BLOWING THE WHISTLE ON THE EMPLOYMENT AT-WILL DOCTRINE

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I. INTRODUCTION

Terminable-at-will employment allows both employers and employees the freedom to determine when the employment relationship will end.[1] Unlike a relationship created by contract, at-will employment generally may be terminated for any reason and at any time.[2] Traditionally, this meant good cause or lack of bad faith need not be shown.

The at-will doctrine is often criticized as inherently unfair.[3] Specifically, it may render employees jobless without requiring the employer prove good cause for the discharge. In response to the often unjust result in employment at-will cases, courts have carved out an exception to the doctrine when the discharge violates a well-defined public policy.[4] Courts differ, however, with

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1. "Terminable-at-will" refers to those indefinite employment relationships not governed by a union or an individual contract. *See generally* Brent Appel & Gayla Harrison, *Employment at Will in Iowa: A Journey Forward*, 39 DRAKE L. REV. 67 (1989-90).

2. *See generally* Tameny v. Atlantic Richfield Co., 610 P.2d 1330 (Cal. 1980) (explaining theories and application of the traditional common law rule); DeMarco v. Publix Super Markets, 384 So. 2d 1253 (Fla. 1980); Maguire v. American Family Life Assurance Co., 442 So. 2d 321 (Fla. Dist. Ct. App. 1983); Georgia Power Co. v. Busbin, 250 S.E.2d 442 (Ga. 1978); Wolfe v. Graether, 389 N.W.2d 643 (Iowa 1986); Laird v. Eagle Iron Works, 249 N.W.2d 646 (Iowa 1977).

3. *See* Lawrence E. Blades, *Employment at Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power*, 67 COLUM. L. REV. 1404, 1405 (1967).

4. *See, e.g.*, Sabine Pilot Serv. v. Hauck, 687 S.W.2d 733, 735-36 (Tex. 1985) (Kilgarlin, J., concurring). In *Sabine*, the court stated:

> Absolute employment at will is a relic of early industrial times, conjuring up visions of the sweat shops described by Charles Dickens and his contemporaries. The doctrine belongs in a museum, not in our law. . . . Our duty to update this doctrine is particularly urgent when the doctrine is used as leverage to incite violations of our state and federal laws. Allowing an employer to require an employee to break a law or

regard to what circumstances warrant application of the public policy exception to at-will employment situations.

Generally, courts will apply the public policy exception when an employee is discharged for exercising a statutory right such as filing a workers' compensation claim.[5] Likewise, many courts are willing to make an exception for an employee discharged for rightfully exercising a legal duty.[6] Thus, in jurisdictions recognizing the public policy exception to the employment at-will doctrine, a cause of action in tort for wrongful discharge is generally available to an employee discharged for exercising a statutory right or duty.

A more difficult problem arises, however, when employees are discharged for "blowing the whistle"[7] on their employers' illegal conduct.[8] Whistleblowers are those individuals who speak out about the potential harmful conduct of employers, supervisors, and coworkers.[9] Employees who blow the whistle on wrongdoing in the workplace often do so despite the prevailing fear that they will be demoted, rejected by coworkers, or fired. Often at-will employees face the difficult choice of ignoring the illegal activity or blowing the whistle and losing their job.[10] Strict application of the at-will employment doctrine leaves remediless employees that are discharged in retaliation for blowing the whistle on their employers' illegal conduct.[11] The public policy exception to the at-will doctrine, however, injects into the at-will relationship a shot of legal reality: employers who retaliate against employees for whistleblowing may in some circumstances be subject to tort liability.

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face termination cannot help but promote a thorough disrespect of the laws and legal institutions of our society.

Id. at 735 (Kilgarlin, J., concurring).

5. *See, e.g.*, Springer v. Weeks & Leo Co., 429 N.W.2d 558 (Iowa 1988).

