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AT-WILL OR SOMETHING MORE?:  
REASONABLE EXPECTATIONS OF  
CONTINUED EMPLOYMENT BY MINORITY  
SHAREHOLDERS POST-*BAUR V. BAUR FARMS,*  
*INC.*

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ABSTRACT

*In Baur v. Baur Farms, Inc.,\*\*\* the Iowa Supreme Court formally adopted the “reasonable expectations test” in minority shareholder oppression cases but left open the question as to what expectations are in fact reasonable. For minority shareholders who are employees of close corporations, Iowa’s appellate courts have yet to address whether these shareholders possess a reasonable expectation of continued employment. This Article addresses how other states applying the reasonable expectations test have answered the question, why Iowa likely would (and should) adopt a similar reasoning and create a cause of action for oppression when a minority shareholder’s reasonable expectation of continued employment is breached, and how minority and majority shareholders can advance or protect their interests accordingly.\*\*\*\**

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## I. INTRODUCTION

*"You're fired!"*

*"You can't fire me—I own this place!"*

That majority shareholders in close corporations owe fiduciary duties to minority shareholders is well-established.<sup>1</sup> Majority shareholders breach their fiduciary duties when they engage in "oppressive" conduct toward minority shareholders.<sup>2</sup> While minority shareholders' rights to relief for

1. See *Midwest Janitorial Supply Corp. v. Greenwood*, 629 N.W.2d 371, 375 (Iowa 2001).

2. See *id.*; IOWA CODE § 490.1430(1)(b)(2) (2019) (providing relief to minority shareholders where "[t]he directors or those in control of the corporation have acted,

shareholder oppression existed in Iowa long before the Iowa Supreme Court's 2013 decision in *Baur v. Baur Farms, Inc.*,<sup>3</sup> the court's opinion clarified the test in shareholder oppression cases.<sup>4</sup> *Baur* established a valid claim for oppression exists in Iowa where the majority shareholder has frustrated a minority shareholder's reasonable expectations.<sup>5</sup> Whether a minority shareholder's expectation is reasonable depends on the particular facts presented.<sup>6</sup>

Based on reported cases, the handful of years since the *Baur* decision has seemingly spurred as many filings of shareholder oppression cases as there had been filed in the previous handful of decades. The post-*Baur* cases have all applied the newly adopted reasonable expectations test.<sup>7</sup> Yet because oppression cases hinge on the facts of each case, there remains a dearth of case law in Iowa on what constitutes reasonable expectations to enlightened practitioners and judges.<sup>8</sup>

Considering the extremely common situation in which shareholders in closely held corporations work for the corporation and deem their employment compensation their primary return on investment, a key question remains unanswered in Iowa: whether a minority shareholder can possess such a reasonable expectation of continued employment that termination would constitute oppression.<sup>9</sup> While Iowa's appellate courts have yet to address this potential avenue of relief, other courts around the

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are acting, or will act in a manner that is illegal, oppressive, or fraudulent"); *Baur v. Baur Farms, Inc.*, 832 N.W.2d 663, 674 (Iowa 2013).

3. See, e.g., *Jochimsen v. Wapsi Hunting Club, Inc.*, No. 10-1430, 2011 WL 2695272, at \*5 (Iowa Ct. App. July 12, 2011); *Heidecker Farms, Inc. v. Heidecker*, Nos. 09-1541, 10-0273, 2010 WL 3894199, at \*11-12 (Iowa Ct. App. Oct. 6, 2010); *Connolly v. Bain*, 484 N.W.2d 207, 212 (Iowa Ct. App. 1992); *Maschmeier v. Southside Press, Ltd.*, 435 N.W.2d 377, 379-81 (Iowa Ct. App. 1988); *Sauer v. Moffitt*, 363 N.W.2d 269, 274 (Iowa Ct. App. 1984); 6 MATTHEW G. DORÉ, IOWA PRACTICE SERIES: BUSINESS ORGANIZATIONS § 31:11 (2018-2019 ed.) [hereinafter DORÉ, IOWA PRACTICE] (discussing pre-*Baur* Iowa oppression case law).

4. *Baur*, 832 N.W.2d at 673-74.

5. *Id.* at 674.

6. *Id.*

7. See DORÉ, IOWA PRACTICE, *supra* note 3, § 31:11 (discussing state and federal post-*Baur* decisions).

8. See generally *id.*

9. See *infra* Part IV.

country offer insights as to where the Iowa Supreme Court might—indeed, should—land on the issue.<sup>10</sup>

This Article addresses when and how a minority shareholder in Iowa may be able to bring a claim for oppression based on frustration of a reasonable expectation of continued employment and how majority shareholders and corporations may defend against these potential lawsuits. First, the Authors provide a brief history of Iowa oppression cases pre-*Baur* and post-*Baur*, as well as discuss the basics of breach of fiduciary duty and oppression claims.<sup>11</sup> This Article then covers the basics of employment law in Iowa, including at-will employment and some exceptions to the doctrine, to better frame the discussion of a shareholder's reasonable employment expectations.<sup>12</sup> Next, this Article discusses how courts in other jurisdictions have handled the issue of minority-shareholder employment expectations and the nonexhaustive factors that can determine whether such an expectation is reasonable.<sup>13</sup> The Authors also discuss why Iowa likely would—and should—adopt these factors.<sup>14</sup> Finally, this Article outlines practical considerations for oppression litigation regarding employment expectations moving forward, including how defendants can prevent this litigation at the front end, the application of the business judgment rule, and the types of damages successful plaintiffs can seek.<sup>15</sup>

Though successfully litigating an oppression claim in Iowa may seem like a Sisyphean task to some given its historically low success rate,<sup>16</sup> success is far from impossible. Reasonable expectations of continued employment might be one of the best ways aggrieved minority shareholders can finally push that rock over the hill.

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10. See *infra* Parts II, IV.

11. See *infra* Part II.

12. See *infra* Part III.

13. See *infra* Part IV.

14. See *infra* Part IV.

15. See *infra* Part V.

16. See *infra* Part II.

## II. *BAUR, CALKINS*, AND IOWA'S ADVANCING SHAREHOLDER- OPPRESSION JURISPRUDENCE

### A. *Reasonable Expectations Come to Iowa*

Shareholder oppression protections are codified in the Iowa Business Corporations Act, which authorizes courts to dissolve a corporation upon a minority shareholder proving “[t]he directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.”<sup>17</sup> The Iowa Code does not define what constitutes oppressive conduct, and—until recently—Iowa case law was exceptionally thin on published guidance for what constituted oppressive conduct.<sup>18</sup>

In 2013, the Iowa Supreme Court issued its first-ever ruling interpreting Iowa's shareholder oppression statute.<sup>19</sup> That case, *Baur*, establishes that a shareholder's reasonable expectations provide the criteria for whether oppression has occurred.<sup>20</sup> In *Baur*, a minority shareholder in a family farm corporation sought judicial dissolution alleging oppression based on the majority's prior removal of the plaintiff as a corporate officer, the majority's refusal to approve shareholder distributions, the majority's offers to purchase the plaintiff's shares with a substantial minority discount, and other misconduct.<sup>21</sup> The court held, “[M]ajority shareholders act oppressively when, having the corporate financial resources to do so, they fail to satisfy the reasonable expectations of a minority shareholder by paying no return on shareholder equity while declining the minority shareholder's repeated offers to sell shares for fair value.”<sup>22</sup>

The *Baur* court made clear the type of misconduct alleged and analyzed in that lawsuit was only one species of oppression and declined to

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17. IOWA CODE § 490.1430(1)(b)(2) (2019).

18. *Id.*

19. *Baur v. Baur Farms, Inc.*, 832 N.W.2d 663, 670 (Iowa 2013).

20. *Id.* at 673–74.

21. *Id.* at 666–68.

22. *Id.* at 674. This finding, however, is not the actual oppression test. *See id.* Rather, it is only one type of oppression under the general reasonable expectations test. *See id.* *Baur* also describes oppression that can broadly be described as “bad act” oppression. *Id.* at 670, 676 (describing squeeze-out oppression where minority shareholders are left with the choice of either “getting little or no return on their investment for an indefinite period of time or selling out to the majority shareholders at whatever price they will offer”).

“catalogue here all the categories of conduct and circumstances that will constitute oppression frustrating the reasonable expectations of minority shareholders’ interests.”<sup>23</sup> The only other published Iowa appellate case involving a shareholder oppression claim (an Iowa Court of Appeals decision from 1988) centered on oppressive actions against minority shareholders more directly involved in the operation of the corporation.<sup>24</sup>

That case, *Maschmeier v. Southside Press, Ltd.*, centered on a family printing corporation in which the parents, as majority shareholders, fired two sons from employment and created a new corporation in which the two sons were not shareholders.<sup>25</sup> The old corporation leased assets to the new corporation, and the new corporation carried on a printing business.<sup>26</sup> Although a substantial portion of the old corporation’s assets had been disposed of, the parents continued to receive salaries from the old corporation and made no distributions to shareholders.<sup>27</sup> The parents ultimately offered to buy the sons’ shares at a price equating to less than half of what the district court determined to be the old corporation’s liquidation value.<sup>28</sup>

The *Maschmeier* court, noting the Model Business Corporation Act did not define oppressive conduct, cited oppression analysis in cases from jurisdictions with similar oppression statutes.<sup>29</sup> The court held the parents violated Iowa Code § 496A.94(1)(c), the precursor to section 490.1430(1)(b)(2) containing substantively identical language.<sup>30</sup> The Iowa Court of Appeals held the majority’s actions constituted oppression and, in fashioning its remedy, required the majority shareholders to purchase the minority’s shares.<sup>31</sup>

The Iowa Supreme Court in *Baur*, citing to *Maschmeier*, determined that oppression is “an expansive term used to cover a multitude of situations dealing with improper conduct which is neither illegal nor fraudulent.”<sup>32</sup>

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23. *Id.* at 674.

24. *Maschmeier v. Southside Press, Ltd.*, 435 N.W.2d 377, 378 (Iowa Ct. App. 1988).

25. *Id.*

26. *Id.* at 378–79.

27. *Id.*

28. *Id.* at 379.

29. *Id.* at 379–80 (considering, among others, *Balvik v. Sylvester*, 411 N.W.2d 383, 388 (N.D. 1987)).

30. *See id.* at 382.

31. *Id.*

32. *Baur v. Baur Farms, Inc.*, 832 N.W.2d 663, 670 (Iowa 2013) (citing *Maschmeier*,

### B. Baur's Progeny

Although the minority shareholder in *Baur* ultimately failed in his attempt to prove oppression,<sup>33</sup> the *Baur* court's reasonable expectations test has been applied in several subsequent oppression cases, all of which are unpublished.<sup>34</sup> In only one of these cases did the court grant relief for oppression.<sup>35</sup>

In *Van Horn v. R.H. Van Horn Farms, Inc.*, two siblings who received shares through parental gifting brought shareholder oppression and corporate waste claims against their father and brother in connection with the operation of a farm corporation.<sup>36</sup> Plaintiffs, who lived out of state and were not involved in the day-to-day operation of the farm corporation, alleged their father and brother used "accounting methods to disguise the financial health" of the corporation to "hide profits that would otherwise warrant shareholder distributions."<sup>37</sup> Plaintiffs further alleged mismanagement of the farming operation, claiming the corporation could have generated more cash revenue by renting the land rather than self-farming and that the father and brother were enjoying "patronage" from the corporation unavailable to the plaintiffs.<sup>38</sup> The Iowa Court of Appeals, citing to both *Maschmeier* and *Baur*, affirmed Specialty Business Court Judge Michael Huppert's rejection of the shareholder oppression claim in finding the plaintiffs failed to show their reasonable expectations were frustrated by the actions of their brother and father.<sup>39</sup>

In *Morse v. Rosendahl*, three siblings—Nels, Carolyn, and Elaine— inherited property from their parents and created a limited liability company with each contributing a portion of their inheritance.<sup>40</sup> Carolyn was made the

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435 N.W.2d at 380).

33. *See id.* at 676–77.

34. *See, e.g.,* *Van Horn v. R.H. Van Horn Farms, Inc.*, No. 17-0324, 2018 WL 3060240, at \*6 (Iowa Ct. App. June 20, 2018); *Morse v. Rosendahl*, No. 15-0912, 2016 WL 3273725, at \*6 (Iowa Ct. App. June 15, 2016).

35. *Calkins v. Brandt*, No. EQCE081752, 2019 WL 1222916, at \*10 (Iowa Dist. Ct. Jan. 26, 2019).

36. *Van Horn*, 2018 WL 3060240, at \*1.

37. *Id.* at \*6.

38. *Id.* at \*7.

39. *Id.* at \*8.

40. *Morse v. Rosendahl*, No. 15-0912, 2016 WL 3273725, at \*1 (Iowa Ct. App. June 15, 2016).

LLC's managing member.<sup>41</sup> When the sisters later filed an action to enforce the LLC's operating agreement against Nels, Nels filed a counterclaim seeking dissolution for minority shareholder oppression under Iowa Code § 489.701(1)(e)(2).<sup>42</sup> Citing to *Baur* and the court's reasonable expectations standard, the Iowa Court of Appeals determined the evidence did not show Carolyn and Elaine had refused repeated offers by Nels to sell his interest in the LLC for fair value and thus held no oppression occurred.<sup>43</sup>

*Knobloch v. Home Warranty, Inc.* is the only federal case addressing a shareholder oppression claim in Iowa.<sup>44</sup> In *Knobloch*, a minority shareholder claimed frustrated reasonable expectations based on deprivation of his right to share proportionately in the company's gains in two ways: by diluting his stock ownership from 48 percent to 18.87 percent through the issuance of new shares in which he was not offered any opportunity to purchase more shares and by the majority shareholders paying themselves excessive compensation.<sup>45</sup> Citing to the reasonable expectations standard for oppression in *Baur*, the federal district court held no oppression occurred.<sup>46</sup>

In *Ahrens v. Ahrens Agricultural Industries Co.*, the nephew of the corporation's founder bought what was at the time a 25 percent interest in the corporation with an understanding he would be groomed for a leadership role.<sup>47</sup> Two years later, the founder terminated his nephew, with other family members rising to leadership roles in the corporation.<sup>48</sup> The nephew ultimately pursued an oppression claim against the majority shareholders for providing treasury shares to key employees that diluted his interest in the corporation, providing bonuses that diminished shareholder dividends, and refusing his request for employment.<sup>49</sup> The court cited exclusively to the reasonable expectations standard in *Baur* in analyzing the oppression claim, holding no oppression occurred.<sup>50</sup>

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41. *Id.*

42. *Id.* at \*2, \*5–6.

43. *Id.* at \*6.

44. *Knobloch v. Home Warranty, Inc.*, No. C15-4239-MWB, 2016 WL 6662709, at \*5–6. (N.D. Iowa Nov. 10, 2016).

45. *Id.* at \*2–3.

46. *Id.* at \*6–7.

47. *Ahrens v. Ahrens Agric. Indus. Co.*, No. 14-0564, 2015 WL 2089372, at \*1 (Iowa Ct. App. May 6, 2015).

48. *Id.*

49. *Id.* at \*5.

50. *Id.* at \*5–6.



