Legislating the Employment Relationship: Montana's Wrongful-Discharge Law

JONATHAN TOMPKINS

The nation's first wrongful-discharge law extends "good-cause" protections to all nonprobationary employees not already protected by collective bargaining agreements. Its passage represents an effort by the Montana legislature to codify, at least in part, judicially recognized exceptions to the at-will doctrine while restricting other common-law remedies in an effort to contain large jury awards. Such legislation may, therefore, signal a new stage in the development of employment law in which legislatures exert increased control over the nature and direction of public policy issuing from the courts. The new law also represents a rare willingness among state governments in the United States to legislatively prescribe the nature of the employment relationship, action indicative perhaps of an emerging societal interest in restructuring the employment relationship according to evolving norms of workplace justice.

In May 1987, the Montana state legislature enacted the nation's first wrongful-discharge law. Under the terms of this statute, a discharge is wrongful if it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy, if the discharge was not for good cause, or if the employer violated the express provisions of its own written personnel policy. In addition, it limited the kinds and amounts of recoverable damages available to plaintiffs and preempted common-law remedies not explicitly allowed by the statute.

The present article examines Montana's wrongful-discharge law and assesses its significance in the larger context of employment law and the changing employment relationship. More specifically, it summarizes changes resulting from judicially recognized exceptions to the at-will doctrine and explains enactment of Montana's wrongful-discharge law as a response to business and insurance industry demands for limiting employers' legal liability and the legislature's desire to restrict the scope of judicial policymaking in light of recent wrongful-discharge rulings.

THE CHANGING EMPLOYMENT RELATIONSHIP

In the evolutionary process in which contract principles became dominant in the United States, certain unresolved legal questions had to be

Dr. Jonathan Tompkins is associate professor of political science at the University of Montana.

addressed by the courts. What constituted an employee's term of employment, whether employers had an obligation to give notice prior to discharging employees, and what amount of permanence was implied in the labor relationship remained unclear under American common law until a treatise writer, Horace Wood, formulated the rule of at-will employment in 1877.[1] Basing his rule on the concept of mutuality, Wood argued that, if the employee is free to quit at any time, then the employer must be free to dismiss at any time. Wood's rule thus states that, where the term of employment is not specified in contract, the employer is free to discharge an employee without stating cause and without giving notice.

Although courts today often feel obliged to pay lip service to the legitimacy of the at-will rule, legal scholars are increasingly likely to view the rule as an anachronism.[2] This conclusion follows from three sets of interrelated arguments, each suggesting that certain social, economic, and institutional conditions have changed since 1877.[3] First, economic power has become increasingly concentrated in the hands of large, impersonal employers. This not only endangers individual freedom by creating the potential for employers to exploit employee vulnerability, but also undermines the traditional assumption that employees can negotiate the terms of their employment contract using bargaining power equal to that of their employers. The latter view, it is argued, does not conform to modern realities. At the time a job offer is extended and accepted, little bargaining actually takes place, only the rare employee can insist on negotiating terms of employment, and the rest must accept the terms and conditions of employment prevailing in the workplace at the time of hire.

Second, the work force is no longer predominantly self-employed and, as a result, today's wage earner is often completely dependent on employment-related income. This reveals the inadequacy of the contract principles of freedom of choice and mutuality of rights. In this context, the employer's right to discharge employees at will becomes a right to impose significant social, psychological, and economic costs on employees without providing justification. For the economically dependent employee who does not feel free to quit, the right to withdraw from the employment contract becomes a hollow right.

Third, employee expectations regarding employee rights generally, and job security specifically, have changed during the course of this century. Evidence of increasing employee dissatisfaction with the employment relationship and rising expectations regarding fair, nonarbitrary treatment is revealed by opinion polls, surveys, and a growing number of lawsuits.[4] Employees now expect management to provide job-related reasons when decisions are made that affect their employment status. Evidence that norms of workplace justice are changing is also reflected in arbitration decisions. Arbitrators are increasingly insistent that procedural rules be observed and increasingly reluctant to uphold employee discharges except as an option of

last resort.[5] As a result, it can no longer be suggested seriously that employees, in accepting a job offer, agree as part of the employment bargain that they can be fired at will.

