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A study of policies and practices for discharging at-will employees at Michigan's four-year state institutions of higher education over a period of ten years: 1979–1989

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A STUDY OF POLICIES AND PRACTICES FOR DISCHARGING AT-WILL EMPLOYEES AT MICHIGAN'S FOUR-YEAR STATE INSTITUTIONS OF HIGHER EDUCATION OVER A PERIOD OF TEN YEARS: 1979-1989

By

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ABSTRACT

A STUDY OF POLICIES AND PRACTICES FOR DISCHARGING AT-WILL EMPLOYEES AT MICHIGAN'S FOUR-YEAR STATE INSTITUTIONS OF HIGHER EDUCATION OVER A PERIOD OF TEN YEARS: 1979-1989

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During the last 10 to 15 years, employees have become more active in protecting what they perceive as a "right" to their jobs. They are increasingly challenging the nineteenth-century common law doctrine called "employment-at-will." The traditional common law interpretation of the doctrine is that absent either a contractual or statutory provision, any employment relationship is "at will" and therefore terminable at pleasure by the employer or the employee for good cause, bad cause, or no cause at all. However, since the Industrial Revolution, there have been significant and important inroads into the employment-at-will doctrine in the context of collective bargaining, civil service rules, statutory protection, and judicial decisions.

The purpose of the study was to describe, identify, and assess what effect the erosion of the doctrine has had

on selected personnel policies and procedures of Michigan's four-year state institutions of higher education, as perceived by those organizations, during the period 1979-1989. The research provides a better understanding of how representative institutions in Michigan have responded to the erosion of the doctrine and to the litigation surrounding wrongful discharge by examining and interrelating points of view of the key executives who share responsibilities for the human resource function.

The writer has summarized, in a general manner, some of the specific changes, adjustments, or new policies and procedures related to discipline and discharge that may have occurred or will occur in the future due to the changes in the interpretation of the doctrine.

In a broader and more practical sense, the research provides human resource executives with information about what managerial activities and decisions are taking place at other similar institutions. It assists them in justifying or reinforcing their behavior related to employment practices in working with nonunion employees. In addition, the description and analysis provides insight into the possible related effects on the organizations and future trends in employment practices.

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CHAPTER I

THE STUDY

Introduction

Three middle-management employees who were fired during a corporate reorganization and replaced with several new and younger employees successfully sued their employer. The jury awarded $3.8 million in damages to the three former employees. Fortino v Quasar Co., No. 87-C-4386, N.D. Ill. (11/14/88). A jury verdict of $375,000 was awarded to an employee who was fired in retaliation for asserting rights under the Workers' Compensation Act. James McGee v City of Grosse Pointe Park (1987). The mediation award in this case was $75,000. In another situation, a terminated employee claimed there was no "just cause" when his employer selectively enforced one of its policies. Doncouse v Spartan Stores, Inc. (1987). The jury verdict of $632,000 was mediated at $210,000. In the past, these employees may have accepted management's decision to fire them as a matter of doing business. Today, employees are reaping substantial jury awards by bringing wrongful termination suits against the employer. The threat of wrongful discharge suits is said to have

become one of the most important issues facing employers today.

During the last 10 to 15 years, employees have become more active in protecting what they perceive as a "right" to their jobs. They are increasingly challenging the nineteenth-century common law doctrine called "employment-at-will." The traditional common law interpretation of the doctrine is that absent either a contractual or statutory provision, any employment relationship is "at-will" and therefore terminable at pleasure by the employer or the employee. Historically, the employee who was not covered by a union contract or some other employment contract could be discharged for good cause, bad cause, or no cause at all.

Not included in this group of at-will employees are unionized workers, representing approximately 22% of the nonagricultural workforce, who are protected by collective bargaining agreements. Another group of employees who typically do not have an at-will employment relationship are public sector employees covered under federal, state, and local governments with tenure or civil service protections. This group represents approximately 15% of the workforce (Peck, 1979). Employees in this group have had a history of challenging the right to their jobs through the due process clauses of the Fifth and Fourteenth Amendments, which prohibit deprivations of

either life, liberty, or property without due process of law. Those covered by collective bargaining agreement, employed in protected public service positions, or working under written employment contracts for a specific period of time can usually be discharged only for good or just cause.

Erosion of the Employment-at-Will Doctrine

Since the Industrial Revolution there have been union and employment law activities that have afforded workers some protection against arbitrary or unjust discharges. The first inroads into the employment-at-will doctrine were made in the context of collective bargaining. In this relationship, employers gave up their unilateral right to discharge and agreed instead to a just cause requirement with binding arbitration provided for through the collective bargaining agreement. Additional interpretations and reviews of employment-at-will and employers' discharge decisions came later, as federal, state, and local government employees obtained protection from arbitrary dismissal through the creation of civil service rules. The third form of protection for at-will employees came from a variety of federal and state statutes, beginning with the National Labor Relations Act of 1935. These statutory protections of job security have been aimed at protecting employee rights.

The concept of employment-at-will has also faced significant judicial attention during the last decade. Nonunion, at-will employees, who in the past were hired and fired at the will of the employer, are now challenging the right to their jobs through wrongful discharge litigation. As the court systems in the United States hand down decisions dealing with wrongful discharge, employers are finding that their decisions to terminate at-will employees are being evaluated by the judicial system and, more important, by the jury. Decisional developments indicate that courts are struggling to find ways to meet a perceived need for broader protection against unjust dismissal.

Failure on the part of the business to recognize and avoid a potential wrongful discharge suit can cost the employer thousands of dollars in damages, as well as attorneys' fees. Thus, when the media announce that the "ABC Company" lost a wrongful discharge case amounting to $400,000 in damages, which is the average settlement in these cases ("More Workers Sue," 1986), the average business owner has to be somewhat, if not very, concerned about his own business practices. A growing number of court decisions, led by California and Michigan, have resulted in a substantial explosion of employment litigation with significant liability. This liability

lies not only with the medium- and large-sized corporations. A number of cases have been brought against small employers, who tend not to be as sophisticated in employment matters.

A business must consider many factors when faced with a wrongful discharge suit. Unless settled out of court, these cases are litigated in open court, which can result in adverse publicity for the employer. There are many intangible costs: numerous business hours tied up in consultation with attorneys, lengthy written responses and disruption of support staff who must probe company records for evidence in support of management's actions, depositions, and court appearances. The tangible costs of defending the company lawsuit are significant also. These include the quantifiable expenses of attorneys' fees, court costs, expert-witness retainers, and sometimes settlements or judgments. This becomes a costly burden, particularly for the small business owner. Both intangible and tangible expenses place a premium on either avoiding such lawsuits or being well prepared to defend the company's policies and procedures when proper personnel decisions (from the company's standpoint) result in an unjustified claim.

The Research Institute of America, Employment Coordinator, and Bureau of National Affairs, Personnel Management, discuss how employer defense attorneys have

been working with business on how to recognize and prevent wrongful discharge suits by helping business to understand the kinds of fact patterns or legal principals that have led to successful lawsuits. This has been accomplished by defining the principles underlying wrongful discharge cases and by synthesizing the common themes of the cases into a set of guidelines. The case law during the last decade has only begun to shape discharge issues. However, even in states where definitive criteria for wrongful discharge are still being made, there are general guidelines legal advisors recommend that are drawn from the case law to assist business in recognizing and avoiding wrongful discharge suits. Much of the written material addressing this subject has offered advice on how to design a system to avoid creating an implied right to continued employment and to implement a fair system of handling employee discipline and discharge. In reality, most suits today include a menu of various causes of action rather than a single legal principle. Attorneys, therefore, must analyze each cause of action separately to properly evaluate an employer's liability and possible defenses.

Summary of Related Literature

One of the most common claims includes the implied employment contract. In the 1980 landmark case of

Toussaint v Blue Cross/Blue Shield, 408 Mich 579 (1980), the Michigan Supreme Court rejected a long-standing legal presumption that all employment for an indefinite term is conclusively at-will employment. The Supreme Court's new rule is that employment for an indefinite term is still presumed to be terminable at will, but the presumption is very weak. If an employee can show any employment statement that caused the employee to reasonably believe that the employment would be terminated only for just cause, then the employee is entitled to lifetime employment unless the employer can show just cause for discharge. This case paved the way for employees to challenge discharge decisions by claiming they had an "implied" contract that limited discharge only for just cause.

In the Toussaint case, the just cause contract was created by employee handbook language stating that employees would be fired only for just cause. Michigan courts have taken an expansive view in construing employer statements as "contracts." In a companion case, Ebling v Masco Corp, 79 Mich App 531, 261 NW2d 74 (1977), the just cause contract was created when an official of the company told the employee that job security at the company was "good" and that the company did not fire anyone "as long as they're doing their job." A review of the Employment

Coordinator, Vol. 8, shows that subsequent cases have held just cause contracts were created by the existence of a "probationary period," by a list of "causes" for discharge," by maintenance of a "grievance procedure," and by a statement that employees would be retained so long as their job performance was "satisfactory."

The courts are saying that written policies create a contractual commitment by the employer and that this mandates strict compliance. Any deviation from established procedures may result in a breach of contract claim. If managers do not follow procedures, they inadvertently may be creating a lawsuit. If, in the example of performance appraisals, the employer describes in detail the intervals at which the evaluations will be given or specifies the number of warnings permitted before discipline or discharge, it must follow those procedures.

Once the judge believes that a just cause contract exists, the judge will likely refer the case to the jury to determine whether there was just cause for discharge. Even if an employer is found not to have created a just cause contract, a jury may still be able to review discharges if the employer is found to have created a "satisfaction contract." An employee handbook can often create a satisfaction contract where, for example, an employer relays to employees that they may be discharged if the employer is "dissatisfied" with their performance.

The jury here determines whether the employer was, in fact, "dissatisfied" (Bogas & Vogan, 1989).

Although there is no guarantee that an employer will not face a Toussaint jury trial, legal advisors suggest that an employer make a definite decision as to whether it wishes to reserve its right to terminate employment at will or to change employment benefits and policies at will. Once that decision is made, it is suggested that the employer clearly state its intent to exercise those rights barring any form of contradictory language in company literature or documents (Bacon & Gomez, 1988). It is necessary to reaffirm clearly the company's at-will employment policies in its application form, handbook, and any other employment-related policies and procedural manuals, to clearly reserve the right to change all employment policies and benefits, to clearly reserve management's rights to make final decisions, even under standards that might be in a handbook, and to protect the management from claims of "verbal contracts," by reserving the right to modify the at-will policies for one individual in the organization or a body of decision makers such as the board of directors (Bureau of National Affairs, 1986, 1988a, 1988b, 1988c; Research Institute of America, 1989; Shepard & Moran, 1982).

Another common claim in wrongful discharge cases is the concept of discharges in violation of "public policy."

This is one of the areas of Michigan employment law that is still developing. The theory is that the state has an interest in encouraging its citizens in some activities, such as reporting violations of the law. The "public policy" of the state, therefore, prohibits the discharge of an employee for engaging in such activities. The legal advice to employers here is to evaluate carefully instances in which the employer wishes to restrict an employee's activities of an "encouraged" function. Also, employers are advised to refrain from retaliating against an employee who chooses to exercise his/her civil rights or refuses to commit an unlawful act.

Michigan has recognized that an employer can be sued for negligence if it terminates an employee in an arbitrary manner without investigation. Following the Michigan case of Chamberlain v Bissel, 574 F Supp 1067 (E.D. Mich. 1982), where the court ruled that the employer failed to warn the employee that lack of performance could lead to termination, legal advisors reminded employers of the need for honest evaluations (31 CCH EPD para. 33367). Those employers reluctant to be truthful with employees when faced with poor performance are advised by legal counsel to eliminate the entire review process. Glowing reviews written just months before a performance discharge have easily led to a negligence claim.

Other states have recognized the good faith and fair dealing exception in wrongful discharge cases. In these cases the courts have ruled that discharge in "bad faith" is a breach of contract. These cases often include charges against the employer of intentional or negligent infliction of emotional distress (Bogas & Vogan, 1989). Although recently, in a California Supreme Court case of Foley v Interactive Data Corporation (1985), where the Court held that punitive damages or recovery for pain and suffering were not available based on breach of implied contract, it does not prevent the employee from filing separate tort claims on defamation, intentional infliction of emotional distress, or similar claims.

Statement of the Problem

The problem investigated in this study was to determine what changes, if any, had taken place with regard to policies and procedures affecting the status of employment-at-will and, more specifically, to the termination policies and practices of at-will employees at Michigan's four-year state institutions of higher education, as perceived by those organizations, over the ten-year period, 1979 to 1989. The writer compared related personnel policies that were in effect in 1979 with policies as they existed in 1989. The focus was on

what changes, if any, had occurred and on addressing possible reasons for the change(s).

Purpose of the Research

The purpose of the study was to describe, identify, and assess what effect the erosion of the employment-at-will doctrine has had on selected personnel policies and procedures of Michigan's four-year state institutions of higher education, as perceived by those organizations, during the period 1979 to 1989.

The dates selected for this study (1979 to 1989) were chosen because of the Michigan Supreme Court's precedent-setting case of Toussaint v Blue Cross/Blue Shield of Michigan (1980), which resulted in a vastly different interpretation of the employment-at-will doctrine.

The aim of the research was to gain a better understanding of how representative institutions in Michigan have responded to the erosion of the employment-at-will doctrine and to the litigation surrounding wrongful discharge by examining and interrelating points of view of the key managers/executives who share responsibilities for the human resource function. The writer has summarized, in a general manner, some of the specific changes, adjustments, or new policies and procedures related to discipline and discharge that may

have occurred or will occur in the future due to the changes in the doctrine.

In a broader and practical sense, this research can provide human resource executives with information about what managerial activities and decisions are taking place at other similar institutions. It can assist them in justifying or reinforcing their behavior related to employment practices in working with nonunion employees, as they become aware of policies and procedures used by executives in a similar function. In addition, it is believed that such description and analysis will provide some insight into the possible related effects on the organizations and future trends in employment practices.

Importance of the Study

While the case law has been developing since the late 1970s, up to this point relatively little is known about the manner in which employers are responding to the court rulings and to advice from legal advisors on this issue. There is a need for prompt and continuous feedback on the effect the erosion of the doctrine has had on actual decision making, business operations, or policies and procedures related to the discipline and discharge of employees. Immediate prescriptive measures, targets, and policies and procedures would seem vital to provide practical methods of avoiding wrongful discharge suits.

Much of the current literature about the erosion of the employment-at-will doctrine was written by legal advisors and theoreticians within the field. The relationship between what is being recommended by them and what is actually taking place in the organization will be very helpful in expanding the practitioner's range of alternative methods for dealing with discipline and discharge issues. In view of this, accurate data relating to personnel policies and procedures that are being used are highly desirable. Such data will aid managers in the evaluation and adoption of alternative employment policies and procedures.

This type of information will be valuable to all organizations for purposes of long-range planning. It will provide awareness and impetus to develop an active comprehensive and coordinated procedure to improve the rate of nonthreatening discharge suits. Individual functions of the organization can then be analyzed and restructured where necessary.

Research Questions

In keeping with the purpose of the study, which was to describe, identify, and assess what effect the changes in the employment-at-will doctrine have had on personnel policies and procedures, five areas of personnel administration were identified by the researcher as having

a high probability of change during the period studied. The five areas examined and formulated into research questions were:

1. Have there been changes in the institution's structural organizational alignment or administrative responsibility for disciplinary action and discharge, especially in regard to (a) final authority and (b) staffing level and reporting lines?

2. Have personnel policies, procedures, or rules been changed during the ten-year period?

3a. In what manner has management activity or behavior changed regarding discipline and discharge?

3b. What are respondents' attitudes toward wrongful discharge?

4a. What changes have taken place in management training, and in what format does management training occur?

4b. From which outside sources or groups does the institution seek assistance when dealing with this issue?