*C. Calkins v. Brandt and Its Unanswered Question*

The Iowa Specialty Business Court's case *Calkins v. Brandt* presents the first instance of a minority shareholder prevailing in an oppression action since the *Baur* court put in place the reasonable expectations standard.<sup>51</sup> *Calkins* involved a closely held corporation in which two shareholders—Calkins, the minority shareholder with a 43.3 percent interest, and Brandt, the majority shareholder with a 56.7 percent interest—had been owners and colleagues in the business for 25 years.<sup>52</sup> Calkins alleged Brandt, in an effort to keep Brandt's own son employed at a high salary despite financial challenges within the business, engaged in squeeze-out techniques to get Calkins out of the business.<sup>53</sup> Among other claims, Calkins alleged that, during negotiations for the buyout of his interest, Brandt cut Calkins's salary by 38 percent while increasing Brandt's son's salary by more than 20 percent.<sup>54</sup> Brandt later abruptly fired Calkins when Calkins refused a buyout proposal, thus eliminating any meaningful, ongoing financial benefit Calkins would receive from the corporation.<sup>55</sup> Brandt also reneged on an agreement to use a specific valuation firm for determination of the purchase price for Calkins's shares and slashed the proposed purchase price for Calkins's shares.<sup>56</sup>

Iowa Business Specialty Court Judge Lawrence McLellan evaluated the oppression claim using the reasonable expectations standard in *Baur*, noting, "[T]he reasonable expectations that a minority shareholder has is not determined solely at the time of the purchase of the shares but is a continuum examined from the time of the purchase until the end of the relationship."<sup>57</sup> Analyzing the reasonable expectations that developed since the beginning of the 25-year relationship, Judge McLellan held Brandt's ceasing negotiations for Calkins's shares and firing Calkins without any justifiable business rationale constituted oppressive conduct toward Calkins.<sup>58</sup>

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51. *Calkins v. Brandt*, No. EQCE081752, 2019 WL 1222916, at \*10 (Iowa Dist. Ct. Jan. 26, 2019).

52. *See id.* at \*2–3.

53. *Id.* at \*1, \*8.

54. *Id.* at \*6.

55. *Id.* at \*6–7.

56. *Id.* at \*7.

57. *Id.* at \*9 (citing *Meiselman v. Meiselman*, 307 S.E.2d 551, 563 (N.C. 1983)).

58. *See id.* at \*10.

In fashioning a remedy for the oppressive conduct found against Brandt, Judge McLellan noted the court's broad equitable powers.<sup>59</sup> He noted the precedent in *Maschmeier* and another Iowa Court of Appeals ruling, *Sauer v. Moffitt*,<sup>60</sup> for the proposition that courts may require the majority to buy out the minority's shares in lieu of dissolving the corporation.<sup>61</sup> Judge McLellan also relied heavily on the statutory remedies set forth in Iowa Code § 490.1434, which permit majority shareholders to elect purchasing shares in lieu of dissolution.<sup>62</sup> Subsection 5 of that statute sets forth a menu of remedy options available to the district court, providing in relevant part:

Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. . . . Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder has probable grounds for relief under section 490.1430, subsection 1, paragraph "b", subparagraph (2) or (4), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the shareholder.<sup>63</sup>

Judge McLellan's damages award hewed closely to subsection 5.<sup>64</sup> After determining the fair value of Calkins's shares, Judge McLellan established payment terms requiring Brandt and the corporation to purchase Calkins's shares over three years with payments on specified dates, with interest from the date of the petition's filing.<sup>65</sup> Judge McLellan further

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59. *Id.* at \*18.

60. *Sauer v. Moffitt*, 363 N.W.2d 269, 275 (Iowa Ct. App. 1984).

61. *Calkins*, 2019 WL 1222916, at \*18.

62. *Id.* at \*18–19.

63. IOWA CODE § 490.1434(5) (2019).

64. *See Calkins*, 2019 WL 1222916, at \*19–24 (explaining the court's calculation for damages).

65. *Id.* at \*27.

ordered Brandt and the corporation to pay Calkins's reasonable attorney and expert witness fees and expenses.<sup>66</sup>

However, Judge McLellan separately denied Calkins's request for relief based on a reasonable expectation of continued employment.<sup>67</sup> The court noted Iowa's public policy exception to the at-will employment doctrine, which provides relief for employees engaging in protected employment activity where an employer lacks an overriding business justification for discharging the employee.<sup>68</sup> The court determined that when "Brandt and Calkins began their preparations for the purchase of [Calkins's] shares Calkins had a reasonable expectation of continued employment until an agreement was reached on the purchase of his shares."<sup>69</sup> However, Judge McLellan declined to find that a breach of this reasonable expectation of continued employment constituted shareholder oppression, noting that "[o]ur appellate courts have not addressed whether the oppressive conduct of a majority shareholder would meet the public-policy exception" and that he did "not believe our appellate courts would allow a claim on this basis at this time."<sup>70</sup> Interestingly, Judge McLellan nonetheless made a detailed analysis of Calkins's damages based on his reasonable expectation of continued employment claim, concluding that "[i]f our appellate courts determine that a claim for reasonable expectation of continuing employment as a claim for oppression is an exception to the at-will doctrine," the damages for lost wages and benefits had been proved in the amount of \$377,879.<sup>71</sup> Judge McLellan, thus, perfectly teed up the issue for the Iowa Supreme Court, but the issue ended there because the business court ruling was not appealed.

### III. AT-WILL EMPLOYMENT IN IOWA

Unlike with a publicly traded corporation, shareholders in a close corporation may expect to receive employment as part of buying into the corporation and would consider their salary and benefits their primary

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66. Order Re: Motion for Attorney Fees, Expenses of Counsel and Experts and Defendants' Motion to Enlarge or Amend at 10, *Calkins v. Brandt*, No. EQCE081752, 2019 WL 1222916 (Iowa Dist. Ct. Jan. 26, 2019).

67. See *Calkins*, 2019 WL 1222916, at \*12–16.

68. *Id.* at \*13.

69. *Id.* at \*16.

70. *Id.* at \*13, \*16.

71. *Id.* at \*26.

return on investment.<sup>72</sup> The question remains, however, whether those expectations are reasonable and thus protected under oppression law.<sup>73</sup> Before broaching when minority-shareholder employees have reasonable expectations of continued employment under oppression law, it is first necessary to provide some context regarding employment rights and expectations in Iowa.

Employment in Iowa has long been presumed at will,<sup>74</sup> which may very well factor into a court's decision in an oppression case.<sup>75</sup> While Iowa's traditional at-will employment doctrine was commonly defined as "[i]n the

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72. *Hollis v. Hill*, 232 F.3d 460, 470–71 (5th Cir. 2000) (discussing how minority shareholders in close corporations may have reasonable expectations of continued employment, in part where the shareholders “obtain their return on investment through benefits provided to them as employees”); *In re Kemp & Beatley, Inc.*, 473 N.E.2d 1173, 1178 (N.Y. 1984) (“It is widely understood that, in addition to supplying capital to a contemplated or ongoing enterprise and expecting a fair and equal return, parties comprising the ownership of a close corporation may expect to be actively involved in its management and operation . . . .”); *Hayes v. Olmsted & Assocs., Inc.*, 21 P.3d 178, 182 (Or. Ct. App. 2001) (“The ‘squeeze out’ tactics of majority shareholders often deprive minority shareholders of management participation, employment income or other advantages that they reasonably have come to expect, and which are the essential benefits of their investment.”); 1 F. HODGE O’NEAL & ROBERT B. THOMPSON, O’NEAL & THOMPSON’S CLOSE CORPORATIONS AND LLCs: LAW AND PRACTICE § 1:13 (rev. 3d ed. 2018).

73. See *infra* Part IV.

74. *Lathrum-Kinney v. City of Bagley*, Civ. No. 4:06-CV-00410-TJS, 2009 WL 10703192, at \*6 (S.D. Iowa Feb. 6, 2009) (applying Iowa law); *Schoff v. Combined Ins. Co. of Am.*, 604 N.W.2d 43, 47 (Iowa 1999); *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 202 (Iowa 1997); *Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 282 (Iowa 1995) (citing *Harrod v. Wineman*, 125 N.W. 812, 813 (Iowa 1910) (“[I]t 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 . . . .”)).

75. See, e.g., *Hollis*, 232 F.3d at 470–71 (discussing the balance between at-will employment and a minority shareholder's reasonable expectations); *Bontempo v. Lare*, 119 A.3d 791, 807–08 (Md. Ct. App. 2015) (holding reasonable expectations of employment could not supersede the at-will employment doctrine); *Ingle v. Glamore Motor Sales, Inc.*, 535 N.E.2d 1311, 1313 (N.Y. 1989) (“A minority shareholder in a close corporation, by that status alone, who contractually agrees to the repurchase of his shares upon termination of his employment for any reason, acquires no right from the corporation or majority shareholders against at-will discharge.”); O’NEAL & THOMPSON, *supra* note 72, § 6:2 (“Employment-at-will remains the default rule for employment generally, so that if a shareholder-employee relationship is viewed solely from the employment perspective, there will be fewer protections against corporate action. Some courts have found that employment status dominates shareholder status in determining remedies.” (citations omitted)). But see *infra* Parts III.C, V.B.

absence of a valid employment contract either party may terminate the relationship without consequence,”<sup>76</sup> “the modern employment-at-will doctrine is perhaps more aptly described as one that permits termination at any time for any *lawful* reason, that is, a reason that is not contrary to public policy.”<sup>77</sup> The employment can be terminated by either the employer or the employee.<sup>78</sup>

Some might contend the at-will employment doctrine would end the discussion of this Article right then and there.<sup>79</sup> There are, however, recognized exceptions to the at-will doctrine relevant to the discussion of a minority shareholder’s expectations of continued employment. The first is the parties’ ability to contract beyond at-will employment.<sup>80</sup> As will be discussed, this is not an easy burden for the minority shareholder to meet.<sup>81</sup> The second, and perhaps even narrower path, is the public policy exception to at-will terminations.<sup>82</sup> While these two options are well defined by Iowa courts, the third path presented in this Article—the reasonable expectation doctrine for minority-shareholder employees, arguably a hybrid of both—remains largely undiscussed in the state’s case law.<sup>83</sup>

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76. *Anderson*, 540 N.W.2d at 281 (describing the doctrine as a mere “gap-filler, a judicially created presumption utilized when parties to an employment contract are silent as to duration”); *see also* *French v. Foods, Inc.*, 495 N.W.2d 768, 769 (Iowa 1993) (stating the general rule in Iowa was at-will employees were “subject to discharge at any time, for any reason, or for no reason at all”).

77. *Lockhart v. Cedar Rapids Cmty. Sch. Dist.*, 577 N.W.2d 845, 846 (Iowa 1998) [hereinafter *Lockhart I*].

78. *Jones v. Univ. of Iowa*, 836 N.W.2d 127, 144 (Iowa 2013); *Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106, 109 (Iowa 2011).

79. *See, e.g., Brennan v. Chestnut*, 973 F.2d 644, 648 (8th Cir. 1992) (“[A] majority shareholder does not owe a fiduciary duty to an employee minority shareholder who acquires a small percentage of stock as part of his or her employment compensation.”); *Bontempo*, 119 A.3d at 807–08; *Merola v. Exergen Corp.*, 668 N.E.2d 351, 355 (Mass. 1996) (“Not every discharge of an at-will employee of a close corporation who happens to own stock in the corporation gives rise to a successful breach of fiduciary duty claim.”); *Ingle*, 535 N.E.2d at 1313; O’NEAL & THOMPSON, *supra* note 72, § 6:2 (“Some courts have found that employment status dominates shareholder status in determining remedies.”).

80. *See Wolfe v. Graether*, 389 N.W.2d 643, 652 (Iowa 1986); *see infra* Part III.A.

81. *See Kabe’s Rest., Ltd. v. Kintner*, 538 N.W.2d 281, 283 (Iowa 1995); *Wolfe*, 389 N.W.2d at 652; *Moody v. R.A. Bogue*, 310 N.W.2d 655, 658 (Iowa Ct. App. 1981); *see infra* Part III.A.

82. *See Springer v. Weeks & Leo Co.*, 429 N.W.2d 558, 559–60 (Iowa 1988); *see infra* Part III.B.

83. *See infra* Parts III.C, IV.

### A. Agreements for Permanent or Continued Employment

“Absent a valid contract of employment, an employment relationship is generally considered to be inherently indefinite and presumed to be at-will.”<sup>84</sup> Employers and employees can contract for employment protections greater than what the at-will doctrine provides (or perhaps does not provide).<sup>85</sup> This can often be seen in a contract for a definite term of employment.<sup>86</sup> For instance, an employee could enter into an employment contract specifically providing for a term of one or two years.<sup>87</sup> When an employment contract is for a definite term, the employer can not terminate the employee, unless it does so for cause or pursuant to the agreement,<sup>88</sup> without potentially taking on liability, which could include breach of contract or wrongful termination claims.<sup>89</sup>

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84. *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 280 (Iowa 2000); *see* *Anderson v. Bristol, Inc.*, 936 F. Supp. 2d 1039, 1069 (S.D. Iowa 2013) (applying Iowa law); *Hussaini v. Gelita USA, Inc.*, 749 F. Supp. 2d 909, 918 (N.D. Iowa 2010) (applying Iowa law); *McVey v. Nat'l Org. Serv., Inc.*, 719 N.W.2d 801, 803 (Iowa 2006) (“[I]f an expressly stated term of employment is not provided by contract, employment is at will.”).

85. *See Kabe's Rest.*, 538 N.W.2d at 283.

86. *Id.*; *Wolfe*, 389 N.W.2d at 652; *Allen v. Highway Equip. Co.*, 239 N.W.2d 135, 140 (Iowa 1976).

87. *See, e.g., St. Jude Med. S.C., Inc. v. Biosense Webster, Inc.*, 818 F.3d 785, 788 (8th Cir. 2016) (two-year employment contract); *Stoetzel v. Cont'l Textile Corp. of Am.*, 768 F.2d 217, 221–22 (8th Cir. 1985) (two-year employment contract); *Linser v. Cross*, No. 13-1927, 2014 WL 7343442, at \*4 (Iowa Ct. App. Dec. 24, 2014) (one-year employment contract).

88. *Wolfe*, 389 N.W.2d at 652 (“In a contract of employment which by its express terms is for a definite time or to last until a definite day, the employer may not discharge an employee prior to the stated time unless cause is shown based upon the employee's failure to perform in accordance with the contract of hire or there is some reason for discharge expressly provided in the contract.”).

89. An Iowa court has expressed this in the following:

A contract of employment which by its express terms is for a definite time or to last until a definite day presents, of course, no problem concerning its duration and termination. The employer has the implied right to discharge the employee for cause, but otherwise the employment cannot be terminated of right during the term of its existence as expressed in the contract. . . .

(I)f the employer made a promise, either express or implied, not only to pay for the service but also that the employment should continue for a period of time that is either definite or capable of being determined, that employment is not terminable by him “at will” after the employee has begun or rendered some of the requested service or has given any other consideration (or has acted in

Things get a little more complicated when the employee alleges a lifetime employment contract or an agreement where employment continues until some event, such as retirement.<sup>90</sup> An employment contract for an indefinite period of time is presumed to be at-will.<sup>91</sup> “Contracts expressly offering lifetime or permanent employment or which a trier of fact has interpreted as offering such employment based on extrinsic evidence will be interpreted as indefinite and terminable at will in the absence of some executed consideration in addition to the services to be rendered.”<sup>92</sup> Only where employees can show both (1) that their employers offered a contract for lifetime or continued employment<sup>93</sup> and (2) that the employees gave special and ample consideration in exchange for that offer (and often that offer alone) can employees sufficiently prove the existence of the lifetime employment contract.<sup>94</sup>

An offer for lifetime employment is typically required to be explicit because these contracts are “extraordinary and unusual.”<sup>95</sup> For instance, in

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reliance on the promise in such manner as to make applicable the rule in Restatement, Contracts, s 90).

*Allen*, 239 N.W.2d at 140 (internal quotation marks omitted) (citations omitted); see also *St. Jude Med. S.C., Inc.*, 818 F.3d at 788 (holding valid a term-of-years employment contract enforceable by damages); *Stoetzel*, 768 F.2d at 221–22 (finding sufficient evidence to support a claim for breach of two-year employment contract).

