EMPLOYMENT AT WILL IN IOWA: IS IT THE RULE OR THE EXCEPTION?

"[I]n this country it is held by an overwhelming weight of authority that a contract of indefinite employment may be abandoned at will by either party without incurring any liability to the other for damages."
—Harrod v. Wineman, 146 Iowa 718, 125 N.W. 812 (1910).
"[W]rongful discharge offends standards of fair conduct."
—Niblo v. Parr Manufacturing, Inc., 445 N.W.2d 351 (Iowa 1989).

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I. INTRODUCTION

The common law concept that a person employed at will is terminable at will has endured in Iowa and virtually throughout the United States for many years.[1] As one court has stated, "The employer has long ruled the workplace with an iron hand by reason of the prevailing common-law doctrine that such hiring is presumed to be at will and terminable at any time by either party."[2] Recently, the times and tides have changed. Employed-at-

1. Wagenseller v. Scottsdale Memorial Hosp., 147 Ariz. 395, ____, 710 P.2d 1025, 1030-31 (1985). The at-will doctrine is said to be adopted from English common law of 1562 which held that an employment contract was presumed to be one year long. *Id.* Employers could not fire an employee within this one year period unless they had good cause. *Id.* Originally in the 19th century, the American courts adopted this same philosophy. *Id.* Then suddenly, with the emergence of the Industrial Revolution, the impersonal employer-employee relationship took hold and the at-will doctrine was created. *Id.* This new at-will trend was adopted in a treatise by H.G. Wood entitled *Law of Master and Servant*, and was later cited in Martin v. New York Life Ins. Co., 148 N.Y. 117, 42 N.E. 416 (1895), which became the rule and authority of the day. *Id.*

2. Monge v. Beebe Rubber Co., 114 N.H. 130, ____, 316 A.2d 549, 551 (1974). This often-cited case is one of the first to suggest exceptions to the employment-at-will doctrine. The plaintiff in this case was fired for refusing to date her boss. *Id.* The court stated, "In all employment contracts, whether at will or for a definite term, the employer's interest in running his

will is no longer synonymous with terminable-at-will. This once universal rule has become riddled with exceptions and qualifications as courts and legislatures have recognized the need to protect workers from unlawful coercion, job related hazards, and retaliatory discharge. The erosion of this rule is also based on a recognition of implied contract rights to job security, necessary to ensure social stability.[3] Finally, on its face, the rule runs squarely into the foundation upon which contract law has been built: that generally, all contracts imply a covenant of good faith and fair dealing.[4]

How far will these exceptions erode the employment-at-will doctrine? Has the death knell been sounded for this once iron-clad rule which has generally labeled the American work force as expendable? As one scholar has assessed, "[E]mployers cannot expect to oversell employment opportunities, publish slick employee handbooks with reassuring job security statements, or make grandiose claims of fairness and enlightenment in an undiscriminating effort to keep unions out and land the best personnel, without substantial risk of wrongful discharge liability."[5] It is now time to stop, step back, and reassess the situation: should employment-at-will remain the rule or has it already become an exception?

Some jurisdictions have come close to rejecting the employment-at-will doctrine in substitution for a "good cause" standard.[6] Iowa has been traditionally slow to react to this evolution of employment law. Only in the past two years has the at-will doctrine come under close judicial scrutiny in Iowa. A brief history of the at-will doctrine in Iowa reveals that *Young v. Cedar County Work Activity Center, Inc.*[7] discussed the possibility of an implied contract of employment and *Cannon v. National By-Products, Inc.*[8] affirmed and documented the exception. *Springer v. Weeks & Leo, Co.*[9] was the first case that recognized a public policy exception to the at-will doctrine, and *Fogel v. Trustees of Iowa College*[10] discussed the idea that employers are under an implied covenant of good faith and fair dealing with

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business as he sees fit must be balanced against the interest of the employee in maintaining his employment, and the public's interest in maintaining a proper balance between the two." *Id.*

3. Cleary v. American Airlines, Inc., 111 Cal. App. 3d 443, 455, 168 Cal. Rptr. 722, 729 (1980).

4. RESTATEMENT (SECOND) CONTRACTS § 205 (1981).

5. Lopaka, *The Emerging Law of Wrongful Discharge—A Quadrennial Assessment of Labor Law Issue of the 80s*, 40 BUS. LAW. 1, 27 (1984).

6. California has led the field in this area by stating that longevity of service and expressed policies of employment "operate as a form of estoppel, precluding any discharge of such an employee by the employer without good cause." Cleary v. American Airlines, Inc., 111 Cal. App. 3d 443, 456, 168 Cal. Rptr. 722, 729 (1980). Other jurisdictions, such as Montana, which have adopted the good faith and fair dealing exception, have in essence rejected the theory behind the employment-at-will doctrine.

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

8. Cannon v. National By-Prods., Inc., 422 N.W.2d 638 (Iowa 1988).

9. Springer v. Weeks & Leo Co., 429 N.W.2d 558 (Iowa 1988).

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

respect to their employees. Although these inroads into the common law are substantial, the Iowa legislature has been "reactive" as opposed to "proactive" on the issue of employment law and, in the near future, needs to take a stance on the issue before courtroom litigation becomes too intense.

Job security is an important aspect in the life of an American worker. It is relied upon by employees, sometimes to their detriment. All that is asked of employers is that assurances and guarantees regarding job security not be given unless the employer fully intends to be bound by them.[11] Once assurances, guarantees, and guidelines are brought to the attention of the employee, they become the basis for employee reliance. Employees believe that they will not be terminated unless they violate these written and oral guidelines. At the very least, employees expect to be treated fairly and dealt with in good faith if they comply with the guidelines, handbooks, and other employment information. Unfortunately, this is not the case.[12]

This Note focuses on three basic areas that have currently evolved in this state in the past two years:[13] (1) the public policy exception, (2) the implied-in-fact contract, and (3) the implied-in-fact and implied-in-law covenants of good faith and fair dealing. Iowa is by no means the only state facing change in employment law. The three exceptions to the at-will doctrine have become judicially noted in a vast majority of states. Every state is currently assessing if, when, and how to recognize, apply, or interpret the exceptions it has created to this doctrine. Thus, Iowa is not alone.

This Note attempts to analyze and document the relevant aspects of these three issues by presenting a short history and development, an explanation of their current status in Iowa, and finally the potential for expansion in Iowa by tracing their logical progression in other jurisdictions of the United States. This expanse of knowledge hopefully culminates in an answer to the question: Employment at Will in Iowa—Is It the Rule or the Exception?

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11. Lopaka, *supra* note 5, at 27. This information upon which employees rely includes: "promotional literature, job advertisements, employment application forms, hiring correspondence, 'welcome aboard' letters, employee handbooks, personnel manuals, guidelines, policy and procedure statements, performance evaluation materials, salary and wage policies, benefit and incentive compensation plan descriptions, collateral compensation agreements and discipline and discharge notices." *Id.*

12. Generally, the courts are beginning to recognize these problems and have started to insist that "once the employee is given certain assurances and good performance reviews during the course of employment, there is created an implied covenant of good faith and fair dealing in the employment relationship that cannot be broken without cause." *See* Abassi, *infra* note 54, at 26.