A few scholars expanded their criticism of the at-will doctrine to include contract theory as well. According to one view, an employment relationship premised on contract principles is unsuited to modern institutional realities.[6] Life in large-scale organizations, for example, is characterized by high degree of interdependence. Organizational efficiency in the context of high interdependence requires cooperation among all of the organization's members and a strong sense of commitment to the enterprise as well as to each other. Contract principles, premised on freedom of choice and limited commitment, seem ill-suited for establishing the kind of employment relationship required by modern enterprises. Achieving harmony between legal principles and institutional realities, therefore, will require alternative principles of association premised on mutual obligation and increased commitment.

Similarly, it is argued that the absence of an internal legal order in which managerial authority is defined by mutual consent is inconsistent with a political culture premised on limited authority and democratic governance. It has been suggested, for example, that if democracy is justified in governing the state, it must also be justified in governing economic enterprises.[7] Achieving harmony between principles of constitutional democracy and the realities of the employment relationship would therefore require defining economic institutions as governing bodies in which all members would participate in setting organizational policies and defining the extent of managerial authority.

Clashes between emerging social values and institutional realities inevitably produce pressures for social change. The law plays a central, mediating role in processes of change by redefining the rules that govern societal relationships. As a result of the law's continuous quest for legitimacy, however, it generally facilitates change from a posture of restraint. New legal principles are often developed as modifications of traditional principles in order to assure continuity with the past while easing the transition to the future. It is in this context that the recent willingness of the courts to recognize exceptions to the at-will rule becomes especially meaningful.

Judicially Recognized Exceptions to the At-Will Rule

As the result of judicial deference to contract principles and the at-will doctrine, discharged employees not covered by collective bargaining agreements generally have lacked a cause of action for bringing wrongful discharge suits. Since the mid-1970s, however, courts in several states, responding to the forces of change outlined above, have allowed wrongful-discharge suits to proceed under one or more legal theories. These have

included public-policy exceptions, exceptions for violation of the covenant of good faith and fair dealing, and exceptions for violation of an implied contract. Although emergence of these common-law protections has been well documented elsewhere,[8] a brief review of recent developments will establish the basis for analyzing legislative change in Montana.

The public-policy exception

State courts are increasingly willing to recognize a tort of wrongful discharge where it is alleged that an employer intended to contravene public policy. Courts have found employers guilty of contravening public policy when they discharged employees for (1) refusing to commit an unlawful act (e.g., perjury),[9] (2) performing an important public obligation (e.g., agreeing to serve on jury duty),[10] or (3) exercising a statutory right or privilege (e.g., filing a workers' compensation claim).[11] Courts have reasoned that to allow employers to discharge employees in such situations is to undermine the intent of public-policy decisions designed to promote and protect societal interests.

Although the number of discharged employees who may seek legal remedy in this way is relatively small, the public-policy exception nonetheless represents a significant limitation on management's right to discharge employees at will. In addition, because courts have granted that wrongful discharge may constitute a civil wrong under tort law, plaintiffs can recover punitive damages as well as the usual compensatory remedies allowed under contract law.

Exception for violation of implied covenant of good faith and fair dealing

Employees may now pursue wrongful-discharge claims under tort law in some states by alleging violation of an implied covenant of good faith and fair dealing. The central issue in recent judicial rulings in this area is whether a breach of this covenant will establish tort liability as well as contract liability. Judicial recognition of tortious breach of the covenant of good faith and fair dealing is significant for two reasons. First, it provides a legal basis on which an employee may pursue a wrongful-discharge suit in the absence of a written employment contract. Second, the remedy for a tortious breach of contractual obligation may include jury-imposed compensatory and punitive d. nages in addition to the usual remedies available for simple breach of contract.