90. See, e.g., *Kabe’s Rest.*, 538 N.W.2d at 283–84 (describing the level of proof necessary to show a lifetime employment contract); *Wolfe*, 389 N.W.2d at 652–54 (describing the level of proof necessary to show a lifetime employment contract).

91. *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 280 (Iowa 2000) (“Absent a valid contract of employment, an employment relationship is generally considered to be inherently indefinite and presumed to be at-will.”).

92. *Wolfe*, 389 N.W.2d at 652.

93. See *Kunzman v. Enron Corp.*, 902 F. Supp. 882, 906–07 (N.D. Iowa 1995) (applying Iowa law and finding an employer’s statements too indefinite to establish offer of lifetime employment); *Kabe’s Rest.*, 538 N.W.2d at 283–84 (requiring employee to prove both that there was a contract and that the terms called for continued employment until retirement); *Kavanaugh v. Med. Assocs. Clinic, P.C.*, 491 N.W.2d 194, 196 (Iowa Ct. App. 1992) (affirming an employee’s failure to identify specific details discussed regarding permanent employment failed to generate an issue of material fact to support a breach of contract claim).

94. See *Kabe’s Rest.*, 538 N.W.2d at 283–84; *Albert v. Davenport Osteopathic Hosp.*, 385 N.W.2d 237, 238 (Iowa 1986); *Wolfe*, 389 N.W.2d at 652–54; *Stauter v. Walnut Grove Prods.*, 188 N.W.2d 305, 311 (Iowa 1971).

95. *Brown v. Safeway Stores, Inc.*, 190 F. Supp. 295, 299 (E.D.N.Y. 1960). (“The intention to make an offer of life employment or any unusual offer of employment, as

*Kavanaugh v. Medical Associates Clinic, P.C.*, the Iowa Court of Appeals held the employee had failed to generate an issue of material fact to survive summary judgment on his breach of contract claim where the only “offer” for lifetime employment he could point to was “a sense or a feeling he would have future employment. However, he admitted no specific details were discussed.”<sup>96</sup> And in *Kunzman v. Enron Corp.*, the United States District Court for the Northern District of Iowa found statements made to the employee at the outset that he could rely on the employer as a place that “took care of its employees,” that the company “was classified as an old folks’ home,” that “[n]obody lost their jobs out here,” and that the employer would “take care of you” were too indefinite to be an offer of lifetime employment.<sup>97</sup>

*Friedman v. BRW, Inc.* provides an even harsher example.<sup>98</sup> There, after being offered a job, the plaintiff employee expressed concerns about the nature and term of the position.<sup>99</sup> An officer of the company, who made the initial offer, wrote the plaintiff, telling him, “This is a permanent position, with a six month ‘orientation’ period.”<sup>100</sup> The letter enclosed the company’s employee handbook, which included an employment-at-will provision.<sup>101</sup> After he accepted the position and started the job, the plaintiff

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gleaned by the plaintiff, must be clear and unequivocal. A casual remark made at a meeting, a phrase plucked out of context, is too fragile a base on which to rest such a heavy obligation inherent in such a contract. Absent the intention of the employer to offer a life contract, or contract of employment to age 65, or contract of employment from year-to-year, mutuality of assent, the basic element of contract, is lacking.”). *Id.* at 299–300.

96. *Kavanaugh*, 491 N.W.2d at 195–96.

97. *Kunzman*, 902 F. Supp. at 907. Similarly, in *Mursch v. Van Dorn Co.*, the Seventh Circuit held the defendant’s vice president of sales’s statement to the plaintiff employee that it was a great place to work, there was no mandatory retirement, and “so long as you do your job you can be here until you’re a hundred” did not amount to a clear intent to agree to lifetime employment. *Mursch v. Van Dorn Co.*, 851 F.2d 990, 998 (7th Cir. 1988). According to the Seventh Circuit, the comment “was made in the context of casual conversation and merely amounted to encouragement and optimism. As such, the parties’ conversation should not be twisted and contrived into an expression of intent to create a binding contract of lifetime employment.” *Id.* at 997–98; see also *Brown*, 190 F. Supp. at 297–98 n.1, 299–300 (holding assurances that employees “will always be one of us” and “would have jobs as long as we wanted them ‘as long as we lived’” was not explicit enough to constitute an offer for lifetime employment).

98. *Friedman v. BRW, Inc.*, 40 F.3d 293, 295 (8th Cir. 1994).

99. *Id.*

100. *Id.*

101. *Id.*



received a letter from the company's human resources department stating it wished to correct the officer's earlier statement.<sup>102</sup> Rather than a permanent position, the letter said the plaintiff's position was really classified as regular (which the letter distinguished from a temporary position).<sup>103</sup> The plaintiff did not respond to the letter and was laid off about two years later.<sup>104</sup> He sued for breach of contract, promissory estoppel, and fraud, but the Eighth Circuit held the use of *permanent* was not a definitive offer of lifetime employment and was only meant to distinguish between temporary and steady—but at-will—employment.<sup>105</sup> Thus, Iowa and federal courts “have uniformly upheld summary dismissal of a breach of oral lifetime contract claims where the parties, in discussing employment, were referring to the distinction between temporary employment and employment which is continuous nevertheless terminable at will, and not to lifetime employment.”<sup>106</sup>

But in *Collins v. Parsons College*, the Iowa Supreme Court found an employer's use of *tenure*—both in the plaintiff's interview and in two written contracts carrying out the original agreement—was sufficient to create a permanent employment contract where the faculty bylaws provided a tenured faculty member could only be terminated for cause.<sup>107</sup> Similarly, in *Kabe's Restaurant, Ltd. v. Kintner*, the Iowa Supreme Court found the evidence supported a verdict in favor of the plaintiff employee where there was testimony by the board of directors regarding an intent to furnish employment until retirement.<sup>108</sup> Further, in *Wolfe v. Graether*, the Iowa Supreme Court held the shareholders of a professional corporation's (which was previously a partnership) promise to the plaintiff (not a shareholder) that he would be compensated equally with the shareholders and was assured he would have all the same rights he had when he was a partner could have generated a contract for permanent employment.<sup>109</sup>

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102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* at 296.

106. *Kunzman v. Enron Corp.*, 902 F. Supp. 902, 909 (N.D. Iowa 1995).

107. *Collins v. Parsons Coll.*, 203 N.W.2d 594, 597–98 (Iowa 1973).

108. *Kabe's Rest., Ltd. v. Kintner*, 538 N.W.2d 281, 284 (Iowa 1995).

109. *Wolfe v. Graether*, 389 N.W.2d 643, 646–47, 654 (Iowa 1986).

The mere offer of lifetime or continued employment by an employer<sup>110</sup> and acceptance by an employee is not enough to create a valid lifetime employment contract.<sup>111</sup>

Absent any consideration beyond the employee's promise to perform, a contract for permanent or lifetime employment is construed to be an indefinite time, terminable at the will of either party. . . .

However, a different situation arises where there is consideration in addition to the promise to perform services. Where the employee furnishes consideration in addition to his services, a contract for permanent or lifetime employment is valid and enforceable and continues to operate as long as the employer remains in business and has work for the employee once the employee performs competently.<sup>112</sup>

Not any old consideration will do, however. Courts require plaintiffs to provide something more than performing their job.<sup>113</sup> And the court will likely scrutinize whether the consideration is sufficient, often looking for some high level of detrimental reliance.<sup>114</sup> There are numerous examples that this is not an easy bar to meet:

- Consideration was deemed insufficient where the employee was unemployed prior to accepting the employment offer and there were no other pending offers he gave up.<sup>115</sup>
- Giving up a prior civil service job with certain statutory protections as to termination was not sufficient consideration.<sup>116</sup>
- There was not sufficient consideration even where the employee contended she had worked for her employer for 40

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110. An offer of lifetime employment may also run into problems when it is oral. Depending on the facts of the alleged agreement, the oral contract may be barred by the statute of frauds because it could not be completed within one year. IOWA CODE § 622.32(4) (2019); *Olson v. Nextel Partners, Inc.*, 317 F. Supp. 2d 972, 979 (S.D. Iowa 2004) (holding the statute of frauds barred oral employment contract for over a year).

111. *Stauter v. Walnut Grove Prods.*, 188 N.W.2d 305, 311 (Iowa 1971).

112. *Id.*

113. *Id.*

114. *See id.* at 312.

115. *Nielsen v. Crane Co. Inc.*, 809 F. Supp. 699, 702 (S.D. Iowa 1992).

116. *Kavanaugh v. Med. Assocs. Clinic, P.C.*, 491 N.W.2d 194, 196 (Iowa Ct. App. 1992).

years, provided numerous services without compensation, worked overtime, was a good employee, and anticipated lifetime employment because the record was devoid of any evidence she had given up a prior permanent job or suffered a similar loss.<sup>117</sup>

- Paying moving expenses is insufficient consideration for lifetime employment.<sup>118</sup>
- Giving up the opportunity to take a different at-will job is insufficient consideration to create permanent employment.<sup>119</sup>
- There was not sufficient consideration where the employee gave up his prior at-will employment, sold his home, and moved.<sup>120</sup> It was also irrelevant his wife gave up her job because she was not a party to the alleged employment contract.<sup>121</sup>
- Taking a different job with the same employer that paid half as much as the employee was making before did not provide sufficient consideration because the prior job was at-will, and the employee thus “gave up nothing that [the employer] could not have taken away anyway.”<sup>122</sup>

Not all consideration is insufficient, however:

- Accepting a minority position instead of equal control of a corporation and settling litigation have both been found to be sufficient consideration.<sup>123</sup>
- Selling a competing business and equipment based on an offer of continued employment is also sufficient.<sup>124</sup>

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117. *Benishek v. Cody*, 441 N.W.2d 399, 400–01 (Iowa Ct. App. 1989).

118. *Bixby v. Wilson & Co., Inc.*, 196 F. Supp. 889, 901–02 (N.D. Iowa 1961).

119. *Hanson v. Cent. Show Printing Co.*, 130 N.W.2d 654, 658 (Iowa 1964).

120. *Moody v. R.A. Bogue*, 310 N.W.2d 655, 659 (Iowa Ct. App. 1981).

121. *Id.*

122. *Laird v. Eagle Iron Works*, 249 N.W.2d 646, 647–48 (Iowa 1977).

123. *Holden v. Constr. Mach. Co.*, 202 N.W.2d 348, 362–63 (Iowa 1972); *see also* *Eggers v. Armour & Co. of Del.*, 129 F.2d 729, 731 (8th Cir. 1942) (settling and releasing tort claim against employer was sufficient consideration for lifetime employment contract); *Wolfe v. Graether*, 389 N.W.2d 643, 653–54 (Iowa 1986) (consenting to change in business type that would surrender partnership protections could be sufficient consideration for lifetime employment if that was the intent of the parties).

124. *Stauter v. Walnut Grove Prods.*, 188 N.W.2d 305, 312 (Iowa 1971).

- Special benefits to the corporation, such as investing in and establishing the business (including bringing in new investors and finding the location for the business), can also be sufficient consideration.<sup>125</sup>
- Finally, leaving or surrendering other permanent, lifetime, or tenured employment is sufficient consideration.<sup>126</sup>

“The important question of what constitutes that additional consideration has been determined on a case-by-case basis.”<sup>127</sup> However, even if an employee can sufficiently prove the existence of a lifetime or continued-employment contract, that does not mean the employee is completely shielded from termination. Rather, “[s]uch ‘permanent employment’ may be better construed as ‘employment that is terminable only for cause.’”<sup>128</sup>

Depending on the facts, a minority shareholder could potentially argue the existence of a lifetime or permanent employment contract as a way around the at-will presumption and as a parallel to the reasonable expectations doctrine.<sup>129</sup> This may be a difficult route. Purchasing shares on the promise of continued employment could potentially constitute sufficient consideration because the employee is paying the corporation and might not otherwise see returns on the investment.<sup>130</sup> However, an employer could

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125. *Kabe’s Rest., Ltd. v. Kintner*, 538 N.W.2d 281, 284 (Iowa 1995).

126. *Collins v. Parsons Coll.*, 203 N.W.2d 594, 599 (Iowa 1973).

127. *Albert v. Davenport Osteopathic Hosp.*, 385 N.W.2d 237, 238 (Iowa 1986). It is established:

[C]onsideration is an essential element of a contract for permanent employment. Such additional benefit or forbearance does not create the status, however, unless this was the intention of both the employer and the employee, or, unless this was the employee’s intention and the employer should reasonably have known that it was.

*Wolfe*, 389 N.W.2d at 657.

128. *Lockhart v. Cedar Rapids Cmty. Sch. Dist.*, 963 F. Supp. 805, 820 (N.D. Iowa 1997) [hereinafter *Lockhart II*], *certifying questions to*, 577 N.W.2d 845 (Iowa 1998).

129. *See, e.g., Holden v. Constr. Mach. Co.*, 202 N.W.2d 348, 362–63, 365–66 (Iowa 1972) (bringing claims for both breach of continued-employment contract and oppression). *But see Roberts v. HydraMetrics, L.L.C.*, Nos. A18-0390, A18-0391, 2019 WL 509976, at \*2 (Minn. Ct. App. Feb. 11, 2019) (unsuccessfully bringing both breach of lifetime-employment contract and oppression claims).

130. *See Kabe’s Rest.*, 538 N.W.2d at 284 (noting plaintiff shareholder had “invested at least \$60,000 to purchase the restaurant and sought out additional investors to create

counter that the money was actually in exchange for an opportunity for ownership, control, and a share of future profits rather than lifetime employment. Additionally, some courts have held shareholder agreements are not sufficient contracts for continued employment.<sup>131</sup> In *Bontempo v. Lare*, the minority-shareholder employee sought to use his stockholder agreement as evidence of a contract for continued employment that would allow him to recover employment-related damages for his oppression claim.<sup>132</sup> The minority-shareholder employee argued that because the shareholder agreement only referred to termination of shareholder employees “for cause” in a provision requiring shareholder employees to sell back their stock to the corporation, he could not be terminated except for cause.<sup>133</sup> The Maryland Court of Appeals disagreed:

[T]he reference to a “for cause” termination in a forced sale provision of the [stockholder agreement] is quite different from an employment agreement. When an owner-employee’s job with the company is terminated for cause, it indicates such a rift among those in control of the company that a forced buy-out would likely be necessary to oust the terminated employee of his shares and preserve the ability of the corporation to operate. The fact that a buy-out is mandated when one of the owner-employees is terminated for cause does not imply that an

owner-employee may *only* be terminated for cause. It does mean that the forced buy-out is not triggered if the owner-employee is *not* terminated for cause.<sup>134</sup>

And in *Roberts v. HydraMetrics, L.L.C.*, the Minnesota Court of Appeals affirmed a member-control agreement among the LLC members

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the business”); *Thompson v. Miller*, 100 N.W.2d 410, 412 (Iowa 1960) (stating capital investment along with labor investment might be sufficient, independent consideration for lifetime employment). Additionally, surrendering majority or equal control of the close corporation has been found to be sufficient consideration for permanent employment. *Holden*, 202 N.W.2d at 362–63 (finding sufficient consideration where “corporate control was at stake” in shareholders’ stormy negotiations and minority shareholder willingly remained minority shareholder in exchange for promise of employment at same duration and equal compensation of majority shareholder); *see also Wolfe*, 389 N.W.2d at 653 (relinquishing partnership protections and control could be sufficient consideration).

131. *See, e.g., Bontempo v. Lare*, 119 A.3d 791, 809 (Md. Ct. App. 2015).

132. *Id.*

133. *Id.*

134. *Id.*

was not a lifetime employment contract—even where it required members to continue on as both members and employees and the members covenanted not to withdraw from the company—because other agreements evidenced the at-will relationship.<sup>135</sup> While an argument for a lifetime or permanent employment contract may be a possible—but difficult—argument, an even narrower claim may exist under the public policy exception for employment at will.

