EMPLOYMENT AT WILL IN IOWA: A JOURNEY FORWARD

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The employment-at-will doctrine has been established law for over a century in Iowa and other jurisdictions. The underpinnings of the doctrine have been traced to nineteenth century concepts of freedom of enterprise.[1] When the most recent Iowa article on the subject was published in 1983,[2] the doctrine remained in a time capsule, seemingly unscathed by numerous changes in the workplace that had occurred in the doctrine's century of existence. Over the years, the Iowa Supreme Court has had several occasions to open this time capsule. Recently, after decades of stability, the Iowa Supreme Court departed significantly from the traditional employment-at-will doctrine.

Lawyers for discharged employees have offered at least three theories to escape strict application of the traditional employment-at-will doctrine: an implied contract theory; a public policy tort theory; and a theory of good faith and fair dealing in employment.[3] The courts of Iowa and other states

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1. Blumrosen, *Workers' Rights Against Employers and Unions: Justice Francis—A Judge for Our Season*, 24 RUTGERS L. REV. 480, 481 (1970).

2. Naylor, *Employment at Will: The Decay of an Anachronistic Shield for Employers?*, 33 DRAKE L. REV. 113 (1983).

3. *See* Annotation, *Modern Status of Rule that Employer May Discharge At-Will Em-*

have also been presented with hybrids of these theories.

This article summarizes the doctrine of employment at will as it existed throughout the majority of this century. The article then turns to recent Iowa Supreme Court decisions which embrace significant exceptions to the doctrine. Finally, the article explores future issues that have not been judicially resolved which are likely to confront practitioners.

I. The Historical Doctrine of Employment at Will

The doctrine of employment at will is a rule of construction that applies in situations in which employer and the employee fail to establish an employment relationship for a definite term.[4] If the employee is serving an indefinite term, the general rule of construction states that the employee may be dismissed at any time for any reason.[5] If a specific period of employment is agreed upon, however, the rule holds that discharge, absent agreement to the contrary,[6] may be based only upon just cause.[7] Agreements for "permanent" or "lifetime" employment, absent an agreement citing circumstances under which an employee could be terminated, have traditionally been construed as contracts for an "indefinite" term and are therefore subject to the

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ployee for Any Reason, 12 A.L.R.4th 544 (1982).

4. Harrod v. Wineman, 146 Iowa 718, 720, 125 N.W. 812, 813 (1910); Naylor, *supra* note 2, at 115 n.5. In *Harrod* the employee and employer entered into a written contract of employment under which the employee was to manage a laundry business for the employer. Harrod v. Wineman, 146 Iowa at 718-19, 125 N.W. at 813. The contract did not state the term or length of the employment relationship, and the court found the contract to be indefinite in term. *Id.* at 720, 125 N.W. at 813. The court stated that the employee "could easily have protected himself [from the hardship of the at-will rule] in framing the contract of service." *Id.* at 721, 125 N.W. at 813.

5. Wolfe v. Graether, 389 N.W.2d 643, 652 (Iowa 1986); Albert v. Davenport Osteopathic Hosp., 385 N.W.2d 237, 238 (Iowa 1986); Northrup v. Farmland Indus., Inc., 372 N.W.2d 193, 195 (Iowa 1985); Abrisz v. Pulley Freight Lines, Inc., 270 N.W.2d 454, 455 (Iowa 1978); Laird v. Eagle Iron Works, 249 N.W.2d 646, 648 (Iowa 1977); Harper v. Cedar Rapids Television Co., 244 N.W.2d 782, 791 (Iowa 1976).

6. An employer and an employee may agree orally or in writing to a specific term of employment which will defeat application of the employment-at-will doctrine. In LaFontaine v. Developers & Builders, Inc., 156 N.W.2d 651, 659 (Iowa 1968), the court enforced an oral contract of employment entered into by the parties in conjunction with a stock purchase agreement. *See also* Greene v. Oliver Realty, Inc., 363 Pa. Super. 534, 556, 526 A.2d 1192, 1202 (1987) (court held oral employment contracts enforceable); Schipani v. Ford Motor Co., 102 Mich. App. 606, 615, 302 N.W.2d 307, 311 (1981) (court refused to dismiss complaint by employee who signed employment application stating employment was at will where employee alleged oral assurances of employment until retirement age). *But see* Savodnik v. Korvettes, Inc., 488 F. Supp. 822, 824 (E.D.N.Y. 1980) (oral agreement for permanent employment unenforceable); Hamlen v. Fairchild Indus., Inc., 413 So. 2d 800, 801 (Fla. Dist. Ct. App. 1982) (same).

7. Allen v. Highway Equip. Co., 239 N.W.2d 135, 140 (Iowa 1976); Kitchen v. Stockman Nat'l Life Ins. Co., 192 N.W.2d 796, 802 (Iowa 1971).

employment-at-will rule.[8] Because many employment relationships are based upon only a handshake and are established without express agreement regarding circumstances under which the relationship might be terminated, the employment-at-will doctrine cuts broadly across the field of employment law in Iowa and elsewhere.

For nearly two decades, the Iowa Supreme Court has held that the employment-at-will doctrine can be avoided if the employee supports an indefinite term of employment with consideration which goes beyond simply providing the employer with the agreed-upon services.[9] The question of what constitutes "additional consideration" is decided on a case-by-case basis.[10] For instance, in *Collins v. Parsons College*,[11] the Iowa Supreme Court held that a college professor who left tenured employment for a new position gave sufficient other consideration to support a contract terminable only for cause, at least where the new employer was aware of the facts.[12] Similarly, in *Wolfe v. Graether*,[13] a partner in a medical clinic surrendered his status as an equal partner, by which he may have enjoyed de facto permanent employment, to accept a position as an employee in a successor professional corporation.[14] The Iowa Supreme Court found "additional consideration" to support assurances of permanent employment from his surrender of his right as a partner to vote and participate in discussion at partnership meetings.[15]

These cases show typical instances in which the plaintiff sufficiently proved "additional consideration" by demonstrating that his previous employment was secure.[16] In several Iowa cases, however, employees have been

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8. Hanson v. Central Show Printing Co., 256 Iowa 1221, 1223, 130 N.W.2d 654, 656 (1964).

9. *See* Wolfe v. Graether, 389 N.W.2d at 652-53; Albert v. Davenport Osteopathic Hosp., 385 N.W.2d 237, 238 (Iowa 1986); Stauter v. Walnut Grove Prods., 188 N.W.2d 305, 311 (Iowa 1971) ("Where the employee furnishes consideration in addition to his services, a contract for permanent or lifetime employment is valid and enforceable and continues to operate as long as the employer remains in business and has work for the employee once the employee performs competently.").

10. Wolfe v. Graether, 389 N.W.2d at 653; Albert v. Davenport, 385 N.W.2d at 238. Cases in which the facts have supported a finding of additional consideration include Holden v. Construction Mach. Co., 202 N.W.2d 348 (Iowa 1972), and Stauter v. Walnut Grove Prods., 188 N.W.2d 305 (Iowa 1971). In *Holden* permanent employment was supported by the employee's settlement of a litigious controversy. Holden v. Construction Mach. Co., 202 N.W.2d at 362. In *Stauter* an employer who offered lifetime employment in conjunction with the purchase of a competitor's business was held to that offer. Stauter v. Walnut Grove Prods., 188 N.W.2d at 312.