Judicial recognition of this tort is controversial not only because it represents a break from traditional applications of contract principles, but also because it allows juries, which are often receptive to emotional appeals on behalf of plaintiffs, to second-guess the conduct and motive of employers. To prevail in court, employers must be prepared to demonstrate that personnel decisions were made in good faith. To do so, employers may feel compelled to offer legitimate business reasons for their decisions, thus

effectively nullifying the at-will rule. Although this judicial exception holds the potential for providing protection to employees under a wider range of situations than does the public-policy exception, courts in only seven states have allowed such claims.[12]

Exception for violation of an implied contract

This exception differs from the public-policy and implied covenant of good faith and fair dealing exceptions in that no tort violation is alleged. It involves breach-of-contract suits in which the plaintiff claims an implied contractual obligation in the absence of a written contract or collective bargaining agreement.[13] Courts may be asked, for example, to find an implied promise to observe certain procedural guidelines or to discharge only after a showing of just cause.

Until recently, at-will employees met with little success in pursuing breach-of-contract claims because of a judicial presumption that the at-will rule takes precedence over any implied restrictions on the right to discharge and because of the legal hurdles represented by contract principles of "consideration" and "mutuality of obligation." The rule developed by the courts states that an employment relationship is at will unless the employee provides consideration beyond the promise to perform his or her work responsibilities. By showing such additional consideration (e.g., provision of an added benefit to the employer or a sacrifice made in accepting employment), the employee can establish a reciprocal obligation by the employer not to terminate at will. In actual practice, few employees can satisfy the demands of consideration.

Since 1980, however, state courts have increasingly refused to be bound by the traditional rules of consideration.[14] Beginning from the premise that the employer and employee establish a psychological contract that governs the interaction between both parties, some courts have been willing to look at the expectations surrounding the employment relationship that might alter its at-will character. These expectations may be viewed as employer promises enforceable by the court—promises that may be shaped by such things as oral commitments, promotions, grievance procedures, longevity of service, good performance appraisals, and policy statements in employee handbooks.

From the employee's perspective, the disadvantage of pursuing a breach-of-implied-contract suit is that punitive damages are not available. It has the advantage, however, that some courts, wishing to move cautiously, may be willing to find violations of implied contract on the theory that they are merely enforcing the parties' own agreements; others may simply dismiss the case. From an employer's perspective, it is ironic that personnel policies consistent with the human relations management approach, and intended to motivate workers by giving them a sense of greater job security, have increased employer liability. This has caused some

employers to take defensive actions such as removing references to job security from policies and handbooks and adopting disclaimers stating that the employee understands his or her employment is at will.

MONTANA'S WRONGFUL-DISCHARGE LAW

Concerned with frivolous lawsuits, large monetary awards, and judicial delays, the insurance industry and its clients succeeded in 1986 in securing laws in approximately thirty states designed to contain jury awards by limiting amounts and types of recoverable damages and restricting recognized theories of tort liability.[15] The Montana state legislature met in 1987 amidst similar demands for tort reform aimed at addressing the existing "liability crisis." During the preceding five years, the Montana Supreme Court had contributed to perceptions of a liability crisis by expanding plaintiffs' rights in several areas of tort law and by recognizing the tortious breach of the covenant of good faith and fair dealing in several wrongful-discharge cases.[16] In a few well-publicized cases, damages in wrongful-discharge suits exceeded one million dollars.

While proponents of tort reform no doubt exaggerated the seriousness of the "liability crisis" to gain political advantage, the legislature did face legitimate political concerns. In the area of employment law the courts had effectively nullified the at-will rule without providing clear guidelines for employers to follow in making personnel decisions. As a result, small businesses, local governments, and school districts in particular were concerned about the specter of large jury awards and high defense costs. Proponents of tort reform also feared that the increasing number of wrongful-discharge suits, and the large settlements that occasionally resulted from them, would create an antibusiness climate in which prospective industries would be discouraged from locating in Montana. Given Montana's depressed economy, this was no small concern.