*B. Public Policy Protections Against Wrongful Discharge*

Even without a valid contract granting greater employment protections, the at-will employment doctrine is not unlimited.<sup>136</sup> It is, for instance, restrained by public policy.<sup>137</sup> Wrongful discharge in violation of public policy was first recognized in Iowa in *Springer v. Weeks & Leo Co.*, holding, “[A] cause of action should exist for a tortious interference with the contract of hire when the discharge serves to frustrate a well-recognized and defined public policy of the state.”<sup>138</sup> The exception, however, is a narrow one.<sup>139</sup>

To prevail on an intentional tort claim of wrongful discharge from employment in violation of public policy, an at-will employee must establish the following elements: (1) the existence of a clearly defined and well-recognized public policy that protects the employee’s activity; (2) this public policy would be undermined by the employee’s discharge from employment; (3) the employee engaged in the protected activity, and this conduct was the reason the employer discharged the employee;

and (4) the employer had no overriding business justification for the discharge. If the employee succeeds in establishing the claim, he or she is entitled to recover both personal injury and property damage.<sup>140</sup>

Thus, a minority shareholder, to use the doctrine, would need to

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135. *Roberts v. HydraMetrics, L.L.C.*, Nos. A18-0390, A18-0391, 2019 WL 509976, at \*2–4 (Minn. Ct. App. Feb. 11, 2019). Nor did the fact the plaintiff was an owner of the company automatically grant him something other than at-will employment. *Id.* at \*5.

136. *Lockhart I*, 577 N.W.2d at 846 (“[T]his court held that some reasons for discharge are not permissible even in an employment-at-will situation.”).

137. *Springer v. Weeks & Leo Co.*, 429 N.W.2d 558, 559–60 (Iowa 1988).

138. *Id.* at 560; *Jones v. Univ. of Iowa*, 836 N.W.2d 127, 143–44 (Iowa 2013).

139. *See Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 762 (Iowa 2009).

140. *Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106, 109–10 (Iowa 2011) (citing *Lloyd v. Drake Univ.*, 686 N.W.2d 225, 228 (Iowa 2004)).

identify “a clearly defined and well-recognized public policy” that would be undermined by termination from employment.<sup>141</sup> Perhaps ironically, Iowa courts have said public policy is “difficult to define,”<sup>142</sup> but “generally [public policy] captures the communal conscience and common sense of our state in matters of public health, safety, morals, and general welfare.”<sup>143</sup> Public policy can be found by looking to the constitution, statutes, and administrative regulations.<sup>144</sup>

However, “[e]ven if an employee identifies a statute as an alleged source of public policy, it does not necessarily follow that the statute supports a wrongful discharge claim.”<sup>145</sup> The court must look to whether the claimed public policy deals with mere individual interests or a clear public interest.<sup>146</sup> “[P]ublic policy can generally be aligned into four categories of statutorily protected activities: (1) exercising a statutory right or privilege; (2) refusing to commit an unlawful act; (3) performing a statutory obligation; and (4) reporting a statutory violation.”<sup>147</sup>

However, the Iowa Supreme Court has also recently written:

[Public policy] is not the product of deductive reasoning, but the accumulations of those choices made by the democratic process of government, including the courts, to guide society over time.

As a result, if experience reveals that a right created with one segment of society in mind should extend to others in society, the law must respond.<sup>148</sup>

The question then becomes whether termination as part of oppression is a wrongful termination undermining public policy.

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141. *See id.*

142. *Id.* at 110; *Dorshkind v. Oak Park Place of Dubuque II, L.L.C.*, 835 N.W.2d 293, 300 (Iowa 2013) (“Public policy is an elusive legal construct.”).

143. *Jasper*, 764 N.W.2d at 761.

144. *See id.* at 762–63; *Berry*, 803 N.W.2d at 110. On the other hand, public policy does not derive from “generalized concepts of socially desirable conduct” or “internal employment policies or agreements.” *Jasper*, 764 N.W.2d at 762. “The legislature is the branch of government responsible for advancing public policy, and courts can be assured that the tort is advancing a legislatively declared goal when public policy is derived from a statute.” *Id.* at 762–63 (internal quotation marks omitted) (citation omitted).

145. *Berry*, 803 N.W.2d at 110.

146. *See id.*

147. *Jasper*, 764 N.W.2d at 762 (citations omitted).

148. *Ackerman v. State*, 913 N.W.2d 610, 616 (Iowa 2018).

Plaintiffs would likely first need to prove the termination was oppressive to begin with, of course necessitating an analysis of their reasonable expectations.<sup>149</sup> But if plaintiffs were to successfully prove their termination was oppressive under Iowa Code § 490.1430(1)(b)(2), a public policy claim of wrongful termination could provide a potential route to employment-related damages even if the oppression claim did not.<sup>150</sup> However, whether section 490.1430(1)(b)(2) enshrines a public policy is open for debate. Obviously, there is a statutory provision prohibiting oppressive conduct.<sup>151</sup> Iowa has recognized a public policy that protects employees attempting to collect wages the employer owes,<sup>152</sup> much like the position of minority-shareholder employees trying to secure or protect their shareholder interests.<sup>153</sup> However, the exception is narrow, and a court could find sections 490.1430 or 490.1434 set forth the exclusive remedy for oppressive conduct.<sup>154</sup> At least one out-of-state court has found a potentially oppressive termination does not invoke public policy, finding a claim regarding termination for attempting to exercise legal rights under the shareholder agreement was not grounded in law nor a public-policy-linked cause of termination.<sup>155</sup>

*C. At-Will Doctrine May Be Separate from the Reasonable Expectations of Minority-Shareholder Employees*

Finally, there is the focus of this Article: the reasonable expectations test.<sup>156</sup> “Increasingly, courts have come to recognize that within many closely held enterprises it is not as easy to separate out the employment relationship from the ownership relationship, and have applied the reasonable

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149. See *infra* Part IV.

150. See *infra* Part V.

151. See IOWA CODE § 490.1430(1)(b)(2) (2019); *Jasper*, 764 N.W.2d at 762–63.

152. *Tullis v. Merrill*, 584 N.W.2d 236, 239 (Iowa 1998) (“We now hold that [Iowa’s wage payment collection statute] plainly articulates a public policy prohibiting the firing of an employee in response to a demand for wages due under an agreement with the employer.”).

153. See *Hollis v. Hill*, 232 F.3d 460, 471 (5th Cir. 2000); *Gunderson v. All. of Comput. Prof’ls, Inc.*, 628 N.W.2d 173, 189 (Minn. Ct. App. 2001); *Ballard v. Roberson*, 733 S.E.2d 107, 111 (S.C. 2012); see also *Ackerman*, 913 N.W.2d at 616 (finding if the legislature recognizes a right for one segment as public policy, the law must respond to extend that to others in society).

154. See IOWA CODE § 490.1430; see also IOWA CODE § 490.1434.

155. See *Dahl v. Gladstone Tech., Partners, L.L.C.*, 267 F. Supp. 3d 625, 630 (E.D. Pa. 2017).

156. See *infra* Parts IV, V.



expectations approach used more generally in close corporations.”<sup>157</sup> The reason the *Baur* test may provide the best path forward for minority-shareholder employees is because some courts have held wrongful termination in at-will employment and reasonable expectation doctrines are separate, coexisting theories of relief or defense.<sup>158</sup>

The wrongful-termination doctrine affords discharged employees of *all* corporations a remedy in the form of wages and/or reinstatement, regardless of whether they are also shareholders, if they can establish the existence of an express or an implied contractual agreement or a promise inducing reliance. . . . The threshold question in wrongful-termination cases, therefore, is whether a contractual agreement or a promise inducing reliance existed.

The oppression doctrine, on the other hand, affords closely-held-corporation shareholders relief when the controlling shareholders frustrate their reasonable expectations as shareholder-employees. Accordingly, the threshold question in the context of a claim of shareholder oppression based on the termination of employment is whether a minority shareholder’s expectation of continuing employment is reasonable.<sup>159</sup>

This means while employers or majority shareholders might not be liable for breach of contract or wrongful termination for firing a minority-shareholder employee, they might not necessarily be off the hook for oppression liability.<sup>160</sup> Thus, the reasonable expectations test appears to

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157. O’NEAL & THOMPSON, *supra* note 72, § 6:2.

158. See, e.g., *Gunderson*, 628 N.W.2d at 190 (“The doctrine of employment-based shareholder oppression is distinct from the wrongful-termination doctrine, and the analysis under the separate doctrines should attempt to protect close-corporation employment and, at the same time, respect the legitimate sphere of the at-will rule.”); *Kortum v. Johnson*, 755 N.W.2d 432, 440–41 (N.D. 2008); O’NEAL & THOMPSON, *supra* note 72, § 6:2; see also *Hegy v. Cmty. Counseling Ctr. of Fox Valley*, 158 F. Supp. 2d 892, 896 (N.D. Ill. 2001) (“[A]n at-will employee can have a reasonable expectation of continued employment sufficient to sustain an action for intentional interference with employment.”).

159. *Gunderson*, 628 N.W.2d at 190 (citations omitted).

160. See *Hollis v. Hill*, 232 F.3d 460, 470–71 (5th Cir. 2000) (“The opinions make clear, however, that shareholders do not enjoy fiduciary-rooted entitlements to their jobs. Such a result would clearly interfere with the doctrine of employment-at-will. Rather, the courts have limited relief to instances in which the shareholder has been harmed as a shareholder.”); *Isaacs v. Am. Iron & Steel Co.*, No. A05-366, 2006 WL 163498, at \*4 (Minn. Ct. App. Jan. 24, 2006) (holding the district court correctly found

provide a path around, or parallel to, the at-will doctrine, even if no valid, continued-employment contract or public policy exception exists. However, a minority-shareholder employee would still have to prove the expectation of continued employment is sufficiently reasonable under oppression law.

#### IV. MINORITY-SHAREHOLDER EMPLOYEES' REASONABLE EXPECTATIONS OF CONTINUED EMPLOYMENT AS A BASIS FOR OPPRESSION CLAIMS

While the contract for lifetime employment or public policy doctrines may offer potential arguments for aggrieved minority shareholders, the most likely successful path in Iowa appears to be the *Baur* reasonable expectations test. While no published Iowa case has definitively ruled whether expectations of continued employment are reasonable under section 490.1430 and the *Baur* doctrine, a substantial amount of out-of-state case law (including some favorably cited by Iowa appellate courts)<sup>161</sup> indicate Iowa appellate courts would adopt the doctrine.<sup>162</sup>

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oppression where a shareholder employee's reasonable expectation of continued employment was frustrated but incorrectly awarded damages based on a wrongful termination theory instead of equitable relief provided for under oppression law); *Gunderson*, 628 N.W.2d at 190 ("Accordingly, even though Gunderson was an at-will employee and, therefore, not wrongfully discharged in the breach-of-contract or tort sense, his employment termination triggers a separate inquiry into whether ACP unfairly prejudiced Gunderson in his capacity as a shareholder-employee."); *Kortum*, 755 N.W.2d at 440-41 ("Even though Kortum was an at-will employee, and therefore could be terminated with or without cause, the termination of her employment triggers an inquiry into whether the Corporation acted in a manner unfairly prejudicial toward Kortum in her capacity as a shareholder-employee."). How this could affect the pursuit of employment-related damages will be discussed later. *See infra* Part V.

161. *See, e.g.,* Maschmeier v. Southside Press, Ltd., 435 N.W.2d 377, 380 (Iowa Ct. App. 1988); Brenner v. Berkowitz, 634 A.2d 1019, 1029 (N.J. 1993) (recognizing termination of minority shareholder's employment is a common means of oppression) (cited by *Baur v. Baur Farms, Inc.*, 832 N.W.2d 663, 671 (Iowa 2013)); *In re Kemp & Beatley, Inc.*, 473 N.E.2d 1173, 1179 (N.Y. 1984) (cited by *Baur*, 832 N.W.2d at 671); Meiselman v. Meiselman, 307 S.E.2d 551, 558 (N.C. 1983) (discussing how minority shareholders can reasonably expect to participate in and be employed by the corporation and how their termination can be oppression) (cited by *Baur*, 832 N.W.2d at 671); Balvik v. Sylvester, 411 N.W.2d 383, 386-88 (N.D. 1987) (finding oppression where minority shareholder who had reasonable expectation of employment as the "primary, if not sole, source of" return on investment was terminated) (cited by *Baur*, 832 N.W.2d at 670).

162. *See infra* Parts V.A-B.

This is in part because what is reasonable depends on the particular facts of the case.<sup>163</sup> While courts outside Iowa have developed general factors that will be analyzed below, it is important first to briefly discuss how an expectation can be reasonable. In short, an expectation must be both subjectively and objectively reasonable:

A court considering a petition alleging oppressive conduct must investigate what the majority shareholders knew, or should have known, to be the petitioner's expectations in entering the particular enterprise. Majority conduct should not be deemed oppressive simply because the petitioner's subjective hopes and desires in joining the venture are not fulfilled. Disappointment alone should not necessarily be equated with oppression.

Rather, oppression should be deemed to arise only when the majority conduct substantially defeats expectations that, objectively viewed, were both reasonable under the circumstances and were central to the petitioner's decision to join the venture.<sup>164</sup>

While not all cases are created equal, a look at the factors considered by courts around the country helps paint a better picture of when expectations of employment are reasonable and when they are not.

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163. Iowa courts have held:

The determination of whether the conduct of controlling directors and majority shareholders is oppressive under section 490.1430(2)(b ) [sic] and supports a minority shareholder's action for dissolution of a corporation must focus on whether the reasonable expectations of the minority shareholder have been frustrated under the circumstances. We need not catalogue here all the categories of conduct and circumstances that will constitute oppression frustrating the reasonable expectations of minority shareholders' interests.

*Baur*, 832 N.W.2d at 674.

164. *In re Kemp*, 473 N.E.2d at 1179; *see* *Regan v. Nat. Res. Grp., Inc.*, 345 F. Supp. 2d 1000, 1112 (D. Minn. 2004) (analyzing whether minority shareholder's expectation of employment was reasonable under both objective and subjective factors); *Gunderson*, 628 N.W.2d at 190; *In re Wiedy's Furniture Clearance Ctr. Co.*, 487 N.Y.S.2d 901, 903 (N.Y. App. Div. 1985); *Meiselman*, 307 S.E.2d at 563 ("Privately held expectations which are not made known to the other participants are not 'reasonable.'"); *Landstrom v. Shaver*, 561 N.W.2d 1, 8 (S.D. 1997); *see also* *Vos v. Farm Bureau Life Ins. Co.*, 667 N.W.2d 36, 50 (Iowa 2003) ("The party asserting the doctrine of reasonable expectations must show not only the expectations, but also that they were *relied upon* by the insurance purchaser in deciding to buy the policy."); *State v. Lomax*, 852 N.W.2d 502, 506 (Iowa Ct. App. 2014) (citing *State v. Lovig*, 675 N.W.2d 557, 562–63 (Iowa 2004) (holding reasonable expectation of privacy requires both objective and subjective expectation)).