11. Collins v. Parsons College, 203 N.W.2d 594 (Iowa 1973).

12. *Id.* at 599; Laird v. Eagle Iron Works, 249 N.W.2d at 647.

13. Wolfe v. Graether, 389 N.W.2d 643 (Iowa 1986).

14. *Id.* at 653.

15. *Id.*

16. Albert v. Davenport Osteopathic Hosp., 385 N.W.2d 237, 238 (Iowa 1986); Collins v. Parsons College, 203 N.W.2d 594, 599 (Iowa 1973).

unable to show "additional consideration," particularly where previously employment was at-will.[17]

The theory of the "additional consideration" rule is that when an employee actually gives up a concrete benefit to accept new employment, it is appropriate to imply a limitation on the employer's power of termination as best reflecting the reasonable expectations of the parties.[18] Some jurisdictions have ruled that moving to the location of new employment may constitute the giving up of something concrete to support permanent or lifetime employment.[19] The Iowa Supreme Court has not ruled upon this issue.[20] In the absence of "additional consideration," a discharged employee must base her claim on another theory.

II. Modern Evolution of the Employment-at-Will Doctrine

In the mid-1970s, lawyers for discharged employees began to urge wrongful discharge theories designed to avoid rigid compliance with the at-will doctrine. The Iowa Supreme Court heard numerous claims, yet adhered to the employment-at-will doctrine and the requirement of "additional consideration" until 1987.[21] Since then, the Iowa Supreme Court has recognized at least two theories under which an employer's at-will powers may be narrowed.

A. *Implied Contract Theory*

In the last decade, a growing number of state courts have recognized an implied contract theory in order to escape the traditional employment-at-will doctrine.[22] The implied contract exception to employment at will is

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17. Albert v. Davenport Osteopathic Hosp., 385 N.W.2d at 239-40; Laird v. Eagle Iron Works, 249 N.W.2d 646, 647-48 (Iowa 1977); Moody v. Bogue, 310 N.W.2d 655, 659 (Iowa Ct. App. 1981). In Hanson v. Central Show Printing Co., 256 Iowa 1221, 1222-23, 130 N.W.2d 654, 655-56 (1964), the court ruled that the giving up of an opportunity to take other employment did not constitute sufficient consideration to support permanent employment despite the employer's assurance of permanent employment after being told of the employee's other offer. *Cf.* Lewis v. Minnesota Mut. Life Ins. Co., 240 Iowa 1249, 1260, 37 N.W.2d 316, 322-23 (1949) (giving up of opportunity to take other employment not additional consideration).

18. J. McCarthy, Punitive Damages in Wrongful Discharge Cases § 3.57, at 207 (1985).

19. *See* 8 Empl. Coordinator (Research Inst. Am.) ¶ 22,812, at 82,736 (1984); J. McCarthy, *supra* note 18, § 3.66, at 221-22.

20. *But see* Bixby v. Wilson & Co., 196 F. Supp. 889 (N.D. Iowa 1961) (federal court predicting Iowa law held that incurring expense of moving was not sufficient to support permanent employment). In *Bixby*, however, the court did not indicate the place from which the employees' families were relocated. *Id.*

21. In fact the court stated as recently as 1985, "Employment at will . . . cannot be used as a basis for an action for wrongful discharge or breach of employment contract." Haldeman v. Total Petroleum, Inc., 376 N.W.2d 98, 105 (Iowa 1985).

22. *See, e.g.*, Pugh v. See's Candies, Inc., 116 Cal. App. 3d 311, 171 Cal. Rptr. 917 (1981); Continental Air Lines, Inc. v. Keenan, 731 P.2d 708 (Colo. 1987); Kinoshita v. Canadian Pac. Airlines, Ltd., 724 P.2d 110 (Haw. 1986); Duldulao v. St. Mary of Nazareth Hosp. Center, 115

most often applied where an employer promulgates personnel policies, which are communicated to its employees.[23] Often the terms of personnel policies are not contained in an express written contract signed by both the employer and the employee. A number of courts have therefore recognized that employees may reasonably rely upon policies, unilaterally adopted by the employer, as establishing job security.[24] In exchange for such policies, employers presumably obtain increased employee loyalty and improved performance.[25] As a result, numerous courts have held that personnel policies which limit circumstances under which employees might be terminated or provide a progressive disciplinary system, may become part of the bargain between the employer and the employee notwithstanding the traditional employment-at-will doctrine. The terms of the personnel policies are said to be part of an implied contract between an employer and employee because they reflect the reasonable expectations of the parties.[26]

The Iowa Supreme Court previewed its thoughts on an implied contract exception to the employment-at-will doctrine in the 1987 case of *Young v. Cedar County Work Activity Center, Inc.*[27] Lillian Young signed a contract stating her employment could be terminated on thirty-days' notice either by the employee or her employer.[28] An employee handbook established a five-step grievance procedure, culminating in termination of employment.[29] Young received a letter from the governing board of the center terminating her employment prior to the execution of the fifth step of the grievance procedure.[30] Young sued for breach of contract and argued that the grievance procedure described in the employee manual formed a part of her employment contract.[31] The Iowa Supreme Court stated that the trial court "might have found on the evidence that . . . the employee's manual formed a part

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Ill. 2d 482, 505 N.E.2d 314 (1987); Staggs v. Blue Cross of Maryland, Inc., 61 Md. App. 381, 486 A.2d 798 (1985); Toussaint v. Blue Cross & Blue Shield, 408 Mich. 579, 292 N.W.2d 880 (1980); Pine River State Bank v. Mettille, 333 N.W.2d 622 (Minn. 1983); Johnston v. Panhandle Coop. Ass'n, 225 Neb. 732, 408 N.W.2d 261 (1987); Osterkamp v. Alkota Mfg., 332 N.W.2d 275 (S.D. 1983); Thompson v. St. Regis Paper Co., 102 Wash. 2d 219, 685 P.2d 1081 (1984); Ferraro v. Koelsch, 124 Wis. 2d 154, 368 N.W.2d 666 (1985); Mobile Coal Producing, Inc. v. Parks, 704 P.2d 702 (Wyo. 1985).

23. *See, e.g.*, Toussaint v. Blue Cross & Blue Shield, 408 Mich. at 613, 292 N.W.2d at 892.

24. *Id.*; Thompson v. St. Regis Paper Co., 102 Wash. 2d at 228, 685 P.2d at 1087 ("the principle, though not exclusive, reason employers issue such manuals is to create an atmosphere of fair treatment and job security for their employees").

25. Toussaint v. Blue Cross & Blue Shield, 408 Mich. at 613, 292 N.W.2d at 892.

26. Cannon v. National By-Products, Inc., 422 N.W.2d 638, 640 (Iowa 1988); Young v. Cedar County Work Activity Center, Inc., 418 N.W.2d 844, 847-48 (Iowa 1987); Toussaint v. Blue Cross & Blue Shield, 292 N.W.2d at 892.

27. Young v. Cedar County Work Activity Center, Inc., 418 N.W.2d 844 (Iowa 1987).

28. *Id.* at 845.

29. *Id.*

30. *Id.* at 846.