5. What is the degree of satisfaction with current policies and activities regarding termination?

Methodology

The population was defined as executive-level human resource administrators at Michigan's four-year state institutions of higher education. The executive-level

administrators included the President or Vice-President, Director of Personnel or Human Resources, Director of Employee Relations, and University Attorney. In case of different titles, individuals with primary responsibility of nonunion staff were included in the study.

Information was gathered through the administration of a written questionnaire. The instrument was designed to (a) determine how many employees the institution had who fit the category of at-will employees, (b) what types of personnel policies and practices were in place that could affect the status of at-will employees, (c) determine whether personnel policies and practices in 1979 were different from those that were in place in 1989; (d) assess perceptions about related management activities or organizational changes that had changed over the ten-year period, and (e) assess respondents' views and attitudes about the employment-at-will doctrine and issues surrounding the doctrine.

To address the concern of a definition of at-will employees, the researcher placed employees into one of four categories: (a) combination of at-will and just cause employees with no clear policy or provision specifying the relationship, (b) combination of at-will and just cause employees with a very clear distinction by way of a policy statement as to which employees are at-will, (c) just cause employees, and (d) at-will employees.

The categorization proved useful in understanding the variation of responses in further research questions.

The instrument was pilot tested with two human resource executives from institutions of higher education in Michigan, but not with any of those included in the study itself. Changes were made based on comments of the pilot group, and the instrument was revised. Research data were then collected during structured personal visits to individual institutions. The completed instruments were coded by the researcher to retain anonymity of the respondents. The responses were then analyzed using descriptive statistics in most instances.

Although no hypotheses were developed for this study, statistical tests were performed on two of the questions to determine whether there was a statistically significant difference in the variables between 1979 and 1989. More specifically, responses to Research Question 1a were measured using the chi-square statistical technique. This allowed the researcher to determine whether changes in the institutions' structural organizational alignment or administrative responsibility for disciplinary and discharge action had changed due to chance or due to a theoretically expected distribution. Responses to Research Question 2 were measured using a standard t-test.

This measure was used to compare the changes in personnel policies and procedures from 1979 to 1989.

Assumptions of the Study

In investigating this problem, the researcher made the following assumptions, which, if violated, could influence the findings.

1. Data were gathered through the survey technique. Survey research is considered an accepted methodology in social science fields (Ostroth, 1979).

2. It was assumed that the administrators selected had ample information and experience to provide the responses to the questions.

3. It was assumed that the formalized instrument for collection of data was sufficient to describe, identify, and assess the effect of the changes in the employment-at-will doctrine on selected personnel policies and procedures and provided results that can be replicated.

Limitations of the Study

The scope and interpretation of this study were limited by the following:

1. The findings in this study were specific to four-year state institutions of higher education in Michigan. The degree to which these findings can be generalized to other business and industry within the state is questionable. Furthermore, the degree to which these

findings can be generalized to business, industry, or institutions in other states is influenced by the corresponding state statutes and judicial decisions made on employment-at-will in those states. Although the findings may reflect trends in the profession, the degree of generalization is limited.

2. This study was designed to assess the relationship, if any, between the changes in the employment-at-will doctrine and personnel policies, practices, and procedures for nonunion, noncontractual employees. While this investigator recognizes that the field of human resources encompasses more than policies, practices, and procedures for nonunion, noncontractual employees, an assessment of these was the central focus.

3. A comprehensive study would include the effects of collective bargaining on decision making and the philosophy and values of institutional decision makers as well as the history of policy changes made by the institutions. Information of this nature was beyond the scope and magnitude of this study.

4. Where written policies were not available for review by the investigator, responses in this study reflect only the perceptions of the individuals surveyed. The cumulative data from a single executive cannot be interpreted as the institutional decision, policy, or

direction. The amount of experience, the knowledge level of the subject matter, and commitment to change varied among the respondents and may have affected their responses.

Definition of Terms

Personnel policies and procedures. Written or unwritten statements of action that the employer uses in the day-to-day operation of the business as it relates to employee personnel issues.

Recent court decisions. Court decisions, made at state circuit courts, courts of appeals, and supreme courts over the last 15 years, with a particular focus on the decisions made in Michigan courts since the 1980 Toussaint v Blue Cross/Blue Shield case.

Wrongful discharge. The act of terminating an employee that is determined to be a breach of an implied employment contract or employment discrimination based on one or more common laws or statutory exceptions to the employment-at-will doctrine.

Organization of Subsequent Chapters

Chapter I included the background and context of the study. It included an introduction to the topic, summary of the related literature and rationale for the study, statement of the problem, and purpose of the research. The research questions and definitions were listed, and

the assumptions and limitations of the study were presented.

A review of the literature explaining the concept of the employment-at-will doctrine and its standing in employment relations today appears in Chapter II. Also included is a detailed review of the literature and research about the statutory protections and judicial erosion affecting the doctrine.

The design of the study, including the description of the study, design of the instrument, the method of collecting the data, and procedures of data analysis, appears in Chapter III.

Chapter IV contains the presentation and analysis of the data.

Chapter V contains a summary of the findings and implications and conclusions drawn from these findings. This chapter also includes suggested areas for future research and additional inferences and speculations.

CHAPTER II

REVIEW OF THE RELATED LITERATURE

To understand the common law doctrine of employment-at-will, it is necessary to review the origins and historical developments of the rule. Using review-based research, primarily from Bureau of National Affairs (BNA), Commerce Clearing House (CCH), and Research Institute of America, Inc. (RIA), this chapter will provide an overview of state and federal legislative developments as well as judicial developments that have had a significant effect on how the doctrine is interpreted today. The chapter is then summarized, pointing out some of the challenges to the traditional common law doctrine of employment-at-will.

The Concept of the Employment-at-Will Doctrine

The American common law doctrine of employment-at-will holds that employment for an indefinite term is terminable at the will of either the employer or the employee. Either party can terminate the employment relationship without reason, notice, explanation, or cause. This common law doctrine first appeared as a rule of evidence in Horace Wood's Treatise on the Law of Master

and Servant 134, at 272 (1877), and is referred to as "Wood's rule." Wood's principle indicates that general or indefinite hiring is "at will" unless it can be rebutted by other evidence (Wood, 1877). For example, the employer and employee could contract for a specific duration (e.g., one year), have no contract at all, or could agree that the employee could be discharged for cause only.

This American common law largely resembles the fourteenth-century English common law except that under the English common law indefinite employment was presumed to be for a one-year period, which was renewable with termination during the term for just cause only (Blackstone, 1771). The English common law was later reinterpreted in the nineteenth century and replaced by the rule that employment was considered to be terminable by either party, at will, with or without cause upon reasonable advance notice during which the employee would receive severance pay (Bath, 1967).

Although Wood's rule is a departure from English common law and early American cases, the United States adopted the rule in 1884, in the case Payne v Western & Atl. R.R. Co., 81 Tenn 507, 519 (1884). The court ruled that employers could dismiss employees at will for "good cause, for no cause or even for a morally wrong cause" (8 RIA, EP para. 82,681). The employment-at-will rule became further institutionalized in Martin v New York Life

Insurance Co., 148 NY 117, 42 NE 416 (1895), when the court held that an annual salary term of an employment contract did not result in a presumption that employment was for a one-year contract.

Adair v United States is discussed in paragraph 22,681 of RIA. In this case, the Supreme Court held "the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee," 208 US 161, 174-175, 28 S Ct 277, 280, 52 L Ed 2d 436 (1907). The court reaffirmed the employer's right to hire and fire at will in Coppage v Kansas, 236 US 1 10 (1915). In this case, the Supreme Court concluded that the Constitution protected an employer's freedom to contract whatever terms it wished with its employees.

It was clear, based on these early cases, that employers became bound only on those promises they obligated themselves to perform. Courts presumed that the parties were not held under contract for any definite duration and the employer did not have the burden of proof to establish the intent that the contract was for less than one year.

There are other established principles at the foundation of the employment-at-will rule. One such

principle is that of mutuality of obligation and consideration. The principle of mutuality of obligation requires that both parties to a contact be legally bound to perform their promises (A. Corbin, 1 Corbin on Contracts, 152, 1950 & Supp. 1971). However, in an employment contract the employee was effectively free to quit at any time with no notice. The employer could sue only for actual losses, e.g., finding a replacement, and could not enforce the contract because it would constitute a violation of the Thirteenth Amendment, i.e., the prohibition against involuntary servitude, as in H. W. Gossard Co. v Crosby, 132 Iowa 155, 109 NW 483 (1906). The courts therefore concluded that if the employee was not obligated to provide services, the employer should not be obligated to continue to provide employment. The principle of mutuality of consideration is where the employee would provide labor in consideration of pay. This principle provides that if the employee is no longer employed and no longer gives consideration for his wage, the employer is not compelled to pay wages for a definite period of time without receipt of services (A. Corbin, 5 Corbin on Contracts, 1181, 1951 & Supp 1971).

In the case Huhtala v Travelers Insurance Co., 401 Mich 118, 133, 257 NW2d 640, 647 (1977), the court enforced other promises in the employment contract based on theories of reliance or promissory estoppel. This

theory protects the promise where one party relies on a promise made by the other party even where there is no mutual promise made that would give rise to a contractual obligation. The court looks for a clear and definite promise by the employer, which induces reliance by the employee and results in action detrimental to the employee's interests, but which occurred because of the reliance upon the promise (Restatement [Second] of Contracts, 90, 1981).

The elements of a promissory estoppel action require that the employer reasonably expects the promise to be relied upon by the employee to the employee's detriment. The question that the court addresses is whether the employee's acts of detrimental reliance were reasonable and were induced by a clear and definite promise by the employer. In a jury trial, the extent of the detriment suffered by the employee determines the likelihood of whether the employer's promise will be viewed as a breach of promise versus the elements required in a promissory estoppel action. A jury may conclude that customary practices of the employer induced acts of employee reliance, rendering enforceable the employer's promise of continued employment in the absence of good cause for discharge.

Under this theory, the employee who resigns a position to accept another offer has the right to enforce the promise of employment because of his detrimental reliance. Similarly, when an employer asserts that the employee has a lifetime job, and the employee relies on this presumed state of facts to his detriment, then the employer may be estopped from denying the truth of his statements. The court cases addressing this issue were American Electrical Steel Co. v Scarpace, 399 Mich 306, 249 NW2d 70 (1976) and Detroit Savings Bank v Loveland, 168 Mich 163, 172, 130 NW 678, 682 (1911), where the court stated, "If one's conduct induces another to believe in the existence of certain facts, and the other acts thereon to his prejudice, the former is estopped to deny that the state of facts does in truth exist."

The Doctrine Today

It is important to note that the traditional rule of employment-at-will is still vital today. Except as modified by statute or decisional law, the common law doctrine continues to control the resolution of all cases of alleged unlawful employment action and is still very much alive.

It is estimated that there are some 50 to 75 million workers in the United Sates, which represents nearly three-quarters of the American workforce, who do not fall

under the protection of laws designed to protect them from arbitrary dismissal and are therefore employed at the will of the employer (Bureau of National Affairs, 1982). In other words, these workers are vulnerable to a relationship where the employer is free to end the employment relationship with or without cause, at any time, and for any reason that is not contrary to law. In one study, a conservative estimate of the annual discharge rate for at-will employees (most of whom are in the private sector) with more than six months of service would be approximately 1.4 million in a given year. These are employees with no recourse to grievance and arbitration procedures (Steiber & Murray, 1983).

The National Labor Relations Act of 1935 requires that the employer bargain collectively with the union representing a majority of the workers (29 U.S.C. 158(d), 159(a), 1982). In addition to that, there are 32 states, including Michigan, that encourage bargaining and provide protections under statutorily authorized collective bargaining for public employees (Mich Comp. Laws, 423 .201-.216, 1979). By way of the bargaining process, it is highly likely that the agreement will contain a provision protecting the job security of its members. These provisions generally outline policies and procedures relating to discharge and discipline only for good cause. The grievance procedures which usually end in arbitration

provide an enforcement procedure for the good-cause requirement. Over 80% of the collective bargaining agreements have such provisions (Peck, 1979). According to RIA's Labor Relations, Volume 13, since the collective bargaining agreement supersedes an individual employment contact, a unionized employee may not assert rights in court under a theory of an individual contract of employment. J.I. Case Co. v NLRB, 321 US 332, 334-35 (1944). The unionized worker also must normally exhaust the grievance procedure they are protected under before initiating litigation for breach of contract. Republic Steel Corp. v Maddox, 379 US 650, 652-63 (1965). However, in a violation of public policy case, the Illinois Supreme Court allowed a union worker's tort challenge in an alleged discharge for filing a worker's compensation claim, without first exhausting the grievance procedures in the union contract. Midgett v Sackett-Chicago, Inc., 1984, Ill, 117 BNA LRRM 2807.

Public sector employees covered under the Civil Service Reform Act of 1978, which protects civil service employees at the federal level, are provided a procedure for suspension and discharge (5 U.S.C., 7501-7533, 1982). The employee must be given advance written notice and reason for the suspension and allowed the opportunity to respond, with representation from any attorney, if so

desired. Additionally, the employee is provided with a reason for any discharge (Chaturvedi, 1968). State and local public employees often enjoy similar statutory protections. It is estimated that over 50% of state and local government employees are covered by some form of just cause protection (Chaturvedi, 1968).

Statutory Protections

Although at this time there has been sparse legislative modification of the doctrine of employment-at-will because of employee challenges, there have been over the years legislative and judicial developments on both federal and state levels, which have led to some limitations on the employer's freedom to discharge employees on particular areas of activity and concern. Nonunion, noncontract workers are protected in part by these statutory restrictions on the employer's ability to discharge.

Federal Level

There are several major federal statutory protections of job security aimed at protecting employee rights. Among these is Title VII of the Civil Rights Act of 1964 (42 U.S.C., 2000e to 2000e-17, 1982), which prohibits any discharge based on discrimination with regard to race, color, religion, sex, or national origin and prohibits any reprisal to an individual for exercising Title VII rights.

The Age Discrimination in Employment Act of 1967 (sec. 4(a), 29 U.S.C. sec. 623(a), 1982) protects the worker who is over 40 years of age from discriminatory discharge. The Vietnam Era Veterans Readjustment Assistance Act (38 U.S. C., 2021(a), 1982) protects the returning veterans' rights to return to their former jobs without fear of being discharged for one year. The Vocational Rehabilitation Act of 1973 (sec. 504, 29 U.S.C. sec. 794, 1976 & Supp. V, 1981) protects the handicapped. The Occupational Safety and Health Act of 1970 (sec. 11(c)(1), 29 U.S.C. sec. 660(c)(1), 1982) protects those exercising their rights to a safe workplace for discharge. The National Labor Relations Act of 1935 (sec. 8(a)(3), 29 U.S.C. 660(c), 1976) protects employees from retaliatory discharge for engaging in concerted activities. The Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001-1461, 1982) protects the rights of employment benefits. The Fair Labor Standards Act (sec. 15(a)(3), 29 U.S.C. sec. 215(a)(3), 1982 & Supp. III, 1985) protects those exercising rights of minimum wage and overtime from retaliatory discharge. The Consumer Credit Protection Act (sec. 304(a), 15 U.S.C. sec. 1674(a), 1976) protects discharge of an employee whose wages are garnished for an indebtedness. These various federal statutes and others protect workers against retribution for filing claims or

complaints, participating in proceedings, or exercising their rights.

State Level

There are also state laws restricting the right of an employer to discharge at will, such as laws forbidding employers from discharging employees who exercise their right to vote, file for workers' compensation, serve as a juror, engage in political activities, refuse to take a lie-detector test, or refuse to commit perjury.

In Michigan, under the Elliott-Larsen Civil Rights Act of 1977 (Mich. Comp. Laws, 37.2101 to 37.2804, 1979), employees or potential employees are protected from discharge or discrimination for reasons related to their religion, race, color, national origin, sex, age, marital status, height, or weight. The Michigan Occupational Safety and Health Act (MI-OSHA) (Mich. Comp. Laws, 408.1001 to 408.1094, 1979) prohibits retaliatory discharge for refusal to work in an unsafe environment. Michigan's Handicappers' Civil Rights Act (Mich. Comp. Laws, 37.1101 to 37.1507, 1979) prohibits discrimination against a handicapped employee with a handicap unrelated to the ability to perform the duties of the job.