13. Areas beyond the scope of this Note include damages, differences between contract and tort remedies, statutory violations of wrongful discharge, written contract disputes, and contracts supported by explicit or implicit consideration.

II. Public Policy Exception

The public policy exception to the employment-at-will doctrine is widely accepted in the United States.[14] Forty-eight states plus the District of Columbia have considered a public policy exception to the employment-at-will rule.[15] Of these forty-nine jurisdictions, thirty-nine have adopted the public policy exception,[16] six have rejected it,[17] and four have come short of formally adopting it.[18]

The public policy exception recognizes that the termination of an at-will employee "is wrongful and constitutes a breach of contract where the discharge is motivated by bad faith or malice or is retaliatory in nature."[19] Other jurisdictions simply hold that termination for a "socially undesirable motive"[20] or one that "strike[s] at the heart of a citizen's social rights, duties, and responsibilities"[21] violates public policy.

In addition to individual state statutory exceptions[22] and federal statutory exceptions,[23] public policy exceptions usually fall into four

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14. *See infra* note 16.

15. *See* Brief of Appellant at ____, Gulino v. Heritage Cablevision, 429 N.W.2d 777 (Iowa 1988) (No. 87-599).

16. *See supra* note 15. States that have accepted the public policy exception include: Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Dist. of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin.

17. *See supra* note 15. States that have rejected the public policy exception include Alabama, Florida, Georgia, Louisiana, Mississippi, and New York.

18. *See supra* note 15. States that have come short of formally adopting the exception include Colorado, Utah, Vermont, and Wyoming.

19. Percival v. General Motors Corp., 539 F.2d 1126, 1130 (8th Cir. 1976) (citing Monge v. Beebe Rubber Co., 114 N.H. 130, ____, 316 A.2d 549, 551 (1974)).

20. Nees v. Hocks, 272 Or. 210, ____, 536 P.2d 512, 515 (1975).

21. Palmateer v. International Harvestor Co., 85 Ill. 2d 124, ____, 421 N.E.2d 876, 878-79 (1981).

22. Some relevant exceptions to at-will employment in Iowa include: Union Membership (Iowa Code § 731.2 (1989)), Age, Race, Creed, Sex, Religion, or Disability Discrimination (Iowa Code § 601A.6 (1989)), Refusal of Polygraph Test (Iowa Code § 730.4 (1989)), National Guard or Military Duty (Iowa Code § 29A.43 (1989)), Garnishment (Iowa Code § 642.21 (1989)), Garnishment for Child Support (Iowa Code § 598.22 (1989)), Time Off for Drunk Driving Course (Iowa Code § 321J.22(4) (1989)), Filing OSHA Claim (Iowa Code § 88.9(3) (1989)), Filing a Wage/Hour Claim (Iowa Code § 91A.10(5) (1989)), Voting (Iowa Code § 49.109 (1989)).

23. Some relevant federal exceptions to at-will employment include: Union Membership (29 U.S.C. §§ 151-69 (1982)), Age (29 U.S.C. §§ 623, 631, 633(a) (1982)), Disability (29 U.S.C. § 793 (1982)), Vietnam Vet. (38 U.S.C. § 2012 (1982)), Filing OSHA claim (42 U.S.C. § 2000(e) (1982)), Filing Wage/Hour Claim (29 U.S.C. § 215 (1982)), Pension Rights (29 U.S.C. §§ 1140-41 (1982)), Filing Atomic Energy Act Claim (42 U.S.C. § 5851 (1982)), Filing Clean Air Act Claim (42 U.S.C. § 7622 (1982)), Filing Water Pollution Act Claim (33 U.S.C. §1367 (1982)), Filing Railroad Safety Act Claim (45 U.S.C. § 441 (1982)), Filing Customer Credit Act Claim for Garnishment (15 U.S.C. § 1674 (1988)).

groups:[24]

1. Where the employee is discharged for refusing to violate a criminal statute or ethical code;[25]
2. Where the employee is discharged for exercising a statutory right;[26]
3. Where the employee is discharged for complying with a statutory duty or public obligation and service;[27] and
4. Where the employee is discharged in violation of a generally recognized public policy of the state.[28]

After several years of consideration, Iowa has recently adopted a public policy exception to the employment-at-will doctrine.[29] The public policy exception began to gain acceptance in *Abrisz v. Pulley Freight Lines, Inc.*[30] Seven years later the court further hinted that it might recognize this exception by stating that under the proper circumstances, it would "recognize a common law claim for a discharge violating public policy."[31] Finally, the

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24. *See* Scholtes v. Signal Delivery Serv. Inc., 548 F. Supp. 487, 494 (W.D. Ark. 1982).

25. *See* Wagenseller v. Scottsdale Memorial Hosp., 147 Ariz. 370, 710 P.2d 1025 (1985) (employee refused to expose her bare buttocks to the audience as part of an employee skit); Tamey v. Atlantic Richfield Co., 27 Cal. App. 3d 167, 164 Cal. Rptr. 839 (1980) (employee refused to participate in price-fixing scheme); Sheets v. Teddy's Frosted Foods, Inc., 179 Conn. 471, 427 A.2d 385 (1980) (employee refused to violate safety, health, and welfare statutes); Kalman v. Grand Union Co., 183 N.J. Super. 153, 443 A.2d 728 (App. Div. 1982) (pharmacist fired for not violating his professional code of ethics); O'Sullivan v. Mallon, 160 N.J. Super. 416, 390 A.2d 149 (Law Div. 1978) (employee would not perform a medical procedure for which she was not licensed); Sides v. Duke Univ., 74 N.C. App. 331, 328 S.E.2d 818 (1985) (employee refused to falsely testify in malpractice trial).

26. Stephanischen v. Merchant Dispatch Transp. Corp., 722 F.2d 922 (1st Cir. 1983) (employee discharged for union organization activities); Smith v. Atlas Off-Shore Boat Serv. Inc., 653 F.2d 1057 (5th Cir. 1981) (employee exercised his legal right to file personal injury action against employer); Hentzel v. Singer Co., 138 Cal. App. 3d 290, 188 Cal. Rptr. 159 (1982) (employee sought to invoke occupational safety laws); Midgett v. Sackett-Chicago, Inc., 105 Ill. 2d 143, 473 N.E.2d 1280 (1984), *cert. denied*, 472 U.S. 1032 (1985) (employee filed Workers' Comp. claim).