31. *Id.*

of plaintiff's contract of employment."[32] The court noted that the trier of fact could look to the reasonable expectations of the parties in making its determination.[33] Unfortunately for Mrs. Young, the supreme court upheld the trial court's factual finding that the manual did not become part of her contract.[34] The supreme court appeared to imply, however, that in the proper factual setting provisions of a personnel manual might become contractually binding on an employer.

In April of 1988 the Iowa Supreme Court revisited the implied contract theory in *Cannon v. National By-Products, Inc.*[35] James Cannon began working for National By-Products in 1969.[36] His employment was for an indefinite period of time and he had no employment contract; therefore, Cannon was originally an at-will employee.[37] Later, the company promulgated written personnel policies and distributed them in a handbook to its employees.[38] One of the policies provided that "[n]o employee will be suspended, demoted or dismissed without just and sufficient cause."[39] "Sufficient cause" was defined as including "dishonesty, negligence, incompetence, insubordination, intoxication while on duty, failure to report for work, or refusal to perform any reasonable work, service or labor."[40]

Notwithstanding the personnel policy, National By-Products discharged Cannon from employment based upon an alleged concern that a back injury would interfere with Cannon's ability to perform the requirements of his job.[41] Cannon sued for breach of contract, arguing that his discharge was improper because his employer lacked just cause for his termination.[42] Unlike *Young*, the finder of fact held that the personnel policies were part of the contract of employment, and the court entered judgment for the plaintiff.[43]

The Iowa Supreme Court affirmed the judgment.[44] Relying on *Young v. Cedar County Work Activity Center, Inc.*,[45] the court stated:

> [T]he question of whether the written personnel policies became part of plaintiff's contract is to be determined on the basis of plaintiff's reasonable expectations. Even if it was not defendant's intention that these poli-

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32. *Id.* at 848.
33. *Id.* at 847-48.
34. *Id.*
35. Cannon v. National By-Products, Inc., 422 N.W.2d 638 (Iowa 1988).
36. *Id.* at 639.
37. *Id.* at 641.
38. *Id.* at 639.
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.* at 640.
44. *Id.* at 643.
45. Young v. Cedar County Work Activity Center, Inc., 418 N.W.2d 844 (Iowa 1987).

> cies confer contractual rights, a contract may be found to exist if this was the plaintiff's understanding and defendant had reason to suppose the plaintiff understood it in that light . . . . The issue of how these written personnel policies were perceived by plaintiff was, on the present record, an issue to be determined by the trier-of-fact.[46]

Cannon teaches that the controlling factual issues when personnel policies have been adopted by an employer are: (1) whether the employee "reasonably expected" that the policies became part of the contractual relationship; and (2) whether the employer should have realized that the employee regarded the policies as contractual in nature. The subjective intent of the employer is not relevant.[47]

The court in *Cannon* also considered whether an employee would be required to give "additional consideration" in order to modify an at-will employment relationship through the adoption of personnel policies.[48] The court exhaustively reviewed the Iowa authorities and concluded that it would be "particularly inappropriate to require an independent consideration for modification of an agreement which is conceded to have been a mere contract at will by defendant."[49]

The contractual status of an employee handbook is a threshold question to be resolved by the trial court on motion or prior to the submission of the implied contract theory to the jury.[50] Two post-*Cannon* Iowa Supreme

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46. Cannon v. National By-Products, Inc., 422 N.W.2d at 640; *see* Toussaint v. Blue Cross & Blue Shield, 408 Mich. at 614-15, 292 N.W.2d at 895. In *Toussaint* the court held that a just cause provision for discharge "may become part of the contract [of employment] . . . as a result of an employee's legitimate expectations grounded in an employer's policy statements." *Id.* at 598, 292 N.W.2d at 885. The court further stated:

> Although Toussaint's employment was for an indefinite term, the jury could find that the relationship was not terminable at the will of Blue Cross. Blue Cross had established a company policy to discharge for just cause only, pursuant to certain procedures, had made that policy known to Toussaint, and thereby had committed itself to discharge him only for just cause in compliance with the procedures. There were, thus, on this separate basis alone, special circumstances sufficient to overcome the presumptive construction that the contract was terminable at will.

Id. at 614, 292 N.W.2d at 892.

47. Cannon v. National By-Products, Inc., 422 N.W.2d at 640; *see* Goodkind v. University of Minnesota, 417 N.W.2d 636, 639 (Minn. 1988) (contract determined on outward manifestations not subjective intentions); Lewis v. Equitable Life Assurance Soc'y, 389 N.W.2d 876, 883 (Minn. 1986) (same).

48. Cannon v. National By-Products, Inc., 422 N.W.2d at 641-42.

49. *Id.* at 641.

50. Fogel v. Trustees of Iowa College, 446 N.W.2d 451, 456 (Iowa 1989); *see also* Hunt v. IBM Mid Am. Employees Fed. Credit Union, 384 N.W.2d 853, 856 (Minn. 1986) ("the resolution of whether the language used rises to the level of a contract is for the court." Only the court can determine if the manual is "sufficiently definite to raise a triable issue of fact."). In Iowa the legal effect of a contract is always a matter of law to be resolved by the court. Farm Bureau Mut. Ins. Co. v. Sandbulte, 302 N.W.2d 104, 107 (Iowa 1981); Allen v. Highway Equip. Co., 239 N.W.2d 135, 139 (Iowa 1976).

Court cases demonstrate that some employment manuals, as a matter of law, may be insufficient to establish implied contractual terms.

In *McBride v. City of Sioux City*[51] a former city employee brought an action based on two separate employment manuals in effect in Sioux City. The plaintiff claimed that the manuals created a belief that he could only be discharged for cause.[52] The trial court granted summary judgment on the implied contract theory, and the plaintiff appealed.

The supreme court noted that employment manuals must meet three requirements in order to establish a unilateral contract of employment: "(1) the handbook must be sufficiently definite in its terms to create an *offer*; (2) the handbook must be communicated to and accepted by the employee so as to create an *acceptance*; and (3) the employee must continue working."[53] In analyzing the manuals at issue in *McBride*, the supreme court held that both manuals as a matter of law failed to meet the requisite level of definiteness to constitute an offer.[54] Additionally, one of the manuals failed to meet the second requirement of acceptance because it had been circulated only to department heads and not to individual employees.[55] Therefore, the su-

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51. McBride v. City of Sioux City, 444 N.W.2d 85 (Iowa 1989).

52. *Id.* at 90. One manual had no discharge for cause provision, and the other provided that "employees *may* be discharged for cause." *Id.*

53. *Id.* at 91.

54. *Id.* Other sister state courts have spent considerable time reviewing the issue of definiteness and may provide some additional guidance on how "definite" a policy must be. *See* Duldulao v. St. Mary of Nazareth Hosp. Center, 115 Ill. 2d 482, 490, 505 N.E.2d 314, 318-19 (1987) (three requirements exist to make an employee handbook enforceable: (1) it must be definite; (2) it must be widely distributed; and (3) employee must accept the offer by commencing or continuing work after becoming aware of handbook); Hunt v. IBM Mid Am. Employees Fed. Credit Union, 384 N.W.2d 853, 857 (Minn. 1986); Pine River State Bank v. Mettille, 333 N.W.2d 622, 630 (Minn. 1983) (terms must be sufficiently definite to allow finder of fact to determine there has been a breach); Harvet v. Unity Medical Center, Inc., 428 N.W.2d 574, 577 (Minn. Ct. App. 1988) (same); Johnson v. Panhandle Coop. Ass'n, 225 Neb. 732, 738, 408 N.W.2d 261, 266 (1987) (applying traditional contract notions of offer, acceptance and consideration to personnel policies). As an example of a definite policy regarding termination, see Woolley v. Hoffman-La Roche, Inc., 99 N.J. 284, 313, 491 A.2d 1257, 1271-73 (1985).

