
PERSPECTIVES

MONITORING THE EMPLOYMENT CONTRACT IN ALASKA

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Thirty years ago a progressive, state appellate court¹ heralded a new era of wrongful discharge cases brought by private employees, when that court recognized a public policy exception to the American employment-at-will rule.² Another fifteen years passed before courts in other states began to elaborate specific³ and general⁴ bases for tortious public policy violations committed by employers when discharging at-will employees. Only in the 1980s, however, have discharge suits multiplied, as new bases for recovery have been recognized by courts throughout the country.

“Although there are no precise statistics available, it is clear that wrongful discharge litigation, which was hardly known in the 1970’s, is increasing geometrically, causing most major law firms to spend at least one half of their billable hours [on employee dismissal cases].”⁵ This increased access to courts, prompted in large part by judicial proliferation of novel exceptions to the at-will doctrine, has not left Alaska unaffected.

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1. *Petermann v. Local 396, Int’l Bhd. of Teamsters*, 174 Cal. App. 2d 184, 344 P.2d 25 (Ct. App. 1959). The California Supreme Court did not endorse the 1959 holding until *Tameny v. Atlantic Richfield Co.*, 27 Cal. 3d 167, 620 P.2d 1330, 164 Cal. Rptr. 839 (1980).

2. The American rejection of the presumption in England, that an employment contract for an indefinite term was for one year, is described in detail in Crook, *Employment at Will: The “American Rule” and Its Application in Alaska*, 2 ALASKA L. REV. 23, 24-26 (1985).

3. *Frampton v. Central Ind. Gas Co.*, 260 Ind. 249, 297 N.E.2d 425 (1973).

4. *Monge v. Beebe Rubber Co.*, 114 N.H. 130, 316 A.2d 549 (1974).

5. Gould, *Stemming the Wrongful Discharge Tide: A Case for Arbitration*, 13 EMP. REL. L.J. 404, 405 (1987).

Indeed, since the early 1980s the Alaska Supreme Court has demonstrated a solid familiarity with all the intriguing modern judicial approaches to the interpretation of the at-will employment relationship. Almost five years ago, the *Alaska Law Review* discussed, for instance, the 1983 "trilogy"⁶ of at-will cases decided by the state's highest court. That trilogy was unique in American law for looking to ordinary contract principles, rather than to special rules, for the interpretation of at-will employment contracts.⁷ Despite that significant difference, the *Review* predicted in 1985 that the Alaska Supreme Court "would . . . be willing to find a cause of action for employees discharged in derogation of public policy."⁸

The colloquium in this issue about at-will employment law and the problems with public policy torts undertakes to evaluate that prediction. During the annual trip to Alaska by the staff of the *Review* in March 1989, Alaska practitioners frequently requested that we revisit the wrongful discharge scene. That scene has indeed been lively since the time of our last report in 1985. In reviewing the major supreme court cases, we found an unresolved tension, which the following contributions by Thomas P. Owens III and Mark A. Redmiles explore from different vantage points.

The supreme court has mentioned, but not yet decided, the question of whether Alaska will apply any sort of judicially created public policy exception to the employment-at-will doctrine.⁹ In *ARCO/Akers*, as well as in a recent case involving a state employee covered by a collective bargaining agreement,¹⁰ the supreme court continues to exhibit a disinclination to engraft concepts of quasi-torts into the context of at-will employment contracts. This judicial conservatism is completely consistent with the judicial position expressed in the 1983 trilogy. It also remains congruent with the majority rule in this country dictating the award solely of compensatory damages as the legal remedy for breach of contract.¹¹

But the 1988 Alaska Supreme Court decisions in this area leave the possible reach of judicial remedies in Alaska employment law unclear. Owens and Redmiles read *ARCO/Akers* to require contrasting alternative routes to clarification. In his discussion of the significance

6. This epithet is used by Crook, *supra* note 2, at 37. That article discusses *Mitford v. de Lasala*, 666 P.2d 1000 (Alaska 1983), *Eales v. Tanana Valley Medical-Surgical Group, Inc.*, 663 P.2d 935 (Alaska 1983) and *Glover v. Sager*, 667 P.2d 1198 (Alaska 1983).

7. See Crook, *supra* note 2, at 38.

8. *Id.* at 39.

9. *Knight v. American Guard & Alert, Inc.*, 714 P.2d 788 (Alaska 1986); *ARCO Alaska, Inc. v. Akers*, 753 P.2d 1150 (Alaska 1988).

10. *Walt v. State*, 751 P.2d 1345 (Alaska 1988).

11. A. FARNSWORTH, *CONTRACTS* § 12.3, at 817-18 (1982).

of two cases decided in 1988, Owens contends that the supreme court now faces a crucial decision. "Together, *Walt* and *Akers* have ushered Alaska jurisprudence to the brink of two important, interrelated and, as yet, unanswered questions."¹² Owens sets out to evaluate whether Alaska should embrace the public policy exception at all and, if so, to what extent. His thoughtful analysis of that question is presented after a detailed survey and refined critique of the history of court-instituted limitations on the American rule. Owens defends the balance between employee and employer rights in current Alaska labor law and pronounces the attitude of the state supreme court to be jurisprudentially sound.

Redmiles maintains that *ARCO* sends a more far-reaching message. He argues that the Alaska Supreme Court is unwilling to go any further with the *judicial* reform of the "laws of the Alaska workplace."¹³ He therefore urges that the Alaska Legislature needs to adopt comprehensive wrongful discharge legislation; that such legislation must carefully balance employee and employer rights; and that such a legislative balancing will perforce be more sensitive to the rights of unjustly dismissed employees than the "'management paradise'"¹⁴ assertedly created by the piecemeal approach so far taken by the Alaska Supreme Court.

On this point the contributions by Owens and Redmiles depart most radically. Their contrasting interpretations of the policy exhibited in key cases from the Alaska Supreme Court set up an intriguing counterpoint. We hope that the *Review's* special employment law feature will expand the debate and trigger appropriate action in Alaska with regard to the at-will "dilemma."¹⁵

12. Owens, *Employment At Will in Alaska: The Question of Public Policy Torts*, 6 ALASKA L. REV. 269, 306 (1989).

13. Redmiles, *Shelter from the Storm: The Need for Wrongful Discharge Legislation in Alaska*, 6 ALASKA L. REV. 321, 335 (1989).

14. *Id.* at 334.

15. *Id.* at 322.