27. Wiskotoni v. Michigan Nat'l Bank, 716 F.2d 378 (6th Cir. 1983) (testifying before a grand jury); Wheeler v. Caterpiller, 108 Ill. 2d 502, 485 N.E.2d 372 (1985) (employee complained about procedure for handling radioactive cobalt to the Nuclear Regulatory Commission); Palmateer v. International Harvestor Co., 85 Ill. 2d 124, 421 N.E.2d 876 (1981) (employee informed police of other employee suspected of criminal involvement); Nees v. Hocks, 272 Or. 210, 536 P.2d 512 (1975) (employee dismissed for serving on a jury).

28. This category holds, "Public Policy concerns what is right and just and what affects the citizens of the State collectively. It can be found in the State's constitution and statutes and, when they are silent, in its judicial decisions." Palmateer v. International Harvestor Co., 85 Ill. 2d 124, ____, 421 N.E.2d 876, 878 (1981).

29. Springer v. Weeks & Leo Co., 429 N.W.2d 558 (Iowa 1988).

30. Abrisz v. Pulley Freight Lines, Inc., 270 N.W.2d 454 (Iowa 1978). Although the court did not recognize the exception, it did note that "this doctrine has recently gained considerable favor with the courts." *Id.* at 455 (citations omitted).

31. Northrup v. Farmland Indus., 372 N.W.2d 193, 196 (Iowa 1985). In this case the court did recognize a public policy violation, but held that the civil rights statute gave rise to the exclusive remedy. *Id.* at 197.

Iowa Supreme Court made a specific stand on the issue in *Springer v. Weeks & Leo Co.*[32]

The plaintiff in *Springer* was fired from her job for filing a worker's compensation claim.[33] The court held that this was an "improper interference with existing business relationships."[34] It also stated 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."[35] The overall basis for the holding was to protect against "interference with reasonable economic expectancies."[36]

The Iowa Supreme Court went on to state that the public policy exception to the employment-at-will doctrine "may arise in a variety of circumstances."[37] From this statement it is obvious that the court was not creating a factually limited opinion. Rather, the Iowa Supreme Court created a common law exception applicable to any discharge that "serves to frustrate a well-recognized and defined public policy of the state."[38] In the process of establishing a public policy exception to the employment-at-will doctrine, the court gave some indication of the type of public policy violations that would fall under the new exception:

> 1. Discharge for refusal of employee to commit perjury at employer's request.[39]
> 2. Discharge of employee for cooperation with grand jury investigating employer's anticompetitive business practices.[40]
> 3. Discharge of employee for supplying law enforcement authorities with

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32. Springer v. Weeks & Leo Co., 429 N.W.2d at 558.

33. *Id.* at 559.

34. *Id.* at 561.

35. *Id. See also* Brockmeyer v. Dun & Bradstreet, 113 Wis. 2d 561, ____, 335 N.W.2d 834, 842 (1983). *Brockmeyer* goes out of its way to state that the excepted public policy must be based on statute or constitution. Because of this, the court itself can "advance an already declared legislative public policy." *Id.* On the same note, the court pointed out that the at-will doctrine is a common law principle and "is not immutable, but flexible, and upon its own principle adapts itself to varying conditions." *Id.* Thus, the court reserved flexibility with the doctrine in case a future public policy may not be fully based upon statute or constitution.

36. Springer v. Weeks & Leo Co., 429 N.W.2d at 561 (citing Clark v. Figge, 181 N.W.2d 291 (Iowa 1970); World Wide Commerce, Inc. v. Fruehauf Corp., 181 Cal. App. 3d 803, 149 Cal. Rptr. 42 (1978)). In *World Wide Commerce, Inc. v. Fruehauf Corp.*, the court stated, "We agree with [the] observation that a large part of what is most valuable in modern life depends upon 'probable expectancies.' As social and industrial life becomes more complex, this court must do more to discover, define and protect them from undue influence." *Id.* at 811, 149 Cal. Rptr. at 47.

37. Springer v. Weeks & Leo Co., 429 N.W.2d at 561.

38. *Id.* at 560.

39. *Id.* (citing Peterman v. International Bhd. of Teamsters, 174 Cal. App. 2d 184, 188-89, 344 P.2d 25, 27 (1959)).

40. *Id.* (citing Parnar v. Americana Hotels, 65 Haw. 370, 379-80, 652 P.2d 625, 631 (1982)).

information concerning criminal acts of co-employee.[41]
4. Discharge of employee for refusal to submit to supervisor's sexual advances.[42]
5. Discharge of employee for serving on a jury.[43]
6. Discharge of employee for refusing to reimburse employer for loss on forged check which had been cashed with approval of employee's supervisor.[44]

Because the court mandated that "a cause of action should exist . . . when the discharge serves to frustrate a well-recognized and defined public policy of the state,"[45] other exceptions are sure to be recognized. Further, "[t]o permit the type of retaliatory discharge which has been alleged in this case to go without a remedy would fly in the face of [public] policy."[46]

The Iowa Supreme Court, through the fact specific exceptions cited in its opinion,[47] has in essence approved of the four traditional public policy exception categories.[48] Broadening the public policy exception seems imminent as more discharge cases are recognized as being in violation of a "well-recognized and defined public policy exception of this state"[49] which is either constitutionally mandated[50] or strikes at the "heart of a citizen's social rights, duties, and responsibilities."[51]

With the recognition of the public policy exception, employees have gained some ground in their uphill battle against employers. Most courts have recognized that although employers can terminate for good cause or no cause, they cannot terminate for bad cause which violates public policy.[52]

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41. *Id.* (citing Palmateer v. International Harvestor Co., 85 Ill. 2d 124, 130, 421 N.E.2d 876, 879-80 (1981)).

42. *Id.* (citing Monge v. Beebe Rubber Co., 114 N.H. 130, 133, 316 A.2d 549, 551 (1974)).

43. *Id.* (citing Nees v. Hocks, 272 Or. 210, 218-19, 536 P.2d 512, 514-15 (1975)).

44. *Id.* (citing Wandry v. Bull's Eye Credit Union, 129 Wis. 2d 37, 48-49, 384 N.W.2d 325, 330 (1986)).

45. Springer v. Weeks & Leo Co., 429 N.W.2d 558, 560 (Iowa 1988).

46. *Id.* at 561. The policy referred to is Iowa Code section 85.18 (1986), which states, "No contract, rule, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by [the Worker's Compensation] chapter, except as herein provided." *Id.*

47. *See supra* notes 39-44.

48. *See supra* note 24.

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

50. "There is no public policy more important or more fundamental than the one favoring the effective protection of the lives and property of citizens." Palmateer v. International Harvestor Co., 85 Ill. 2d 124, ____, 421 N.E.2d 876, 879 (1981) (citing the Illinois Constitution Preamble). Other scholars state that there is a general consensus that a state's Bill of Rights identifies and promotes important public policies. Batress, *A Synthesis and a Proposal for Reform of the Employment-At-Will Doctrine*, 90 W. VA. L. REV. 319 (1988).