In Hunt v. IBM Mid Am. Employees Fed. Credit Union, 384 N.W.2d 853 (Minn. 1986), the Minnesota court rejected an implied contract claim as indefinite that was based on the following discharge policy: "In the event of a serious offense, an employee will be terminated immediately." *Id.* at 855. The court stated that lack of definition for the term "serious offense" and the absence of specific procedures weighed against the claimed implied contract. *Id.* at 857. The same court, however, recognized the definiteness of the personnel policy at issue in *Pine River State Bank v. Mettille*, which provided a three-stage disciplinary procedure resulting in discharge only "for an employee whose conduct does not improve as a result of the previous action taken." Pine River State Bank v. Mettille, 333 N.W.2d at 626.

55. *Id.* There remains a question unanswered by the court regarding the effectiveness of the communication of the policies distributed only to department heads if a former department head were to raise an implied contract claim based on those policies. It can certainly be argued by counsel for the former department head that wide distribution is not necessary if the individual has actual knowledge of the employment manual and has developed reasonable expecta-

preme court ruled that McBride did not have an implied contract of employment with the city based on the employee manuals.

The supreme court rejected another employee handbook as indefinite in *Fogel v. Trustees of Iowa College*.[56] The policy handbook did not indicate that dismissal would occur only for cause.[57] The termination provision, read in its most favorable light by the court, merely stated that the college would attempt to provide notice in the event of discharge in three different situations.[58] Thus, the supreme court upheld the defendant's motion for summary judgment on the ground that, as a matter of law, Fogel had no guarantee of continued employment.

Notwithstanding the limitations in *McBride* and *Fogel*, the recognition by the Iowa Supreme Court of the implied contract exception to the employment-at-will doctrine reveals that the court believes that the realities of the modern workplace require some limitation on the scope of the employment-at-will doctrine. *Young* and *Cannon* give greater weight to the employee's reasonable expectations based on personnel policies rather than the employer's subjective intention expressed during litigation. The court's approach in *Young* and *Cannon* reflect the view that an employer does not publish manuals merely to clutter an employee's desk; an employer publishes the manuals in anticipation that the manuals will imbue employee loyalty and enhance employee performance by giving employees a sense of security.[59] The Iowa Supreme Court has made it clear that it will not allow employers to obtain the benefit of personnel policies without assuming the burdens they appear to impose.[60]

While *Young* and *Cannon* are clearly watershed cases, a number of important issues relating to the implied contract theory remain to be addressed. For instance, it is not clear to what extent an express statement of at-will status in an employment application will preclude an action for

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tions of continued employment based thereon.

56. Fogel v. Trustees of Iowa College, 446 N.W.2d 451 (Iowa 1989). The policy handbook provided, in part, as follows:

> DISMISSAL. If termination is necessary for reasons not prejudicial to the employee (reasons unrelated to job performance), he/she may expect to receive notice of not less than one month prior to the termination date . . . . When dismissal is necessary because of unsatisfactory work, as much notice as possible will be given, ordinarily not less than two weeks. However, dismissals occurring during the probationary period require no notice. Dismissals necessitated by dishonesty or misconduct become effective immediately upon determination of facts concerning the offense.

Id. at 452.

57. *Id.* at 456.

58. *Id.*

59. Toussaint v. Blue Cross & Blue Shield, 408 Mich. 579, 613, 292 N.W.2d 880, 892 (1980); *see supra* notes 23 & 24.

60. *See* Lopatka, *The Emerging Law of Wrongful Discharge—A Quadrennial Assessment of Labor Law Issue of the 80s*, 40 BUS. LAW. 1, 27 (1984) (employees tend to rely on various publications, notices and letters drafted by employers).

breach of an implied contract of employment. Counsel for a discharged employee is likely to argue that a statement in an employment application should not bind the employee unless the statement was sufficiently called to the attention of the employee at the time the application was signed and both parties intended the statement to be a part of their employment relationship.[61] The employer's counsel will claim the employee's ability to read will bind the employee to the terms of a signed application.[62] Courts from other jurisdictions have reached widely disparate results on this issue.[63]

Another question regarding the implied contract theory which remains to be resolved by the Iowa courts is whether and under what circumstances an employer can unilaterally disclaim provisions in personnel policy manuals, especially after employees have relied upon them for many years. Employers in some jurisdictions have been somewhat successful in arguing that a disclaimer placed at the beginning of a personnel manual can limit an employee's reliance on policies contained therein. The issue, however, is not entirely free from doubt.[64]

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61. *See* J. CALAMARI & J. PERILLO, THE LAW OF CONTRACTS §§ 9.43-.44, at 330-43 (2d ed. 1977). The authors point out that statements such as those in employment applications are frequently analyzed as contracts of adhesion.

62. *See* Joseph L. Wilmotte & Co. v. Rosenman Bros., 258 N.W.2d 317, 323-24 (Iowa 1977).

63. Pagdilao v. Maui Intercontinental Hotel, 3 Individual Empl. Rts. Cas. (BNA) 1628, 1631 (D. Haw. Oct. 13, 1988) (at-will language in employment application will not foreclose plaintiff from claiming implied contract of employment based on employee handbook); Schipani v. Ford Motor Co., 102 Mich. App. 606, 611-15, 302 N.W.2d 307, 309-11 (1981) (specific disclaimer in employment agreement that employment was at-will may be overcome by oral and written assurances of continued employment). *But see* Reid v. Sears, Roebuck & Co., 790 F.2d 453, 456, 461 (6th Cir. 1986) *aff'g* 588 F. Supp. 558 (E.D. Mich. 1984) (the unequivocal language in application that the "employment . . . can be terminated with or without cause, and with or without notice, at any time" defeats an employee's claim that she can be discharged only for good cause); Gianaculas v. Trans World Airlines, Inc., 761 F.2d 1391, 1394 (9th Cir. 1985) (the court held an employment application expressly providing for employment-at-will relationship cannot be contradicted by implied contract covering the same subject); Novosel v. Sears, Roebuck & Co., 495 F. Supp. 344, 346 (E.D. Mich. 1980) (language in application stating employment could be terminated at any time is binding on employee attempting to sue for wrongful discharge).