6. *See, e.g.*, Petermann v. International Bhd. of Teamsters Local 396, 344 P.2d 25 (Cal. 1959) (holding discharge for refusing to commit perjury before legislative committee wrongful); Nees v. Hocks, 536 P.2d 512 (Or. 1975) (holding employer cannot discharge employee for serving on a jury).

7. The term "whistleblowers" is derived from the act of an English bobby blowing his whistle to alert other law enforcement officers of the commission of a crime. *See* Winters v. Houston Chronicle Publishing Co., 795 S.W.2d 723, 727 (Tex. 1990).

8. *See infra* text accompanying notes 32-61.

9. "Among the more highly publicized events where whistleblowing was a factor are Watergate, Love Canal, Three Mile Island and the Challenger shuttle disaster." Winters v. Houston Chronicle Publishing Co., 795 S.W.2d at 728.

10. *See, e.g.*, Sheets v. Teddy's Frosted Foods, 427 A.2d 385 (Conn. 1980); Harless v. First Nat'l Bank, 246 S.E.2d 270 (W. Va. 1978).

11. *See* Sventko v. Kroger Co., 245 N.W.2d 151, 153 (Mich. Ct. App. 1976) (noting the employment at-will doctrine is not absolute); *see also* Perks v. Firestone Tire & Rubber Co., 611 F.2d 1363, 1366 (3d Cir. 1979) (holding employee discharged for refusing to take lie detector test has cause of action in light of statute making it misdemeanor to require such test as condition of employment).

The employee that exposes an employer's illegal conduct may be protected by the public policy exception to the employment at-will doctrine.[12] Alerting officials to the illegal conduct of the employer, some courts reason, is worthy of protection as a means of upholding the law and protecting the public.[13] One court noted, "In a society where the law operates well, the hope is also that just wearing the whistle on a street, or threatening to use it in the corporate setting, may serve to ward off misconduct."[14] In short, public policy would only be defeated if employees were lawfully discharged for reporting an employer's violations.

A handful of courts also recognize that employees who reveal an employer's unethical or unsafe practices may also have recourse under the public policy exception. These courts argue the public welfare can only be advanced by the activity of such whistleblowers, and thus, the public policy exception must apply.

This Note discusses the common law tort of retaliatory discharge for employees that "blow the whistle" on employers engaged in activity contrary to public interest. The scope of this Note is limited to at-will private sector employment not governed by legislative mandate.[15]

First, this discussion will focus on the public policy exception's treatment of whistleblowers. Second, this discussion will examine the public policy considerations articulated by courts in protecting whistleblowers. Finally, application of the whistleblower exception to Iowa's line of at-will cases will illustrate why, if given the opportunity, Iowa should adopt the whistleblower exception to the at-will employment doctrine.

II. TREATMENT OF WHISTLEBLOWERS UNDER THE PUBLIC POLICY EXCEPTION

Jurisdictions that recognize the tort of retaliatory discharge take divergent positions on the circumstances requiring application of the public policy exception to employees discharged for whistleblowing. The whistleblower exception generally applies to three kinds of cases. The first involves the employee that refuses to take part in illegal activity at the request of an

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12. *See infra* text accompanying notes 32-61.

13. *See* Shaw v. Russell Trucking Line, 542 F. Supp. 776 (W.D. Pa. 1982) (protecting employee that notified police employer's trucks were overloaded in violation of state law); Palmer v. Brown, 752 P.2d 685 (Kan. 1988) (protecting employee that reported employer's improper Medicaid billing); Vermillion v. AAA Pro Moving & Storage, 704 P.2d 1360 (Ariz. 1985) (protecting employee that told customer of theft of customer's property by employer).