It was in this political context that the Montana Association of Defense Counsel, acting on behalf of its clients, drafted and introduced House Bill 241. The bill sought to address employers' concerns by clarifying what constituted wrongful discharge, by limiting kinds and amounts of remedies, and by preempting further judicial intervention.

Significantly, proponents of tort reform did not respond to judicial activism by insisting on adherence to the at-will doctrine. As had the courts, proponents were willing to recognize changing norms of fairness in the workplace as well as political realities. The "good-cause" protections and restrictions on remedies currently existing for organized employees, they argued, should exist for nonorganized employees as well.[17] As will be seen, however, the legislation as initially drafted severely restricted the scope of "good-cause" protection as well as the types of recoverable damages and theories of tort liability.

Analysis of Current Montana Law

Montana's wrongful-discharge law reflects an uneasy compromise between two partially contradictory purposes, i.e., providing statutory protection against wrongful discharge to employees while simultaneously restricting available remedies and theories of tort liability. The first purpose serves the interests of employees, while the second serves the interests of employers and insurers.

Protecting employee interests

Employee protection against wrongful discharge under the new law is found in *Montana Code Annotated* Section 39-2-904:

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

The first element is significant because it represents statutory recognition of the public-policy exception to the at-will doctrine. "Public policy" is defined in the law as "a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule."

The second element, which establishes a duty that management not discharge nonprobationary employees except for good cause, represents the first time that such protection, previously enjoyed mainly by organized employees, has been extended by law to at-will employees. "Good cause" is defined in the law as "reasonable job-related grounds for dismissal based on a failure to satisfactorily perform duties, disruption of the employer's operation, or other legitimate business reason." Although an employer may have no difficulty in citing a "legitimate business reason," this requirement nonetheless demands that the reason be job-related.

The third element holds employers responsible for commitments made through written personnel policies. This provides statutory legitimacy to recent judicial rulings that viewed personnel policies as giving rise to contractual obligation. The term "express provisions," however, leaves it unclear how free courts should be to find implied contractual obligation in the language of employee handbooks and other policy statements.

Protecting employer interests

Restrictions on remedies available to employees are found in Section MCA 39-2-905:

> *Remedies.* (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed four years from the date of discharge, together with interest thereon. Interim earnings, including amounts the employee could have earned with reason able diligence, must be deducted from the amount awarded for lost wages.
>
> (2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of section 39-2-904(1).
>
> (3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2).

Whereas Section 904 of the law is significant for the protections it extends to employees, Section 905 is equally significant for the limitations it places on the ability of plaintiffs to pursue remedies and recover damages. Plaintiffs are limited to awards of lost wages and fringe benefits for a period not to exceed four years from the date of discharge. This limitation resulted from concern over the recent willingness of courts in Montana to award lost future wages for the balance of a plaintiff's working life. The intent of this provision, therefore, is to prevent courts from allowing damages for loss of future earnings beyond four years, a length of time sufficient to allow most individuals to find other employment. In addition, courts are explicitly prohibited from allowing recovery of noneconomic damages such as those for pain and suffering and emotional distress. Finally, punitive damages may be recovered only under the public-policy exception and only after a showing of "clear and convincing evidence that the employer engaged in actual fraud or actual malice."

Not only did the legislature seek to restrict availability of damage awards, but it also sought to reverse the tendency of Montana courts to recognize new theories of wrongful discharge. Section 32-2-913 states:

> *Preemption of common-law remedies.* Except as provided in this part, no claim for discharge may arise from tort or express or implied contract.

The specific intent of this provision is to preempt remedy under the theory of breach of the covenant of good faith and fair dealing which had provided the basis for several recent wrongful-discharge suits in Montana, and to restrict implied- contract rulings to those based on express provisions of personnel policies as stated in Section 39-2-904(3).