64. *See generally* S. PEPE & S. DUNHAM, AVOIDING AND DEFENDING WRONGFUL DISCHARGE CLAIMS § 2.24 (1987) (some courts have recognized that a disclaimer allowing the employer to make unilateral changes in personnel policies can defeat a claim that the policies formed a binding contract); 8 Empl. Coordinator (Research Inst. Am.) ¶¶ 22,697, 22,820-21 (1984) (employers can reduce potential liability for implied contracts based on personnel policies if disclaimers added to the cover of policy manuals and company documents regarding permanent employment are purged); Marshall, *Minimizing the Risk of Implied-Contract Employment Litigation*, 33 PRAC. LAW 61 (Dec. 1987). *But see* Aiello v. United Airlines, Inc., 818 F.2d 1196, 1198, 1200 (5th Cir. 1987) (purported disavowal of contract rights in introductory statement to personnel handbook ineffective in light of detailed grievance procedures and statement in policies that employment is terminable only for cause); Loffa v. Intel Corp., 153 Ariz. 539, 544, 738 P.2d 1146, 1151 (Ct. App. 1987).

B. *Public Policy Tort Exception*

A number of recent judicial decisions have also circumvented the employment-at-will doctrine through the recognition of a "public policy" exception to the doctrine. The theory suggests that recovery should be allowed to an employee who is dismissed from employment in violation of a fundamental principle of public policy. A discharge may be in violation of public policy if the reason for the discharge is an employee's assertion of a legal right, performance of a legal duty, refusal to commit an illegal or unethical act, or whistleblowing.[65] Some courts have recognized that a worker cannot be terminated simply for seeking to exercise a statutory right, such as applying for workers' compensation.[66] It has also been held that an employee cannot be terminated for serving on a jury[67] or for refusing to give false testimony under oath.[68]

In some states which have embraced a "public policy" exception to employment-at-will, the plaintiff has the burden of demonstrating that the termination contravenes a public policy which is clearly mandated and specifically addressed in a statutory provision.[69] Other states, however, appear more open in their approach to public policy torts, holding that the public policy exception may be rooted in judicial precedent, statutes, or administrative decisions.[70] New Hampshire leaves the question of public policy up to the jury, which may find the public policy resting on nonstatutory as well as statutory grounds.[71]

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65. *See generally Cause of Action by "At Will" Employee for Wrongful Discharge*, 1 C.O.A. 273 (1983) (indicating tort cause of action exists for pursuit of legal duty, refusal to participate in or cover up crime, pursuit of a legal right or miscellaneous employee activities); *Cause of Action for Wrongful Discharge from Employment in Retaliation for Exercising Workers' Compensation Rights*, 16 C.O.A. 785 (1988) (outlining elements of and defenses to such an action).

66. *See, e.g.*, Frampton v. Central Ind. Gas Co., 260 Ind. 249, 251-53, 297 N.E.2d 425, 428 (1973); Murphy v. City of Topeka, 6 Kan. App. 2d 488, 495-96, 630 P.2d 186, 192 (1981); Krien v. Marian Manor Nursing Home, 415 N.W.2d 793, 794-95 (N.D. 1987).

67. Nees v. Hocks, 272 Or. 210, 219, 536 P.2d 512, 516 (1975).

68. Petermann v. International Bd. of Teamsters, 174 Cal. App. 2d 184, 188-89, 344 P.2d 25, 27 (1959).

69. *See, e.g.*, Campbell v. Eli Lilly & Co., 413 N.E.2d 1054, 1061-62 (Ind. Ct. App. 1980); Brockmeyer v. Dun & Bradstreet, 113 Wis. 2d 561, 579, 335 N.W.2d 834, 842 (1983).

70. Parnar v. Americana Hotels, Inc., 65 Haw. 370, 380, 652 P.2d 625, 631 (1982); Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58, 72, 417 A.2d 505, 512 (1980) (professional code of ethics may contain public policy). In *Parnar* the court stated:

> In determining whether a clear mandate of public policy is violated, courts should inquire whether the employer's conduct contravenes the letter or purpose of a constitutional, statutory, or regulatory provision or scheme. Prior judicial decisions may also establish the relevant public policy. However, courts should proceed cautiously if called upon to declare public policy absent some prior legislative or judicial expression on the subject.

Parnar v. Americana Hotels, Inc., 65 Haw. at 380, 652 P.2d at 631.

71. Cloutier v. Great Atl. & Pac. Tea Co., 121 N.H. 915, 924, 436 A.2d 1140, 1145 (1981).

Some courts have characterized the violation of a "clear mandate of public policy" as a breach of an implied contractual provision not to discharge an employee for reasons that would contravene public policy.[72] Other courts have classified terminations in violation of public policy as a tort,[73] thereby establishing a theoretical basis for an award of punitive damages.[74]

The Iowa Supreme Court first confronted the public policy exception in *Abrisz v. Pulley Freight Lines, Inc.*[75] In *Abrisz* the plaintiff supported a fellow employee's claim for unemployment compensation by writing a letter critical of her employer's business practices.[76] Pulley Freight Lines discharged Sharon Abrisz from employment for writing this letter.[77]

Abrisz sued, claiming that although her employment was at-will, her discharge was at odds with public policy.[78] She relied upon cases from other jurisdictions recognizing a cause of action when an employee is discharged for exercising a statutory right.[79] The trial court found that Pulley Freight Lines had legitimate cause for the discharge of Abrisz, based on misstatements in her letter.[80]

The Iowa Supreme Court upheld the decision of the trial court.[81] The court noted that the factual determination of the trial court that the Abrisz letter contained inaccurate or factually wrong particulars was supported by the record.[82] Under this circumstance, the court held that the termination of Abrisz was justified.[83] The court expressly avoided the question of whether a public policy exception to employment at will might exist under other factual circumstances.[84]

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72. *See, e.g.*, Pierce v. Ortho Pharmaceutical Corp., 84 N.J. at 72, 417 A.2d at 512.

73. *See, e.g.*, Palmateer v. International Harvester Co., 85 Ill. 2d 124, 133-35, 421 N.E.2d 876, 880-81 (1981).

74. The constitutionality of punitive damages in civil actions is under attack in the courts. In Kelco Disposal, Inc. v. Browning-Ferris Indus. of Vt., Inc., 845 F.2d 404 (2d Cir.), *aff'd*, 109 S. Ct. 2909 (1989), the United States Supreme Court rejected a constitutional challenge to punitive damages one hundred times the amount of the compensatory damages under the excessive fines provision of the eighth amendment. The Iowa Supreme Court recently remanded a case to the district court for retrial on punitive damages due to the excessiveness of the original award. Johnson v. Norfolk S. Corp., No. 88-1617 (Iowa Sup. Ct. Nov. 22, 1989).

75. Abrisz v. Pulley Freight Lines, Inc., 270 N.W.2d 454 (Iowa 1978).

76. *Id.* at 455.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 456. The trial court found that four statements in the letter written by Abrisz were inaccurate or factually wrong. *Id.*

81. *Id.* at 457.

82. *Id.* at 456.