The brief review of federal and state statutory protections provided above reflects only part of the movement that has taken place in the United States

providing job security for at-will employees. Some authors have contended that the growth in these statutory constraints parallels a trend to uphold common law challenges to at-will terminations (Bureau of National Affairs, 1984), while others have urged drastic legislative reform to further limit discharge discretion of employers. Another important, and perhaps the more significant, movement reshaping social policy in the area of job security over the last decade has been the judicial developments that have begun to change the doctrine more rapidly than legislative developments.

Judicial Developments

The literature pertaining to the status of the employment-at-will doctrine takes different approaches and can be confusing. Some authors have implied that employers have too little discretion on termination because the doctrine has been so terribly eroded by the courts. They have claimed that the judicial erosion over the last two decades has "threatened the continued legal validity of the employment-at-will rule and [has] fundamentally altered the traditional employer-employee relationship" (Murg & Scharman, 1982). Others have suggested that the court rulings have had little effect and that at-will employees are left with very little protection against unjust terminations, and, as such, it

is necessary to legislate a "cause" standard for at-will employees at both the federal and state levels (Blades, 1967; Peck, 1979; St. Antoine, 1981; Steiber, 1980).

The following review-based research discussing judicial developments in the at-will arena, provides an orderly review of some of the major court cases in the United States that have addressed the issue of employment-at-will, with a particular emphasis on cases that have been heard by Michigan courts. Laws and decisions on employment-at-will vary from state to state. For that reason, it is important that businesses be aware of the laws and decisions in the state in which they operate, while also having knowledge on what case law is being decided upon in other states. A review of case law will reveal that courts will frequently change their minds on a particular issue after looking at decisions made by courts in other states.

Although several state courts have held that an employee has no cause of action absent a specific statute providing for just cause discharge, during the past few years a growing number of courts have recognized exceptions to the employment-at-will doctrine on various grounds. The purpose of these exceptions has been to provide protection for employees who are discharged for bad cause, or without good cause, popularly referred to as wrongful discharge. Some very important decisions have

provided a cause of action for breach of contract in what had been construed as an at-will employment relationship. The three judicial theories most commonly advanced in support of wrongful discharge suits have been on claims of (a) violation of public policy, (b) the existence of an implied contract, and (c) the covenant of good faith and fair dealing. Employees may allege a combination of theories or causes of action depending on the elements that must be proved under a theory and/or the amount of damages or type of relief available.

Violation of Public Policy Exceptions

There are numerous court cases that have been settled in favor of the employee where the employer retaliated against employees for exercising their civil right or refusing to act in an unlawful manner. Terminating an employee for this reason has been found by the courts to be a violation of public policy. They have been brought either as tort or contract actions under which an employee can sue if his discharge violates public policy. In cases where the court has held that the plaintiff can sue not only in contract but also in tort, the employee is entitled to pursue compensatory tort and punitive damages. Tameny v Atlantic Richfield Co., 164 Cal Rptr 839, Cal Sup Ct (1980), 115 BNA LRRM 3119; Pierce v Ortho

Pharmaceutical Corp., 84 NJ 58, 417 A2d 505 (1980), 115 BNA LRRM 3044.

Challenges to the at-will rule grounded in public policy have been the most successful in state courts. At the time of this research paper, there are at least 33 states, including Michigan, in which courts have ruled that there are "public policy" exceptions to the common law rule (Hames, 1988). In other words, the employer is not free to discharge an employee at-will when the reason for the discharge is an intention on the part of the employer to contravene the public policy generally set forth in constitutional provisions, legislative enactments, administrative rules and regulations, and judicial decisions.

The leading case in the United States involving a public policy exception was Peterman v International Brotherhood of Teamsters, Local 396, 174 Cal App 2d 184, 344 P2d 25 (1959), 44 BNA LRRM 2968. In this case, a union business agent was terminated for refusing to give false testimony at a legislative hearing. The court determined that the employer's actions were tortuous.

There have been many other court cases since that time which have adopted a cause of action under the public policy exception for employees who were discharged for doing what the law or public policy specifically required or, conversely, for refusing to do what the law

proscribed. Public policy exceptions have included cases of "whistle-blowing," Palmateer v International Harvester Co., 85 Ill 2d 124, 421 NE, 8 RIA, para. 22,698; refusing to take a polygraph test, serving on a jury, refusing to falsify reports required to be filed with a state agency, Trombetta v Detroit, Toledo & Ironton Railroad Co., 81 Mich. App. 489, 265 NW2d 385 (1978); or filing a worker's compensation claim, Goins v Ford Motor Company, 131 Mich App 185, 347 NW2d 184 (1983). The South Dakota Supreme Court in Johnson v Kreiser's Inc. (SD Sup Ct., 1988), 8 RIA, para. 39,705, ruled that it was a "breach of an implied provision that the employer will not terminate an employee for refusing to perform a criminal act."

Michigan adopted the public policy exception in Sventko v Kroger Co., 69 Mich App 644, 245 NW2d 151 (1976), 115 BNA LRRM 4613. In this case the Court of Appeals ruled that the employee may not be discharged in retaliation for filing a workers' compensation claim. Numerous other cases in Michigan since Sventko have clarified the parameters of the public policy exception. In Suchodolski v Michigan Consolidated Gas Co., 412 Mich 692, 316 NW2d 710 (1982) 8 RIA para. 22,704, the court held that public policy was violated only when the discharge contravened public policy expressed in a clearly mandated and settled public policy, but not where an

employee was discharged for reporting questionable accounting practices, as in this case. The court's decision in Adler v American Standards Corporation, Md App 4, 32 A2d 464 (1981), 115 BNA LRRM 4130, reflects an equally restrictive view of requirements of the tort action. In this case the court found that the plaintiff failed to recite specifically which statute the employer violated to constitute a violation of public policy. Other cases, such as Schwartz v Michigan Sugar Co., 106 Mich App 471, 308 NW2d 459 (1981) and Ohlsen v DST Industries, Inc., 111 Mich App 580, 314 NW2d 699 (1981), place additional limitations on public policy tort action, including the requirement to exhaust statutory remedies in the legislation that is the source of the public policy. In some instances, the statutory remedies may be the only remedy available to the employee in cases where the statute has expressed rights allowable.

In a recent case, Foley v Interactive Data Corporation, 174 Cal App 3d 282 (1985), the California Supreme Court ruled that for a breach of public policy to occur, the public policy must be "founded upon a statute enacted by the legislature." In this case, the reporting of information by Foley to management was not in the public interest. This case supports the contention made that public policy exception is interpreted "very narrowly" by the courts and yet clearly indicates that the

courts recognize wrongful termination case law upholding public policy exceptions to dismissals (Shepard & Moran, 1982).

Equally significant in the Foley case was that the court limited damages to "contract-type" remedies of back pay and lost benefits but not tort damages. This precedented ruling will likely limit monetary damages that employees may receive in wrongful discharge suits (Lotito & Caples, 1988).

These court rulings would suggest that in many states, including Michigan, discharging an employee for activity such as whistle-blowing or filing claims against the employer or refusing to act in a manner contrary to public policy is prohibited by the public policy exception. The courts view this as action that "protects" society and therefore furthers public policy. It is clear, based on current case law, that an employee in Michigan must identify a specific legislative enactment or policy statement upon which to base a claim for breach of public policy. Having met that requirement, it can be concluded that this exception, over the years, appears to have provided at-will employees with some protection from unjust dismissal.

Existence of an Implied Contract

As noted earlier, tort action for wrongful discharge where the employee engaged in activity protected as a matter of public policy is a departure from the traditional employment-at-will rule, which gave employers the right to discharge anyone at any time for any or no reason. The wrongful discharge litigation arising out of an implied contract had resulted in an even greater departure.

Employment-at-will has been an implied term for the employment relationship except when the employer explicitly contracts to hire the employee for a specified duration, or where the employee is subject to specific protections afforded by a bargaining contract or other similar protections, i.e., tenure or civil service. It is the defense that employers use in exercising their right to terminate the employment relationship. The exceptions in contract law governing employment-at-will have been expanded in recent years to requiring the employer to honor promises of continued employment made by the employer which traditionally were regarded as having no legal effect.

There have been several leading cases in the United States involving discharge of public sector employees. A review of these cases helps to understand the principles that were used to protect employees from bad-cause

discharge and to provide a theoretical framework as to what factors the courts consider when hearing cases for at-will employees.

Over the years, the Supreme Court has decided several cases in favor of providing certain procedural safeguards of job security for public sector employees. Perry v Sinderman, 408 US 593, 596-603 (1972); Board of Regents v Roth, 408 US 564, 573-78 (1972); Pickering v Board of Education, 391 US 563, 569-73 (1968); Mount Healthy City School Dist. Bd. of Ed. v Doyle, 429 US 274, 284-87 (1977). The Supreme Court held in Perry v Sinderman that the discharge of a college professor may have violated his due process rights guaranteed by the Fourteenth Amendment. These rights were found by the court to be based on a de facto tenure system that existed at the university. The faculty handbook guaranteed continued employment as long as services were satisfactory. According to the court in this case, if the employee could establish a legitimate expectancy that he could not be discharged without just cause, he had the right to a hearing prior to the discharge to determine whether just cause was present. In a more recent case, Marwil v Baker, 499 F Supp 560 (ED Mich 1980), 8 RIA para. 22,798, the court ruled in favor of the employee by upholding a cause of action for lack of tenure review based on the rules, policy statements, and

customs of the university. The critical question is whether the employee has a legitimate expectancy to continued employment. This issue will be discussed in length as this study reviews the implied contract cases in the private sector.

There have been several cases testing whether public employees are entitled to constitutional due process when they are terminated. Case law determines that public employees do not have "property" interest in their jobs within the meaning of the Fourteenth Amendment as in Lawson v Sheriff of Tippecanoe County, 725 F2d 1136, 115 BNA LRRM 2663 and Asbill v Housing Authority of Choctaw Nation, 726 F2d 1499, 115 BNA LRRM 3559.

Current case law is that if there is no statute, public employment is at-will unless there is some constitutional or other written expression of job security. For example, Connecticut enacted a statute that indicates the public employer will be held liable for discharging any public employee who exercises his federal First Amendment rights or similar state rights (Public Act 83-578, Laws 1983 effective July 11, 1983).

At the time of this research paper, courts in at least 32 states, including Michigan, have recognized implied contract exceptions by ruling that such documents as company handbooks, manuals, benefit brochures, or even employment interviews, where the interviewer refers to job

security, may constitute "implied contracts" or legally binding contractual obligations, and that specific actions or statements may limit the employer's right to terminate in the absence of good cause (Bureau of National Affairs, 1982).

In specific written contracts of employment, the findings of breach of contract by either party are straightforward. The courts have traditionally enforced promises contained in writing. However, where the contractual agreement is said to be oral or implied, such findings become more difficult. These representations of continued employment may be made to employees at an employment interview or during the employee's tenure. Some courts have determined that these statements and promises are inducements for acceptance of employment and should be enforced.

The exceptions in contract law in applying the thought here are that through continued employment, it supplies the necessary "consideration" and that the benefits to the employees have been "bargained for" and become part of an implied contract. The employment-at-will rule has been expanded based on grounds of an implied contract where it is found that in the contract of employment an expressed or implied condition exists that the employee can only be discharged with good or just

cause. Courts have ruled that promises of continued employment that previously had been viewed as nonbinding are, in fact, contractual provisions requiring good cause for discharge. In recent court rulings, decisions are relying less on traditional contract rules and more on doctrines of reliance, estoppel, and additional consideration to determine the intent of the parties.

Exceptions to the employment-at-will doctrine have also come from the court recognizing additional considerations in making a contract for continued employment and without termination except for good cause. In a California case, Rabago-Alvarez v Dart Indus. Inc., 55 Cal App 3d 91, 127 Cal Rptr 225 (1976), the court upheld an award of damages to the plaintiff, explaining that "the parties agreed, whether expressed or implied, that the employee could be terminated only for good cause." In another California case, the court held that factors such as length of employment, promotions, commendations, and oral promises of continued employment resulted in a promise of cause for discharge. In Pugh v See's Candies, 116 Cal App 3d 329, 171 Cal Rptr 927 (1981), 8 RIA para. 22,704, the court held that an implied promise of employment had been made to the individual, noting the employee's outstanding work history with several commendations and promotions. The court ruled that this implied promise would not be revoked

without documented good cause. In another case, Hackett v Foodmaker, Inc., 69 Mich App 591, 245 NW2d 140 (1976), the court held a promise was enforceable when the employee moved his family from California to Michigan with the reliance upon the employer's promise of being made a manager and was later denied the position because he filed an anti-trust action against the employer. These cases reflect the courts' recognition of additional considerations as enforcing promises made by employers of continued employment.

The New York Court of Appeals held in a 1981 case that there was sufficient evidence of a contract and a breach of the contract to sustain a cause for action when the employee signed an application stating that employment would be subject to the company's handbook, which stated that dismissal would occur only for "just and sufficient cause." Weiner v McGraw-Hill Inc., 457 NY2d 193 New York (1982), 118 BNA LRRM 2689.

In the leading implied contract case, Toussaint v Blue Cross & Blue Shield of Michigan, 408 Mich 579, 292 NW2d 880 (1980), reh denied, 409 Mich 1101 (1980), the Supreme Court recognized exceptions to the at-will doctrine where an employee alleged that the employer's agent indicated that he "could only be fired for cause." The employee also used for evidence of a just cause

employment relationship the employer's personnel policy manual, which provided nonprobationary employees with a protection of discharge "for just cause." The jury found the discharge to be a breach of the employment contract.

The court held that the employer's oral promises and written statements contained in an employee policy handbook created a reasonable expectation that they could only be discharged for good or just cause. In a companion case, the Supreme Court ruled in Ebling v Masco Corp., 79 Mich App 531, 261 NW2d 74 (1977), aff'd, 408 Mich 579, 292 NW2d 880 (1980), that an employer who has a written policy or has made an oral statement that an employee would not be discharged without just cause must adhere to the policy. Again, the jury found that the employer breached an employment contract. In an attempt to enforce the intentions, the courts gave preference to the substance of the expressed promise of continued employment, rather than the form of an at-will contract.

In a later case, Wiskotoni v Michigan National Bank-West, 716 F2d 378 (6th Cir. 1983), 114 BNA LRRM 2596, the federal court ruled that since the employer's personnel policy stated that probationary employees could be discharged for "any reason and without cause," it is implied that nonprobationary employees are permanent and can only be discharged for just cause. The Michigan Supreme Court of Appeals in Struble v Lacks Industries,

Inc., 157 Mich App 169, 403 NW2d 71 (1986), agreed that the employee could reasonably rely on the employer listing of rules and reasons for discipline, a progressive discipline system, and seniority provisions to establish a just cause employment relationship.

According to the Toussaint theory and similar decisions since that time, promises can give rise to an enforceable right of good cause for discharge if relied upon by the employee. Some authors have suggested that this may result in job security for nonunionized employees, which traditionally has been reserved for the unionized sector in this country. If, as was determined in the Toussaint case, these breach-of-contract cases are for an unskilled jury to determine, the situation may exist where nonunionized employees are enjoying as much or more protection than unionized workers (St. Antoine, 1981).

Covenant of Good Faith and Fair Dealing

Seven states, led by California, have recognized the good faith and fair dealing exception to the employment-at-will doctrine. The courts in these states have found that a discharge not founded in good faith violates an implied contract of good faith and fair dealing held to state a cause of action in both contract and tort. In

general, employers may not discharge employees in bad faith if the discharge deprives the employee of the benefits of their agreement (Hames, 1988). Some wrongful discharge complaints have involved damages for mental or emotional distress, loss of professional reputation, or exemplary damages. The courts that have adopted "tort" theories of wrongful or abusive discharge have ruled in favor of compensatory and/or punitive damages to the terminated employee. These implied covenant claims as tort actions have potentially enormous recovery.