14. Winters v. Houston Chronicle Publishing Co., 795 S.W.2d 723, 728 (Tex. 1990) (Doggett, J., concurring).

15. The federal government and a few state governments have also enacted specific whistleblower protection laws for government employees. *See, e.g.*, 5 U.S.C. § 2302(b)(8)-(9) (Supp. II 1988); *see also* Frazier v. Merit Systems Protection Bd., 672 F.2d 150, 166 (D.C. Cir. 1982) (holding constructive knowledge of employees' protected activities on the part of personnel officials may be evidence of retaliatory intent under 5 U.S.C. § 2302(b)(8)).

employer.[16] The second involves the employee that reports the employer's illegal activity to either internal or external sources.[17] The third involves the employee that criticizes an employer's activities that, although legal, are potentially harmful to the public.[18]

A. *Blowing the Whistle on an Employer that Demands an Employee Act Illegally*

Employees discharged in retaliation for refusing to violate the law at an employer's request are often afforded a remedy under the public policy exception to the employment at-will doctrine.[19] Even those courts reluctant to apply the public policy exception acknowledge the propriety of such an application when an employee is forced to choose between continued employment and breaking the law.[20] Moreover, employees seeking to uphold the laws of the state should be protected rather than punished for their integrity.[21] Undoubtedly, public policy is best served when an employee refuses to do an illegal act.

Petermann v. International Brotherhood of Teamsters[22] was the seminal case is this area. In *Petermann*, the employer, a labor union, discharged the plaintiff because he refused to perjure himself before a state legislative committee.[23] The California court adhered to the state's long standing rule allowing terminable-at-will employment.[24] At the same time, the court emphasized that public policy considerations mandated the recognition of a cause of action for the discharged employee.[25] In recognizing the public policy

16. *See infra* text accompanying notes 19-31.

17. *See infra* text accompanying notes 32-61.

18. *See infra* text accompanying notes 62-69.

19. *See, e.g.*, Sarratore v. Longview Van Corp., 666 F. Supp. 1257 (N.D. Ind. 1987) (employee fired for refusing to participate in illegal scheme to set back odometers); Adler v. American Standard Corp., 538 F. Supp. 572 (D. Md. 1982) (employee discharged for threatening to disclose bribery of public officials and falsification of documents); McClanahan v. Remington Freight Lines, 517 N.E.2d 390 (Ind. 1988) (truck driver fired for refusing to carry load that exceeded statutory limits); Trombetta v. Detroit, Toledo & Ironton R.R., 265 N.W.2d 385 (Mich. 1978) (employee refused to alter pollution control reports); Sabine Pilot Service, Inc. v. Hauck, 687 S.W.2d 733 (Tex. 1985) (employee refused to empty boat's bilge in violation of federal law).

20. *See, e.g.*, Adams v. George W. Cochran & Co., 597 A.2d 28 (D.C. 1991).

21. *See, e.g.*, Tameny v. Atlantic Richfield Co., 610 P.2d 1330 (Cal. 1980). The *Tameny* decision included this quote:

> "To hold that one's continued employment could be made contingent upon his commission of a felonious act at the instance of his employer would be to encourage criminal conduct upon the part of both the employee and employer and serve to contaminate the honest administration of public affairs."

Id. at 1333 (quoting Petermann v. International Bhd. of Teamsters, 344 P.2d 25, 27 (Cal. Dist. Ct. App. 1959)).

22. Petermann v. International Bhd. of Teamsters, 344 P.2d 25 (Cal. Dist. Ct. App. 1959).

23. *Id.* at 27.

24. *Id.*

25. *Id.*

exception, the court defined an act contrary to public policy as "whatever contravenes good morals or any established interests of society."[26]

Courts recognizing the exception for illegal activities generally reason that the legislature's purpose in passing the law can only be fulfilled if those trying to assist in its enforcement are protected. A federal district court applying Indiana law held the plaintiff's refusal to participate in an illegal scheme to set back odometers stated a cause of action for retaliatory discharge.[27] The court explained that the purpose of the statute in question, which outlawed odometer tampering, would be frustrated by permitting those employees who adhered to it to be discharged.[28] The court stated, "We simply cannot . . . allow an employer to force an employee to choose between breaking the law and losing his job."[29]

Several jurisdictions have limited the public policy exception solely to those instances in which the discharge stems from the employee's refusal to break the law.[30] Courts reason that the only circumstance mandating implementation of the public policy exception is when an employee is "unacceptably forced to choose between risking criminal liability or being discharged from his livelihood."[31] Therefore, those employees who are discharged, not only for refusing to engage in illegal conduct, but for also blowing the whistle on the demanding employer may be afforded a remedy in tort for the discharge.