83. *Id.*

84. *Id.* at 456-57. The Iowa Supreme Court alluded to the public policy theory again in Haldeman v. Total Petroleum, Inc., 376 N.W.2d 98, 105 (Iowa 1985), but held that the facts of the case would not support such a claim. In another 1985 decision, the court considered the viability of the public policy exception to the employment-at-will doctrine for allegedly dis-

In September of 1988 the public policy issue returned to the Iowa Supreme Court sitting *en banc* in *Springer v. Weeks & Leo, Inc.*[85] Mary Springer was employed by Weeks and Leo Company, a manufacturer of cosmetics and pharmaceuticals. She was first positioned on its assembly line and later as a labeler.[86] During her employment, Springer developed bilateral carpal tunnel syndrome.[87] Surgery was performed to correct the condition, and, while her condition was healing, Springer received workers' compensation benefits.[88]

Weeks and Leo Company discharged Springer from employment shortly after she returned to work due to her refusal to execute a statement that her carpal tunnel syndrome problems were not work related.[89] Springer sued for wrongful discharge.[90] The district court directed a verdict for the employer on the ground that Springer's employment was at-will, thus, she could be discharged from her employment at any time for any reason.[91]

On appeal, the Iowa Supreme Court noted that the question of whether the court would recognize a public policy exception to the employment-at-will doctrine was not resolved by the decision in *Abrisz*.[92] Citing authority from other jurisdictions, the court held that "a cause of action should exist for tortious interference with the contract of hire when the discharge serves to frustrate a well-recognized and defined public policy of this state."[93] The court reasoned that "by sanctioning wrongful discharge actions for contravention of a public policy which has been articulated in a statutory scheme, we are acting to advance a legislatively declared goal."[94]

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charging an employee for alcoholism. Northrup v. Farmland Indus., Inc., 372 N.W.2d 193, 196-97 (Iowa 1985). The court ultimately held that the Iowa Civil Rights Act provided an exclusive remedy for that violation. *Id.*

85. Springer v. Weeks & Leo Co., 429 N.W.2d 558 (Iowa 1988); *see Trends in the Law*, A.B.A.J. 82-83 (Jan. 1989).

86. Springer v. Weeks & Leo Co., 429 N.W.2d at 559.

87. *Id.*

88. *Id.* In her claim for benefits, Springer alleged "that her carpal tunnel syndrome condition was caused by the physical activities required in her employment with defendant." *Id.* The company's workers' compensation carrier determined that her injury was a work-related condition. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 560.

93. *Id.* The public policy at issue in *Springer* involved IOWA CODE § 85.18 (1987), which states: "No contract, rule, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter [workers' compensation] except as herein provided."

94. *Id.* at 561. This position was affirmed by the Iowa Supreme Court in Conaway v. Webster City Products Co., 431 N.W.2d 795, 799 (Iowa 1988). In *Conaway*, cases involving two union employees were remanded to the trial court to allow the employees to pursue actions based on the public policy exception independent of rights under their collective bargaining agreement. *Id.* at 800. The court stated that the cause of action is "limited to a violation of

The court in *Springer* characterized the cause of action as a "tortious interference with the contract of hire."[95] This approach differs from other tortious interference cases because in *Springer* the employer interfered with its own contract.[96] Tortious interference cases generally involve an act of interference by a third party who is not a party to the original contract.[97] The Iowa Supreme Court indicated that other courts have taken the tortious interference approach to an employer's discharge of an at-will employee on statutorily prohibited grounds;[98] however, the court did not cite any authority for that proposition.

Three justices dissented in *Springer*, adhering to the doctrine that "persons employed under contracts at will may lose their jobs at the whim of the employer."[99] The dissenters stated that the fact "the employer acted from a bad motive" should not prevent application of the employment-at-will rule.[100]

The Iowa Supreme Court recently considered a case *en banc* challenging a jury verdict for the plaintiff based on the *Springer* theory. In *Niblo v. Parr Manufacturing, Inc.*[101] Rose Niblo sought damages for dismissal from her employment as a result of a possible workers' compensation claim. The jury returned a general verdict in the amount of $12,000.[102] The employer, on appeal, did not challenge Niblo's ability to bring such an action, but challenged an instruction allowing the jury to consider an award of damages for emotional distress and the sufficiency of evidence to support such a claim.[103]

The court ruled that the record evidence allowed the jury to deduce that the threat of filing a workers' compensation claim was the basis for plaintiff's discharge.[104] The court then turned to the damages recoverable for wrongful discharge in violation of public policy and addressed the availability of mental distress damages in that setting. In a seven to one decision, the court held that damages for emotional distress can be recovered despite lack of a physical injury when the tort alleged involves intentional or unlawful conduct as opposed to negligent conduct.[105] The court indicated that public policy dictated this result because the conduct of the employer would

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public policy." *Id.* at 799.

95. Springer v. Weeks & Leo Co., 429 N.W.2d at 560.

96. *Id.* at 560-61.

97. *Id.* at 561 n.1; *see* RESTATEMENT (SECOND) OF TORTS § 767 (1979).

98. Springer v. Weeks & Leo, Co., 429 N.W.2d at 561 n.1.

99. *Id.* at 564. The dissenters also noted that the offensive firing at issue in *Springer* blurred the fact that the at-will employee had "no legal right to continued employment." *Id.*

100. *Id.*

101. Niblo v. Parr Mfg., Inc., 445 N.W.2d 351 (Iowa 1989).

102. *Id.* at 352.

103. *Id.*

104. *Id.* at 353.

105. *Id.* at 355.

injure the employee financially and, quite possibly, mentally.[106] The court held that damages for mental distress which are causally connected to and reasonably expected to result from the discharge are compensable,[107] thus opening yet another avenue of recovery to discharged employees. The ruling in *Niblo* also evidences the potential for full tort damages in an action for termination of employment in violation of public policy.[108]

A number of important questions remain to be decided regarding the recognition of a cause of action for wrongful discharge in violation of public policy. The most pressing question is whether the public policy foundation must be rooted in specific legislation[109] or whether the public policy may be found in judicial decisions or other sources.[110] It is conceivable, for instance, that the court could find a judicially developed policy against malicious acts sufficient to support a public policy cause of action against an employer who maliciously fires an employee, even though there is no specifically identifiable legislative source for such policy. In addition, the court will have to sift through various statutory provisions or other legal sources of public policy to determine which policies are so "fundamental" as to support a cause of action by a terminated employee.[111]

III. Potential Future Erosion of Employment at Will

By expressly embracing the implied contract and public policy tort exceptions to the employment-at-will doctrine, the Iowa Supreme Court has significantly expanded judicial remedies available to employees who are terminated without cause. There remain, however, at least two additional theories that the Iowa Supreme Court may be asked to embrace which would further eviscerate the employment-at-will rule: (1) an implied covenant of good faith and fair dealing; and (2) malicious discharge.

A. *Implied Covenant of Good Faith and Fair Dealing*

Generally, all contracts imply a covenant of good faith and fair deal-

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106. *Id.*

107. *Id.*

108. *But see* Foley v. Interactive Data Corp., 47 Cal. 3d 654, 670-71, 765 P.2d 373, 380, 254 Cal. Rptr. 211, 218 (1988).

109. *See generally* 8 Empl. Coordinator (Research Inst. Am.) ¶ 22,720, at 82,701 (1984) (legislative sources of public policy include constitutional provisions, statutes and administrative regulations).

110. *See generally* 8 Empl. Coordinator (Research Inst. Am.) ¶ 22,722, at 82,703-04 (1984) (some states may find public policy in nonstatutory sources such as judicial decisions).