The courts' rationale in most of these cases is the protection of employee benefits that have been earned through the course of employment. Some courts have inferred that under certain instances there is an implied good faith requirement when there is an attempt to deprive an employee of vested benefits. In a California case, Cleary v American Airlines, Inc., 111 Cal App 3d 443, 168 Cal Rptr 722 (1980), 115 BNA LRRM 3030, the California Court of Appeals held that an expressed employer policy on complaint procedures and the employee's seniority with the company operated as a form of estoppel precluding discharge without good cause.

In the case of Fortune v National Cash Register Co., 373 Mass 96, 364 NE2d 1251 (1977), 115 BNA LRRM 4658, the Supreme Judicial Court ruled in favor of the employee when it decided that the employee was discharged in the

employer's attempt to avoid payment of a previously earned commission bonus. The employer's discharge was alleged to have deprived him of commissions on future deliveries for a sale that had been previously credited to his account, with the employee thereby being denied the bonus he was entitled to (Id. at 100,364 NE2d at 1254). This court chose to see the covenant of good faith and fair dealing as implicit in the general law of contracts and that a written at-will employment contract contained a good faith and fair dealing covenant.

In Savodnik v Korvettes, Inc., 488 FSupp 882 (E.D.N.Y. 1980), 8 RIA para. 22,721, the court found that a 13-year employee discharged within two years of the vesting of his pension benefit was found to be a discharge in bad faith. In a California case, Cancellier v Federated Dept. Stores, 672 F2d 1312 (1982), 28 BNA FEP CAS 1151, the court placed limits on the applicability of the doctrine by indicating that to establish an implied covenant of good faith and fair dealing, the employee must allege and prove longevity of service and the existence of policies or oral representations of an implied promise by the employer not to deal arbitrarily with employees. A Connecticut court has held that if the employer engages in fraud, deceit, or misrepresentation, it breaches the covenant. Magnan v Anaconda Industries, Inc., 37 Conn

Supp 38, 429 A 2d 492 (1980), 117 BNA LRRM 2163. The implied covenant could be breached only when the discharge contravened public policy.

Courts have disagreed on the cause of action being tort or contract or whether the covenant covers at-will contracts. Most courts, including Michigan, have refused to adopt the covenant as an exception to the employment-at-will doctrine. Michigan's first case brought to the Michigan Supreme Court on this matter was Prussing v General Motors Corp., 403 Mich 366, 269 NW2d 181 (1978), where the court declined to rule on the issue.

It has been suggested that as long as Michigan remains an employment-at-will state, it is unlikely to adopt the covenant because it would present a theoretical clash with the at-will doctrine. However, it is also very important to examine the precedents of other states as the common law of wrongful discharge continues to evolve.

Summary

It can be concluded that many challenges to the traditional common law doctrine of employment-at-will have occurred during this century. Important court decisions handed down in recent years have provided a cause of action for breach of contract in what had been construed as an at-will employment relationship. What is known is that Michigan courts and other jurisdictions have, for the

most part, retained the common law rule that the employment relationship is subject to termination by either the employer or the employee at any time and for any reason, except for a clear violation of a public policy or when there are other "distinguishing features" to the employment relationship.

In Michigan's leading case, Toussaint v Blue Cross & Blue Shield of Michigan, the court has opened the door for establishing an expanded definition of the employment relationship. It makes it clear that oral or written statements by the employer can create a legitimate employee expectation of discharge only for just cause or in accordance with some policy that the employer has stated.

A variety of commentators have made suggestions for changes in the law designed to protect at-will employees against arbitrary, capricious, unfair, unjust, or discriminatory discharge, while others have discussed strategies that the employer might adopt to protect the business against employee claims of unfair treatment (Gittler, 1988; Johnston & Taylor, 1985; Steiber, 1984; Voluck, 1987). What is important is the realization that this is a new and rapidly evolving area needing additional investigation and research.

CHAPTER III

RESEARCH METHODOLOGY AND THE DESIGN OF THE STUDY

Introduction

The purpose of this study was to describe, identify, and assess what effect the changes of the employment-at-will doctrine have had on selected personnel policies and procedures at Michigan's four-year state institutions of higher education, as perceived by executives from those organizations, during the period 1979 to 1989. To provide more focus to the study, the following questions for investigation were developed:

1. Have there been changes in the institution's structural organizational alignment or administrative responsibility for disciplinary action and discharge, especially in regard to (a) final authority and (b) staffing level and reporting lines?

2. Have personnel policies, procedures, or rules been changed during the ten-year period?

3a. In what manner has management activity or behavior changed regarding discipline and discharge?

3b. What are respondents' attitudes toward wrongful discharge?

4a. What changes have taken place in management training, and in what format does management training occur?

4b. From which outside sources or groups does the institution seek assistance when dealing with this issue?

5. What is the degree of satisfaction with current policies and activities regarding termination?

Description of the Population and Sample

The wrongful discharge issue affects all businesses that employ at-will employees, i.e., those workers not covered under a collective bargaining contract or some other formal employment agreement. There are no exemptions for small businesses, even those with one employee. Because of the large number and types of profit and nonprofit organizations, there were obvious and practical limitations relating to the selection of an appropriate population for this research project.

First, it was decided that since the general focus of this study was based on at-will employees in Michigan and court decisions on wrongful discharge in the state, the population would be limited geographically to Michigan. Further, it was limited to all four-year state institutions of higher education in Michigan. The institutions that fit into this population and included in the survey were Central Michigan University, Eastern

Michigan University, Ferris State University, Grand Valley State University, Lake Superior State University, Michigan State University, Michigan Technological University, Oakland University, Northern Michigan University, Saginaw Valley State University, University of Michigan, Wayne State University, and Western Michigan University.

The decision to interview administrative executives at Michigan's four-year state universities was made because of the investigator's familiarity and experience with the system of higher education and proximity to the institutions within the state. Because of the manageable number of institutions, the entire population was included in the sample, i.e., 13 human resource executives, one from each of the four-year state universities in Michigan.

Selection of the specific executives to be included in the sample were based on (a) which executives had primary responsibility for making and revising personnel policies and procedures and (b) which executives were likely to have experience with and knowledge of the employment relationships between the institution and nonunion, noncontractual employees. The executive-level positions included in this study were (a) President or Vice-President, (b) Director of Personnel or Human Resources, (c) Director of Employee Relations, and (d) University attorney. If institutions used different titles, the individual with primary responsibility for the

human resource function was selected. These executive-level administrators had primary responsibility for institutional human resource decision making and management, as well as knowledge, experience, and a broad institutional perspective in human resource decisions for the university.

Design of the Instrument

The Questionnaire and Interview Guide (see Appendix A), hereinafter referred to as the instrument, was developed following an extensive review of the literature and analysis of the problem. It was developed to solicit information and perceptions that would assist in describing, identifying, and assessing the effect the erosion of the employment-at-will doctrine has had on the personnel policies and practices selected for this study. The instrument was designed to capture the actual activity taking place in the institution with regard to particular personnel policies and practices. More specifically, the instrument was designed to (a) determine how many employees at the institution fit the category of "at will" employees, (b) discover what types of personnel policies and practices were in place that could affect the status of at-will employees, (c) determine whether personnel policies and practices in 1989 were different from those that were in place in 1979, (d) assess perceptions about

related management activities or organizational changes that had changed over the ten-year period, and (e) assess respondents' views and attitudes about the employment-at-will doctrine and issues surrounding the doctrine.

The statements that were used in the instrument were composed after a thorough review of suggested management behavior, or lack of behavior, which according to legal advisors may be affecting employers' ability to discharge at will. The additional data sought from the instrument allowed the researcher to evaluate change in related personnel policies and procedures by comparing what institutions had in place in 1979 with what activity was taking place in 1989, and to investigate what changes management contemplated making in the near future.

The instrument was composed of forced-answer items along with provisions for open-ended responses organized in ten parts. The questions in Part I solicited information about the respondent's title and length of employment both at the institution and in the incumbent position. This information was helpful to better identify and clarify areas of the study with which the respondent was unable to provide a response, due to lack of tenure in the incumbent position or lack of tenure at the institution. The questions in Part II helped the respondent and researcher determine together how many

employees might conceivably be in an at-will employment relationship with the institution, i.e., the employee group exclusive of any unionized or contractual employment relationships. These employees could be viewed as at will, depending on what personnel policies and practices were written or implied for this group, and which were included and investigated in this study.

Questions in Parts III and IV of the instrument solicited responses to questions related to personnel policies and practices that were in existence in 1979 and to those in existence in 1989. The responses here were used to assess current status of the employment relationship with the non-bargained-for, noncontractual employees, relying, in part, on the principles and guidelines set forth by legal advisors. The questions in Part V assessed how decentralized the discipline and discharge function was at the institution and at what level of authority discipline and discharge action was allowable. The instrument then sought information in Parts VI and VII related to what changes had occurred over the ten-year period associated with the day-to-day activities of management for the discipline and discharge function.

Questions in Part VIII requested information on management's general level of satisfaction with the current policies, management's viewpoint on the issue of

wrongful discharge, instruction provided to management on the subject, and whether management sought input from "outside" sources when dealing with this issue. The respondents' exposure to the wrongful discharge issues, and views and attitudes of the respondents, were gathered from the questions in Part IX. The researcher sought responses to these questions in order to assess whether the legal environment had caused a conscious change among the management group in dealing with employees in the at-will group. These questions also helped to assess respondents' perceptions of how they viewed management's response to the discipline and discharge function and to gain insight into the respondents' own views and attitudes regarding what had occurred during the decade as it related to the wrongful discharge issue. Soliciting responses to these questions helped to determine whether knowledge, views, and attitude had an effect on the amount of change that had occurred at the institutions over the ten-year period. The final questions in Part X requested information as to whether the institution had, during the ten-year period, experienced a wrongful discharge lawsuit brought against it by a nonunion, noncontracted employee, the cause of action of the lawsuit, and outcome of the lawsuit. Although it was sensitive information for the institution to divulge, background on lawsuits was helpful

for the researcher to determine whether lawsuits might have been part of the reason for change in personnel policies and procedures over the ten-year period.

Data Collection

Structured interviews during personal visits to individual institutions were selected as the most appropriate means to obtain responses to the instrument. There were several reasons for this choice. First, the instrument was too lengthy and complex to mail, expecting human resource executives to voluntarily complete and promptly return it. Second, it was believed that personal interviews would provide the respondents with the opportunity to identify with the researcher and that the resulting rapport would encourage a free exchange of information. Third was the probability that confidential or sensitive information, such as termination rates and information regarding wrongful discharge lawsuits, might be volunteered and be more accurate. Last, it was possible to identify more closely the appropriately knowledgeable person(s) from whom to obtain the information.

The individual sessions were designed to seek input on question bias, vagueness, or confusion and for ease of completing the questionnaire. The interviews also helped determine the general attitudes of the respondents about

the subject overall. A Questionnaire and Interview Guide and a cover letter (see Appendices A and B) were provided to each respondent on the day of the interview. Participants were told that the individual identity of their responses and the institution would be kept confidential. Following the interviews, all instruments were coded so that neither the institution nor the respondent could be linked to the responses. During the confidential meeting, the researcher completed the instrument, recording all responses, while the respondent followed along using a blank instrument for review throughout the process. The interview involved highly structured questions in accordance with the instrument and then followed with open-ended questions in which the respondents could express themselves on any area that they believed needed further clarification or explanation.

The instrument was pilot tested with two human resource executives from institutions of higher education in Michigan, but not with any of those included in the study itself. The instrument was revised based on the comments of the pilot group and the degree to which the instrument fit the purpose of the study. Face validity of the questionnaire was assumed from this process.

Data Analysis

Responses to the instrument were coded for computer analysis. The coding provided for a consistent direction of responses, not to give value but to lend consistency for analysis and interpretation of data. This procedure was necessary because the numeric value of positive item responses was varied across items so as to avoid a response set on the part of the respondents.

The responses given to questions in Parts I and II of the instrument were analyzed using descriptive statistics. Frequencies and percentages were used to describe quantitatively, in summary form, the data related to the respondent's position, the respondent's length of employment at the institution and in the current position, and the composition of the workforce. Descriptive analysis was also used to analyze responses to Research Question 1b, and Research Questions 3, 4, and 5.

The responses to Research Question 1a, "Have there been changes in the institution's structural organizational alignment or administrative responsibility for disciplinary action and discharge, especially in regard to final authority?" were analyzed using the chi-square statistical technique. This technique was used to determine whether the changes from 1979 to 1989 were due to chance or to a theoretically expected distribution.

The statistical measure used to analyze the responses to Research Question 2, "Have personnel policies, procedures, or rules been changed?" was a one-tailed, matched-pairs t-test. This technique was used to compare the changes from 1979 to 1989. However, upon initial examination, three of the individual questions in this set were responded to by the majority of the respondents as "almost always." Such responses left no room for change in the expected direction. Thus, those individual items were omitted. Because of this change, the analysis became less than a priori and took on a post-hoc aspect. To adjust the probabilities of the t-test for this post-hoc aspect, a standard, one-tailed t-test (a more conservative test) was used.

Summary

The content of this chapter was a detailed account of the procedures established and followed by the investigator in carrying out the study. The purpose of the study was reiterated in this chapter as the guiding principle in the design of the questions of investigation. The sample and design of the instrument, which was done in accordance with the original statement of purpose, were described in this chapter. Additionally, the collection and analysis of data, which followed established and

conventional procedures, was described. Findings of the study are presented in Chapter IV.

CHAPTER IV

ANALYSIS OF THE DATA

Introduction

The findings from the survey of human resource executives from Michigan's four-year state institutions of higher education are presented in this chapter. The findings are based on an analysis of the data collected from the administration of the instrument.

The instrument was designed to (a) determine how many employees the institution had who potentially fit the definition of at-will employees, (b) discover what types of personnel policies and practices were in place that could affect the status of at-will employees, (c) determine whether personnel policies and practices in 1979 were different from those that were in place in 1989, (d) assess perceptions about related management activities or organizational changes that have changed over the ten-year period, and (e) assess respondents' views and attitudes about the employment-at-will doctrine and issues surrounding the doctrine. More specifically, the survey was designed to gain responses to the following research questions:

1. Have there been changes in the institution's structural organizational alignment or administrative responsibility for disciplinary action and discharge, especially in regard to (a) final authority and (b) staffing level and reporting lines?

2. Have personnel policies, procedures, or rules been changed during the ten-year period?

3a. In what manner has management activity or behavior changed regarding discipline and discharge?

3b. What are respondents' attitudes toward wrongful discharge?

4a. What changes have taken place in management training, and in what format does management training occur?

4b. From which outside sources or groups does the institution seek assistance when dealing with this issue?

5. What is the degree of satisfaction with current policies and activities regarding termination?

Analysis of the data in Research Question 1b and Research Questions 3, 4, and 5 was conducted using descriptive statistics. Frequencies and percentages were used to describe quantitatively, in summary form, the differences as reported by the respondents. The chi-square statistic was used in Research Question 1a to determine whether organizational changes were due to chance or to a theoretically expected distribution. For

purposes of this study, a significant relationship was defined as one having a chi-square probability of less than .05.

A standard, one-tailed t-test was used to analyze the responses to Research Question 2, concerning changes in personnel policies, procedures, and rules. The analysis took on a post-hoc aspect after the researcher removed responses of three of the questions in this section. This was done because out of 13 respondents, at least 12 answered "almost always" to those questions for 1979, leaving no room for change in the expected direction. A matched-pairs t-test, the most appropriate a priori test for this question, was discarded in favor of the more conservative standard t-test, so as to compensate for removing the three questions.