51. Palmateer v. International Harvestor Co., 85 Ill. 2d 124, 130, 421 N.E.2d 876, 878-79 (1981).

52. Wagenseller v. Scottsdale Memorial Hosp., 147 Ariz. 395, ____, 710 P.2d 1025, 1033 (1985).

"The interests of society as a whole will be promoted if employers are forbidden to fire for cause which is 'morally wrong.' "[53]

III. Implied-In-Fact Contracts

Employment contracts have traditionally been categorized as either written or oral. Recently, however, courts have recognized implied employment contracts which either stand on their own merit, or modify the existing written or oral contract with implied information from nontraditional documents. The recognition of implied contracts strongly suggests that employers cannot utilize the at-will doctrine when they have implied that employees will be discharged only after a grievance proceeding or for good cause.[54]

Many jurisdictions, including Iowa and its neighbors, are becoming more receptive to implied contracts of employment.[55] If an implied contract is held valid, it removes the employee from the terminable-at-will status, potentially giving rise to a breach of an implied-in-fact contract.[56] Iowa has not been immune to this recent exception to the employment-at-will doctrine. The theory behind an implied contract of employment was mentioned in *Young v. Cedar County Work Activity Center, Inc.*[57] The court noted that "the precise intentions of parties to an employment agreement are often left unexpressed and that contractual obligations may be enforced based upon the reasonable expectations of the parties."[58]

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53. *Id.*

54. Abassi, Hollman & Murrey, *Employment at Will: An Eroding Concept in Employment Relationships*, 38 Lab. Law J. 21, 27 (Jan. 1987).

55. *See* 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., Inc., 332 N.W.2d 275, 276 (S.D. 1983); Ferraro v. Koelsch, 124 Wis. 2d 154, 368 N.W.2d 666 (1985).

56. The essence of this exception is that a contract can be implied from the actions or statements of a party. "We hold that employer statements of policy, . . . can give rise to contractual rights in employees without evidence that the parties mutually agreed that the policy statements would create contractual rights in the employee . . . ." Toussaint v. Blue Cross & Blue Shield, 408 Mich. 579, ___, 292 N.W.2d 880, 892 (1980).

57. Young v. Cedar County Work Activity Center, Inc., 418 N.W.2d 844 (Iowa 1987). Although the court suggested that incorporation of the employee handbook was plausible, they stated that they were bound by the district court's decision that the manual was not part of the contract. *Id.* at 848.

58. *Id.* at 847.

> [O]ne of the parties (usually the employee) may have had in mind a definite period of employment and the other party had not. Here there is no actual "meeting of the minds"; and yet there can be a valid contract. Interpreting the elliptical expressions of the parties, the court may find that the expressions, interpreted in the light of the surrounding facts, made the understanding of one of the parties reasonable and made it unreasonable for the other party not to know that such would be the first party's understanding. In such a case, there is a contract in accordance with that understanding.

Wolfe v. Graether, 389 N.W.2d 643, 653-54 (Iowa 1986) (citing A. Corbin, Contracts § 684, at

In *Young* the unexpressed intentions were defined by using excerpts from the employee handbook.[59] "We conclude that the trial court might have found on the evidence that *the conditions set forth in the employee's manual formed a part of plaintiff's contract of employment.*"[60] Although the employment contract specified that it was terminable at will on thirty days notice,[61] the employee handbook stated a five-step grievance process that should have been undertaken before termination of the employment relationship.[62] These two contradictions resulted in the dispute between the parties. The court held that it was plausible that the grievance procedure set forth in the employee manual could be part of the employment contract and may have been the intentions of the parties, but since it was a fact question, it was ultimately for the jury to decide.[63]

The opportunity to recognize an implied contract was again presented in *Cannon v. National By-Products, Inc.*[64] The court in *Cannon* took a firm stance on the issue: "In applying the principles which we approved in *Young*, we conclude that . . . the question of whether the written personnel policies became part of the plaintiff's contract is to be determined on the basis of plaintiff's reasonable expectation."[65]

Though the employee's position with National By-Products was terminable-at-will, the written personnel policy relied on by the employee stated, "No employee will be suspended, demoted, or dismissed without just and sufficient cause."[66] The trial court found that the personnel policy was part of the contract of employment, thus making the discharge improper since it was not for just and sufficient cause[67] as required by the personnel manual.

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224 (1960)). The court in *Wolfe* also held that "extrinsic evidence may be considered by the trier of fact in resolving these issues of contract interpretation." *Id.* at 652.

59. Young v. Cedar County Work Activity Center, 418 N.W.2d at 848.

60. *Id.* (emphasis added).

61. *Id.* at 845.

62. *Id.* The termination procedure was: (1) Verbal warning; (2) Verbal warning noted in personnel file; (3) Written warning of possible suspension and noted in personnel file; (4) Suspension without pay; and (5) Termination.

63. *Id.* After raising the plausibility of the new exception, the court affirmed the district court judgment stating that as a matter of law the district court did not err and the plaintiff did not "establish that her interpretation should prevail as a matter of law." *Id.* at 848.

64. Cannon v. National By-Prods., Inc., 422 N.W.2d 638 (Iowa 1988).

65. *Id.* at 640. *See also* IOWA CODE § 622.22 (1985) ("When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which a party had reason to suppose the other understood it.").

66. Cannon v. National By-Prods., Inc., 422 N.W.2d at 639.

67. *Id.*

> Under the court's instructions, if the jury found that these policies were not part of plaintiff's contract, then he was to be deemed an employee at will subject to discharge for any reason or for no reason at all. If, however, the jury found that the personnel policies were part of the plaintiff's contract, it was then permitted to find that his discharge was improper if not for cause.

Id.

The Iowa Supreme Court affirmed the trial court's decision, relying heavily on Iowa Code section 622.22.[68] It also stated: "Even if it was not defendant's intention that these policies confer contractual rights, a contract may be found to exist if this was the plaintiff's understanding and defendant had reason to suppose that plaintiff understood it in that light."[69] In both *Young* and *Cannon* the focus is upon the legal effect of a written guarantee that discharge will only take place "for cause." The finding of cause and the subsequent breach of an implied contract is usually dealt with on a case-by-case basis and is generally a question for the trier-of-fact.[70]

What constitutes the basis for using a personnel policy as an implied contract? The Iowa Supreme Court has stated that whether or not the personnel policy becomes part of the plaintiff's employment contract "is to be determined on the basis of plaintiff's *reasonable expectation*."[71] The court has recently added that there must be "sufficient mutual assent" before an implied contract will be given effect.[72]

Other states such as Michigan, which have led the way into the realm of implied contracts, have used a reliance test in determining whether personnel policies should be treated as implied contracts:[73]

> The employer secures an orderly, cooperative and loyal work force, and the employee the peace of mind associated with job security and the conviction that he will be treated fairly. No pre-employment negotiations need take place and the parties' minds need not meet on the subject . . . . It is enough that the employer chooses, presumably in its own interest, to create an environment in which the employee believes that, whatever the personnel policies and practice, they are established and official at any given time, purport to be fair, and are applied consistently and uniformly to each employee. The employer has then created a situation "*instinct with an obligation.*"[74]

The Michigan courts have placed great emphasis on the theories of reliance and reasonable expectation when dealing with an implied contract.[75] Following suit, Iowa has also based their recognition of implied contracts on these

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68. *See supra* note 65.