111. Moore v. Home Ins. Co., 601 F.2d 1072 (9th Cir. 1979); Daniel v. Magma Copper Co., 127 Ariz. 320, 620 P.2d 699 (Ct. App. 1980); DeMarco v. Publix Super Markets, Inc., 360 So. 2d 134 (Fla. Dist. Ct. App. 1978), *aff'd*, 384 So. 2d 1253 (Fla. 1980); Brockmeyer v. Dun & Bradstreet, 113 Wis. 2d 561, 579, 335 N.W.2d 834, 840-41 (1983).

ing.[112] Some courts have been reluctant to apply this maxim to employment contracts.[113] Other jurisdictions, however, have implied such a covenant in an employment context and have held that the covenant of good faith and fair dealing requires that a long-term employee may be terminated only for just cause.[114] The rationale for implying a covenant of good faith and fair dealing where a long-term employment relationship exists is simple: "A long-term employee has an expectation of continued employment provided that the employee's work performance is satisfactory . . . . The covenant, in a long-term employment situation, only requires the employer to have a fair and honest reason for termination."[115]

An implied covenant of good faith and fair dealing has also been invoked to protect employees who are terminated contrary to provisions of personnel policies.[116] Even where an employer gratuitously adopts personnel policies applicable to its employees, the employer presumably seeks "to secure an orderly, cooperative and loyal work force by establishing uniform policies."[117] Based on these policies, the employee develops peace of mind related to job security.[118] Failure to follow the established policies constitutes a breach of the employer's covenant to deal with the employee fairly and in good faith.[119] The critical issue when this theory is applied in the personnel policy context is whether the employer's objective manifestations induced the employee reasonably to believe he had job security and would be treated fairly by his employer.[120]

Cases involving the concept of good faith and fair dealing have been based on both contract and tort principles. The Montana Supreme Court in *Gates v. Life of Montana Insurance Co.*[121] has held that the duty of good

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112. RESTATEMENT (SECOND) OF CONTRACTS § 205 (1979). *See also* Crosier v. United Parcel Serv., Inc., 150 Cal. App. 3d 1132, 1138, 198 Cal. Rptr. 361, 364 (1983).

113. Scholtes v. Signal Delivery Serv., 548 F. Supp. 487, 494 (W.D. Ark. 1982). The court frankly stated in *Scholtes*, "Exactly why society needs 'good faith' in sales of goods but not in employment of those who manufacture them is unclear." *Id. But see* Fortune v. National Cash Register Co., 373 Mass. 96, 102, 364 N.E.2d 1251, 1255 (1977) (court applied legal requirement of good faith and fair dealing in contracts to decisions relating to termination of employees).

114. Pugh v. See's Candies, Inc., 116 Cal. App. 3d 311, 330, 171 Cal. Rptr. 917, 927 (1981); Cleary v. American Airlines, Inc., 111 Cal. App. 3d 443, 456, 168 Cal. Rptr. 722, 729 (1980); Flanigan v. Prudential Fed. Sav. & Loan Assoc., 720 P.2d 257, 261 (Mont. 1986); Dare v. Montana Petroleum Mktg. Co., 687 P.2d 1015, 1020 (Mont. 1984).

115. Flanigan v. Prudential Fed. Sav. & Loan Assoc., 720 P.2d at 261-62.

116. Gray v. Superior Court, 181 Cal. App. 3d 813, 226 Cal. Rptr. 570 (1986); Cleary v. American Airlines, Inc., 111 Cal. App. 3d 443, 168 Cal. Rptr. 722 (1980); Dare v. Montana Petroleum Mktg. Co., 687 P.2d 1015 (Mont. 1984); Gates v. Life of Mont. Ins. Co., 638 P.2d 1063 (Mont. 1982).

117. Gates v. Life of Mont. Ins. Co., 638 P.2d at 1067.

118. *Id.*

119. *Id.*; *see also* Cleary v. American Airlines, Inc., 111 Cal. App. 3d at 456-57, 168 Cal. Rptr. at 729.

120. *See* Dare v. Montana Petroleum Mktg. Co., 687 P.2d at 1020.

121. Gates v. Life of Mont. Ins. Co., 638 P.2d 1063 (Mont. 1982).

faith and fair dealing establishes a basis for a cause of action in tort if breached.[122] The vast majority of cases, however, have held that the implied covenant evolves from the contractual relationships of the parties and does not create independent tort duties.[123] Because of the potential for recovery of punitive damages in tort actions, the question of whether a breach of the covenant of good faith and fair dealing sounds in contract or tort is a very important issue.[124]

The Iowa Supreme Court has not recognized an implied covenant or duty of good faith and fair dealing in an employment termination case.[125] The court, however, has recognized the concept of good faith and fair dealing in nonemployment settings. For instance, in *Midwest Management Corp. v. Stephens*,[126] the Iowa Supreme Court held that a contractual agreement giving a party "sole discretion" to terminate a subscription agreement could be exercised only "in a reasonable manner on the basis of fair dealing and good faith."[127] The court has also acknowledged that causes of action

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122. *Id.* at 1067.

123. Vandegrift v. American Brands Corp., 572 F. Supp. 496 (D.N.H. 1983); Foley v. Interactive Data Corp., 47 Cal. 3d 654, 682-700, 765 P.2d 373, 389-401, 254 Cal. Rptr. 211, 227-39 (1988); Martin v. Federal Life Ins. Co., 109 Ill. App. 3d 596, 440 N.E.2d 998 (1982).

124. The California courts upon which Iowa might rely have recently withdrawn from the position that punitive damages may be available under the theory. Foley v. Interactive Data Corp., 47 Cal. 3d 654, 765 P.2d 373, 254 Cal. Rptr. 211 (1988). In *Foley* the California Supreme Court exhaustively discussed the differences between employment and insurance settings, holding the special relationship which exists in an insurance contract case does not exist in the usual employment relationship. *Id.* at 691, 765 P.2d at 395, 254 Cal. Rptr. at 233. To aid in understanding the shift in the position of the California Supreme Court, it is important to remember that Chief Justice Rose Bird and Associate Justices Cruz Reynoso and Joseph R. Grodin were voted out of office effective January 1987. *See* 75 A.B.A. J. 20 (Mar. 1989). The theory remains viable for recovery of compensatory damages in the appropriate factual setting in California.

The court in *Foley* reviewed the common law basis for a claimed breach of the duty of good faith and fair dealing. Historically based on California's "good faith" cases, the court recited that a breach of good faith is established "whenever the employer engages in 'bad faith action extraneous to the contract, combined with the obligor's intent to frustrate the [employee's] enjoyment of contract rights.' " *Id.* at 698, 765 P.2d at 400, 254 Cal. Rptr. at 238. The court went on to acknowledge that under the California precedent it is enough to prove an unjust reason for termination and it is not required that the plaintiff establish a bad or hidden motive. *Id.*

At least one Iowa plaintiff has established to the satisfaction of a jury that his employment was terminated unjustly in violation of a duty to treat him fairly and in good faith in his employment. Greer v. Meredith Corp., No. 63-36901 (Polk County, Iowa, Dist. Ct. March 31, 1988) (unpublished opinion).

125. In an intriguing passage, however, the Iowa Court of Appeals, in reviewing a wrongful termination, stated that "it is not the function of the court to pass on the reasonableness of the employer's dissatisfaction, but only upon the employer's good faith . . . ." *See* Moody v. Bogue, 310 N.W.2d 655, 661 (Iowa Ct. App. 1981).