The instruments were completed during individual sessions with each of the 13 human resource executives from the four-year state institutions. During the confidential meeting, the researcher completed the instrument, recording all responses. The interview involved highly structured questions in accordance with the instrument and then followed with open-ended questions in which the respondent could express him/herself in any area needing further clarification or explanation. The instruments were then reviewed and evaluated for inclusion

in the study. Findings related to questions implicitly addressed in the instrument are discussed below.

Data Analysis

Discussion of Questions in Parts I and II: General Demographic Information

The executive-level administrative positions included in the study were (a) President or Vice-President, (b) Director of Personnel or Human Resources, (c) Director of Employee Relations, (d) University Attorney, and (e) Other. These executives were selected because of their primary responsibility for making and revising personnel policies, and the likelihood that their experience in and knowledge of the personnel function would ensure that they had sufficient information about employment relationships between the institution and employees. Questions in Part I of the instrument solicited information about the executive's (respondent's) title, length of employment at the university, and length of time in the incumbent position.

Executive-level administrators from Michigan's 13 four-year state institutions of higher education were included in the study. Tables 4.1, 4.2, and 4.3 provide a detailed analysis of the population and relative frequency percentages.

It can be seen in Table 4.1 that 77% of the respondents were from the categories of President or Vice-President, Director of Personnel, or Director of Employee Relations. Also included in this group were executives referred to by the institution as Assistant Vice-President. The remaining three respondents (23%) were placed in the "other" category, with titles of Director of Human Resources-Medical Center and Assistant Director of Personnel-Corporate (joint appointment), Director of Compensation and Benefits, and Manager of Employment and Compensation.

Table 4.1.--Job titles of respondents.

Job Title	Number of Responses	Relative Frequency (%)
President or Vice-President	5	38.5
Dir. of Personnel/Hum. Res.	3	23.0
Dir. of Employee Relations	2	15.5
University Attorney	0	0
Other[a]	3	23.0
Total	13	100.0

[a]"Other" included (a) Director of Human Resources-Medical Center and Assistant Director of Personnel-Corporate (joint appointment), (b) Director of Compensation and Benefits, and (c) Manager of Employment and Compensation.

It may be seen in Table 4.2 that the range of the average years of service at the institution among the

respondents was from a low of 9.33 years to a high of 14.17 years. The average for all respondents was 11.55 years.

Table 4.2.--Respondents' length of service at institution.

Position	Number of Responses	Min. Years	Max. Years	Ave. Years
President or Vice-President	5	.42	20.00	10.43
Director of Personnel/ Human Resources	3	6.50	22.00	14.17
Director of Employee Relations	2	7.50	20.00	13.75
University Attorney	0	0	0	0
Other	3	2.50	17.00	9.33
Total	13	3.40	19.77	11.55

Table 4.3 reflects the average years of service in the respondents' incumbent position. The range was from a low of 3.78 years to a high of 7.83 years. The average for all respondents was 4.81 years. In one instance where the Assistant Vice-President was new to the institution, two other human resource executives from the institution joined the discussion and provided the researcher with historical data important to the completion of the instrument. This confirmed that the information given to

the researcher was provided by individuals well established at the institution and in the human resources profession.

Table 4.3.--Respondents' length of service in incumbent position.

Position	Number of Responses	Min. Years	Max. Years	Ave. Years
President or Vice-President	5	.42	9.00	3.78
Director of Personnel/ Human Resources	3	2.50	14.00	7.83
Director of Employee Relations	2	2.00	7.00	4.50
University Attorney	0	0	0	0
Other	3	.17	8.50	3.72
Total	13	1.09	9.73	4.81

Questions in the second part of the instrument provided information on the demographics of the institution's workforce. The responses provided the researcher with pertinent information as to how many employees were unionized and how many had employment contracts, thereby precluding their inclusion in the at-will employee group. Those remaining employees, i.e., those reported in Table 4.4 as "total employees with no

union representation or employment contract," were the group to which the research questions in the instrument were directed.

Table 4.4 displays the totality of the workforce, statewide, among all 13 institutions. The table indicates a total count of approximately 46,857 employees. Forty-two percent or 19,682 were categorized as nonunion, noncontractual employees.

Table 4.4.--Composition of workforce for all institutions.

	Number of Employees Reported	Relative Frequency (%)
Total employees covered by bargaining unit contract	24,908	53.16
Total employees with employment contract	2,267	4.84
Total employees with no union representation or employment contract	19,682	42.00
Total	46,857	100.00

Research Question 1

Have there been changes in the institution's structural organizational alignment or administrative responsibility for disciplinary action and discharge, especially in regard to (a) final authority and (b) staffing level and reporting lines?

Questions in Parts V and VI of the instrument were designed to address Research Questions 1a and 1b,

respectively. Specifically, the researcher gained greater insight into which executives held final authority for discipline and discharge of employees, and whether there were changes made during the ten-year period with regard to who had final authority in these matters.

With respect to Question 1a, a chi-square statistical test was applied to determine whether the changes in final authority for discharge and disciplinary action from 1979 to 1989 were due to chance or to a theoretically expected distribution. The results from the test showed that from several of the cells in the chi-square table, the expected values were less than five. The assumptions of the chi-square test do not permit its use when the expected values become less than five. Therefore, the chi-square test was not used. It was replaced by examination and descriptive analysis of the data that can be found in Tables 4.5 and 4.6.

Tables 4.5 and 4.6 reflect the responses given to questions in Part V of the instrument. As may be seen in these tables, authority on disciplinary matters rested with the Department Head, Immediate Supervisor, or the Director of Personnel 85% of the time. The President was reported as having final authority on disciplinary matters 15% of the time. The only change reported between 1979 and 1989 was an increase of the use of Immediate Supervisors in this function.

Table 4.5.--Change in final authority for discipline from 1979 to 1989.

	Final Authority 1979	Final Authority 1989
President or Vice-President	3	3
Dir. of Personnel/Human Resources	6	6
Immediate Supervisor	5	7
Dept. Head/Manager	6	7
University Attorney	0	0
Outside Attorney	0	0
External Party--Griev. Proc.	0	0
Other	0	0
Total	20	23

Table 4.6.--Change in final authority for discharge from 1979 to 1989.

	Final Authority 1979	Final Authority 1989
President or Vice-President	6	6
Dir. of Personnel/Human Resources	3	5
Immediate Supervisor	2	3
Dept. Head/Manager	2	1
University Attorney	0	0
Outside Attorney	0	0
External Party--Griev. Proc.	0	0
Other[a]	1	1
Total	14	17

[a]"Other" reported was Board of Control.

Final authority on discharge action in 1979 rested, for the most part, with the President or Vice-President

(42%), then the Director of Personnel (21.4%), and finally the Department Head and Immediate Supervisor (each with 14.3%). In one case, the institution reported the Board of Control as having final authority on discharge. In 1989, one respondent indicated the use of an in-house Attorney, whereas at that same time there was also an increase in the use of the Personnel Director for final authority.

With the responses to questions in Part VI of the instrument, the researcher sought information as to whether there were changes during the ten-year period relative to staffing levels and/or reporting lines for handling discipline and discharge. The responses indicated very limited change in new or different reporting lines, or position and reporting procedure, with only two institutions (15.4%) reporting changes. One institution changed reporting lines for discipline and discharge from Human Resources to Legal Counsel, then back to Human Resources during the ten-year period. Another institution reported having separated reporting lines for the staff, from reporting lines for the faculty, in dealing with discipline and discharge matters during the survey period.

Research Question 2

Have personnel policies, procedures, or rules been changed during the ten-year period?

The responses to questions in Part III of the instrument provided the data to answer Research Question 2. These questions, which provided data on the changes in personnel policies and procedures during the ten-year period, were analyzed using a one-tailed t-test. The formula and Table 4.7 reflect the test data. It can be concluded from this statistical test and the data reflected in Table 4.7 that the differences between the responses for 1979 and 1989 were not random, and thus the policies and procedures had changed during the period studied.

$$t = \frac{\bar{X}_1 - \bar{X}_2}{\sqrt{\frac{sd_1^2}{N_1-1} + \frac{sd_2^2}{N_2-1}}}$$

Table 4.7.--Comparison of personnel policies, procedures, or rules between 1979 and 1989.

	n	Average ($\bar{X}$)	Standard Deviation (sd)	t (.05,24)
1979 (1)	13	11.62	1.54	-1.74
1989 (2)	13	12.84	1.89	

t (.05,24,one-tail) = 1.71 < .05.

Further descriptive analysis of each statement in Parts III and IV of the instrument was helpful to determine which specific statements showed the greatest amount of change between policies and procedures in effect in 1979 and those in effect in 1989. In these parts, the survey included fixed-alternative questions designed to address Research Question 2: "Have personnel policies, procedures, or rules been changed during the ten-year period?" In Part III, the responses were recorded on a four-point scale, ranging from 1 (almost always) to 4 (never). The survey also allowed the respondent the choice of (5) don't know or (6) not applicable. For purposes of data analysis, when response (5) or (6) was given, the researcher took the more conservative approach of recording "no change." Responses to statements in Part IV were either "yes" or "no" and were asked for the year 1979 and then repeated for 1989. Again, if the respondent indicated a "don't know" or "not applicable" response, the researcher entered a "no change" for data-analysis purposes.

Responses to statements in Part III. The ten statements in this set represented possible personnel policies and procedures used by the institution. The respondent was asked to respond to each statement with one of the following: (1) almost always, (2) some of the

time, (3) rarely, (4) never, (5) don't know, (6) not applicable.

1. Use of the word "permanent" in advertisement. Ten out of 13 respondents said "never" for both 1979 and 1989. These responses showed no change in the institutions' policy during the decade. One respondent said "rarely" for both periods, again showing no change. Two respondents did report change. One said "rarely" for 1979 and "never" for 1989; the other reported "some of the time" for 1979 and "never" for 1989.

2. Include a written disclaimer on the employment application specifying "at-will" relationship. Twelve of the 13 respondents said "never" for the years 1979 and 1989, reflecting no change in the institutions' policy. One respondent indicated "never" for 1979 and "almost always" for 1989.

3. Use the words "permanent" or "probationary" during the employment interview. The most frequent response given was "almost always." This response was given by six interviewees for both 1979 and 1989, reflecting no change in policies. Four of the institutions responded with "some of the time" for both 1979 and 1989. One institution indicated "never" for the ten-year period. Two institutions reported change. One reported "almost always" for 1979 and "never" for 1989. The other reported "some of the time" for 1979 and "almost always" for 1989.

4. Use the words "permanent" or "probationary" during the orientation period. Seven institutions reported "almost always" for 1979 and 1989. Four institutions reported "some of the time" for both years. One institution reported "never" for the period investigated. One institution reported a change from "almost always" in 1979 to "never" in 1989.

5. Make reference to job security or unlimited advancement. Six institutions reported "rarely" for both periods studied. Two institutions said "some of the time," one said "almost always," and one responded "never" for the ten-year period. Three institutions reported change, all moving from the response of "some of the time" in 1979 to "almost always" in one case, "rarely" in another case, and "never" in the third instance.

6. Include a written disclaimer specifying at-will relationship for employees with an "offer letter." Eleven institutions responded "never" for the period 1979 to 1989. One institution showed a change from "rarely" to "almost always," and the final respondent indicated change from "almost always" to "never."

7. Have a written at-will disclaimer for all new employees to sign when hired. All 13 respondents indicated "never" to this question for 1979 as well as for 1989.

8. Reiterate the at-will policy throughout the employment relationship. Twelve of the 13 respondents answered "never" for the period. One respondent indicated having changed from "rarely" in 1979 to "some of the time" in 1989.

9. Require a written receipt for the handbook. Eight institutions responded "never" for the period of study, whereas three responded "not applicable" because they did not have a handbook. Two institutions reported change; one reported changing from "never" in 1979 to "almost always" in 1989, and the other reported "some of the time" in 1979, changing to "almost always" in 1989.

10. Pre-discharge review whereby management articulates reasons for discharge. Seven institutions reported "almost always" for the period studied. Two of the institutions showed "some of the time" for both periods, whereas another reported "not applicable" as the response for 1979 through 1989. Finally, one institution reported "never" for both periods. Two respondents showed change from "some of the time" in 1979 to "almost always" for 1989.

Responses to statements in Part IV. Part III questions referred to personnel policies in general. The questions in Part IV referred to written policies/ provisions in employee handbooks or other employee-related documents. The responses in this section were "yes" or

"no" during the period studied, 1979 through 1989. In some instances the respondent replied "don't know" or "not applicable." These responses were recorded as well.

1. Written clause specifying the employment-at-will relationship in handbook or other document.

	No	Yes	Not Applicable/ Don't Know
1979	38.5	0	7.7
1989	69.2	30.8	0

2. Written statement that the handbook is not a contract of employment.

	No	Yes	Not Applicable/ Don't Know
1979	38.5	7.7	53.8
1989	46.1	30.8	23.1

3. Provision providing for "just cause" discharge in handbook or other document.

	No	Yes	Not Applicable/ Don't Know
1979	38.5	53.8	7.7
1989	46.2	53.8	0

4. Use of words "permanent" or "probationary" in handbook or other document.

	No	Yes	Not Applicable/ Don't Know
1979	7.7	92.3	0
1989	23.1	76.9	0

5. Reference to job security or unlimited advancement in handbook or other document.

	No	Yes	Not Applicable/ Don't Know
1979	53.8	46.2	0
1989	61.5	38.5	0

6. Statement of employer's ability to change contents on regular basis, as deemed appropriate.

	No	Yes	Not Applicable/ Don't Know
1979	46.2	15.3	38.5
1989	30.8	53.8	15.4

7. List of conduct leading to discipline or discharge in handbook or other document.

	No	Yes	Not Applicable/ Don't Know
1979	46.2	46.2	7.6
1989	53.8	46.2	0

8. Written statement that the employee may be discharged at any time for any reason.

	No	Yes	Not Applicable/ Don't Know
1979	92.3	0	7.7
1989	84.6	15.4	0

9. Informal, nonwritten complaint procedure.

	No	Yes	Not Applicable/ Don't Know
1979	23.1	76.9	0
1989	30.8	69.2	0

10. Formal written complaint procedure.

	No	Yes	Not Applicable/ Don't Know
1979	46.2	53.8	0
1989	30.8	69.2	0

11. Formal written grievance procedure.

	No	Yes	Not Applicable/ Don't Know
1979	30.8	69.2	0
1989	15.3	84.7	0

12. Provision that disciplinary matters are subject to the complaint or grievance procedure.

	No	Yes	Not Applicable/ Don't Know
1979	46.2	53.8	0
1989	38.5	61.5	0

13. Have a written progressive or corrective disciplinary procedure.

	No	Yes	Not Applicable/ Don't Know
1979	46.2	53.8	0
1989	53.8	46.2	0

14. Grievance procedure's final step is with an outside arbitrator or objective party.

	No	Yes	Not Applicable/ Don't Know
1979	92.3	7.7	0
1989	92.3	0	7.7

15. The arbitrator or objective party is decided upon jointly by the university and the grievant.

	No	Yes	Not Applicable/ Don't Know
1979	0	7.7	92.3
1989	0	0	100.0

16. The cost of the arbitrator is borne equally by the parties.

	No	Yes	Not Applicable/ Don't Know
1979	0	7.7	92.3
1989	0	0	100.0

Research Question 3

3a. In what manner has management activity or behavior changed regarding discipline and discharge?

3b. What are respondents' attitudes toward wrongful discharge?

Questions in Part VII of the instrument were designed to respond to Research Question 3a. Respondents were asked whether they thought any additional time had been devoted by managers during the ten-year period to tasks related to (a) documentation, (b) analysis and investigation, (c) policies and/or procedures, (d) committees, (e) advising, (f) new manager orientation, (g) education and training, (h) other. Table 4.8 summarizes the responses. A descriptive analysis of Table 4.8 follows.

Table 4.8.--Reported percentage change in various discipline/discharge management activities from 1979 to 1989.