B. *Blowing the Whistle on an Employer's Illegal Acts*

Employees discharged for reporting the illegal acts of their employers, supervisors, or coworkers may also seek shelter under the public policy umbrella. In such cases, the usual rules of terminable-at-will employment may be abandoned in an effort to protect the whistleblowing employee. Relying on the public policy exception, several courts have reasoned that upholding the law not only involves abiding by it, but also includes reporting the illegal activity of an employer.[32]

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26. *Id.*

27. Sarratore v. Longview Van Corp., 666 F. Supp. 1257, 1262 (N.D. Ind. 1987).

28. *Id.* at 1262.

29. *Id.*

30. *See, e.g.*, Adams v. George W. Cochran & Co., 597 A.2d 28 (D.C. 1991); Winters v. Houston Chronicle Publishing Co., 795 S.W.2d 723 (Tex. 1990).

31. Winters v. Houston Chronicle Publishing Co., 795 S.W.2d at 724.

32. *See, e.g.*, Campbell v. Eli Lilly Co., 413 N.E.2d 1054 (Ind. Ct. App. 1980) (involving employee discharged for advising employer's counsel of violations by his superiors of the federal Food, Drug and Cosmetics Act); Martin v. Platt, 386 N.E.2d 1026 (Ind. Ct. App. 1979) (involving employees discharged for reporting to company officials solicitation by their immediate superiors of kickbacks from company suppliers); Suchodolski v. Michigan Consol. Gas Co., 316 N.W.2d 710 (Mich. 1982) (involving employee discharged for alerting company officials to internal accounting practice which could have impeded the Public Service Commission's ability to regulate).

In *Harless v. First National Bank*,[33] the West Virginia Supreme Court acknowledged the public's interest by rewarding an employee who disclosed a violation of the state's credit code.[34] In that case, an employee sought to notify public banking officials of his employer's overcharges on consumer credit accounts.[35] In overruling the trial court's dismissal of the employee's complaint, the supreme court acknowledged the goal of the state's banking laws—the protection of consumers—would be defeated if such reports were not protected.[36] The court justified its decision by emphasizing the role whistleblowing plays in fulfilling the legislature's intention.[37]

An employee discharged for blowing the whistle on conduct adverse to the public interest, such as the employee in *Harless*, is most likely to reap the benefits of the public policy exception in the whistleblowing context. In *Garibaldi v. Lucky Food Stores*,[38] the plaintiff, a truck driver, reported to the local department of health that his employer had ordered him to deliver contaminated milk.[39] The California Supreme Court, although relying on a state statute prohibiting the sale of contaminated milk to justify the public policy exception, also acknowledged the importance of protecting those who seek to promote the public health and safety through their whistleblowing efforts.[40] Thus, the court recognized reporting the illegal conduct of an employer is conduct worthy of protection, particularly when the conduct threatens the public.[41]

In *Palmateer v. International Harvester Co.*,[42] the court applied its own notion of public policy, rather than the legislature's, and held a whistleblower had a cause of action for retaliatory discharge.[43] The plaintiff in *Palmateer* was terminated for reporting a fellow employee's criminal activity to local law enforcement officials.[44] The court defined public policy as "what is right and just and what affects the citizens of the [s]tate collectively."[45] The court could have simply relied on the relevant provisions of the state criminal code,[46] but

33. Harless v. First Nat'l Bank, 246 S.E.2d 270 (W. Va. 1982).

34. *Id.* at 276.

35. *Id.*

36. *Id.*

37. *Id.*

38. Garibaldi v. Lucky Food Stores, 726 F.2d 1367 (9th Cir. 1984) *cert. denied*, 471 U.S. 1099 (1985).

39. *Id.* at 1374.