*A. The Investor Employee: When Are a Minority Shareholder's  
Expectations of Continued Employment Reasonable?*

Why a reasonable expectation of continued employment may exist for minority shareholders has to do with the unique nature of close corporations themselves:

Unlike the typical shareholder in a publicly held corporation, who may be simply an investor or a speculator who does not desire to assume the responsibilities of management, participants in a close corporation or LLC consider[] themselves as . . . co-owners of the business and want the privileges and powers that go with ownership. Employment by the entity is often the participant's principal or sole source of income. Providing for employment may have been the principal reason why the individual participated in organizing the venture. Even if shareholders in a close corporation anticipate an ultimate profit from the sale of shares, they usually expect (or perhaps should expect) to receive an immediate return in the form of salaries as officers or employees of the entity rather than in the form of dividends on their stock.<sup>165</sup>

However, the unique circumstances and power dynamic between close corporations' majority and minority shareholders are also ripe for abuse and "freeze out" oppression tactics:

Because majority shareholders have the power to dictate to the minority the manner in which the corporation is run, a minority shareholder in a close corporation becomes vulnerable when dissension develops. The controlling shareholders' voting power enables them to freeze-out minority shareholders by terminating their employment, excluding them from participation in management decision-making, and reducing their salary and other income.

The vulnerability of minority shareholders is exacerbated by the illiquidity of their financial stake in the company. They cannot dissolve the company at will like members of a partnership, nor can they sell their shares on the open market like shareholders in a publicly held corporation. As a consequence, a shareholder challenging the majority in a close corporation is on the horns of a dilemma. The shareholder can neither profitably leave nor safely stay with the corporation. In reality, the only prospective buyer turns out to be the majority shareholder. This inability of minority shareholders to withdraw from the venture on

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165. O'NEAL & THOMPSON, *supra* note 72, § 1:13.

their own terms makes it easy for controlling shareholders to exploit minority shareholders and defeat their reasonable expectations.<sup>166</sup>

This is why termination of a minority shareholder is a “classic” squeeze-out technique.<sup>167</sup> But liability only exists for these tactics when minority shareholders can prove they reasonably expected to be continuously employed.

While reasonable expectations are measured on the basis of shareholder status,<sup>168</sup> that status alone does not create a reasonable expectation of continued employment.<sup>169</sup> Rather, courts consider facts at the outset of and throughout the employment relationship to determine whether the minority shareholder had or developed a reasonable expectation of

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166. *Muellenberg v. Bikon Corp.*, 669 A.2d 1382, 1386 (N.J. 1996) (citations omitted); see *Balvik*, 411 N.W.2d at 386 (“The limited market for stock in a close corporation and the natural reluctance of potential investors to purchase a noncontrolling interest in a close corporation that has been marked by dissension can result in a minority shareholder’s interest being held ‘hostage’ by the controlling interest, and can lead to situations where the majority ‘freeze out’ minority shareholders by the use of oppressive tactics.”).

167. See *Wilkes v. Springside Nursing Home, Inc.*, 353 N.E.2d 657, 662 (Mass. 1976) (noting that terminating a minority-shareholder employee can be “especially pernicious”); *Knights’ Piping, Inc. v. Knight*, 123 So. 3d 451, 458 (Miss. Ct. App. 2012) (“One particularly effective [squeeze-out] tactic involves terminating a minority shareholder’s employment.”); *In re Kemp*, 473 N.E.2d at 1179 (“A shareholder who reasonably expected that ownership in the corporation would entitle him or her to a job, a share of corporate earnings, a place in corporate management, or some other form of security, would be oppressed in a very real sense when others in the corporation seek to defeat those expectations and there exists no effective means of salvaging an investment.”); *N. Air Servs., Inc. v. Link*, No. 2008AP2897, 2012 WL 130531, at \*3 (Wis. Ct. App. Jan. 18, 2012) (describing the termination of a minority-shareholder employee “in an attempt to purchase his shares at a depressed value” is a “classic ‘squeeze out’ scenario”); see also Douglas K. Moll, *Shareholder Oppression & “Fair Value”: Of Discounts, Dates, and Dastardly Deeds in the Close Corporation*, 54 DUKE L.J. 293, 374–75 (2004) (“[I]n the typical freeze-out scenario in which the majority unjustifiably terminates the minority’s employment and strips the minority of management responsibilities, the minority has been fully ousted from any participatory role in the company.”).

168. See *Salsgiver v. Am. Online, Inc.*, 32 F. App’x 894, 897 (9th Cir. 2002); *Hollis v. Hill*, 232 F.3d 460, 471 (5th Cir. 2000) (holding relief must be for harm as a shareholder); *Gunderson*, 628 N.W.2d at 186 (analyzing reasonable expectations “as a shareholder”); *Kortum v. Johnson*, 755 N.W.2d 432, 443 (N.D. 2008).

169. *Hollis*, 232 F.3d at 470–71; *Regan*, 345 F. Supp. 2d at 1012; *Ahrens v. Ahrens Agr. Indus. Co.*, No. 14-0564, 2015 WL 2089372, at \*6 (Iowa Ct. App. May 6, 2015).

employment.<sup>170</sup> While any number of facts could build toward a reasonable expectation of employment, courts generally consider a similar set of nonexhaustive factors:

Factors to be considered in determining whether a shareholder's expectation of continued employment are reasonable include whether (1) the shareholder made a capital investment in the company; (2) continued employment could be considered part of the shareholder's investment; (3) the shareholder's salary could be considered a de facto dividend; and (4) continued employment was a significant reason for making the investment.<sup>171</sup>

These types of minority-shareholder employees might better be considered investor employees.<sup>172</sup>

In *Hollis v. Hill*, the Fifth Circuit determined the controlling shareholder's termination of the plaintiff was oppressive.<sup>173</sup> The plaintiff and defendant founded the corporation together.<sup>174</sup> Uniquely, they were both 50 percent owners, but the defendant served as president and apparently had more controlling power over operations.<sup>175</sup> The plaintiff ran one of the company's offices.<sup>176</sup> After about two years, the relationship between the two began to deteriorate.<sup>177</sup> The defendant believed the plaintiff was not carrying an equal burden of the workload and was paid too much.<sup>178</sup> The plaintiff offered several solutions to resolve the dispute, but the defendant rejected them all.<sup>179</sup> The defendant proposed buying out the plaintiff's interest in the

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170. *Meiselman v. Meiselman*, 307 S.E.2d 551, 563 (N.C. 1983); *see, e.g.*, *Calkins v. Brandt*, No. EQCE081752, 2019 WL 1222916, at \*8–9 (Iowa Dist. Ct. Jan. 26, 2019).

171. *Haley v. Forcelle*, 669 N.W.2d 48, 59 (Minn. Ct. App. 2003); *see, e.g.*, *Hollis*, 232 F.3d at 471; *Kortum*, 755 N.W.2d at 446; *Balvik*, 411 N.W.2d at 388; *Grady v. Grady*, No. PB 09-0367, 2012 WL 171006, at \*4 (R.I. Super. Ct. Jan. 17, 2012).

172. *Hollis*, 232 F.3d at 471 (“It is therefore important to distinguish investors who obtain their return on investment through benefits provided to them as employees from employees who happen also to be investors.”).

173. *Id.*

174. *Id.* at 463.

175. *Id.*

176. *See id.*

177. *See id.*

178. *Id.*

179. *Id.*

company, but when the plaintiff refused the offer, the defendant threatened to close the plaintiff's office and establish his own independent business.<sup>180</sup>

The defendant secretly began to move the business under a sole proprietorship he established, ostensibly for legal reasons required by the state.<sup>181</sup> The defendant began to freeze the plaintiff out of the business; he stopped sending financial reports, refused to go over the books with the plaintiff (or allow other employees to do so), and began to take a number of unilateral measures he claimed were aimed at lowering costs.<sup>182</sup> Among those "cost-saving" measures was reducing salaries; the defendant reduced his own to \$80,000 but reduced the plaintiff's to \$0, claiming "an inactive officer commands no salary."<sup>183</sup> The defendant thereafter shut down the plaintiff's Florida office and refused to allow the company to pay for the plaintiff's cell phone or leased vehicle.<sup>184</sup> He also terminated the plaintiff's wife.<sup>185</sup> While the defendant claimed these cost-cutting measures were necessitated by two important clients leaving the company, he conceded he had made little effort to produce new business.<sup>186</sup>

Everything came to a head when the plaintiff filed a shareholder oppression claim.<sup>187</sup> Two weeks later, the defendant terminated the plaintiff and eliminated all of his company benefits.<sup>188</sup> The defendant went so far as to try to make an unsuccessful capital call on the plaintiff.<sup>189</sup> While the plaintiff was able to continue on as an officer and board member, the district court found the defendant's conduct oppressive.<sup>190</sup> The Fifth Circuit affirmed the finding of oppression.<sup>191</sup> According to the court, "[A] controlling shareholder cannot, consistent with his fiduciary duty, effectively deprive a minority shareholder of his interest as a shareholder by terminating the latter's employment or salary has been widely accepted."<sup>192</sup> While the court

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180. *Id.*

181. *Id.*

182. *Id.* at 463–64.

183. *Id.* at 464.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *See id.* at 471.

192. *Id.* at 470.

held the plaintiff had no fiduciary-rooted entitlement to his job, he had been injured as a shareholder because (1) he had been a founder of the company and 50 percent owner; (2) the value of his investment was tied directly to his employment; (3) he received his return on investment through his salary and benefits; (4) the company had never declared dividends; and (5) the company did not pay a separate salary to directors.<sup>193</sup> Thus, the defendant:

[T]otally deprived [the plaintiff] of those benefits by terminating his employment and salary, closing the Florida office, and cutting him off from company benefits. As a result, [the plaintiff's] shares in [the corporation] were rendered worthless. No offer was made by the corporation to purchase [the plaintiff's] shares at a fair price upon termination, and [the plaintiff] did not have the option of selling his shares to another buyer.<sup>194</sup>

The court ordered a buyout of the plaintiff's shares and used the date the plaintiff filed suit as the date of valuation.<sup>195</sup>

Similarly, in *Wilkes v. Springside Nursing Home, Inc.*, the court found the actions of the majority shareholders were designed to freeze out the plaintiff.<sup>196</sup> The plaintiff was one of four original founders of the company.<sup>197</sup> He had invested sweat equity and substantial capital for more than 15 years "with the expectation that he would continue to participate in corporate decisions."<sup>198</sup> The corporation had never declared dividends.<sup>199</sup> Thus, his termination "assured that [the plaintiff] would receive no return at all from the corporation."<sup>200</sup> After "bad blood" formed between the plaintiff and one of the shareholders, the other shareholders refused to pay the plaintiff his salary, and he was later not reelected as a director or officer and was told his services and presence were no longer wanted.<sup>201</sup> The court found these acts were not the result of any misconduct or neglect of duties on the plaintiff's part.<sup>202</sup> Rather, stripping him of his salary and employment was based on

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193. *See id.* at 471.

194. *Id.*

195. *Id.* at 472.

196. *Wilkes v. Springside Nursing Home, Inc.*, 353 N.E.2d 657, 664 (Mass. 1976).

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* at 660–61.

202. *See id.* at 664.



“the personal desire of [the other shareholders] to prevent him from continuing to receive money from the corporation.”<sup>203</sup> Therefore, the court found the other shareholders lacked any legitimate business reason to terminate the plaintiff and that their acts constituted oppression because “by terminating [the plaintiff’s] employment or by severing him from a position as an officer or director, the majority effectively frustrate[d] the minority stockholder’s purposes in entering on the corporate venture and also den[ied] him an equal return on his investment.”<sup>204</sup> The court found:

It is an inescapable conclusion from all the evidence that the action of the majority stockholders here was a designed ‘freeze out’ for which no legitimate business purpose has been suggested. Furthermore, we may infer that a design to pressure Wilkes into selling his shares to the corporation at a price below their value well may have been at the heart of the majority’s plan.<sup>205</sup>

The minority shareholder’s termination in *Balvik v. Sylvester* likewise frustrated his reasonable expectations of employment when he was a founder of the company, had quit his former job to join the majority shareholder in the new enterprise, made a substantial investment, and had his salary and benefits as his primary, if not sole, source of livelihood.<sup>206</sup> The minority’s termination after disagreeing with the majority on how to spend corporate profits “destroy[ed] the primary mode of return on his investment,” and any “slim hope” of seeing returns and continuing to participate in the business was dashed when he was removed as a director and officer.<sup>207</sup> Further, after he was terminated, the majority stopped issuing dividends, essentially leaving the minority stuck with worthless shares he could not readily sell on the open market.<sup>208</sup> The court found “little relevance” in whether the minority was terminated for cause.<sup>209</sup>

The court in *Kortum v. Johnson* found oppression possible even where the minority shareholder had signed a shareholder agreement acknowledging her status as an at-will employee.<sup>210</sup> While the court

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203. *Id.* at 661.

204. *Id.* at 662–63.

205. *Id.* at 664.

206. *See* *Balvik v. Sylvester*, 411 N.W.2d 383, 388 (N.D. 1987).

207. *Id.*

208. *See id.*

209. *Id.*

210. *Kortum v. Johnson*, 755 N.W.2d 432, 444–45 (N.D. 2008). Other courts,

recognized “[n]ot all expectations of continued employment are reasonable,” here the minority shareholder’s expectations could be because she helped form and capitalize the corporation and her initial investment and ownership share was the same as all the other shareholders.<sup>211</sup> The court emphasized the other shareholders needed to know and accept the minority’s expectation and that it needed to be an expectation where “*all investors* shared a basic understanding at the inception of the venture and that, objectively viewed, was reasonable under the circumstances.”<sup>212</sup> While the court noted shareholders who sign buy-sell agreements requiring the minority shareholders to sell their shares upon termination “would not likely have a reasonable expectation of continuing employment,” an expectation could be reasonable if “contin[uing] employment can fairly be characterized as part of the shareholder’s investment.”<sup>213</sup> Ultimately, the court remanded the case for further analysis on the minority’s expectations.<sup>214</sup>

Numerous other successful, termination-based oppression claims match up with these common factors.<sup>215</sup> But not all cases are the same. “‘Specific expectations’ require proof of specific facts giving rise to the expectation in a particular case and a showing that the expectation was reasonable under the circumstances of the case as well as central to the minority shareholder’s decision to join the venture . . . .”<sup>216</sup> “Not all

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however, disagree with this approach. *See infra* Part IV.B.

211. *See Kortum*, 755 N.W.2d at 446 (citation omitted).

212. *Id.*

213. *Id.* (alteration in original) (citation omitted).

214. *Id.* at 446–47.

215. *See, e.g.,* *Haley v. Forcelle*, 669 N.W.2d 48, 60 (Minn. Ct. App. 2003) (holding expectation was reasonable where minority shareholder had personally guaranteed company debt and majority shareholders had contemplated that he’d have continued employment, that salaries would always be equal, and that salaries were de facto dividends); *Pedro v. Pedro*, 489 N.W.2d 798, 801–02 (Minn. Ct. App. 1992) (finding plaintiff had reasonable expectation of continued employment where he was a founder and helped build the business); *In re Wiedy’s Furniture Clearance Ctr. Co.*, 487 N.Y.S.2d 901, 903 (N.Y. App. Div. 1985) (holding termination was oppression where minority shareholder had joined the corporation as a founder with the idea he would be employed, invested substantial capital to secure employment, and turned the corporation into a highly profitable venture).

216. 12B WILLIAM MEADE FLETCHER ET AL., *FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS* § 5820.11 (rev. vol. Supp. 2017).

expectations of continuing employment are reasonable.”<sup>217</sup> Thus, to better understand successful claims, it is important to analyze those that are not.

*B. Not All Cases Are Made Equal: Situations Where a Minority Shareholder’s Expectations of Continued Employment Are Unreasonable*

“Not every discharge of an at-will employee of a close corporation who happens to own stock in the corporation gives rise to a successful breach of fiduciary duty claim.”<sup>218</sup> Mere shareholder status alone does not guarantee a job.<sup>219</sup> Oppression claims live and die on the particular facts of the case.<sup>220</sup> Where minority shareholders are lacking most, if not all, of the factors typically present in successful oppression claims based on termination, it is unlikely the court will find in their favor.<sup>221</sup>

“Distinguishable from a close corporation shareholder who considers himself a co-owner of the business and is owed a fiduciary duty by other shareholders in the close corporation is a close corporation employee who

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217. *Gunderson v. All. of Comput. Prof’ls, Inc.*, 628 N.W.2d 173, 190 (Minn. Ct. App. 2001).