Activity	Percentage of Change					Total
	No Change	Up to 9%	10-24%	25-50%	≥50%	
Documentation	1	2	1	5	4	13
Analysis/invest.	2	1	3	5	2	13
Policies/proc.	1	4	2	2	2	11
Committee	9	1	0	1	1	12
Advising	0	2	2	3	5	12
New mgr. orient.	5	0	5	0	2	12
Educ./training	2	0	6	2	2	12
Total	20	10	19	18	18	85

1. Documentation. One institution reported no change during the ten-year period in documentation of records. Two institutions showed a small to moderate amount of change. Nine (approximately 69%) of the respondents indicated a large or significant amount of additional time spent on this activity during the ten-year period.

2. Analysis/investigation. Two institutions reported no change in the amount of analysis or investigation of discipline/discharge matters. One reported a small amount of change. Eight (approximately 61%) of the institutions reported a moderate to large amount of change in this management activity. Two

institutions showed a significant amount of additional time devoted to this management activity.

3. Policies/procedures. One institution reported no additional time spent in addressing policy issues on discipline/discharge matters. Four (approximately 36%) reported having devoted a small amount of additional time. Two institutions reported a moderate amount, two reported a large amount, and two reported a significant amount of increased time devoted to developing, reviewing, or revising policies and procedures related to discipline/ discharge matters.

4. Committee. Nine (75%) of the respondents indicated there had been no additional time devoted to committee involvement or the development of new committees to handle discipline/discharge matters. Of the remaining three respondents, one reported a small amount of change, one showed a large amount of change, and one mentioned a significant amount of change.

5. Advising. Eight (approximately 67%) of the respondents indicated a large or significant increase in the amount of advising conducted regarding discipline and discharge matters. All respondents indicated that there had been an increase in advising to some degree. Two respondents indicated that there had been a small amount of change, and two responded that there had been a moderate amount of increase in this activity.

6. New manager orientation. Forty-two percent of the respondents indicated no additional time spent on this activity, whereas another 24% said there had been a moderate amount of additional time spent on this activity. The remaining two respondents indicated a significant amount of time devoted to new manager orientation during this ten-year period.

7. Education and training. Fifty percent of the respondents indicated that there had been a moderate amount of additional training and education on this subject for the management group. Four indicated there had been a large or significant amount of additional activity in this area. Two of the institutions indicated that there had been no change in the amount of training and education for management on this topic.

8. Other. Other activities that were reported as requiring additional management time and attention during the ten-year period included (a) the use of outside counsel (attorneys), (b) time spent responding to lawsuits, (c) time spent devising separation agreements, (d) developing or revising the performance-appraisal system, and (e) administrative staff time spent responding to complaints or lawsuits.

A further analysis of responses based on size of the institution revealed a significant concentration of

activities worth mentioning. At least 80% of the five largest institutions (those having more than 2,000 employees) spent a large or significant amount of time during the ten-year period in areas of documentation, analysis and investigation, advising, and education and training.

Questions in Part IX of the instrument provided data in response to Research Question 3b, "What are respondents' attitudes toward wrongful discharge?" The responses provided the researcher with information as to (a) the level of knowledge claimed by the respondent on the subject of wrongful discharge and (b) the respondents' views and attitudes toward the changes that had occurred over the ten-year period with regard to the wrongful discharge issue.

Eight (61.5%) of the respondents indicated that they were "well informed" about the wrongful discharge issue. The remaining five respondents said that they had "some knowledge, could be better." The level of knowledge was evidenced by the strong response pattern with seven of the nine statements shown in Table 4.9, and by the comments made in this part.

Overall responses to seven of the nine statements indicated that 75% of the respondents agreed (to varying degrees) with each statement. Ambiguity of the issue and courts "nit-picking" were two statements not showing

Table 4.9.--Respondents' views of the wrongful discharge issue.

	Response							
	(1) StD	(2) MD	(3) SlD	(4) N	(5) SlA	(6) MA	(7) StA	Total
Issue is ambiguous	1	4	3	1	2	2	0	13
Difficulty defending position	0	2	1	0	3	5	2	13
Courts "nit-picking"	1	2	2	2	1	3	2	13
Courts temper selves	0	1	3	1	1	4	3	13
Costly	0	0	0	0	1	5	7	13
Limits management discretion	0	0	0	0	5	6	2	13
More paperwork	0	0	0	0	2	3	8	13
More job security	0	1	2	1	3	4	2	13
Fear of suits	0	1	1	0	1	5	5	13
Total	2	11	12	5	19	37	31	117

Key: StD = strongly disagree, MD = moderately disagree, SlD = slightly disagree, N = neither, SlA = slightly agree, MA = moderately agree, StA = strongly agree.

consistent agreement. A descriptive analysis of each statement follows.

1. Entire issue is ambiguous. Eight respondents disagreed with the statement, four of them moderately disagreeing, three slightly, and one strongly disagreeing. Four respondents agreed with the statement, two slightly and two moderately. Of all statements in this part, this one received the greatest amount of variance in responses.

2. Employers face difficulty defending position. Approximately 77% of the respondents agreed that employers face a more difficult task of defending the organization's position in wrongful discharge claims. Three respondents (33%) disagreed with the statement. Two moderately disagreed and one slightly disagreed.

3. Courts are "nit-picking." Respondents were nearly split on this statement. Two neither agreed nor disagreed, six agreed in significant strength, and five respondents disagreed, slightly or moderately.

4. Courts should temper their involvement. There was strong agreement on this statement, with eight respondents agreeing in significant strength. Four of the respondents disagreed, three of them slightly and one moderately.

5. Costly to the bottom line. All respondents agreed with this statement. Ninety-two percent either

strongly or moderately agreed, illustrating that even if they had not directly been affected by a costly lawsuit, they were familiar with a business or institution that had been, or had read of such a case(s).

6. Limits management discretion. All respondents agreed with this statement, suggesting that if wrongful discharge were not an issue, they may have chosen to behave differently when dealing with discipline and discharge issues.

7. More paperwork. This statement received the strongest degree of agreement among the respondents. All respondents concurred that the changes during the last ten years had resulted in a much greater degree of paperwork for the management group.

8. More employee job security. Nine respondents indicated that the changes had resulted in greater job security for at-will employees. Three respondents disagreed, two slightly and one moderately.

9. Management fear of employee suits. Eighty-five percent of the respondents agreed with this statement. One respondent slightly disagreed, and another moderately disagreed.

This set of questions also allowed for open-ended responses and comments. The following is a list of additional comments representing views expressed by the respondents.

Changes reported occurring over the ten-year period:

a. Greater effort needed on how to deal with problem employees.

b. Greater preparedness required for substance-abuse problems.

c. More time required to keep up with legislation and court cases.

d. Institution needs to expend more effort to become at-will with employees.

e. More activity needs to go to a higher level of management.

f. Need much more management training and education.

g. A need for different policies and procedures that better fit the various "cultures" on campus.

h. Requires better use of the performance evaluation system.

i. Fatalism.

j. Need for new policies.

Each of the above comments except for (f) and (j) was made once by a respondent. Comment (f) was repeated on five occasions. Comment (j) was repeated by three respondents on separate occasions.

Research Questions 4 and 5

4a. What changes have taken place in management training, and in what format does management training occur?
4b. From which outside sources or groups does the institution seek assistance when dealing with this issue?

5. What is the degree of satisfaction with current policies and activities regarding termination?

The questions asked in Part VIII of the instrument were designed to address Research Questions 4 and 5. It can be seen from the data in Table 4.10 that 92% of the respondents indicated that formal instruction to management on the subject of discipline/discharge did exist. Eighty-three percent indicated that the training was being done by way of in-house seminars. Additionally, 50% of the respondents indicated that the institution used external seminars and/or training as a means of providing management with formal instruction on this subject.

Table 4.10.--Formal instruction to management on discipline/discharge.

	Training in Use	Training Not in Use	Total
In-house	11	2	13
External	7	6	13
Other	4	8	12
None	1	-	1
Total	22	16	38

Analysis of the data in Table 4.11 indicates that when seeking advice on the subject of discipline/discharge, approximately 69% of the respondents consulted with their counterparts at other universities. About 61% obtained assistance through a professional association. Roughly 35% consulted with their counterparts in business/industry or with an outside consultant. By far, the most frequently used source by respondents from which to gain information on this subject was their legal advisor (100%) or related publications and literature (92.3%).

Table 4.11.--Assistance sought from outside sources.

	In Use	Not Used	Total
University counterpart	9	4	13
Business/industry counterpart	5	8	13
Professional associations	8	5	13
Consultants	4	9	13
Legal advisors	13	0	13
Publications/other literature	12	1	13
Total	51	27	78

In response to Research Question 5 regarding the degree of satisfaction with current termination policies and activities, the respondents indicated the following: 69.2% indicated "good now with some review," 23.1%

responded "no change in policy needed," and 7.7% responded "termination policy needs upgrading."

Discussion of Questions in Part X: Experiences With Lawsuits

Responses to questions in Part X of the instrument provided the researcher with information as to whether the institution experienced lawsuits filed by nonunion, noncontractual employees during the survey period, 1979 to 1989. In instances where the respondent was unable to provide information for the questions in this part, the researcher obtained available information from the legal affairs department at the institution.

An analysis of the responses shown in Table 4.12 indicated that all but two institutions had had one or more lawsuits filed against them during the ten-year period. The cause of action brought most often against the institutions was a claim of statutory protection. Issues mentioned most frequently were age and sex discrimination. Implied contract and tort claims were the next highest cause of actions filed. Institutions also noted a significant number of combined causes, most notably, a combination of implied contract with good faith and fair dealing, or a combination of statutory, implied contract, and good faith and fair dealing.

Table 4.12.--Lawsuits filed and cause of action claimed from 1979 to 1989.

One or More Lawsuits Filed, 1979-1989				
Yes: 11			No: 2	
Cause of Action				
Statutory	Public Policy	Implied Contract	Good Faith, Fair Dealing	Other (Combination)
8	1	5	5	4

Summary

The research questions and the findings from questions implicit in the instrument were presented in Chapter IV.

Conclusions and discussion of the research questions are summarized in Chapter V. Interpretations and inferences from the research, implications for policy and practice by institutions of higher education, and recommendations for further study are also presented in Chapter V.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The nineteenth-century common law doctrine called employment-at-will continues to govern the nonunion, noncontractual employment relationship in this country. The traditional common law interpretation of the doctrine is that absent either a contractual or statutory provision, any employment relationship is at-will, and therefore terminable at pleasure by the employer or the employee.

Except as modified by state or decisional law, the common law doctrine continues to control the resolution of all cases of alleged unlawful employment action. However, since the Industrial Revolution, there have been union and employment-law activities that have afforded various protections against arbitrary or unjust discharges. The first inroads came in the context of collective bargaining and federal, state, and local government civil service rules. Then later, a variety of federal and state statutes, beginning with the National Labor Relations Act

of 1935, provided statutory protection aimed at guaranteeing certain employee rights.

An on-going and important challenge to the employment-at-will doctrine has been the judicial developments that have had a significant effect on how the doctrine is interpreted today. It was clear, based on case law in the early 1900s, that employers were bound only on those promises they obligated themselves to perform (Adair v United States (1907) and Coppage v Kansas (1915), among others). During those early cases, courts presumed that the parties were not held under contract for any definite duration, and the employer did not have the burden of proof to establish any just cause requirement for termination of the employment relationship.

Over the last 15 years, however, decisional developments have indicated that courts are struggling to find ways to meet a perceived need for broader protection against unjust dismissal. A growing number of court decisions, led by California and Michigan, have resulted in a substantial explosion of employment litigation with significant liability for employers (specific cases discussed in Chapter II). Because of the costs to employers, both in defending a wrongful discharge case and the potential liability for substantial bench and jury

awards, it is important for business to place a premium on avoiding such lawsuits.

A significant amount of attention has been given to this subject by scholars who have come down in favor of abolishing the at-will rule. They have made suggestions for changes in the law designed to protect at-will employees against arbitrary, capricious, unfair, or discriminatory discharge. At the same time, there has been a significant number of recommended defense strategies made by employer defense attorneys aimed at maintaining or creating an at-will employment relationship with their employees. Suggestions have been made by other attorneys, who perhaps do not feel that the defensive strategy is good for employee relations or that it is a bad legal strategy, that employers consider adopting an internal binding arbitration procedure to resolve disputes over employee terminations, thereby keeping a great number of these cases out of the court system.

Up to this point, relatively little is known about the manner in which employers are responding to the case law that has been developing since the late 1970s or to the legal advice. The relationship between what is being written by theoreticians and legal advisors in the field and what is actually taking place in the organization will be helpful in expanding the practitioner's range of alternative methods for dealing with the discipline and

discharge issue. Accurate data relating to alternative employment policies and procedures available to the institution are valuable to long-range planning by the organization. This information provides awareness and impetus to develop active, comprehensive, and coordinated procedures, in view of the continued threats of wrongful discharge suits by employees.

In a broader and more practical sense, this research could provide human resource executives with information about what managerial activities and decisions have taken place at other similar institutions. The findings can assist them in justifying or reinforcing their behavior related to employment practices in working with nonunion employees, as they become aware of policies and procedures used by executives in a similar function. Having insight into possible related effects of particular policies and procedures on the organization and future trends in employment practices proved to be useful.

Purpose and Framework of the Study

The purpose of the study was to describe, identify, and assess what effect the erosion of the employment-at-will doctrine has had on selected personnel policies and procedures in Michigan's four-year state institutions of higher education, as perceived by those organizations, during the period 1979 to 1989.

The aim of the research was to gain a better understanding of how representative institutions in the state have responded to the erosion and to the litigation surrounding wrongful discharge. The period of time studied, 1979 to 1989, was chosen because the precedent-setting case, Toussaint v Blue Cross/Blue Shield of Michigan, heard in 1980 by the Michigan Supreme Court, resulted in what has been said to be a significantly different interpretation of the employment-at-will doctrine.

An introduction to and overview of the study were provided in Chapter I. Included in the chapter were the rationale of the study, statement of purpose, supporting comments about the need for the study, and a summary of the related literature. The design of the study was outlined, and limitations and assumptions of the study were defined. Five research questions were also outlined for examination in the study. They were as follows:

1. Have there been changes in the institution's structural organizational alignment or administrative responsibility for disciplinary action and discharge, especially in regard to (a) final authority and (b) staffing level and reporting lines?

2. Have personnel policies, procedures, or rules been changed during the ten-year period?

3a. In what manner has management activity or behavior changed regarding discipline and discharge?

3b. What are respondents' attitudes toward wrongful discharge?

4a. What changes have taken place in management training, and in what format does management training occur?

4b. From which outside sources or groups does the institution seek assistance when dealing with this issue?

5. What is the degree of satisfaction with current policies and activities regarding termination?

The second chapter contained a review of related literature pertinent to the purpose of the study. Included was selected research and factual information about the concept of the employment-at-will doctrine, statutory protections, and judicial developments affecting the interpretation of the doctrine.

A detailed description of the research methodology and the design of the study was presented in Chapter III. The population for this study included executives from Michigan's four-year state institutions of higher education who had primary responsibility for making and revising personnel policies, and who had knowledge in the personnel function with sufficient information about employment relationships between the institution and its employees. The 13 executives in the study were

categorized as President or Vice-President, Director of Personnel or Human Resources, Director of Employee Relations, or University Attorney. In three instances, respondents had a title other than those listed above; therefore, they were categorized under "other," and their responses included in the data analysis.

Structured interviews during personal visits with each human resource executive were conducted using the Questionnaire and Interview Guide (the instrument). The instrument was developed to solicit information and perceptions that assisted the researcher in describing, identifying, and assessing the effect that the erosion of the employment-at-will doctrine has had on the personnel policies and practices selected for this study. More specifically, the instrument helped (a) determine how many employees at the institution fit the category at-will, (b) assess what personnel policies and practices were in place that could affect the status of at-will employees, (c) determine whether personnel policies and practices in 1989 were different from those that had been in place in 1979, (d) assess perceptions about related management activities or organizational changes that had changed over the ten-year period, and (e) assess respondents' views and attitudes about the employment-at-will doctrine and issues surrounding the doctrine.