69. Cannon v. National By-Prods., Inc., 422 N.W.2d at 640. *See also* IOWA CODE § 622.22 (1985), *supra* note 65.

70. Cannon v. National By-Prods., Inc., 422 N.W.2d at 640.

71. *Id.* (emphasis added).

72. McBride v. City of Sioux City, 444 N.W.2d 85, 90 (Iowa 1989). The court stated, "In Iowa, a contract will be implied where there has been a mutual manifestation of assent by acts and deeds (rather than words) to the same terms of an agreement." *Id.* (citing Duhme v. Duhme, 260 N.W.2d 415, 419 (Iowa 1977).

73. *See, e.g.*, Toussaint v. Blue Cross & Blue Shield, 408 Mich. 579, ____, 292 N.W.2d 880, 892 (1980).

74. *Id.* (emphasis added).

75. *Id.*

two concepts.[76] Thus, it seems that the main elements required in order to establish an implied contract are reasonable expectation or detrimental reliance. Other elements, such as consideration, do not seem to play an important role.[77]

The Minnesota courts have also addressed the issue of implied contracts and have held that the policies must include more than the employer's general statement of policy[78] and must contain definite conditions for the trier-of-fact to determine if there has been a breach.[79] In addition, "[P]romises found in an employee manual issued by an employer to its employee may, in appropriate situations, obligate the employer to act in accord with those promises . . . . However, it must be shown that the employee justifiably relied on the employer's promises."[80] Although an employer has no duty to provide a personnel policy manual or employee handbook, the employer who does so must follow those policies, as well as the employee.[81]

In all fundamental fairness, the employer should be held to the same standard as the employee. Both parties should follow the established guidelines and comply with promises made. The employer should not expect the employee to follow employment procedures when the employer does not intend to comply with them. Yet, if the employee does not follow these procedures the employee will be terminated. In that respect, the purpose of the implied contract exception is to remedy this unequal bargaining power and give the employee greater job stability.

IV. Good Faith and Fair Dealing

The final exception to the employment-at-will doctrine is the implied-in-fact and the implied-in-law covenants of good faith and fair dealing. The basis for these theories is found in the *Restatement of Contracts* which states, "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement."[82]

Why has this phrase not been applied to employment contracts? The courts, for lack of a better answer, have simply stated that, "[t]raditionally, an employment contract which is 'at will' may be terminable by either side

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76. Cannon v. National By-Prods., Inc., 422 N.W.2d at 640.

77. *Id.* at 641 (citing Wolfe v. Graether, 389 N.W.2d 643, 654-55 (Iowa 1986)).

78. Harvet v. Unity Medical Center, Inc., 428 N.W.2d 574, 577 (Minn. Ct. App. 1988) (citing Pine River State Bank v. Mettille, 333 N.W.2d 622, 626 (Minn. 1983)).

79. *Id.* (citing Hunt v. IBM Mid Am. Employees Fed. Credit Union, 384 N.W.2d 853, 857 (Minn. 1986)).

80. Slaughter v. Snohomish County Fire Protection Dist. No. 20, 50 Wash. App. 733, ___, 750 P.2d 656, 659 (1988) (citing Thompson v. St. Regis Paper Co., 102 Wash. 2d 219, 685 P.2d 1081 (1984)).

81. Toussaint v. Blue Cross & Blue Shield, 408 Mich. 579, ___, 292 N.W.2d 880, 892 (1980).

82. Restatement (Second) Contracts § 205 (1981).

without reason."[83] Other jurisdictions have held that "[i]n all employment contracts, whether at will or for a definite term, the employer's interest in running his business as he sees fit must be balanced against the interest of the employee in maintaining his employment, and the public's interest in maintaining a proper balance between the two."[84] One court was completely honest by stating, "Exactly why society needs 'good faith' in sales of goods but not in employment of those who manufacture them is unclear."[85]

A. *Implied-in-Law Good Faith and Fair Dealing*

An implied-in-law covenant of good faith and fair dealing has been the cry of employees and employee-oriented groups for many years. This duty arises from the *Restatement of Contracts* which mandates that every contract impose upon each party a "duty of good faith and fair dealing in its performance and its enforcement."[86] The implied-in-law covenant of good faith and fair dealing was first recognized in the 1970s in *Monge v. Beebe Rubber Co.*[87] and *Fortune v. National Cash Register.*[88] The leading case of good faith and fair dealing in the 1980s is *Cleary v. American Airlines, Inc.*,[89] in which the California Supreme Court held that "[t]here is an implied covenant of good faith and fair dealing in *every* contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement."[90] The duty arising from the covenant of good faith and fair dealing is "*unconditional* and *independent* in nature."[91] This exception is the most restrictive on employers and in essence defeats the entire theory behind employment at will.

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83. *See, e.g.*, Fortune v. National Cash Register Co., 373 Mass. 96, ____, 364 N.E.2d 1251, 1255 (1977).

84. Monge v. Beebe Rubber Co., 114 N.H. 130, ____, 316 A.2d 549, 551 (1974). But the court later stated, "We hold that a termination by the employer of a contract of employment at will which is motivated by bad faith or malice or based on retaliation is not in the best interest of the economic system and the public good and constitutes a breach of the employment contract." *Id.*

85. Scholtes v. Signal Delivery Serv. Inc., 548 F. Supp. 487, 494 (W.D. Ark. 1982).

86. RESTATEMENT (SECOND) CONTRACTS § 205 (1981).

87. Monge v. Beebe Rubber Co., 114 N.H. 130, 316 A.2d at 549.

88. Fortune v. National Cash Register Co., 373 Mass. 96, 364 N.E.2d 1251 (1977). "[W]e are merely recognizing the general requirement in this Commonwealth that parties to contracts and commercial transactions must act in good faith toward one another." *Id.* at ____, 364 N.E.2d at 1256. In this case the court ruled that "NCR's written contract contains an implied covenant of good faith and fair dealing, and a termination not made in good faith constitutes a breach of the contract." *Id.* at ____, 364 N.E.2d at 1255-56.

89. Cleary v. American Airlines, Inc., 111 Cal. App. 3d 443, 168 Cal. Rptr. 722 (1980).

90. *Id.* at ____, 168 Cal. Rptr. at 728 (emphasis original). The plaintiff, an 18 year employee of American Airlines was fired for union organizing activities. The plaintiff was deprived of an investigation before discharge and an objective review of his appeal of termination by the Review Board. *Id.* at ____, 168 Cal. Rptr. at 724.