40. *Id.*

41. *Id.*

42. Palmateer v. International Harvester Co., 421 N.E.2d 876 (Ill. 1981).

43. *Id.* at 879.

44. *Id.* Palmateer was discharged for supplying information to law enforcement officials regarding a coworker's alleged theft in violation of Illinois law. *Id.*

45. *Id.* at 878.

46. Illinois' proscriptions against theft are contained in ILL. REV. STAT. ch. 38, para. 1-2 (1979).

instead looked to broader considerations of public interest.[47] The court emphasized that allowing employers to discharge reporting employees would leave illegal conduct unchecked and undeterred.[48] The court stated, "The law is feeble indeed if it permits [defendants] to take matters into [their] own hands by retaliating against employees who cooperate in enforcing the law."[49]

The public policy exception is not limited, however, to pronouncements by the legislature. Professional codes of conduct may also provide public policy considerations essential to the whistleblower's claim for wrongful discharge. For example, in *Kalman v. Grand Union Co.*,[50] an at-will employee stated a cause of action for wrongful discharge when he was terminated after advising the state board of pharmacy of his employer's plan to close the pharmacy in apparent violation of a regulatory law.[51] The court noted that the plaintiff was required by the Code of Ethics of the American Pharmaceutical Association to report any attempt by his employer to defy state regulations.[52] Although the plaintiff was not required to make a disclosure under state law, the court found that "[t]his is an instance where a code of ethics coincides with public policy."[53] Because the plaintiff was thus acting in accordance with public policy as well as a code of ethics, the court held the employee's behavior appropriate.[54]

The public policy exception has also been applied to the discharge of employees reporting alcohol and drug use by coworkers,[55] as well as the discharge of employees reporting violations of state-mandated patient care standards,[56] the Food, Drug, and Cosmetics Act,[57] and air pollution standards.[58] These cases indicate courts accept the idea that employees who report an employer's wrongdoing should be afforded the protection of tort law in the event of a discharge.

Some courts are reluctant, however, to extend the public policy exception beyond those instances in which an employee is discharged for refusing to participate in illegal activity. The justification for such limitation lies in maintaining a cause of action only for those instances in which an employee

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47. Palmateer v. International Harvester Co., 421 N.E.2d at 479. "There is no public policy more important or more fundamental than the one favoring the effective protection of the lives and property of citizens." *Id.*

48. *Id.* at 880.

49. *Id.*

50. Kalman v. Grand Union Co., 443 A.2d 728 (N.J. Super. Ct. App. Div. 1982).

51. *Id.* at 729-30. Allowing the store to remain open while closing the pharmacy portion of the store was a violation of state regulatory law. *Id.* at 730.

52. *Id.* at 729.

53. *Id.*

54. *Id.*

55. Knight v. American Guard & Alert, 714 P.2d 788, 792 (Alaska 1986).

56. Kalman v. Grand Union Co., 443 A.2d 728, 730 (N.J. Sup. Ct. App. Div. 1982).

57. Sheets v. Teddy's Frosted Foods, 427 A.2d 385, 389 (Conn. 1980).

58. Trombetta v. Detroit, Toledo & Ironton R.R., 265 N.W.2d 385, 388 (Mich. Ct. App. 1978).

is discharged for refusing to break the law. In *Winters v. Houston Chronicle Publishing Co.*,[59] the Texas Supreme Court refused to recognize a cause of action for an employee discharged after reporting the illegal activities of fellow employees.[60] The court held the public policy exception would only apply when the employee was forced to choose between breaking the law and continued employment, or when discharge was predicated on a workers' compensation claim or some other benefit.[61] In short, the court diminished any hope that whistleblowers in Texas would be afforded a remedy for reporting their employer's illegal conduct.