The instrument was composed of forced-answer items along with provisions for open-ended responses. Responses to the questions allowed the researcher to evaluate changes in related personnel policies and procedures by comparing what the institution had in place in 1979 with what policies were in effect in 1989, and to investigate what changes management contemplated making in the near future.

Chapter IV included the data analysis based on the data collected from the administration of the instrument. Findings were discussed in terms of research questions implicitly addressed by way of question sets in the instrument.

The findings and conclusions of the study, interpretation of the research, and inferences from research findings are presented in Chapter V. This chapter also includes implications for policy and practice and suggested areas for future research.

Conclusions and Discussion

Responses to questions in Part I of the instrument were designed to provide the researcher with background information about the respondents and data relating to the demographics of the workforce. Responses indicated that the average years of service at the institution among the respondents was 11.55 years. The average years of service

in the respondent's incumbent position was 4.81 years. In only one instance, where the respondent was new to the position and to the institution, the researcher sought assistance from two other, more tenured human resource administrators. The outcome of the respondents' years of service, both at the institution and in the human resources profession, confirmed that those individuals providing information for this study fit the initial criteria set forth.

Responses to questions in Part II of the instrument required further analysis by the researcher because of the variation of employment relationships revealed by respondents. The questions were initially designed by the researcher based on a review of the literature and current research addressing the concern about a definition of an at-will employment relationship versus a just cause or contractual employment relationship. Respondents easily answered questions regarding (a) number of employees, (b) number of unionized employees, and (c) number of employees with an employment contract specifying the duration of employment. However, the remaining employees listed in Item 4 of the instrument were, in some instances, identified by respondents as just cause employees only, or a combination of at-will and just cause employees. This created difficulty in obtaining responses to future

interview questions because respondents were unsure about how to respond to the questions.

To delineate better the variation in responses, the researcher categorized employees counted in Item 4 as follows:

1. Combination of at-will and just cause employees with no clear policy or provision specifying the relationship.

2. Combination of at-will and just cause employees with a very clear distinction by way of a policy statement as to which employees were at-will.

3. Just cause employees only.

4. At-will employees.

An analysis of the data showed three institutions fitting into the above-listed category 1, with a notation that two of the three institutions were in the process of moving to category 2. There were two respondents fitting into the above-listed category 2. These were institutions that took a firm position to change the employment relationship, creating a specific category of at-will employees. This change occurred during the ten-year period studied. Three of the respondents indicated that the employees fit into the above-listed category 3. One of the institutions had established continuing appointment letters, whereas the other two had concluded that employee handbook language or implied contracts with employees

precluded any type of at-will relationship. However, one of these respondents indicated that the institution was in the process of moving to category 1. Five of the respondents indicated that the employees fit category 4. Some of these institutions had no written policy statements or formal handbook covering the group but maintained that an at-will employment relationship existed.

Having an analysis of the above information helped lend greater insight into the variations of responses to the questions posed in Research Question 2, regarding the significance of change in personnel policies and practices during the ten-year period. It also helped to better understand why the institution either had or did not have particular personnel policy provisions. Having provided a breakdown of the responses to these preliminary questions, the researcher now turns to conclusions about specific research questions posed in this study.

Research Question 1

> **Have there been changes in the institution's structural organizational alignment or administrative responsibility for disciplinary action and discharge, especially in regard to (a) final authority and (b) staffing level and reporting lines?**

Overall, the researcher found no significant change in the institutions' structural organizational alignment or administrative responsibility for final authority

related to discipline or discharge during the ten-year period studied. Although there was no significant change during the ten-year period, a summary from responses presents findings that are similar to what was described in the literature; i.e., authority for disciplinary action should be centralized and should rest most often with the immediate-supervisor level or higher. This was the procedure in place at least 70% of the time as reported by the respondents. According to the respondents, the same was true for final authority as it related to discharge. In at least 80% of the cases, discharge decisions were made at the department-head level or higher. The summary data, in fact, show the level of President or Vice-President being the final authority twice as often in discharge matters as in disciplinary matters.

Although insignificant changes were reported in staffing levels and reporting lines, discharge practices seemed to reflect management's appreciation of the risks involved in terminating an employee. It appears from comments made that respondents were taking steps to avoid legal problems from discharged employees. One respondent noted that the institution used "outside counsel to review sensitive cases" and required senior personnel department staff to "be involved in the review of and planning for all dismissals." "No manager may fire anyone on the

spot," reported another respondent. Yet another respondent indicated that "although there is nothing formally written, supervisors and managers know that they cannot act without review of the case by the personnel director." Other protective measures reported by the respondents were:

* Used severance agreements to arrange for release of all claims against the institution by discharged employees.
* Increased the amount of documentation required from supervisors who handle incidents of discipline.
* Before firing, conducted a detailed review of all relevant facts, including consistency of treatment.
* Listened to the employee's side of the story.
* Retained legal counsel to advise on discharge situations or required a personnel officer to approve all decisions to terminate.

In conclusion, it appears that institutions will continue to be more cautious in terminating their relationships with employees.

Research Question 2

Have personnel policies, procedures, or rules been changed during the ten-year period?

There has been continuing controversy as to whether language confirming the at-will status in the organization's personnel documents will reduce exposure to

potential legal cases involving wrongful termination. Employer defense attorneys suggest ways in which employers can minimize their involvement in a wrongful termination suit and maximize their chances of winning one, including a critical review and revision of all relevant personnel documents. Other legal scholars and practitioners are of the opinion that "language confirming the at-will status of the employment relationship is of no legal significance and can only serve to alienate employees and exert a devastating impact on morale" (Steiner & Dabrow, 1986). The researcher devised two sets of questions, based on a review of the literature, designed to solicit responses to what changes in personnel policies and practices, if any, had occurred during the ten-year period.

A t-test was applied to the data reported for statements in Part III, which represented personnel policies and procedures in place at the institutions during the ten-year period. The result of the t-test was determined to be significant. The descriptive data supported the findings, as well. Responses to some questions demonstrated action taken during the ten-year period in the expected direction, whereas summary from other responses presented findings that differed from the literature and that did not occur in the direction expected by the researcher.

The responses showing change in the direction expected by the researcher included those policies related to (a) use of the word "permanent" in job advertisements, (b) incorporating an at-will disclaimer on the employment application, (c) use of the words "permanent" or "probationary" during the employment interview and orientation process, (d) making reference to job security or unlimited advancement, (e) use of an at-will disclaimer in offer letters, (f) reiterating the at-will policy during the employment relationship, and (g) requiring a receipt for the handbook.

Policy changes that were made in an unexpected direction included the reference to a "probationary" period, the development of a layoff procedure, and use of a discharge interview, which were formalized at different institutions during the ten-year period. Another institution that used an at-will statement with the initial appointment letter never used it again for continuing appointments, showing a change in an unexpected direction.

With regard to responses to questions in Part IV, which referred to written policies/provisions in handbooks and other related documents, there again were strong indicators of change that had occurred; some changes were in the expected direction, whereas others occurred in the unexpected direction. The most significant changes

observed in the expected direction were responses to statements regarding (a) written "at-will" clause, (b) "not a contract" statement, (c) provision for changing contents, (d) statement of discharge for any reason, and (e) having an informal complaint procedure.

Changes that had occurred in the unexpected direction were in areas of probationary periods, job security, and the formal written grievance procedure, which allowed for a hearing of disciplinary cases.

In instances where the institution had imposed new policies related to probation and job security, it was not done for the entire nonunion, noncontractual employee group. Rather, it was set forth for employees who were in the nonunionized, noncontractual group, but excluded from the executive, managerial, and higher-level employees. In fact, two institutions specifically acted to define employees who were at-will, and three institutions in varying stages indicated that the institution was in the process of setting forth policy statements. Other changes reported by respondents included:

* Reviewed and rewrote relevant documents to remove wording that could be construed as a guarantee of permanent employment.
* Made sure that employee performance evaluations were complete and precise enough to support allegations about an employee's performance.

* Made sure supervisors were using the disciplinary system that was in place and were keeping a record of all warnings and offenses.

Research Question 3

a. In what manner has management activity or behavior changed regarding discipline and discharge?

b. What are respondents' attitudes toward wrongful discharge?

From a summary of responses to this research question, the greatest amount of increased effort during the ten-year period had clearly been in the areas of documentation, analysis and investigation, and advising management. Other significant additional time had been spent on development of policies and education and training. The least amount of increase was with the development of committees.

The increase of documentation and analysis/investigation was noted by respondents to have included areas of disciplinary action, employee evaluations or meetings that involved constructive criticism, any communication in which a policy or procedure was clarified for the employee, and any meeting requested by the employee in which the employee sought specific information on a potentially sensitive situation. One respondent indicated, with respect to advising, that "all managers

are being told that documentation is a must" and that "the first thing we do in a discipline or discharge case is look for the documentation." Another indicated that "managers don't like to write people up, so they look to personnel to help them decide what to say and how to say it."

Comments made by respondents in the area of education and training included the need to "make sure that performance standards are well outlined and communicated" and that line managers use "objective criteria when evaluating subordinates." "The performance appraisal process has to meet standards necessary for the future defense of personnel action," reported another respondent.

The responses to the research question, "What are respondents' attitudes toward wrongful discharge?" demonstrated a clear understanding of the costs associated with wrongful discharge suits. Perhaps costs and fear of employee suits, those being the number one and two concerns among these administrators, lend understanding as to why the respondents thought wrongful discharge limited management's discretion and caused significantly more paperwork. Analysis of the literature would agree with this finding. The literature indicated that an employer's best defense strategy has depended largely on the ability to articulate reasonable criteria and to present

associated documentation regarding various personnel actions and activities.

Another viewpoint expressed by respondents was the notion that increased courtroom activity had resulted in greater job security for nonunion, noncontractual employees. One respondent indicated that even if the personnel documents contain language reflecting an at-will employment relationship, the institution has a "long way to go in eliminating oral representations which could create a legitimate expectation of permanent employment." Another respondent noted that "supervisors are the key to ensuring an at-will status, but they need to understand the reasons why it's important."

The statement receiving the least support was the issue of ambiguity. Most respondents disagreed that the issue is ambiguous. The researcher attributes these views to the knowledge base among respondents on the wrongful discharge issue. Nearly 62% of the respondents believed that they were "well informed" on the issue. Therefore, this issue was not viewed as ambiguous to respondents; they appeared to have a clear understanding of the issues involved.

Responses to the statements "courts were nit-picking" and "courts should temper their involvement" received, from the researcher's point of view, less agreement than was expected. Summary of these responses presents

findings that differ from the literature. A possible explanation for this might be due to an inherent belief among institutional representatives that employees in the public sector, unlike those in the private sector, enjoy certain constitutional protection concerning their continued employment. Furthermore, employees in the public sector have had a history of challenging the right to their jobs through the due process clauses of the Fifth and Fourteenth Amendments, which prohibit deprivations of either life, liberty, or property, without due process of law. The respondents may have believed that the use of the judicial system is an inherent right and that courts should be involved in these disputes.

Research Question 4

a. What changes have taken place in management training, and in what format does management training occur?

b. From which outside sources or groups does the institution seek assistance when dealing with this issue?

The literature frequently cites the importance of management training on this issue. Findings related to Research Question 4 suggest that institutions are in agreement with this point. Formal management instruction on the topics of discipline and discharge was taking place at 92% of the institutions, with 83% of the training being done on an in-house basis. External seminars were used

for approximately 50% of the training. Furthermore, when comments regarding attitudes were sought as part of an earlier research question (responses to questions in Part IX), at least five respondents commented that there was a "need for much more management training and education" on the wrongful discharge issue. This would indicate that there is agreement that it is essential to inform supervisors and interviewers of the binding nature of oral comments as well as bases for discharge and terms of employment.

A summary of responses to the second part of this research question regarding which outside sources were used for assistance with this issue showed 100% used "legal counsel," whereas 92% also used related publications and literature. This strong response confirms the notion that keeping abreast of legal and regulatory developments may affect personnel decisions. Given the frequent changes in judicial decisions, statutes, and regulations, the status of the doctrine and the defenses used in these cases in Michigan need to be monitored. As cited by a respondent in an earlier comment, "more time is required to keep up with legislation and court cases."

There also appeared to be considerable use of respondents' counterparts at other universities, as well

as professional associations, when dealing with this issue. Sixty-nine percent of the respondents indicated that they called on other human resource executives at "sister" institutions. The researcher has found that this activity can be particularly helpful because, as noted earlier in this chapter, the employment relationship in public sector employment is unique.

Research Question 5

What is the degree of satisfaction with current policies and activities regarding termination?

Approximately 8% of the respondents indicated that "termination policy needs upgrading," whereas nearly 70% said the policy was "good now with some review." These responses seemed to conflict with earlier comments made by respondents about the need to (a) improve how to deal with terminating problem employees, (b) become more "at the pleasure" with employees, (c) have more activity go to a higher level of management, and (d) create new policies. The last statement was repeated by three respondents. These earlier comments communicate that there is, in fact, a need for an upgrading of policy. The fact that 100% of the respondents looked to legal counsel for assistance in handling discipline and discharge reveals some question as to the amount of credibility placed in the existing termination policy.

Interpretations and Inferences

The summary of responses reflecting change in institutional policies and procedures for handling discipline and discharge presents findings similar to those of the literature. According to the population of institutional decision makers from Michigan's four-year state universities, the ten-year period between 1979 and 1989 resulted in significant change related to personnel policies, procedures, and rules; time devoted to discipline and discharge activity and to management training and education; and finally, overall concern with the wrongful discharge issue. The following points further highlight these changes.

1. To address the concern of a definition of at-will employees, the researcher placed employees into one of four categories: (a) combination of at-will and just cause employees with no clear policy or provision specifying the relationship, (b) combination of at-will and just cause employees with a very clear distinction by way of a policy statement as to which employees are at-will, (c) just cause employees, and (d) at-will employees. The categorization proved useful in understanding the variation of responses in further research questions.

2. There was no significant change in the institutions' structural organizational alignment or administrative responsibility for final authority related

to discipline or discharge during the ten-year period studied, as shown by the results of the chi-square statistical test. A summary of responses presents findings that show authority for disciplinary and discharge action was centralized and conducted at a higher level of authority, which was in line with recommendations from the literature.

No substantial changes were reported in staffing levels or reporting lines. Discharge practices reflected management's appreciation for the risks involved in terminating employees.

3. There was significant change in personnel policies, procedures, and rules during the ten-year period, as reflected in the outcome of the t-test. Responses to numerous question specifically devised to seek data with regard to the wrongful discharge issue showed significant change in the expected direction. These findings suggest that the human resource executives recognized the erosion of the doctrine and the need to review and revise related personnel policies to ensure that they accurately set forth the practices and procedures to which the institution is willing to be committed.

4. There has been a significant increase in management time devoted to discipline and discharge

activity during the ten-year period. The greatest amount of increased effort was in areas of documentation, analysis/investigation, and advising management. Development of related personnel policies and education and training were also given increased effort. These findings indicate that the erosion of the doctrine has had an effect on the way the respondents handle employment-related matters at the institution.

Furthermore, costs and fear of employee suits, which were the top two concerns expressed by respondents, teamed up with the increase in paperwork and limited management discretion. This finding indicates that these executives may view discharged employees as potential claimants and are looking for ways to reduce the risk of litigation and to increase their chances of success if a claim is filed.

5. A great deal of management training has been taking place, much of which has been internal. Management has also taken advantage of external workshops and seminars on this issue. The human resource executives rely heavily on legal counsel and literature related to the wrongful discharge issue. They also consult with their counterparts at "sister" institutions and foster relationships with professional associations. Monitoring the frequent changes in judicial decisions, statutes, and regulations would indicate that these executives are

concerned about the status of the doctrine and the defenses they can use as Michigan employers.

6. The respondents noted satisfaction with the current termination policy, with some review necessary. The researcher questioned the consistency of the responses to this question, with earlier comments regarding a need for change in policies. The accumulation of responses throughout the entire questionnaire would lend itself to continuous review and update of related personnel policies and procedures.

