any legal liability unless the termination violates state or federal civil-rights statutes prohibiting terminations on the basis of race, gender, national origin, age, marital status, weight, or other statutes and/or laws which form an exception to the at-will doctrine.

Unless an at-will employee is protected by these others laws, an employer can legally terminate the at-will employee without a reason or stating a reason; an employer is not required to provide an at-will employee with any notice of deficient performance and notice of pending termination; an employer is not required to follow its own procedures and policies regarding discipline, performance or termination if the employee in question is an at-will employee. The employer can terminate a long-term, at-will employee unfairly (such as without warning). The employer can be mean-spirited in its actions toward an at-will employee (such as firing a family member on Christmas Eve), or downright silly or stupid (terminate an at-will employee because the employee refused to get on his knees and bark like a dog) and not be legally liable to the employee unless the employment action implicates a violation of civil rights.

Most employees are informed by their employers that they are at-will employees. Notification of this status is usually found in the job application, employee handbook, or other company-produced publications. An employer is not required to specifically identify an employee as an at-will employee. Even if the employer is silent as to the status of a particular employee, the law will presume that the employment is at-will. The at-will employment doctrine is very strong in Michigan and is difficult, if not impossible, to overcome.

In order to overcome the presumption of at-will employment status, an employee must present competent evidence of a written or oral agreement to terminate for just-cause only, or a written or oral agreement that

employment will continue for a definite duration. If the employer publishes written material which suggests that the employee is a “just-cause” and an “at-will” employee at the same time, usually a question of fact exists for a jury to decide the correct status of the employee.

Claims by an employee that a member of management orally stated that the employee could not be terminated except for just cause will not usually override written material published by the employer establishing the at-will status of the employee.

Many of our prospective clients are surprised to learn that they are at-will employees and, as such, can be terminated without notice or cause, even if the employee has a long-term relationship with the employer and has done nothing to justify the termination. At-will employees, faced with a termination perceived to be unfair, should consult with an attorney to see whether there are any exceptions to the at-will doctrine which might provide relief.