

IV.

Terminated Employee issues

1. Exceptions to the At-Will Doctrine:

Civil-Rights Claims:

Most employees in Michigan are covered by either state or federal civil-rights laws which prohibit employment decisions based on race, gender, religion, age, national origin, marital status, weight, retaliatory motive, disability or whistleblower status. These civil-rights laws prohibit severe and pervasive harassment resulting in a hostile and intimidating work environment because of a status protected by the civil-rights laws. Employees who suffer discrimination or retaliation for opposing a violation of these civil-rights laws, or filing a complaint of discrimination, or participating in a civil-rights proceeding may not be terminated for that reason.

Whistleblower Claims:

Employees who report, or who threaten to report, actual or suspected violations of law to a public body and who are terminated or suffer other adverse employment action are protected under Michigan's Whistleblower Protection Act and can bring a legal action in circuit court for termination, demotion, or other adverse-employment action.

Common-Law Claims

Employees who are terminated because they refuse to violate a Michigan or federal law or are required by the employer to engage in other conduct which may violate Michigan or federal public policy, may not be lawfully terminated and can bring a claim for wrongful termination under what is known as Michigan common law. Common law, as opposed to statutory law, is created by the courts to provide remedies to terminated employees under limited circumstances. A typical example of a common law wrongful discharge claim is a lawsuit for an employee who has been terminated for bringing a Workers' Compensation claim. Michigan public policy encourages injured workers to bring claims for compensation and it is the common law of the State of Michigan that employers may not terminate employees (even at-will employees) for this reason. Other examples of common law claims arising out of the employment context are defamation (false statements tending to injure an employee's reputation), tortious interference with employment rights (a supervisor maliciously and for personal reasons causes an employee to lose his or her job), invasion of privacy (the employer publishes sensitive

information regarding an employee causing the employee to suffer extreme embarrassment or emotional distress), intentional infliction of emotional distress (the employer's agent engages in extreme and outrageous conduct causing severe psychological injury).

An experienced employment attorney can help you assess whether any of these common-law remedies will be available to you.

Unionized Employee Claims:

Employees who are in a union and subject to a collective-bargaining agreement (CBA) are subject to some of the same laws as non-union employees. Most CBAs contain a guarantee that the covered employee will not be terminated without just cause. The same civil-rights laws protect unionized employees and non-unionized employees alike. Terminations of a unionized employee based on race, gender, age (as well as the other impermissible criteria) can usually be (but not always) redressed in a civil-rights claim simultaneously with the pursuit of wrongful-termination grievance procedures set forth in the CBA. Claims of wrongful discharge, separate from any alleged civil-rights violations, can be pursued in a claim of breach of contract against the employer but must be accompanied by a claim that the union failed to represent the employee in the grievance process. In almost all cases, the employee must first exhaust contractual remedies provided by the CBA. If the union fails to prosecute a meritorious grievance or mishandles it so that the employee's termination cannot be properly redressed, the employee must allege and prove that the union breached its duty of fair representation and that this claim must be part of the suit against the employer for breach of the CBA.

Public Employee Claims:

Public employees may be unionized or non-unionized. In general, public employees may bring civil-rights claims for wrongful termination, file grievances against their employer in connection with the collective-bargaining agreement, and may also pursue civil-service procedures set up by the employing government. Public employees may also have what is known as a constitutional property interest in his or her job. If such a property interest is found to exist, the public employer may not deprive that employee of that property interest without due process of law. Public employees can bring a claim that there was a violation of due process under the federal Constitution in the grounds or manner in which the termination occurred. Employees working for private employers cannot assert a violation of due process under the federal Constitution.