91. *Id.*

Due to astronomical jury verdicts in favor of discharged employees, the California Supreme Court has recently modified its stance on good faith and fair dealing. In *Foley v. Interactive Data Corp.*,[92] the court stated, "[A]s to [the] cause of action for tortious breach of the implied covenant of good faith and fair dealing, we hold that tort remedies are not available for breach of the implied covenant in an employment contract . . . ."[93] Although good faith and fair dealing is still a cause of action in California, its highest court has retrenched on tort recovery and has stated that the cause of action must be limited to contractual damages.[94] Despite the extinction of tort recovery for a good faith and fair dealing claim, California still recognizes that there is a "continuing trend toward recognition by the courts and the legislature[s] of certain implied contract rights to job security, necessary to ensure social stability in our society."[95] These changing social values and the need for job security are the driving force behind the courts' receptive erosion of the at-will doctrine.[96]

Courts have recognized that the need to invoke the exception is derived from the fact that many employers lead their employees to believe and expect a certain degree of job security. In *Chamberlain v. Bissell, Inc.*[97] the Michigan Federal District Court recognized the requirement of good faith and job security when a twenty-three year veteran employee was fired.[98] The court held that the company was negligent in its discharge because there was an implied promise to act fairly and in good faith.[99] In *Pugh v. See's Candies, Inc.*[100] the vice-president was terminated after thirty-two years of employment and no reason was given.[101] The court held there was an implied contract to deal fairly with him and to terminate only for good cause.[102] The court found that a basis for the good faith claim arose out of

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92. Foley v. Interactive Data Corp., 47 Cal. 3d 654, 765 P.2d 373, 254 Cal. Rptr. 211 (1988).

93. *Id.* at ____, 765 P.2d at 401, 254 Cal. Rptr. at 239.

94. *Id.*

95. Cleary v. American Airlines, Inc., 111 Cal. App. 3d at ____, 168 Cal. Rptr. at 729.

96. *Id.* The court stated, "The conflict between an employee's right to job security and an employer's right to fire for cause or with economic justification should be resolved by judicial balancing of the competing equities." *Id.* at ____, 168 Cal. Rptr. at 729. Many courts seem to be intuitively using this type of test, and in many cases the scales seem to be tipping in favor of the employee.

97. Chamberlain v. Bissell, Inc., 547 F. Supp. 1067 (D. Mich. 1982).

98. *Id.* at 1082.

99. *Id.* at 1078. The court concluded that "the procedure as a whole implied a policy of discharge only for good cause." *Id.* As an interesting sidenote, though the plaintiff recovered, he was found contributorily negligent in bringing about his discharge and he was awarded only 17% of his damages. *Id.* at 1084.

100. Pugh v. See's Candies, Inc., 116 Cal. App. 3d 311, 171 Cal. Rptr. 917 (1981).

101. *Id.* at 317, 171 Cal. Rptr. at 919. The defendant employer told the employee to "look deep within himself" for the answer to why he was fired. *Id.*

102. *Id.* at 328-29, 171 Cal. Rptr. at 927.

the company personnel policy, longevity of service, assurances by the employer,[103] and the practice of the industry.[104]

Is longevity the only criteria involved that requires a dealing in good faith? No. Authorities suggest that good faith and fair dealing should be interpreted into contracts: (1) of extraordinary length of service; (2) good employee performance; (3) assurances from employer of continued employment; (4) policy of termination only for cause; and/or (5) no prior warnings of poor job performance.[105]

The Iowa Supreme Court has recognized, in an insurance context, that the tort of "bad faith" is a valid cause of action. In *Dolan v. AID Insurance Co.* the court held that a "bad faith" claim has legal merit when brought by an individual against an insurer.[106] Though *Dolan* dealt specifically with insurance contracts, it is important to note that the reasons for imposing a duty to act in good faith were: (1) traditional damages for breach of contract are not always adequate compensation for an insurer's bad faith conduct;[107] (2) insurance contracts are contracts of adhesion;[108] and (3) insurance contracts are inherent with "unequal bargaining power."[109] Although the California Supreme Court would strongly disagree,[110] there are substantial similarities between the reasons courts recognize a good faith requirement in insurance contracts and the reason they recognize a good faith requirement in the employment context. Therefore a strong analogy exists.

Though Iowa has not officially adopted the good faith exception in the employment arena, it has not ruled it out. In *High v. Sperry Corp.*[111] the Federal District Court for the Southern District of Iowa refused to dismiss a good faith and fair dealing claim on the basis that Iowa has not recognized the exception. The court held that "[p]erhaps 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."[112]

The Iowa Supreme Court has recently been presented with a claim for

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103. The assurance by the employer was found in an oral statement made to the employee, "If you are loyal to [See's] and do a good job, your future is secure." *Id.* at 317, 171 Cal. Rptr. at 919.

104. *Id.* at 330, 171 Cal. Rptr. at 925-26.

105. Wald & Wolf, *Recent Development in Employment at Will*, 1 LAB. LAW 533, 541 (1985).

106. Dolan v. AID Ins. Co., 431 N.W.2d 790 (Iowa 1988).

107. *Id.* at 794.

108. *Id.*

109. *Id.*

110. "[W]e are not convinced that a 'special relationship' analogous to that between insurer and insured should be deemed to exist in the usual employment relationship which would warrant recognition of a tort action for breach of the implied covenant." Foley v. Interactive Data Corp., 47 Cal. 3d 654, ____, 765 P.2d 373, 395, 254 Cal. Rptr. 211, 233 (1988).

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

112. *Id.* at 1248.

breach of the implied covenant of good faith and fair dealing. In *Fogel v. Trustees of Iowa College*,[113] the plaintiff was employed by Grinnell College in the food service department.[114] While employed in that position, Fogel developed a case of head lice.[115] Although he was medically treated and obtained a work release from his doctor, he was fired.[116] Fogel urged recovery under the implied covenant of good faith and fair dealing exception. In denying the plaintiff's claim, the supreme court refused to deny recovery under a good faith and fair dealing claim but rather noted, "We need not decide in this case whether to join the limited number of jurisdictions that have recognized the doctrine. The facts in the record . . . do not compel its consideration."[117]

Although only a small minority of jurisdictions recognize that when employers give assurances and praise performances, an implied covenant of good faith and fair dealing is woven into the employment contract,[118] the exception is far from becoming extinct. Even Iowa has saved for another day a classic good faith and fair dealing claim such as the "[d]ischarge of a thirty-year employee six months before a pension vests, or the dismissal of an employee for spurning the affection of a co-worker."[119] Because of this heightened awareness for societal values, the Iowa Supreme Court, if presented with the right fact pattern, may adopt the implied-in-law covenant of good faith and fair dealing exception to the employment-at-will doctrine. An unreported Iowa trial court decision, *Greer v. Meredith Corp.*,[120] does give some indication of the usefulness and effectiveness of this possible exception.