Implications for Policy and Practice

Implications are difficult to make based on this preliminary study, which was primarily investigative in nature. However, the following recommendations present some general suggestions for human resource executives.

1. Respondents indicated that final discharge authority rested with the immediate supervisor or department head 23% of the time. It is this researcher's suggestion that if the institution believes that authority needs to rest at that level, the institution should build in some protective measures to guarantee that unlawful or questionable discharge situations are being avoided. For example, the institution might specify a ruling that no supervisor has the authority to fire without clearance

from the human resources director or university legal counsel, in advance of the action.

Additionally, the researcher suggests that all personnel given this authority be required to participate in extensive training on procedures for effective terminations. These suggestions are made for the following reasons: (a) the human resource executive is in the best position to judge whether the institution, by way of an institutional representative or a personnel handbook or policy statement, has created an implied contract that must be addressed before any termination activity takes place; (b) the human resource executive will have copies of any accumulated documentation for disciplinary action previously taken, which could be useful in the decision to terminate. The human resource executive will also investigate whether any extraneous material exists that could be used by the terminated employee against the institution at a later date; (c) the human resource executive knows the history of what the institution's past practice has been regarding treatment of similar cases. Courts have ruled past practice involving terms and conditions of employment consistently treated in the past, as a form of employment agreement between the parties giving rise to certain employee expectations considered to be a contractual obligation; and (d) since it is known that Michigan courts are likely to carve out exceptions to

the at-will doctrine because of a public policy exception, it makes good sense for an "outsider" to assess whether there was any encouragement for the employee to perform an illegal act, or whether the employee was prohibited from exercising a statutory right.

2. It appears there is strong consensus among executive-level administrators that there is a need for adequate personnel policies, procedures, and practices for an effective employer-employee relationship. While the researcher understands the importance of establishing rules by which to operate, the suggestion here is to attempt to operate with fewer descriptive policies so as to build in more flexibility in dealing with day-to-day workplace activity and employee relationships. While consistent application of policies and fair and equitable methods of dealing with employees are becoming increasingly important, it is the recommendation of this investigator that the focus on dealing with personnel should be from the standpoint of: How can the supervisor set forth expectations and encourage employees to meet those goals? Furthermore, How can the supervisor outplace a nonperformer who is not meeting expectations? The focus here would be on setting forth performance standards and implementing an adequate, well-formulated performance-appraisal system, instead of a large volume of

descriptive, binding personnel policies. The performance-appraisal system would be designed to review past performance when considering what future action to take. It would also notify the employee of problems in his/her performance. Attention might also be focused on other alternatives to termination, such as early retirement proposals, severance agreements, outplacement services, or department transfers.

3. It is the researcher's recommendation that institutions view the training of supervisors and interviewers as a critical component of their job responsibility. They must be trained to recognize the potentially binding nature of promises and oral assurances. Supervisors need to be clear on what the institution's policy is regarding its at-will status so that it can be exercised by them when dealing with applicants and employees. Supervisors should be well trained in how to use the institution's performance-appraisal system so that they are complete and precise enough to support allegations about the employee's performance. Any disciplinary system that requires a specified number of warnings, written or not, needs to be done correctly by well-trained supervisors even though the human resource executive reviews them for the employee's signature, relevant facts, and consistency of statements.

4. The researcher recommends that the human resource executives have access to current literature and to specialized labor-law attorneys who can provide them with up-to-date case law and alternative defense mechanisms to apply to employment litigation. As the courts hear wrongful discharge cases, there may be some surprising defenses available for the institution to use in defending its case. Human resource executives should also be given the time it takes to read pertinent materials or to participate in workshops/seminars that address the current status of this topic. Furthermore, all human resource executives should familiarize themselves in a general way with the legislation, court rulings, and administrative decisions. The focus should be on what liability the institution faces should a wrongful discharge case be filed by an at-will employee.

Suggested Areas for Future Research

Based on findings from this investigative research, the conclusions, in addition to other implications from the data, may provide a catalyst for further study. While the research questions related to this study were answered, the following recommendations for future research are presented as a result of this study.

1. This study included the population of Michigan's four-year state institutions of higher education. The

degree to which these findings can be generalized to business and industry within the state is questionable. Therefore, investigation of practices in business and industry should be addressed. A comparison of private versus public entities could result in some very interesting findings.

2. The findings from this study determined whether or not there had been significant change in personnel policies and procedures during the ten-year period investigated. While the descriptive data provide a foundation from which to speculate about a cause-effect relationship, additional and more detailed analysis is necessary. For example, the relationship between specific judicial decisions and resulting change in personnel policy, or the institution's history of employee lawsuits affecting particular policy changes, would be interesting to study.

3. This study focused on organizations that had a combination of union and nonunion workers. It would be interesting to investigate personnel policy issues in a nonunion work environment for comparison purposes. This researcher believes that there would be significant differences in the way in which a nonunion employer handles the at-will employment relationship.

4. The results of the study revealed that institutions had adopted several different approaches to

personnel policies, practices, and procedures during the ten-year period. Further investigation as to whether these changes assisted the institution in defending a future wrongful discharge case was beyond the scope of this study, but it is certainly a topic worth further research. If, in fact, written protections constitute an important element of evidence in wrongful discharge litigation, it would be helpful to investigate whether, over time, specific policies helped the institution win wrongful discharge lawsuits.

5. Respondents provided feedback on several different approaches that had been taken during the ten-year period, including the "hard-line" approach of issuing a written disclaimer of job security to at-will employees. It would be worthwhile to investigate whether this approach has had a deleterious effect on employee morale and productivity, or on the institution's potential exposure to union vulnerability, resulting from employee job insecurity. It would also be interesting to determine whether a contract disclaimer had an effect on the institution's ability to recruit experienced personnel with unique skills.

Conclusion

This chapter presented a brief overview of the study, the findings and conclusions of the study, and

interpretations and implications from the research findings. This chapter also included recommendations, implications, and suggested areas for future research. The recommendations discussed in this chapter are ideas for future consideration by institutions concerned with the continuing controversy surrounding the erosion of the employment-at-will doctrine and what action, if any, they should consider taking to protect the interests of the institution.

Because the issue is complex and because employment security poses both payoffs and risks, institutions should embark on a rigorous analysis before developing an at-will policy. Each institution and each employment termination presents unique circumstances that must guide the applications of procedures. Employees will judge management by what it does, not only by what it says or writes. What is important is that personnel policies exist and are fairly and consistently administered. Prudent employers will do well simply to act in good faith and to adhere to any policies they devise.

APPENDICES

APPENDIX A

THE QUESTIONNAIRE AND INTERVIEW GUIDE

TERMINATION PROCEDURE
QUESTIONNAIRE AND INTERVIEW GUIDE

DATE_____

CODE_____

PART I <u>The responses to this questionnaire will be used for research purposes only. Neither the respondent nor the University will be identified in any way.</u>

What is your "title" or "position"?

_____President or Vice President

_____Emp. Relations Director

_____Personnel or Human Resources Dir.

_____Univ. Attorney

_____Other (please specify)_____

How long have you been employed at the University?_____

How long have you been in your current position?_____

PART II

1. Approximately how many employees, full and part-time, does the University employ (exclude adjunct faculty)?_____

2. Approximately how many University employees are covered by a union contract or association agreement?_____

3. Approximately how many employees have an employment contract or a written letter of appointment specifying the duration of the employment period?_____

4. Approximately how many employees are <u>not</u> covered under numbers 2 or 3 above, i.e., they are not covered by a bargaining unit contract nor do they have a letter of appointment which specifically outlines the length of employment?_____

PART III **The following statements apply to non-union employees. The statements represent possible policies/procedures used by the University for this group. Please indicate which number (1-6) is correct for letters A and B, representing methods utilized by the University with this employee group.**

1= Almost always
2= Some of the time
3= Rarely
4= Never
5= Don't know
6= Not applicable

A= Used in 1979
B= Used in 1989

1. Use of the word "permanent" in advertisement. A _____
B _____

2. Include a written disclaimer on the employment application specifying at-will relationship. A _____
B _____

3. Use the words "permanent" or "probationary" during the employment interview. A _____
B _____

4. Use the words "permanent" or "probationary" during the orientation period. A _____
B _____

5. Make reference to job security or unlimited advancement.
A _____
B _____

6. Include a written disclaimer specifying at-will relationship for employees with an "offer letter".
A _____
B _____

7. Have a written at-will disclaimer for all new employees to sign when hired: A _____
B _____

8. Reiterate the at-will policy throughout the employment relationship. A _____
B _____

9. Require a written receipt for the handbook. A _____
B _____

10. Pre-discharge review whereby management articulates reasons for discharge. A _____
B _____

PART IV **The following statements refer to written policies/provisions in a handbook or any other document for employees in this group. Please respond "yes" or "no" to the statements and indicate a response to the date (A= 1979, B=1989). Please provide the interviewer with applicable handbooks and/or documents referred to in this section.**

1. Written clause specifying the employment-at-will relationship in handbook or other document. A_____
B_____

2. Written statement that the handbook is not a contract of employment. A_____
B_____

3. Provision providing for "just cause" discharge in handbook or other document. A_____
B_____

4. Use of words "permanent" or "probationary" in handbook or other document. A_____
B_____

5. Reference to job security or unlimited advancement in handbook or other document. A_____
B_____

6. Statement of employers' ability to change contents on regular basis, as deemed appropriate. A_____
B_____

7. List of conduct leading to discipline or discharge in handbook or other document. A_____
B_____

8. Written statement that the employee may be discharged at any time for any reason. A_____
B_____

9. Informal, non-written complaint procedure. A_____
B_____

10. Formal written complaint procedure. A_____
B_____

11. Formal written grievance procedure. A_____
B_____

12. Provision that disciplinary matters are subject to the complaint or grievance procedure. A_____
B_____

13. Have a written progressive or corrective disciplinary procedure. A_____
B_____

14. Grievance procedure's final step is with an outside arbitrator or objective party. A_____
B_____

15. The arbitrator or objective party is decided upon jointly by the University and the grievant. A_____
B_____

16. The cost of the arbitrator is borne equally by the parties.
A_____
B_____

PART V

I MANAGEMENT INVOLVEMENT IN DISCIPLINE AND DISCHARGE DURING THE PERIOD 1979-1989:

Using the list below, indicate which of the following individuals **in 1979** exercised final authority on:

disciplinary action_____
(indicate number(s))

discharge_____
(indicate number(s))

1. President or Vice President
2. Personnel or Human Resources Director
3. Immediate Supervisor
4. Department Head/Manager
5. University Attorney
6. Outside Attorney
7. External Party in Greivance Procedure

8. Other (please explain)_____

Using the list above, indicate which of the following individuals **in 1989** exercise final authority on:

disciplinary action_____
(indicate number(s))

discharge_____
(indicate number(s))

PART VI **II STAFFING, TITLES, TIME DEVOTED TO DISCIPLINE/DISCHARGE DURING THE PERIOD 1979-1989:**

A. Change in staffing levels and/or reporting lines for handling discipline and/or discharge: Yes_____ No_____
(if yes, please provide the information below)

New Position: Title_____

New Reporting Procedure (structural change) Yes_____ No_____

(if yes, please explain_____)

PART VII B. Using the numbers 1-6 below, indicate what additional time, if any, has been devoted to discipline/discharge by the management staff between 1979-1989 in the following areas:

1. No change
2. 0-9% (small amt.)
3. 10-24% (moderate amt)
4. 25-50% (large amt.)
5. 50-full time (significant amt)
6. Don't know

1. Documentation _____
2. Analysis/Invest. _____
3. Policies/Proc. _____
5. Advising _____
6. New Mgr Orientation _____
7. Educ/Training _____

4. Committee _____ 6. Other _____

PART VIII C. Satisfaction with current termination policy and related termination activities:

1. Terminations Need Upgrading_____ 3. Good Now With Review_____
2. No Change In Policy Needed_____

New, Increased Activity Needed (explain)_____

D. Management's view of discipline/discharge: (Select One)

1. Takes Matter Seriously _____
2. Is Resistant and Defensive _____
3. Regards as nothing to be worried about _____
4. Other _____

E. Formal Instruction To Management on Discipline/Discharge: (check all that apply)

1. None _____
2. In-House Seminars and/or Training _____
3. External Seminars and/or Training _____
4. Other_____
(please specify)

F. Help from Outside Sources:

1. Counterparts At Other Universities _____
2. Counterparts In Other Bus/Industry _____
3. Professional Associations _____

4. Consultants _____

5. Legal Advisors _____

6. Publications and Other Literature _____

7. Other_____

PART IX III EXPOSURE TO WRONGFUL DISCHARGE

A. Your Knowledge of the Wrongful Discharge Issue:

1. None _____ 3. Some, could be better _____

2. Little _____ 4. Well Informed _____

B. Please select the number for each statement which best represents your views and attitude toward the changes that have occurred over the last ten years with respect to the wrongful discharge issue:

1= Strongly Disagree
2= Moderately Disagree
3= Slightly Disagree
4= Neither Agree nor Disagree
5= Slightly Agree
6= Moderately Agree
7= Strongly Agree

1. Entire issue is ambiguous _____

2. Employers face difficulty defending position _____

3. Courts are "nit picking" _____

4. Courts should temper their involvement _____

5. Costly to the bottom line _____

6. Limits management discretion _____

7. More Paperwork _____

8. More employee job security _____

9. Mgmt. fear of employee suits _____

10 Other Comments_____

PART X C. Has the University had a lawsuit or civil rights complaint brought by an at-will employee on issues of wrongful discharge between 1979-1989?

____Yes

_____No (if no, go to page 9)

D. For each lawsuit or complaint, which of the following issues were involved? (check all that apply. Use additional space on following page if needed)

____ Statutory Protection (Title VII, Age Discrim., etc.)

____ Violation of public policy exception (whistle-blowing, code of ethics, etc.)

____ Existence of an implied contract (verbal contract)

____ Covenant of good faith and fair dealing (tort theory of wrongful or abusive discharge)

____ Other (please explain)_____

_____

_____

E. For each lawsuit or complaint, please provide a brief description of the final judgement in the suit:

____ Suit Dismissed

____ University Won

____ Settled out of court

____ Employee Won

____ Other (please explain)_____

Please use this additional space for each of the wrongful discharge suits brought against the University by an at-will employee.

_____

_____

_____

_____

_____

Would you like to receive a copy of the statistical results and inferences of this questionnaire?

____yes ____no

If yes, please complete the following:

Name_____

Title_____

Company_____

Adoress_____

_____

Phone No_____

Please use the space below to add any remarks that you feel would add to the information provided above or that are needed to clarify any responses you have made to the questions asked.

_____

_____

_____

APPENDIX B

LETTER TO PARTICIPANTS

Dear Personnel/Employee Relations Executive:

Per our earlier conversation, at which time I spoke with you about the purpose of this research study, I wish to reiterate the procedures I will follow in collecting the research data.

The attached Interview Guide will be completed by me as we speak during our interview. It is the too which I will use to obtain pertinent research data on the subject of personnel policies and procedures within the University. Your participation in the interview is strictly voluntary. You may choose not to participate at all, stop at any time, or not answer certain questions.

The data collected from the respondents, when shared after the research has been completed, will be useful to managers in the vital area of personnel planning. It will provide information on the impact of court rulings upon actual decision making, business operations, and personnel policies and procedures related to nonunion employees.

Your willingness to participate in this study is very much appreciated. The interview itself will take approximately 45 minutes of your valuable time. Please be assured that the information you provide will be used for research purposes only and will be kept in strictest confidence. Since all information from respondents will be coded to protect confidentiality, neither you nor the University will be identified in any way.

Thank you again for your voluntary participation.

_____ _____

Respondent's Signature Date

APPENDIX C

LIST OF CASES

Table of Cases

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James McGee v City of Grosse Pointe Park, No. 84-434300, Wayne County. Verdict 7/30/87.

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