218. *Merola v. Exergen Corp.*, 668 N.E.2d 351, 355 (Mass. 1996).

219. *Hollis v. Hill*, 232 F.3d 460, 470 (5th Cir. 2000); *Regan v. Nat. Res. Grp., Inc.*, 345 F. Supp. 2d 1000, 1012 (D. Minn. 2004).

220. *See, e.g., Regan*, 345 F. Supp. 2d at 1012.

221. For instance, the Utah Supreme Court held the minority shareholder had no reasonable expectation of continued employment where the following occurred:

[He] was not a founding member who created the company with the expectation of employment. Instead, after the corporation was well established, McLaughlin was recruited for his specialized experience in similar industries. His primary reason for joining Cookietree was employment. This employment allowed him to purchase stock in Cookietree, but he was not required to do so. And, while it was likely that his initial stock purchase allowance and the later stock purchase agreement were offered as an incentive or reward for McLaughlin’s work performance, the purchase allowances were not inextricably tied to his employment; they were a separate investment in the company. In addition to his stock purchases, and unlike the plaintiff in *Wilkes*, McLaughlin was paid a competitive salary for his contributions to the company. His investment in the company was separately rewarded through the payment of dividends, which he continued to receive after his termination. Therefore, in terminating McLaughlin, Schenk did not thwart McLaughlin’s investment expectations in the company and therefore did not violate any duty owed to McLaughlin.

*McLaughlin v. Schenk*, 220 P.3d 146, 158 (Utah 2009), *abrogated on other grounds by* *Haik v. Jones*, 427 P.3d 1155 (Utah 2018).

owns shares only by virtue of his employment compensation package.”<sup>222</sup> Courts have found that when minority shareholders were gifted the shares or provided them without investment, they might not have a reasonable expectation of continued employment.<sup>223</sup> This is because the minority shareholders’ employment and shares were not necessarily tied together, and their employment and compensation were not the reason for their investment nor their primary return on investment (if there even was an “investment”).<sup>224</sup>

Tangible proof of the shareholders’ intent is often relevant to the court’s analysis. This includes written buy-sell, shareholder, and employment agreements:

Written agreements among shareholders or between shareholders and the corporation carry great weight in determining a shareholder’s reasonable expectations. Consequently, a written agreement specifically stating that the shareholder may be terminated without cause contravenes a finding that the shareholder had an expectation of continued employment.<sup>225</sup>

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222. *Kortum v. Johnson*, 755 N.W.2d 432, 444 (N.D. 2008) (citations omitted).

223. See, e.g., *Merola*, 668 N.E.2d at 354–55; *Vakil v. Anesthesiology Assocs. of Taunton, Inc.*, 744 N.E.2d 651, 655 (Mass. App. Ct. 2001) (holding no reasonable expectation “[w]here there was no evidence that the plaintiff’s compensation or employment was conditioned on his ownership of stock in the corporation”); *Harris v. Mardan Bus. Sys.*, 421 N.W.2d 350, 353 (Minn. Ct. App. 1988) (finding no fiduciary duty to minority shareholder who only held a small percentage of stock as part of compensation package); *Ford v. Ford*, 878 A.2d 894, 903–04 (Pa. Super. Ct. 2005) (holding plaintiff who was gifted shares had no reasonable expectation of continued employment) (cited by *Baur v. Baur Farms, Inc.*, 832 N.W.2d 663, 671 (Iowa 2013)); *McLaughlin*, 220 P.3d at 158; see also *Hollis*, 232 F.3d at 471 (“It is therefore important to distinguish investors who obtain their return on investment through benefits provided to them as employee from employees who happen also to be investors.”); *Gunderson v. All. of Comput. Prof’ls, Inc.*, 628 N.W.2d 173, 190 (Minn. Ct. App. 2001) (“[A]n employee who has no capital investment in the corporation but either buys a small percentage of stock through periodic company offerings or receives a small percentage of stock as part of a compensation package most likely lacks a reasonable expectation of continued employment.”); *Kortum*, 755 N.W.2d at 444.

224. *McLaughlin*, 220 P.3d at 158; see also *Merola*, 668 N.E.2d at 354–55; *Gunderson*, 628 N.W.2d at 190.

225. *Regan*, 345 F. Supp. 2d at 1012; see *Gunderson*, 628 N.W.2d at 190; *Kortum*, 755 N.W.2d at 446; cf. *Grady v. Grady*, No. PB 09-0367, 2012 WL 171006, at \*7 (R.I. Super. Ct. Jan. 17, 2012) (holding minority shareholders could have reasonable expectations of employment where their shareholder agreement did not specifically state they could be

A minority shareholder's own statements are also relevant to the shareholder's subjective expectation.<sup>226</sup> In *Regan v. Natural Resources Group, Inc.*, the court noted documents and comments demonstrating the plaintiff had no objectively or subjectively reasonable expectation of continued employment:

No reasonable jury could find that Regan had a reasonable expectation of continued employment. The Agreement, which Regan executed as both CEO and shareholder, clearly explains that Regan could be terminated without cause. Similarly, the NRG employee policy manual stated that employment was at-will. Regan also signed a form acknowledging that he was an at-will employee. In addition, Regan admits that throughout his employment, he understood that he was an at-will employee who could be terminated with or without cause. Moreover, Regan himself terminated the employment of other shareholders, and testified that he understood that all shareholders were at-will employees.<sup>227</sup>

Other courts have similarly held at-will employment agreements or shareholder agreements requiring minority shareholders to sell back their shares upon termination with or without cause, or any reason or no reason, strongly weigh against a reasonable expectation of continued employment.<sup>228</sup>

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terminated for any reason but also noting more specific language, such as *shareholder could be terminated for any reason*, could defeat continued-employment expectations).

226. *Regan*, 345 F. Supp. 2d at 1012; *Clingan v. Stanislav*, No. LACL113066, 2011 WL 1235571, at \*12 (Iowa Dist. Ct. Feb. 8, 2011) (rejecting reasonable expectations claim where shareholder "knew he had no guarantee of employment").

227. *Regan*, 345 F. Supp. 2d at 1012.

228. See, e.g., *Coleman v. Taub*, 638 F.2d 628, 636 (3d Cir. 1981); *Jenkins v. Haworth, Inc.*, 572 F. Supp. 591, 601 (W.D. Mich. 1983); *Vakil*, 744 N.E.2d at 655; *McKee v. St. Paul Eye Clinic, P.A.*, No. A14-0681, 2015 WL 1757833, at \*4 (Minn. Ct. App. Apr. 20, 2015); *In re Apple*, 637 N.Y.S.2d 534, 535 (N.Y. App. Div. 1996) ("That agreement explicitly binds each shareholder to offer to sell his or her stock within 30 days after ceasing for any reason, either voluntarily or involuntarily, to be in the employ of the corporation. That agreement is enforceable and Peter Apple cannot be heard to argue that he had a reasonable expectation that he would be employed and would be a shareholder for life."); see also *Berberman v. W. Publ'g Co.*, 615 N.W.2d 362, 374-75 (Minn. Ct. App. 2000) (disagreeing that "the repurchase terms are dispositive of reasonable expectations in all circumstances," but "[a]t-will employees who are allowed to buy stock subject to a buy-back-on-termination agreement may have lower expectations"); *Grady*, 2012 WL 171006, at \*6 ("Written agreements entered into by shareholders are presumed to reflect their reasonable expectations.").

In one pre-*Baur* Iowa case, for instance, the district court found the minority shareholder had no reasonable expectation of continued employment for a number of reasons previously noted.<sup>229</sup> The parties had a shareholder agreement that did not include any employment guarantees, despite a long period of negotiations.<sup>230</sup> The minority shareholder had numerous customer complaints leveled at him, causing him to have less and less work because fewer clients would work with him.<sup>231</sup> He had “expressly stated that he knew he had no guarantee of employment.”<sup>232</sup> This was despite the district court noting the minority shareholder only derived return on his investment through his salary and employment-related dividends (which the court appeared to consider weighed in favor of a reasonable expectation).<sup>233</sup> Ultimately, the court found there was no reasonable expectation of employment based on both the lack of any protections in the agreement among the shareholders and the minority’s poor job performance, which gave the majority (whom the court noted had acted openly and honestly throughout the relationship) a reason to terminate the minority shielded by the business judgment rule.<sup>234</sup>

It is also important to note that even where minority shareholders can prove their employment expectations were reasonable, it does not mean they get to kick back at their desk and do whatever they want, shielded from any repercussions by their ownership status.<sup>235</sup> Rather, much like employees with term or lifetime employment contracts, minority shareholders can still be terminated for cause.<sup>236</sup> It is unlikely any court would find it reasonable

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229. See generally *Clingan*, 2011 WL 1235571, at \*11–15.

230. *Id.* at \*12.

231. *Id.*

232. *Id.*

233. *Id.* at \*12–13.

234. See *id.* at \*14–15.

235. See *Kortum v. Johnson*, 755 N.W.2d 432, 446 (N.D. 2008) (“A shareholder’s expectation of continuing employment must be balanced against the other shareholders’ ‘need for flexibility to run the business in a productive manner.’” (citation omitted)).

236. See, e.g., *McKee v. St. Paul Eye Clinic, P.A.*, No. A14-0681, 2015 WL 1757833, at \*5 (Minn. Ct. App. Apr. 20, 2015) (holding termination did not frustrate reasonable expectations where majority shareholders honestly believed the minority shareholder had anger management problems that created liability for the clinic and there had been two credible reports of the minority shareholder abusing patients); *Muellenberg v. Bikon Corp.*, 669 A.2d 1382, 1388 (N.J. 1996) (“We agree that it cannot be considered oppression when controlling shareholders seek to rein in management and control the affairs of their corporation.”); *Priebe v. O’Malley*, 623 N.E.2d 573, 575–76 (Ohio Ct. App. 1993) (finding no breach of fiduciary duty where the minority shareholder was

for shareholder employees to believe they could never be fired. That would force parties with no ability to work together to have to remain together, likely crippling the business.<sup>237</sup> Such a result would not serve the balancing act that oppression law seeks to strike.<sup>238</sup> Relatedly, some courts' application of the business judgment rule to termination-based oppression further demonstrates reasonable expectations do not guarantee employment no matter what.<sup>239</sup>

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terminated for "not producing sales" and "not working well with other employees," among other violations).

237. See, e.g., *Clingan*, 2011 WL 1235571, at \*19–20.

238. See *id.* at \*11; *Gunderson v. All. of Comput. Prof'ls, Inc.*, 628 N.W.2d 173, 191 (Minn. Ct. App. 2001); *Kortum*, 755 N.W.2d at 446.

239. *Connolly v. Bain*, 484 N.W.2d 207, 211 (Iowa Ct. App. 1992) ("Majority shareholders have the 'right to control the affairs of a corporation, if done so lawfully and equitably, and not to the detriment of minority shareholders.'" (citation omitted)). Under the business judgment rule, there is a "presumption that [directors'] decisions are informed, made in good faith, and honestly believed by them to be in the best interests of the company." *Rowedder ex rel. Cookies Food Prods., Inc. v. Lakes Warehouse Distrib., Inc.*, 430 N.W.2d 447, 453 (Iowa 1988). Some courts have applied the rule to termination-based oppression. See *Clingan*, 2011 WL 1235571, at \*14–15; *Merola v. Exergen Corp.*, 668 N.E.2d 351, 354–55 (Mass. 1996); *McKee*, 2015 WL 1757833, at \*5; *Priebe*, 623 N.E.2d at 575–76; see also *Van Horn v. R.H. Van Horn Farms, Inc.*, No. 17-0324, 2018 WL 3060240, at \*7 (Iowa Ct. App. June 20, 2018) (applying the business judgment rule in an oppression case); cf. *Knights' Piping, Inc. v. Knight*, 123 So. 3d 451, 459 (Miss. Ct. App. 2012) (noting "there are times when a majority shareholder may terminate a minority shareholder with impunity," but this was not one of those times because the majority shareholder terminated the minority unilaterally, without a stated reason or legitimate business purpose for the termination). Other sources, however, have disputed that rule's application in the close-corporation context. *Hollis v. Hill*, 232 F.3d 460, 467 (5th Cir. 2000) (finding the business judgment rule does not apply in the close-corporation context because "classic business judgment decisions can also have a substantial and adverse affect [sic] on the 'minority's' interest as shareholder. . . . In this setting, it is not difficult for a controlling stockholder to frustrate such expectations and deny a return on investment through means that would otherwise be legitimate."); *Fed. Deposit Ins. Corp. v. Castetter*, 184 F.3d 1040, 1046 (9th Cir. 1999) ("It is clear that the rule does not protect a director in certain situations, such as where there is a conflict of interest, fraud, *oppression*, or corruption." (emphasis added)); *Muellerberg*, 669 A.2d at 1386 (noting sources that argue the business judgment rule has limited application and validity in the close-corporation context); *Grato v. Grato*, 639 A.2d 390, 396 (N.J. Super. Ct. App. Div. 1994) ("[J]udicial consideration of a claim of majority oppression or freeze-out in a closely held corporation is guided by considerations broader than those espoused in defendant's version of the 'business judgment rule.'"); *Exadaktis v. Cinnaminson Realty Co.*, 400 A.2d 554, 561 (N.J. Super. Ct. Law Div. 1979), *aff'd*, 414 A.2d 994 (N.J. Super. Ct. App. Div. 1980) (per curiam) ("Thus, the statutory language embodies a legislative determination that freeze-out maneuvers in close corporations

*C. Why Post-Baur Iowa Courts May Allow Claims for Reasonable  
Expectations of Continued Employment in Minority Shareholder  
Oppression Claims*

As noted, Iowa has not definitively ruled whether reasonable expectations of continued employment create an oppression cause of action under the *Baur* test.<sup>240</sup> The *Baur* court explicitly declined to detail every instance of when a majority shareholder's actions would frustrate the minority's expectations.<sup>241</sup> But it is hard to say Iowa courts would find expectations of continued employment are per se unreasonable.<sup>242</sup> *Baur* itself favorably cited multiple reasonable expectations cases dealing specifically with employment expectations.<sup>243</sup>

Pre-*Baur* cases further indicate Iowa courts could find expectations of continued employment reasonable given the right factual circumstances. In *Maschmeier*, the Iowa Court of Appeals favorably discussed the reasonable expectations test in its analysis of the definition of oppression.<sup>244</sup> The court found termination of minority shareholders could frustrate their reasonable expectations by effectively squeezing them out of the company.<sup>245</sup> The court upheld the district court's findings of oppression, holding the termination of the two minority shareholders' employment was such a "squeeze out."<sup>246</sup> The district court in *Clingan v. Stanislav* also detailed the reasonable expectations test in its oppression analysis and, like *Baur*, turned to out-of-state courts that had favorably discussed the expectations-of-employment

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constitute an abuse of corporate power. Traditional principles of corporate law, such as the business judgment rule, have failed to curb this abuse. Consequently, actions of close corporations that conform with these principles cannot be immune from scrutiny."); *Cochran v. L.V.R. & R.C., Inc.*, No. M2004-01382-COA-R3-CV, 2005 WL 2217067, at \*4 (Tenn. Ct. App. Sept. 12, 2005); DORÉ, IOWA PRACTICE, *supra* note 3, § 31:11 (analyzing the application of the business judgment rule in oppression cases); Matthew G. Doré et al., *How You Gonna Keep 'Em Down On The Farm After Baur v. Baur Farms, Inc.? An Analysis & Defense of the "Reasonable Expectation" Standard for Iowa Oppression Cases*, 18 DRAKE J. AGRIC. L. 429, 451 (2013) [hereinafter *How You Gonna Keep 'Em Down*] (discussing why the business judgment rule may not apply well in the close corporation and oppression context).