B. *Implied-in-Fact Good Faith and Fair Dealing*

Some courts have held that the duty of good faith and fair dealing is not implied in every contract of employment; rather, the "covenant of good faith and fair dealing is implied in a particular case [depending] upon objective manifestations by the employer giving rise to the employee's reasonable

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

114. *Id.* at 452.

115. *Id.*

116. *Id.* at 453.

117. *Id.* at 457. The court notes that only five states recognize the doctrine and four of those only recognize it as a remedy in contract. *Id.*

118. Cleary v. American Airlines, Inc., 111 Cal. App. 3d 443, ____, 168 Cal. Rptr. 722, 729 (1980).

119. Fogel v. Trustees of Iowa College, 446 N.W.2d at 451.

120. Greer v. Meredith Corp., Law No. 63-36901 (Polk County 1988) is an example of a case in which the good faith and fair dealing requirement was applied. The *Greer* case involved termination of the editor of *Better Homes and Gardens Magazine*. Des Moines Reg., March 31, 1988, at 1, col. 2. The Plaintiff alleged he had an implied contract and also that because of his 21 years of service, he should have been treated fairly and in good faith. *Id.* The trial court awarded Greer $1.1 million in lost wages and $1.5 million in punitive damages. *Id.*

belief that he or she has job security and will be treated fairly."[121] Under this approach, good faith and fair dealing is implied in fact. Implied-in-fact good faith and fair dealing is similar to an implied-in-fact contract. While the implied-in-fact contract is generally based on the employee handbook or printed regulations, the implied-in-fact covenant of good faith and fair dealing is based "upon existence of objective manifestations by the employer."[122] In essence, the employee relies upon representations made by the employer that he or she will not be terminated without cause. Therefore, if an employee is able to allege facts of an oral conversation or written memorandum that insinuate an employee will be dealt with fairly and in good faith, that employee should be allowed great latitude in proving the claim. This, of course, must be dealt with on a case-by-case basis.

North Dakota has distinguished between implied-in-fact and implied-in-law by holding that "[t]o recognize an implied in law covenant of good faith and fair dealing . . . would directly contravene the employment at will statute . . . [therefore it] must be implied in fact rather than implied in law."[123] In a recent Minnesota decision, *Rognlien v. Carter*,[124] an employer made representations to an employee that he "would not have to worry about his job so long as he did good work."[125] Although not specifically naming it an implied-in-fact covenant of good faith and fair dealing, the court held that this statement took the employee job relationship out of the at-will standard and into a "good cause" standard.[126] Wisconsin has also discussed an implied-in-fact covenant of good faith and fair dealing when it said that if the "plaintiff can allege and prove a covenant of fair dealing and good faith between her and the defendant employers, such a claim would be actionable."[127] Because courts are reluctant to adopt a carte blanche attitude toward the good faith and fair dealing exception, the likely alternative is the implied-in-fact approach. Although the implied-in-fact theory is not yet widely known or used, it is a viable form of recovery under certain circumstances.

Good faith and fair dealing is basically an old concept being applied in a new way. Businessmen have to deal in good faith with contractors, suppliers, manufacturers, and clients on a daily basis. Why should they not deal in good faith with their own employees? "When one, who has been employed for such time as his services are satisfactory, is discharged it is 'well settled that the employer must act in good faith; and, where there is evidence tend-

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121. Dare v. Montana Petroleum Mktg. Co., 687 P.2d 1015, 1020 (Mont. 1984).

122. *Id.*

123. Bakken v. North Am. Coal Corp., 641 F. Supp. 1015, 1022 (D.N.D. 1986).

124. Rognlien v. Carter, 443 N.W.2d 217 (Minn. Ct. App. 1989).

125. *Id.* at 219.

126. *Id.* "Rognlien claims that Jim Carter's alleged representation that Rognlien would not have to worry about his job so long as he did good work constituted an offer of employment subject to dismissal only for good cause. We agree." *Id.*

127. Funk v. Sara Lee Corp., 699 F. Supp. 1365, 1367 (E.D. Wis. 1988).

ing to show that the discharge was due to reasons other than dissatisfaction with the services the question is one for the jury.' "[128]

V. Future of the Doctrine

The employment-at-will doctrine has become antiquated and obsolete. The exceptions have overtaken the rule and have left the courts with a hodgepodge of fact specific opinions based on an array of legal theories claiming to be the basis for a wrongful discharge. Unearthing the original premise of the doctrine may give some idea of where the doctrine is headed. The impersonal employer-employee relationship which emerged during the Industrial Revolution gave life to the employment-at-will doctrine.[129] Essentially, the new doctrine gave the employer economic freedom to discharge an employee for any reason.[130] Courts stated, "With us the rule is inflexible, that a general or indefinite hiring is *prima facie* a hiring at will . . . ."[131] This outmoded theory reflected the sweatshop management practices, the high profit/low wage standard and the need for stringent control over employees brought about by the Industrial Revolution. Do these same reasons warrant the at-will doctrine a place in today's society?

Some say yes. These persons declare the doctrine valid because if equally applied, it leaves both the employer and employee free to terminate the employment relationship at any given time. Some have sarcastically analogized this reasoning to "the majestic equality of the law, which forbids rich and poor alike to sleep under the bridges, to beg in the streets and to steal bread."[132] In other words, the reality of this theory is misplaced since the expendable employee is the one fighting for job security, not the employer.

What is next for the doctrine? Looking at other jurisdictions, the Montana legislature has lead the way in replacing the common law employment-at-will doctrine with legislation. The state took control of the confusing issue and passed legislation entitled, "Wrongful Discharge From Employment."[133] Essentially, the Act outlays how, when, and for what reasons an employee can be terminated.[134] On the other hand, it limits damages,[135] places a statute of limitations on such actions,[136] and provides for arbitra-

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128. Peterman v. International Bhd. of Teamsters, 174 Cal. App. 2d 184, ____, 344 P.2d 25, 28 (1959).

129. Wagenseller v. Scottsdale Memorial Hosp., 147 Ariz. 370, ____, 710 P.2d 1025, 1030 (1985).

130. *Id.*

131. *Id.* (citing H. Wood, Law of Master and Servant § 134, at 273 (1877)).

132. A. France, The Oxford Dictionary of Quotations 217 (3d ed. 1980).

133. Mont. Code Ann. § 39-2-901 et seq. (1987).

134. *Id.* § 39-2-904.

135. *Id.* § 39-2-905.

136. *Id.* § 39-2-911.

tion.[137] The main emphasis of the legislation is the coordinated summation of all the employment-at-will exceptions into one concise subparagraph, which states:

> A discharge is wrongful only if:
> (1) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;
> (2) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or
> (3) the employer violated the express provisions of its own personnel policy.[138]

This Act has been declared constitutional by the Montana Supreme Court after being challenged as "unconstitutional in that it serves to wrongfully deprive an individual . . . from his or her right to 'full legal redress.' "[139] The trend in this country may be moving toward this type of model legislation or at least toward common law decisions that favor the three exceptions discussed in this Note.