C. *Blowing the Whistle for the Public Good*

Employees blowing the whistle on legal but potentially harmful employer practices face more difficult problems when seeking the protection afforded by the public policy exception in an at-will employment discharge. Without a statutory declaration of public policy, courts are faced with the problem of defining public policy.[62] Most courts are reluctant to do so.

In *Geary v. United States Steel Corp.*,[63] the Pennsylvania Supreme Court refused to apply the public policy exception to the discharge of a salesman who bypassed his immediate supervisors to warn a company vice president about a product he thought was unsafe.[64] The court gave strong consideration to the fact that the salesman was in no way responsible for product safety.[65] The decision did not foreclose the notion, however, that an employee could be protected from discharge if he was directly responsible for product safety.[66] In this case, however, the salesman's duties did not include evaluation of product safety, and he thus acted beyond the scope of his protected job function.[67] The court reasoned the discharge merely protected the employer's legitimate business interests, and the court would not recognize a cause of action that interfered with those interests.[68] In short, the *Geary* court was unwilling to impose the public policy exception where an employee is not bound by mandates of a statute or a legal duty.

The reasoning in *Geary* illustrates the tension between at-will employers and the public interest. An at-will employee who discovers a product

59. Winters v. Houston Chronicle Publishing Co., 795 S.W.2d 723 (Tex. 1990).

60. *Id.* at 723. The plaintiff alleged that the Houston Chronicle Publishing Company was "falsely reporting an inflated number of paid subscribers, that several employees were engaged in inventory theft, and that his immediate supervisor offered him an opportunity to participate in a kickback scheme." *Id.*

61. *Id.* at 724.

62. *See, e.g.*, Pierce v. Ortho Pharmaceutical Corp., 417 A.2d 505 (N.J. 1980).

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

64. *Id.* at 175, 180.

65. *Id.* at 178-79.

66. *Id.* at 178.

67. *Id.* at 178-79.

68. *Id.* at 179.

defect may be faced with the clear choice of retaining employment or blowing the whistle. The employee would be understandably reluctant to report potential problems to an employer. At the same time, however, the employer would lose a rare opportunity to uncover potential product failures. Such "preventive medicine" could save employers from the adverse affects of sending defective products into the marketplace.[69]

III. PUBLIC POLICY IMPLICATIONS OF WHISTLEBLOWING

Providing a legal remedy for whistleblowers is justified, because allowing employers to violate the law would undermine legislative attempts to protect the public through statutory law.[70] Courts have looked to both statutory and administrative law when determining whether whistleblowers should be provided a remedy.[71] When the discharge of an at-will employee frustrates the public policy embodied in these statutes, the employee is entitled to recover damages in tort.[72]

Generally, courts require a "clear mandate of public policy" before the public policy exception will be implemented.[73] Indeed, courts are not reluctant to find a "clear mandate" in state workers' compensation laws when an employee has been discharged for filing a workers' compensation claim.[74] In addition, the clear mandate of a state's criminal code justifies application of the exception when an employer asks an employee to act illegally.[75] Courts have struggled, however, with the exception in cases where employees have reported the illegal acts of others.

Jurisdictions affording whistleblowing employees a remedy recognize the function reporting employees serve in law enforcement. In *Palmateer v. International Harvester Co.*, the court willingly applied the public policy exception to protect an employee discharged for reporting violations of the state criminal code.[76] The court stated, "There is no public policy more basic, nothing more implicit in the concept of ordered liberty than the enforcement

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69. As one judge noted, "Employees are the first to learn of activities in the workplace that may have an adverse effect on the public and are in the best position to bring to a halt threatening conduct before irreversible damage is done." Winters v. Houston Chronicle Publishing Co., 795 S.W.2d 723, 729 (Tex. 1990) (Doggett, J., concurring); *see also* Brown v. Texas A & M Univ., 804 F.2d 327, 337 (5th Cir. 1986).

70. *See, e.g.*, Tameny v. Atlantic Richfield Co., 610 P.2d 1330, 1333 (Cal. 1980).