240. *See supra* Part II.C.

241. *Baur v. Baur Farms, Inc.*, 832 N.W.2d 663, 674 (Iowa 2013).

242. *See id.* at 673–74.

243. *Id.* at 671, 673.

244. *Maschmeier v. Southside Press, Ltd.*, 435 N.W.2d 377, 379–80 (Iowa Ct. App. 1988).

245. *Id.* at 380 (citing *Balvik v. Sylvester*, 411 N.W.2d 383, 386–87 (N.D. 1987)).

246. *Id.* (citing *Balvik*, 411 N.W.2d at 388).



issue.<sup>247</sup> While the district court ultimately found the minority shareholder's termination was not oppressive, it did so based on the particular facts of the case.<sup>248</sup> The district court in fact emphasized, "[A]ll of the cases of oppression as [a] result of termination of employment rest on the unique facts of that specific case to determine if there was a guarantee of employment."<sup>249</sup> Thus, the district court did not find expectations of employment would be per se unreasonable but rather appeared to agree that a minority shareholder with the right set of facts would possess a claim.<sup>250</sup>

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247. See *Clingan v. Stanislav*, No. LACL113066, 2011 WL 1235571, at \*10–11 (Iowa Dist. Ct. Feb. 8, 2011) (citing *Wilkes v. Springside Nursing Home, Inc.*, 353 N.E.2d 657 (Mass. 1976); *Gunderson v. All. of Comput. Prof'ls, Inc.*, 628 N.W.2d 173 (Minn. 2001); *Meiselman v. Meiselman*, 307 S.E.2d 551, 563 (N.C. 1983); *Balvik*, 411 N.W.2d at 386).

248. *Id.* at \*12–13. The court found the minority and majority shareholder had negotiated for a long period of time prior to the minority buying into the company. *Id.* at \*12. The minority's employment was part of those discussions, but the ultimate agreement between the two did not include any employment guarantees. *See id.* In fact, their agreement specifically included at-will employment language. *See id.* The court did discuss how the expectations of the shareholders could have evolved over time, but the court found later events (including customer complaints against the minority shareholder to the point customers did not want to work with him) only further evidenced the minority had no reasonable expectation of continued employment. *See id.* Finally, harkening back to the subjective-expectations discussion above, the minority shareholder actually expressly stated he knew he had no employment guarantees. *Id.*; see also *Regan v. Nat. Res. Grp., Inc.*, 345 F. Supp. 2d 1000, 1012 (D. Minn. 2004) (finding no reasonable expectation of continued employment where minority shareholder admitted "that throughout his employment, he understood that he was an at-will employee who could be terminated with or without cause"). While the court did emphasize the parties could have included employment guarantees in their ultimate agreement, other courts have noted the likely unrealistic nature of such an occurrence given the unique position of minority shareholders in close corporations. Compare *Clingan*, 2011 WL 1235571, at \*12 ("They could have included a guaranteed employment clause for each of them, but they consciously chose not to do so."), with *Meiselman*, 307 S.E.2d at 558 ("Some may argue that the minority shareholder should have bargained for greater protection before agreeing to accept his minority shareholder position in a close corporation. However, the practical realities of this particular business situation oftentimes do not allow for such negotiations. . . . In short, then, the minority shareholder who acquired his shares to secure his position with the firm may have lacked sufficient bargaining power to force the majority to agree to terms which would enable him to protect his interests." (internal quotation marks omitted) (citation omitted)). In fact, the oppression doctrine and codification exists because of the particular lack of power minority shareholders would have to protect their interests otherwise. *See Muellenberg v. Bikon Corp.*, 669 A.2d 1382, 1386 (N.J. 1996); see also IOWA CODE § 1430(1)(b)(2) (2019).

249. *Clingan*, 2011 WL 1235571, at \*13.

250. *See id.* at \*13–14.

Cases post-*Baur* have not ruled definitively either way. While the court in *Ahrens* held the minority shareholder did not have a reasonable expectation of employment, that holding again appeared to be largely based on the particular facts of the case and the rule that shareholder status alone does not create an expectation or right to employment.<sup>251</sup> There, the minority shareholder claimed the majority acted oppressively when it declined to provide him the particular job he wanted, rather than making a claim based on termination.<sup>252</sup> Further, the corporation would have been subject to liability with a particular contractor had it given the minority shareholder the position he desired.<sup>253</sup> The court deemed it unreasonable to expect the corporation to subject itself to unnecessary litigation and liability, especially if alternatives were available.<sup>254</sup> And in *Calkins*, the district court actually held “Calkins had a reasonable expectation of continued employment” that was “known and accepted by” the majority shareholder, but the court declined to award additional damages on that particular basis.<sup>255</sup> While the district court indicated it did not believe the appellate courts would hold shareholder expectations overcome the at-will employment doctrine, it acknowledged the appellate courts could find termination-based oppression and in fact preemptively determined what the damages would be if an appellate court so held.<sup>256</sup>

Given the continued emphasis on the particular factual circumstances and the abundance of outside authority favoring these claims, it is not hard

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251. See *Ahrens v. Ahrens Agric. Indus. Co.*, No. 14-0564, 2015 WL 2089372, at \*6 (Iowa Ct. App. May 6, 2015) (holding expectation of employment based solely on status as substantial minority shareholder was unreasonable).

252. *Id.* at \*5.

253. See *id.* at \*6.

254. See *id.*

255. See *Calkins v. Brandt*, No. EQCE081752, 2019 WL 1222916, at \*31–32 (Iowa Dist. Ct. Jan. 26, 2019). The court did find oppression liability and awarded damages on other theories. See *id.* at \*20, \*48–49. The district court’s finding Calkins had a reasonable expectation of continued employment relied largely on the above cited factors. See *id.* at \*30–32 (noting the plaintiff had made substantial investments to buy into the company, worked there over 25 years, developed its successful business, relied on his income as his primary return on investment, agreed to a salary equal to the majority shareholder’s, and was believed by nonshareholders to be protected from termination due to minority-ownership status).

256. *Id.* at \*32, \*49–50 (holding “[i]f our appellate courts determine that a claim for reasonable expectation of continuing employment as a claim for oppression is an exception to the at-will doctrine” the minority shareholder would be entitled to an additional nearly \$400,000 in lost wages and benefits).

to imagine an Iowa court post-*Baur* following *Maschmeier*'s lead and granting relief for oppression-based termination.<sup>257</sup> However, courts should continue to hold shareholder status alone does not create a reasonable expectation of continued employment.<sup>258</sup> Rather, Iowa should, and likely would, adopt the factors considered by out-of-state courts detailed above.<sup>259</sup> Oppression law is a balancing act protecting the unique interests of minority shareholders while ensuring the corporation can be run effectively.<sup>260</sup> The factors discussed above offer the best guide both to analyze a shareholder's continued-employment expectations and protect that balance. Adopting these established, albeit nonexhaustive, factors in the employment-expectation context would also provide some measure of consistency and create a lodestar for shareholder relations moving forward.

#### V. PRACTICAL CONSIDERATIONS FOR MAJORITY AND MINORITY SHAREHOLDERS IN IOWA REGARDING EMPLOYMENT-RELATED OPPRESSION CLAIMS

It is likely Iowa appellate courts would adopt the rationale that, under the right factual circumstances, minority-shareholder employees can have reasonable expectations of continued employment that would create a cause of action based on oppression in the event of termination.<sup>261</sup> This creates several practical considerations for both majority and minority shareholders. Looking to the case law in this area and their experiences litigating these types of cases on either side of the *v*, the Authors offer some practice tips for parties and practitioners.

##### A. *Practical Considerations for Majority Shareholders and Close Corporations*

Majority shareholders in close corporations must be able to efficiently operate the corporation, which includes making decisions regarding hiring, salaries, benefits, workflow, and when necessary, terminations.<sup>262</sup> However,

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257. *Maschmeier v. Southside Press, Ltd.*, 435 N.W.2d 377, 381 (Iowa Ct. App. 1989).

258. *See, e.g., Regan v. Nat. Res. Grp., Inc.*, 345 F. Supp. 2d 1000, 1012 (D. Minn. 2004).

259. *See supra* note 160.

260. *See Clingan v. Stanislav*, No. LACL113066, 2011 WL 1235571, at \*11 (Iowa Dist. Ct. Feb. 8, 2011); *Gunderson v. All. of Comput. Prof'ls, Inc.*, 628 N.W.2d 173, 191 (Minn. Ct. App. 2001); *Kortum v. Johnson*, 755 N.W.2d 432, 446 (N.D. 2008).

261. *See supra* Part IV.C.

262. *See Clingan*, 2011 WL 1235571, at \*11; *Gunderson*, 628 N.W.2d at 191; *Kortum*,

their fiduciary duties to minority shareholders can loom over them like the Sword of Damocles. While majority shareholders must let their fiduciary duties guide their decisions on behalf of the corporation, there are steps they can take to limit liability for terminating minority shareholders.<sup>263</sup>

First, it is important to establish the shareholders' expectations from the outset.<sup>264</sup> This can be done a number of ways. Conversations with the shareholders as to their employment expectations should be documented to the best extent possible, whether through memoranda or contemporaneous e-mails sent to all necessary parties.<sup>265</sup> A detailed record regarding the expectations of all shareholders is a powerful tool in litigation, as it can establish both objective and subjective expectations of employment.<sup>266</sup> One of the most useful ways to tangibly record shareholder expectations is through written agreements.<sup>267</sup>

There are several different agreements majority shareholders can use to establish the minority has no reasonable expectation of continued employment: at-will employment agreements, shareholder agreements, corporate bylaws, buy-sell agreements, and even the company's employee

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755 N.W.2d at 446.

263. These practical considerations are not meant to give license to majority shareholders to breach their fiduciary duties and act in an oppressive manner. Bad blood can form among shareholders, and that division can create a strain on the corporation's operation and affairs. But, majority shareholders must abide by their fiduciary duties and must restrain from acting in an oppressive manner. *Baur v. Baur Farms, Inc.*, 832 N.W.2d 663, 673–74 (Iowa 2013). Taking into account that the facts of every oppression claim are different, these practice tips are merely meant to help the parties better establish expectations that might otherwise be unclear. Attorneys for majority shareholders and close corporations should strive to counsel their clients against acts that would clearly violate the client's fiduciary duties.

264. See *Meiselman v. Meiselman*, 307 S.E.2d 551, 563 (N.C. 1983).

265. See *Regan v. Nat. Res. Corp., Inc.*, 345 F. Supp. 2d 1000, 1012 (D. Minn. 2004) (holding the minority shareholder's acknowledgement he was at will disfavored a reasonable expectation); *Clingan*, 2011 WL 1235571, at \*6 (stating minority shareholder had said in his regular meetings with the majority he understood he had no employment protections as a shareholder).

266. See, e.g., *Regan*, 345 F. Supp. 2d at 1012.

267. See *Coleman v. Taub*, 638 F.2d 628, 636 (3d Cir. 1981); *Regan*, 345 F. Supp. 2d at 1012; *Jenkins v. Haworth, Inc.*, 572 F. Supp. 591, 601 (W.D. Mich. 1983); *Clingan*, 2011 WL 1235571, at \*4–5; *Gunderson*, 628 N.W.2d at 190; *In re Apple*, 637 N.Y.S.2d 534, 534 (N.Y. App. Div. 1996); *Kortum*, 755 N.W.2d at 446. However, it should be reiterated that “[o]ften, shareholder expectations arise from understandings that are not expressly stated in the corporation's documents.” *Gunderson*, 628 N.W.2d at 186; see *Topper v. Park Sheraton Pharmacy, Inc.*, 433 N.Y.S.2d 359, 362 (N.Y. Spec. Term 1980).

handbook.<sup>268</sup> Written agreements or documents provided to shareholder employees at the outset of the relationship and maintained throughout (including in any purchase of additional shares or any changes to the corporate structure) should make clear the shareholder employee is an at-will employee.<sup>269</sup> For instance, the Authors have used language similar to the following in shareholder agreements and other agreements pertaining to the issuance of shares:

Employment At-Will: Employee/Shareholder's employment shall be at-will, terminable by either Employee/Shareholder or Employer at any time with or without cause and with or without notice for any reason or no reason at all. Nothing in this document shall be considered to alter the nature, status, or term of Employee/Shareholder's at-will employment.

No Employment Expectations: Employee/Shareholder expressly warrants he/she has no reasonable expectation of lifetime, permanent, continued, or termed employment, regardless of any shareholder or other status. Employee/Shareholder acknowledges and agrees his/her purchase or receipt of shares are not considered in exchange or consideration for any offer, contract, agreement, or proposal for lifetime, permanent, continued, or termed employment. Employee/Shareholder's employment is at-will, terminable at any time with or without cause and with or without notice for any reason or no reason at all.

No Reliance: Employee/Shareholder warrants he/she is not relying on any other oral or written statement, offer, or document regarding the term or status of his or her employment. Employee/Shareholder acknowledges and agrees this Agreement governs and defines the nature of Employee/Shareholder's employment relationship with Employer.

This language could also be used in any documents gifting shares in the corporation or allowing an employee to purchase a small ownership interest. Similar language could be incorporated in a buy-sell agreement requiring shareholder employees to sell their shares back to the corporation upon

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268. See, e.g., *Regan*, 345 F. Supp. 2d at 1012.

269. See, e.g., *id.*

termination.<sup>270</sup> For instance, in *Ingle v. Glamore Motor Sales, Inc.*, the court found no reasonable expectation of continued employment existed when the buy-sell agreement included language giving the corporation the right to repurchase all shares if the minority shareholder “cease[d] to be an employee of the Corporation for any reason.”<sup>271</sup>

If problems begin to arise with the minority shareholder, including performance problems or misconduct, it is important for the corporation to document these incidents.<sup>272</sup> The majority shareholder should strive to be open and honest with the shareholder about the problems,<sup>273</sup> make it clear these problems will not be tolerated, and remind the minority shareholder that owners may be terminated.<sup>274</sup> Documenting incidents and communicating with the minority shareholder about the problems can help establish an argument later if the problems persist based on the business judgment rule.<sup>275</sup>

In litigation, the minority shareholders’ statements, documents they signed, records of misconduct, and poor job performance are useful pieces of evidence.<sup>276</sup> Further, attorneys should look to the particular facts of the minority shareholders’ investment in the corporation for avenues of attack and ask:<sup>277</sup>

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270. See *id.* (“[A] written agreement specifically stating that the shareholder may be terminated without cause contravenes a finding that the shareholder had an expectation of continued employment.”); *Gunderson*, 628 N.W.2d at 190 (“[S]hareholders who sign buyout agreements permitting termination of employment for any reason and obligating shareholders to sell their shares to the corporation upon termination of employment would not likely have a reasonable expectation of continuing employment.”).

271. *Ingle v. Glamore Motor Sales, Inc.*, 535 N.E.2d 1311, 1312–13 (N.Y. 1989); see *Grady v. Grady*, No. PB 09-0367, 2012 WL 171006, at \*7 (R.I. Super. Ct. Jan. 17, 2012) (comparing language in *Ingle* agreement with language in the plaintiff’s buy-sell).

272. See *McKee v. St. Paul Eye Clinic, P.A.*, No. A14-0681, 2015 WL 1757833, at \*5 (Minn. Ct. App. Apr. 20, 2015); *Priebe v. O’Malley*, 623 N.E.2d 573, 575–76 (Ohio Ct. App. 1993).