In a recent opinion, the Iowa Supreme Court further demonstrated its concern for the wrongfully terminated employee by allowing recovery for emotional distress.[140] The court stated:

> [W]e believe that damages caused by mental distress may properly be considered in addition to the lost earnings caused by the termination of employment . . . . A wrongful or retaliatory discharge in violation of public policy is an intentional wrong committed by the employer against an employee who chooses to exercise some substantial right . . . . We believe that public policy also requires us to allow a wrongfully discharged employee a remedy for his or her complete injury.[141]

The liberality of the opinion signifies the Iowa Supreme Court's recognition and support of the trend toward greater employee rights. "While it is not a crime or an act requiring a malicious motive or outrageous conduct, wrongful discharge offends standards of fair conduct and normally will cause the employee damages in lost income . . . . We believe that fairness alone justifies the allowance of a full recovery in this type of tort."[142] The court further held that no signs of physical injury are needed for recovery.[143] In fact, the court held that the emotional distress need not be severe. "[W]e see no logical reason to require a plaintiff to prove that the emotional distress was severe when the tort is retaliatory discharge in violation of public policy."[144]

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137. *Id.* § 39-2-914.
138. *Id.* § 39-2-901.
139. Meech v. Hillhaven West, Inc., 776 P.2d 488 (Mont. 1989).
140. Niblo v. Parr Mfg., Inc., 445 N.W.2d 351 (Iowa 1989).
141. *Id.* at 355.
142. *Id.*
143. *Id.* at 356.
144. *Id.* at 357.

These statements made by the court reflect the growing attitude of other jurisdictions, an attitude not sympathetic to the employment-at-will doctrine. One scholar insists that the employment-at-will doctrine goes so far as to violate constitutional guarantees.[145]

The winds of change have blown across the wasteland of the at-will doctrine. Economic conditions have changed in today's society and the job market involves many facets that the work force was not faced with during the Industrial Revolution.[146] These facts, along with a generally better educated work force, are calling for a demise of the employment-at-will doctrine.

VI. Conclusion

The decline of the employment-at-will doctrine should not come as a surprise. This same inequality of bargaining power between employers and employees gave rise to labor unions and to the National Labor Relations Act of 1935.[147] Unions, along with employees covered by collective bargaining agreements, have placed limitations on the employer's right to termination for many years. "Under most union contracts, employees can only be dismissed for just cause."[148] Other employees such as public servants enjoy job security through the civil service laws[149] and most professors and teachers are protected by tenure programs. These totals show that thirty-five to forty percent of nonagricultural workers enjoy job protection while sixty to sixty-five percent are subject to the harsh results of the employment-at-will doctrine.[150]

Internationally, the United States is one of the few industrialized countries that does not protect its work force from arbitrary termination.[151] Other industrialized nations that protect their workers include France, Germany, Great Britain, and Sweden.[152] Even the International Labor Organization adopted a proposal protecting employees from wrongful termina-

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145. Peck, *Unjust Discharge From Employment: A Necessary Change in the Law*, 40 Ohio St. L.J. 1, 13 (1979). Professor Peck's article raises many untraditional yet valid arguments that support the eradication of the employment-at-will doctrine.

146. "With the rise of large corporations conducting specialized operations and employing relatively immobile workers who often have no other place to market their skills, recognition that the employer and employee do not stand on equal footing is realistic." Palmateer v. International Harvestor Co., 85 Ill. 2d 124, 129, 421 N.E.2d 876, 878 (1981) (citing Blades, *Employment At Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power*, 67 Colum. L. Rev. 1404, 1405 (1967)).

147. 29 U.S.C. § 157 (1982).

148. Pugh v. See's Candies, Inc., 116 Cal. App. 3d 311, ____, 171 Cal. Rptr. 917, 921 (1981).

149. *Id.* at ____, 171 Cal. Rptr. at 922.

150. *See* Peck, *supra* note 145, at 9.

151. Summers, *Individual Protection Against Unjust Dismissal: Time for a Statute*, 62 Va. L. Rev. 481, 508 (1976).

152. *Id.* at 509-15.

tion.[153] These statistics along with the public outcry should be enough to cause American courts and legislatures to stop and reassess the values and morals this country possesses and places on the working class American.

What about Iowa; where is it headed in regard to this issue? The common thread that runs through *Young*, *Cannon*, and *Springer* is the employee's "reasonable expectation."[154] What does the employee expect, or better yet, what has he or she been led to expect? This concept has singularly led to the downfall of the employment-at-will doctrine in Iowa. In the past two years, the Iowa Supreme Court has stripped employment law to its foundation. *Reasonable expectation* is that foundation. It is the foundation upon which new employment law will arise. *Cannon*, *Springer*, and *Niblo* have formed the structure for future decisions and have mandated that serious consideration be given to the interrelationship between an employment-at-will exception and an employee's reasonable expectation. The future will be a true test of commitment by the Iowa Supreme Court to the standard by which it judges employee's rights. An employee of devoted service and satisfactory job performance who complies with all job guidelines and policies "reasonably expects" to be treated fairly and has a "reasonable expectation" of remaining on the job.

With the potential of the third employment-at-will exception being recognized in Iowa, the old cliché, three strikes and you're out, holds true for the employment-at-will doctrine. As Justice William O. Douglas assessed the situation:

> The right to work, I had assumed, was the most precious liberty that man possesses. Man has indeed as much right to work as he has to live, to be free, to own property. The American ideal was stated by Emerson in his essay on *Politics*, "A man has a right to be employed, to be trusted, to be loved, to be revered." It does many men little good to stay alive and free and propertied, if they cannot work. To work means to eat. It also means to live. For many it would be better to work in jail, than to sit idle on the curb. The great values of freedom are in the opportunities afforded man to press to new horizons, to pit his strength against the forces of nature, to match skills with his fellow man.[155]

With this final insight, we can gather that employment and job security are not something that can be dismissed at the whim of an employer. Rights, in some form, should protect the American worker from arbitrary discharge. This answers the original question. Employment-at-will should not and can not remain the rule. The educated American in today's society realizes that it is a thing of the past, and at the very least, it should only

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153. *Id.* at 508.

154. *See* Young v. Cedar County Work Activity Center, Inc., 418 N.W.2d 844 (Iowa 1987); Cannon v. National By-Prods., Inc., 422 N.W.2d 638, 640 (Iowa 1988); Springer v. Weeks & Leo Co., 429 N.W.2d 558, 561 (Iowa 1988).

155. Barsky v. Board of Regents, 347 U.S. 442, 472 (1954) (Douglas, J., dissenting).

govern in a few exceptional cases. Thus, by its own demise, the rule has and should become an exception.

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