126. Midwest Management Corp. v. Stephens, 291 N.W.2d 896 (Iowa 1980).

127. *Id.* at 913.

exist for bad faith breach of an insurance contract.[128] In addition, a federal court in Iowa refused to dismiss a wrongful discharge action in an at-will contract situation, noting that "perhaps plaintiff can prove an employment relationship and other facts giving rise under Iowa common law to a cause of action for breach of an implied covenant of good faith and fair dealing."[129]

In *Fogel v. Trustees of Iowa College*,[130] however, the supreme court expressed reluctance to embrace a broad theory of good faith and fair dealing in an employment setting. In *Fogel* the plaintiff challenged his dismissal after twelve years of service for the college as a receiving clerk and custodian in the food service department.[131] Apparently, Fogel developed a case of head lice while he worked for the food service.[132] Fogel sought medical attention and at the request of his employer obtained a medical release to return to work.[133] Nonetheless, Fogel was fired.[134] The termination letter stated that Fogel had put the food service operation in jeopardy by coming to work with head lice.[135] The letter also cited a breach of sanitary standards which occurred in 1981 when Fogel urinated into a mop bucket.[136]

The trial court granted the college's motion for summary judgment on the good faith and fair dealing theory, and the supreme court affirmed with the passing observation that "the facts in the record before us simply do not compel its consideration."[137] While the factual context is obviously unattractive, the court did not explain precisely why summary judgment was appropriate.

In its discussion of the good faith and fair dealing theory, however, the court seemed to express a reluctance to embrace it. The court noted, for instance, that "only a handful of states have adopted the doctrine,"[138] and that only one state recognized the theory as based in tort rather than contract.[139] The final word on the theory is yet to be written. The court may have a different attitude in a more attractive factual setting than that

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128. In Kooyman v. Farm Bureau Mutual Insurance Co., 315 N.W.2d 30, 35-37 (Iowa 1982), the Iowa Supreme Court recognized an action based on an insurer's failure to investigate and negotiate a claim by a third party in good faith. Recently, the court stated that an insurer can also be held liable for bad faith failure to settle a claim with its insured. Dolan v. AID Ins. Co., 431 N.W.2d 790, 794 (Iowa 1988).

129. High v. Sperry Corp., 581 F. Supp. 1246, 1248 (S.D. Iowa 1984).

130. Fogel v. Trustees of Iowa College, 446 N.W.2d 451 (Iowa 1989).

131. *Id.* at 452.

132. *Id.* at 452-453.

133. *Id.* at 453.

134. *Id.*

135. *Id.*

136. *Id.* at 452-53.

137. *Id.* at 457.

138. *Id.* at 456 (citing *Monge v. Beebe Rubber Co.*, 114 N.H. 130, 316 A.2d 549 (1974)). The court in *Fogel* described *Monge* as presenting a "classic case" invoking a duty of good faith and fair dealing. *Id.* at 457.

139. *Id.*

presented in *Fogel*, such as when a long-term employee is fired just prior to the vesting of pension benefits.[140]

B. *Malicious Discharge*

The Pennsylvania courts have suggested that an employee may have a cause of action for malicious discharge under certain circumstances. In *Geary v. United States Steel Corp.*,[141] a long-term salesman was discharged after urging the company to withdraw from the market certain products which he felt were unsafe.[142] The company withdrew the products from the market, but shortly thereafter a superior discharged George Geary from his employment.[143] While the court concluded Geary was not wrongfully discharged, it indicated that if a discharge action is taken with specific intent to harm the employee, a viable cause of action may exist.[144]

A post-*Geary* case defined the cause of action with somewhat greater clarity. In *Tourville v. Inter-Ocean Ins. Co.*,[145] an insurance agent was effectively terminated based on the actions and comments of a company employee.[146] The court reiterated that *Geary* recognized two tort causes of action for wrongful discharge, one based on the public policy exception to the at-will rule and the other grounded in a discharge made with specific intent to harm the discharged employee.[147] "Specific intent to harm" can be proven by showing "disinterested malevolence"[148] or an "ulterior purpose" in the termination.[149] While the court concluded that Tourville had not complained of an action by the employer rising to the level of a specific intent to harm him, the court acknowledged that under circumstances discussed therein, an employee might frame a tort claim in addition to a public policy

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140. *Id.* at 456.

141. Geary v. United States Steel Corp., 456 Pa. 171, 319 A.2d 174 (1974).

142. *Id.* at 173, 319 A.2d at 175. In making his argument for withdrawal of the product, Geary bypassed his superiors and made his appeal to the vice-president responsible for sales of the product. *Id.*

143. *Id.*

144. *Id.* at 179-80, 319 A.2d at 177-78. The court stated that the presence of an ulterior purpose or disinterested malevolence would evidence a specific intent to harm.

145. Tourville v. Inter-Ocean Ins. Co., 353 Pa. Super. 53, 508 A.2d 1263 (1986).

146. *Id.* at 55, 508 A.2d at 1264. The employee picked up Tourville's customer files while he was ill, contacted the customers and made disparaging comments about Tourville's character. *Id.*

147. *Id.* at 55, 508 A.2d at 1265. The court noted that earlier cases had focused on the public policy exception. *Id.* & nn.2-3 (citing Yaindl v. Ingersoll-Rand Co., 281 Pa. Super. 560, 573 n.5, 422 A.2d 611, 618 n.5 (1980)).

148. Tourville v. Inter-Ocean Ins. Co., 353 Pa. Super. at 56-57, 508 A.2d at 1265. Disinterested malevolence exists when the employer has no reason for the action taken.

149. *Id.* at 57-58, 508 A.2d at 1266. An ulterior purpose in discharging an employee can be shown by a lack of proportionality between the triggering act and the termination, an impropriety in the discharge or some evidence of viciousness toward the discharged employee. *Id.*

tort for an abusive or malicious discharge.[150]

IV. Conclusion

The employment-at-will doctrine in Iowa has recently undergone dramatic changes. The recognition by the Iowa Supreme Court of the implied contract and public policy exceptions to the at-will rule have substantially limited its application. For the future, practitioners can anticipate that the Iowa courts will address the following issues related to the implied contract theory: (1) the effect of an express statement of at-will status in an employment application; and (2) the effect of disclaimers on longstanding employee policies.

Additionally, the courts will be asked to determine the parameters of this State's public policies and also to define which public policies are so fundamental as to support the public policy exception to the at-will rule. Plaintiffs will also present theories relating to implied covenants of good faith and fair dealing and malicious discharge which the courts must accept or reject as viable exceptions to the at-will rule.

With the recognition of two exceptions to the rule, the Iowa Supreme Court has provided fertile ground for further litigation. In the meantime, some Iowa employers will seek to avoid the implications of *Cannon* and *Young* through modification or abandonment of personnel policies which could give rise to implied contractual terms. Conversely, the Iowa legislature has considered and at this time rejected a proposal which would virtually abolish the employment-at-will doctrine by statute.[151] In any case, practitioners should monitor judicial and legislative developments in order to properly advise employers and employees of their legal obligations and rights.

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150. *Id.*

151. *See* H.F. 7, 73d Leg. (an act relating to wrongful discharge introduced on January 10, 1989, in the Labor and Industrial Relations Committee of the Iowa legislature).