71. Pierce v. Ortho Pharmaceutical Corp., 417 A.2d 505, 512 (N.J. 1980).

72. *Id.*

73. Smith v. Calgon Carbon Corp., 917 F.2d 1338, 1345 (3d Cir. 1990), *cert. denied*, 111 S. Ct. 1597 (1991).

74. In one such case, the Iowa Supreme Court stated, "[B]y 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." Springer v. Weeks & Leo Co., 429 N.W.2d 558, 561 (Iowa 1988).

75. *See supra* text accompanying notes 19-31.

76. Palmeter v. International Harvester Co., 421 N.E.2d 876, 880 (Ill. 1981).

of a [s]tate's criminal code."[77] Thus, the criminal code provided the "clear mandate of public policy" required for imposition of the public policy exception.[78]

Similarly, the Kansas Supreme Court afforded a remedy to a woman who had been fired after reporting to authorities that a coworker was committing Medicaid fraud by billing for services not performed.[79] The court emphasized the importance of upholding the law and preventing future frauds by reporting the abuse.[80] Thus, the public policy embodied in disallowing fraud provided protection to the whistleblowing employee.

Other courts refuse to sail uncharted waters, however, and apply the exception to the whistleblowing employee's discharge. These courts often refuse to extend the exception beyond those instances in which an employee is discharged for exercising a statutory right or duty.[81] The result is that the "clear mandate of public policy" requirement acts as a sword against shieldless employees who seek to uphold the law by reporting the illegal activity of coworkers and employers.

IV. IOWA'S AT-WILL EXCEPTION: ADOPTION OF THE WHISTLEBLOWER EXCEPTION RECOMMENDED

Iowa courts have long advocated the general rule that at-will employment may be terminated by an employer at any time and for virtually any reason.[82] Iowa has joined other states that adopted the common law public policy exception.

In *Abrisz v. Pulley Freight Lines*,[83] the Iowa Supreme Court first hinted that a public policy exception to the at-will doctrine may exist in limited circumstances.[84] The court distinguished other public policy exception cases from the plaintiff's case, and found the plaintiff's discharge legitimate.[85] Moreover, the court left the question open for another time, stating, "[W]e do

77. *Id.* at 879.

78. *Id.* at 878-79.

79. Palmer v. Brown, 752 P.2d 685 (Kan. 1988).

80. *Id.* at 687.

81. *See, e.g.*, Winters v. Houston Chronicle Publishing Co., 795 S.W.2d 723 (Tex. 1990).

82. *See* 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., 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); *see also* Harrod v. Wineman, 125 N.W. 812, 813 (Iowa 1910) (holding contract of indefinite employment may be abandoned at will by either party without incurring liability to other for damages).

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

84. *Id.* at 456. The *Abrisz* court did not specifically pass on the public policy exception because it found the employee had been fired for reasons other than retaliation. *Id.* The court noted, "[P]laintiff has not established her discharge violated the public policy of this state. Courts should not declare conduct violative of public policy unless it is clearly so." *Id.*

85. *Id.*

not decide if an employee under an at-will contract is without a remedy under any circumstances."[86] The court thus seemed to indicate that there may be circumstances where an at-will employee would be entitled to relief.

The Iowa Supreme Court's hinted willingness to adopt the public policy exception was later realized in *Springer v. Weeks & Leo Co.*[87] In that case, the court found the plaintiff had been discharged for filing a workers' compensation claim.[88] The Iowa Supreme Court was quick to adopt the public policy exception in such a circumstance. The court held that "discharging an employee merely for pursuing the statutory right to compensation for work-related injuries offends against a clearly articulated public policy of this state. This type of conduct by an employer, if established, will support a claim for tortious interference with the contractual relationship."[89] The court also cited decisions from other jurisdictions in reaching its conclusion.[90] Additionally, the court looked to Iowa's workers' compensation statute, which provides that employers cannot avoid compensation liability created by the employment relationship.[91] Thus, the court relied on Iowa statutory law to find a clear expression of public policy that employees are entitled to workers' compensation.[92]

Iowa continues to apply this exception in at-will cases.[93] The issue of an employee discharged for refusing to participate in or exposing an employer's illegal conduct, however, has never been squarely addressed by Iowa courts. If given the opportunity, it would be in Iowa's best interest to apply the exception to those circumstances in which an employee is discharged for reporting the illegal conduct of an employer.