273. *Clingan v. Stanislav*, No. LACL113066, 2011 WL 1235571, at \*13 (Iowa Dist. Ct. Feb. 8, 2011) (holding majority shareholder has duty to be open and honest with minority shareholder); see also *G&N Aircraft, Inc. v. Boehm*, 743 N.E.2d 227, 240–41 (Ind. 2001).

274. See, e.g., *Regan*, 345 F. Supp. 2d at 1012.

275. See *supra* Part IV.B.

276. See, e.g., *Gunderson v. All. of Comput. Prof’ls, Inc.*, 628 N.W.2d 173, 190 (Minn. Ct. App. 2001).

277. See *supra* Part IV.B.

- Did they buy into the corporation with a substantial investment?
- Were they a founder?
- Did they receive shares as part of a compensation package?
- Are salaries and benefits tied directly to their shareholder status, or would they retain their employment even if they were not a shareholder?
- Have valuable and consistent dividends been issued so that their salaries and returns on investment are separate?
- What facts occurred leading up to, as part of, and after the termination? For instance, were the minority shareholders able to retain their status as officers, directors, or both and to continue to receive dividends? If so, the majority shareholders might be able to argue the minority shareholders' expectations of participation and return on investment were not frustrated.<sup>278</sup>

Additionally, the at-will employment doctrine might offer a viable defense in some instances. As discussed, some courts have used the doctrine, or at least plaintiffs' admissions they were at-will, to either defeat or weaken reasonable expectations of continued employment.<sup>279</sup> Other courts, however, have found the two doctrines run parallel without invalidating the other.<sup>280</sup> As some courts have found, a minority shareholder can be both at will but also have reasonable expectations of continued employment.<sup>281</sup> The at-will doctrine instead could work to prevent recovery of employment-related damages, limiting the plaintiff's claim to equitable relief under sections 490.1430 and 490.1434.<sup>282</sup>

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278. See *Clingan*, 2011 WL 1235571, at \*15.

279. See, e.g., *Regan*, 345 F. Supp. 2d at 1012.

280. See *supra* Part III.C.

281. See *supra* Part III.C.

282. An analogous out-of-state case found:

Mr. Bontempo does not claim that he had a lifetime employment contract or even continuous for-cause employment as in *Spacesaver*. It is undisputed that there was no written employment contract and no oral agreement as to specific terms of employment. To the extent that Mr. Bontempo asserted that there was agreement on key elements of his work with Quotient—*i.e.*, that his salary was to equal the combined salaries of the Lares, once they started to draw a salary—

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### B. Practical Considerations for Minority Shareholders

A number of the practical considerations discussed above apply equally to minority shareholders and their attorneys. For minority shareholders, while in reality it might be difficult to negotiate specific employment protections into shareholder documents,<sup>283</sup> elimination of at-will employment language in shareholder-related agreements might be

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the trial court found otherwise. The trial court found that he was an at-will employee and, on this record, there is no basis to conclude that the finding is clearly erroneous.

Instead, Mr. Bontempo relies on the Circuit Court's findings, in determining whether there was oppression for purposes of the corporate dissolution statute, as to his reasonable expectations when he became a minority shareholder. He argues that the court's statement that he had a reasonable expectation of future employment at the time he became a shareholder superseded his at-will employment status. In essence, he would leverage the court's assessment of his expectations for purposes of the dissolution remedy into an employment-related remedy for a non-existent employment contract. Mr. Bontempo describes this as an equitable remedy that is only necessary when employment law does not adequately compensate someone in his position who has been fired without cause.

A "reasonable expectation" for purposes of the corporate dissolution statute is simply a way of detecting oppression, but it does not dictate the relief that an equity court is to grant. While Mr. Bontempo may have had a reasonable expectation of a future relationship with Quotient that included a connection to the corporation as an employee, officer, director, and shareholder, that is a far cry from an employment agreement that entitles him to a specific employment-related relief—*i.e.*, a specific position within the company with specific duties, pay, and conditions of employment. One might envision a situation in which a minority shareholder reasonably believed, upon committing capital to an entity, that one day he would advance to an executive position with the enterprise and in which, as a result of oppressive conduct of the majority shareholder, the minority shareholder has never been considered for any management position. A court acting under the authority of the corporate dissolution statute would be venturing far afield to order the company to hire the shareholder into a particular position with particular duties at a specified salary. . . .

To hold that the court abused its discretion and that Mr. Bontempo was entitled to employment-related relief—whether reinstatement or the monetary damages he is primarily interested in—would be to convert a discretionary equitable remedy into a substantive legal right.

Bontempo v. Lare, 119 A.3d 791, 807–08, 809 (Md. Ct. App. 2015); *see* Hollis v. Hill, 232 F.3d 460, 470–71 (5th Cir. 2000).

283. *See* Meiselman v. Meiselman, 307 S.E.2d 551, 558 (N.C. 1983).



useful evidence later or a way to defend an employment expectation.<sup>284</sup> Negotiating compensation that is equal with other shareholders—especially the majority shareholder—is another way to help establish reasonable expectations of continued employment.<sup>285</sup> Make clear from the outset of the relationship, especially if the minority shareholder is buying into the company as a way to secure employment, that employment expectations and protections are part of the investment.<sup>286</sup> Keep records of any communications wherein employment guarantees were made.<sup>287</sup> Documenting conversations among shareholders regarding employment is a useful tool for later demonstrating what the shareholders knew and understood about the minority shareholder's employment expectations.<sup>288</sup> Further, minority shareholders should avoid making statements acknowledging their employment is at will.<sup>289</sup>

For attorneys who are approached by minority shareholders for representation in oppression cases, potential clients should be warned that successfully bringing an oppression case in Iowa is no easy task. Before the *Calkins* case, there had not been a successful, published oppression case in Iowa for 30 years.<sup>290</sup> Post-*Baur*, the appellate cases indicate the court's reluctance to find oppression.<sup>291</sup> That certainly does not mean such a case is impossible and should not be brought.<sup>292</sup> Rather, attorneys should work with their clients to put together the best facts and arguments as to employment expectations, keeping in mind that shareholder status alone does not guarantee employment.<sup>293</sup> When developing the theory of the case, ask questions and review documents to answer certain questions:<sup>294</sup>

- How did the client become a minority shareholder in the corporation?

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284. See *Grady v. Grady*, No. PB 09-0367, 2012 WL 171006, at \*6–8 (R.I. Super. Ct. Jan. 17, 2012); cf. *Regan*, 345 F. Supp. 2d at 1012; *Clingan v. Stanislav*, No. LACL113066, 2011 WL 1235571, at \*12 (Iowa Dist. Ct. Feb. 8, 2011).

285. See *Haley v. Forcelle*, 669 N.W.2d 48, 60 (Minn. Ct. App. 2003).

286. See *Kortum v. Johnson*, 755 N.W.2d 432, 444–45 (N.D. 2008).

287. See *supra* Parts III.A, IV.A.

288. Cf. *Regan*, 345 F. Supp. 2d at 1012; *Clingan*, 2011 WL 1235571, at \*12.

289. Cf. *Regan*, 345 F. Supp. 2d at 1012; *Clingan*, 2011 WL 1235571, at \*12.

290. See *supra* Part II.

291. See DORÉ, IOWA PRACTICE, *supra* note 3, at § 31:11; *supra* Part II.

292. See *Calkins v. Brandt*, No. EQCE081752, 2019 WL 1222916, at \*20–22, \*24 (Iowa Dist. Ct. Jan. 26, 2019).

293. See, e.g., *Regan*, 345 F. Supp. 2d at 1012.

294. See *supra* Part IV.A.

- How much did the client invest to become a shareholder?
- Were there any discussions about employment related to the purchase of the shares?
- How did the client generally receive a return (if any) on her investment?
- How often were dividends issued?
- Were there any formal or informal agreements between the client and the majority shareholder regarding compensation and benefits?
- How long was the client an employee of the corporation (more specifically a shareholder employee)?
- What nonmonetary contributions did the client make to the corporation?
- What did other shareholders and employees believe about the client's employment status?
- What was the purported reason for the termination?
- What facts led up to the termination?
- Were there other potential shareholder-related motives for the termination, such as to secure total control of the corporation or to repurchase the shares below fair market value?
- Were there any events post-termination that further evidence oppressive conduct? For example, was there an offer to purchase the shares below fair market value or were efforts made to prevent the client from participating in the corporation as a shareholder, such as removing the client as a director or officer?

Using these questions and the factors derived from the successful oppression cases discussed above, minority shareholders can help develop the best theory of the case to present to the court regarding employment expectations under an oppression cause of action.

In litigation, two main attacks likely to be leveled at the minority shareholder will be the at-will employment doctrine and the business judgment rule.<sup>295</sup> Neither, though, are silver bullets. First, as to at-will

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295. See *supra* Parts III.C., IV.B.

employment, courts have found a shareholder employee can be at will and still have a reasonable expectation of employment for oppression purposes.<sup>296</sup> While some courts have used the doctrine to limit the damages available to plaintiffs, others have allowed minority-shareholder employees to recoup certain types of employment-related damages.<sup>297</sup> While it is unlikely a court would allow minority shareholders to seek reinstatement given the goal of balancing interests and the majority's need to run the corporation efficiently, there is an argument that damages for lost compensation would be available as a way for the minority shareholders to recoup the return on investment for their shares they otherwise would have been entitled to absent the oppressive termination.<sup>298</sup>

On the business judgment rule, while post-*Baur* courts have applied it in the oppression context,<sup>299</sup> it does not typically apply when the actions of the majority shareholder are self-dealing.<sup>300</sup> Oppressive termination of the

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296. See *supra* Part III.C.

297. See *Wilkes v. Springside Nursing Home, Inc.*, 353 N.E.2d 657, 664–65 (Mass. 1976) (holding termination of minority shareholder's employment was oppression and a breach of fiduciary duty and allowing minority shareholder to recover from the individual shareholders "the salary he would have received had he remained an officer and director of [the corporation]"); *Pedro v. Pedro*, 489 N.W.2d 798, 800–01 (Minn. Ct. App. 1992) (affirming award of \$256,740, plus prejudgment interest of \$31,750.37, as compensation for lost wages associated with termination from squeezing out a minority shareholder with reasonable expectations of continued employment); *Evans v. Blesi*, 345 N.W.2d 775, 779–80 (Minn. Ct. App. 1984) (holding majority shareholder breached a fiduciary duty by forcing a minority shareholder to resign and allowing an award for compensatory damages of the minority shareholder's salary to the time of appeal that was joint and several against the majority shareholder and corporation); see also *Crawford v. Mindel*, 469 A.2d 454, 462 (Md. Ct. Spec. App. 1984) (allowing minority shareholders to recover award for lost wages where the majority shareholder breached a fiduciary duty by committing fraud in an attempt to seize control of corporation and terminating minority shareholders).

298. See *Hollis v. Hill*, 232 F.3d 460, 470–71 (5th Cir. 2000); *In re Kemp & Beatley*, 473 N.E.2d 1173, 1178 (N.Y. 1984); *Hayes v. Olmsted & Assocs., Inc.*, 21 P.3d 178, 182 (Or. Ct. App. 2001); O'NEAL & THOMPSON, *supra* note 72, § 1:13; see also *State ex rel. Weede v. Bechtel*, 56 N.W.2d 173, 191 (Iowa 1952) (holding that in a stockholder derivative action, "The authority of the court to grant the relief to avoid an injustice is inherent in the broad discretionary power of equity.").

299. See *Van Horn v. R.H. Van Horn Farms, Inc.*, No. 17-0324, 2018 WL 3060240, at \*7 (Iowa Ct. App. June 20, 2018); DORÉ, IOWA PRACTICE, *supra* note 3, § 31:11.

300. *Rowedder ex rel. Cookies Food Prods., Inc. v. Lakes Warehouse Distrib., Inc.*, 430 N.W.2d 447, 453 (Iowa 1988) ("Appellants correctly assert that the business judgment rule governs only where a director is shown not to have a self interest in the transaction at issue. When self-dealing is demonstrated, 'the duty of loyalty supersedes

minority shareholder is frequently self-dealing because the corporation would no longer need to pay the minority, allowing the majority shareholders to retain more profits for themselves. Removing the minority shareholder from a position of authority in the company prevents the minority from influencing the corporation's actions, allowing the majority to act with increased autonomy.<sup>301</sup> Further, in some instances, the majority shareholder is able to repurchase the minority's shares for below fair market value, netting the majority the shares at a discount while solidifying power.<sup>302</sup> Establishing these facts might allow a minority shareholder to prevent application of the business judgment rule.

Finally, as to damages, an oppression case in Iowa will be tried in equity.<sup>303</sup> Sections 490.1430 and 490.1434 serve as the guide to the damages typically available when the minority shareholder is not looking for dissolution of the corporation.<sup>304</sup> While a judge sitting in equity has broad powers to craft remedies for minority shareholders,<sup>305</sup> section 490.1434 does specify some potential types of relief available to plaintiffs, including the following: (1) repurchase of the shares at fair value; (2) additional costs, fees, and expenses as determined by the court; (3) interest on the purchase of the shares at a rate and from a date the court deems equitable; (4) attorney's fees and expenses; and (5) expert fees and expenses.<sup>306</sup>

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the duty of care, and the burden shifts to the director "to prove that the transaction was fair and reasonable to the corporation."''' (citations omitted)).

301. See *Baur v. Baur Farms, Inc.*, 832 N.W.2d 663, 676–77 (Iowa 2013); *Maschmeier v. Southside Press, Ltd.*, 435 N.W.2d 377, 379–80 (Iowa Ct. App. 1988); see also *N. Air Servs., Inc. v. Link*, No. 2008AP2897, 2012 WL 130531, at \*3 (Wis. Ct. App. Jan. 18, 2012).

302. See *Baur*, 832 N.W.2d at 676; *Maschmeier*, 435 N.W.2d at 380; see also *Muellerberg v. Bikon Corp.*, 669 A.2d 1382, 1386 (N.J. 1996); *Balvik v. Sylvester*, 411 N.W.2d 383, 386–87 (N.D. 1987); *N. Air Servs.*, 2012 WL 130531, at \*3.

303. See generally *Calkins v. Brandt*, No. EQCE081752, 2019 WL 1222915, at \*1 (Iowa Dist. Ct. Jan. 26, 2019).

304. See IOWA CODE §§ 490.1430, 490.1434 (2019).

305. See *State ex rel. Weede v. Bechtel*, 56 N.W.2d 171, 191 (Iowa 1952); *Maschmeier*, 435 N.W.2d at 382; see also *Iowa Dep't of Soc. Servs. v. Blair*, 294 N.W.2d 567, 569 (Iowa 1980) (noting "the broad power of a court sitting in equity to frame an adequate remedy").

306. IOWA CODE § 490.1434(5) (2019).

Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure

## VI. CONCLUSION

While *Baur* resolved the test for oppression in Iowa, it left open many questions as to what expectations of minority shareholders will generally be found reasonable. Given the reasonable expectations test is fact dependent and will vary by shareholder, it is unlikely Iowa appellate courts would rule continued-employment expectations are per se unreasonable. This is supported by authority across the country, many of which the Iowa appellate courts have favorably cited to in support of the *Baur* test. As this area of Iowa law continues to develop, majority and minority shareholders in Iowa should consider these employment expectations (and the potential litigation surrounding them) as they initiate, continue, and, when necessary, terminate their corporate-shareholder relationships.

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payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. . . . Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder has probable grounds for relief under section 490.1430[‘s prohibition of oppression and waste], it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the shareholder.

*Id.* Iowa courts have affirmed attorney fees in freeze-out cases. *See* *Holden v. Constr. Mach. Co.*, 202 N.W.2d 348, 365–66 (Iowa 1972); *Sauer v. Moffitt*, 363 N.W.2d 269, 275 (Iowa Ct. App. 1984).