Iowa's exceptions to the at-will doctrine are soundly rooted in statutory law.[94] Through these exceptions, the legislature has acknowledged that the employer's power over the employee's livelihood is not absolute. These statutes do not, however, address every situation in which an employee should be protected from retaliatory discharge. As the Wisconsin Supreme

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86. *Id.*

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

88. *Id.* at 558-59.

89. *Id.* at 559.

90. *Id.* at 560 (citing Petermann v. International Bhd. of Teamsters, 344 P.2d 25, 27 (Cal. 1959); Parnar v. Americana Hotels, 652 P.2d 625, 631 (Haw. 1982); Palmateer v. International Harvester Co., 421 N.E.2d 876, 879-80 (Ill. 1981); Monge v. Beebe Rubber Co., 316 A.2d 549, 551 (N.H. 1974); Nees v. Hocks, 536 P.2d 512, 514-16 (Or. 1975); and Wandry v. Bull's Eye Credit Union, 384 N.W.2d 325, 330 (Wis. 1986)).

91. Springer v. Weeks & Leo Co., 429 N.W.2d at 560 (citing IOWA CODE § 85.18 (1987)). Iowa Code § 85.18 reads: "No contract, rule, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided." IOWA CODE § 85.18 (1990).

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

93. *See, e.g.*, Fogel v. Trustees of Iowa College, 446 N.W.2d 451 (Iowa 1989); Niblo v. Parr Mfg., 445 N.W.2d 351 (Iowa 1989).

94. *See supra* text accompanying notes 87-92.

Court observed, "[T]he legislature has not and cannot cover every type of wrongful termination that violates a clear mandate of public policy."[95]

Courts must be able to respond to the complaints of individual employees whose discharge violates public policy. One clear violation of public policy is the retaliatory discharge of an employee who refuses to participate in his employer's illegal activity. It is also in the public's best interest to ensure the protection of those employees that expose their employers' wrongdoing. Finally, public policy is served when employees are allowed to warn employers about potentially harmful products without fear of retaliation. When confronted with these situations, Iowa courts should be able to provide such employees a remedy.

V. CONCLUSION

As a response to the harsh result of the terminable-at-will doctrine, several courts have created a public policy exception.[96] These courts recognize that the employee should have a cause of action in tort against the employer when the employee's discharge violates a clear public policy. A number of courts have expanded the public policy exception to protect employees that have been discharged for refusing to participate in their employers' illegal activities, for exposing their employers' illegal activities, or for objecting to activities that may harm the public.[97]

The Iowa Supreme Court has not yet faced a case dealing with the whistleblower exception to the at-will doctrine. The court has, however, acknowledged that public policy considerations are germane to the employment-at-will relationship.[98] Public policy can only be furthered if employees courageous enough to speak out against employers' illegal or unsafe practices are protected by the courts. When confronted with such cases, the courts should adopt exceptions for whistleblowing employees. This precedent would encourage employees to uphold the law and would protect the public from employers' illegal conduct. Moreover, application of the public policy exception would not endanger the long-standing terminable-at-will doctrine. Rather, it would provide employees a remedy in those circumstances in which their discharge contravenes the purposes and goals of public policy. Failing to provide such a remedy would reward, with unemployment, those whistleblowers interested in upholding the law and protecting the public.

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95. Brockmeyer v. Dun & Bradstreet, 335 N.W.2d 834, 841-42 (Wis. 1983).
96. *See supra* text accompanying notes 76-80.
97. *See supra* text accompanying notes 19-69.
98. *See supra* text accompanying notes 82-95.