Provision for dispute settlement

Finally, the act allows disputes to be settled through binding arbitration by mutual consent of both parties. Although legislation proposed in other states[18] has mandated binding arbitration as the exclusive remedy for discharge disputes because it is quicker and less expensive than litigation, the sponsors of the Montana bill preferred the choice of arbitration to be voluntary. If an offer to arbitrate is accepted, arbitration becomes the exclusive remedy for wrongful-discharge disputes, and both parties forfeit their right to bring a subsequent lawsuit. Organized employees, because they are already covered by explicit contractual provisions and are generally subject to binding arbitration requirements, are exempted from the terms of the wrongful-discharge act.

For most legislators, Sections 904 and 905, considered together, represent a fair balance between competing social interests. Employees receive protection from wrongful discharge in situations defined by statute law, and employers receive protection from excessive economic hardship resulting from large jury awards.

ANALYSIS OF LEGISLATIVE POLITICS

In commenting on the stiff political opposition faced by wrongful-discharge bills in Pennsylvania, Michigan, New York, and Connecticut, Villanova University law professor Henry H. Perritt, Jr. predicted in 1984 that the nation's first wrongful-discharge law might originate as a conservative response to problems related to legal liability:

> The balance of power is likely to shift in favor of wrongful discharge legislation only if employers and the defense bar react against expanded common law liability for wrongful discharge. If these two groups decide that legislation is the only feasible alternative to continued expansion of common law liability, they may become powerful proponents of legislative action. If political realignment occurs in this fashion, wrongful discharge legislation could be an essentially conservative proposal, also having intuitive appeal for civil libertarians and others with sympathy for workers.[19]

Although Perritt correctly identified the political dynamics that would spur passage of Montana's wrongful-discharge law, the bill as finally enacted was perhaps less conservative in character than he had anticipated.

The original bill, modeled after a bill introduced in the California legislature, was written principally to serve the interests of employers. The Montana House Judiciary Committee edited the bill to clarify certain ambiguities. The definition of "good cause," for example, was provided greater substance by replacing "a legitimate business reason" with "reasonable job-related grounds for dismissal based on failure to satisfactorily perform job duties or disruption of the employer's operation." The House

Judiciary Committee also made one important change to the bill. In the committee's view, protection against wrongful discharge should apply not only to situations involving violations of public policy and failures to demonstrate "good cause," but also to situations where the employer violated the express provisions of its own written personnel policies. Committee members believed the courts were often justified in recognizing the implied contract exception to the at-will rule, and that employers should be held accountable for commitments made in written personnel policies. This provision was approved over objections that it would encourage employers to operate using nonwritten policies in order to avoid lawsuits.

Advocates of employee rights, not surprisingly, were displeased with the proposed bill as passed by the House and succeeded in introducing significant modifications into the law in the Senate. First, the definition of "discharge" was redrafted to include virtually any severance of the employment relationship, including termination involving constructive discharge, resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason. The original bill, by contrast, specifically excluded termination involving resignation (other than constructive discharge), elimination of the job, or layoff for lack of work as falling within the category of "discharge." Members of the Montana Senate Judiciary Committee felt employees required protection in the latter instances as well. Otherwise, an employer could, for example, rid itself of certain employees during a layoff and then fail to recall or rehire them as required by existing policies.

Second, the original bill extended good-cause protection only to employees with five consecutive years of service preceding the discharge. From an employee rights perspective, extending statutory protection to employees with five years of service while denying it to others seemed to categorize employees unfairly and for reasons that were not justified. After intense lobbying, the final bill emerged from the Senate Judiciary Committee with good-cause protection for all employees that have completed the employer's probationary period of employment. Third, the committee felt punitive damages were appropriate in cases involving violations of public policy where the employer had "engaged in actual fraud or malice." The original bill recognized no right to punitive damages. Finally, the original bill allowed awarding lost wages and fringe benefits for a period not to exceed two years from the date of discharge; the final bill extended this period to four years.

Thus, despite placing limitations on damage awards, a bill that originated as a pro-employer bill emerged with some important protections for employees. The new statute recognized the public-policy exception to the at-will rule, recognized the implied-contract exception where express provisions of personnel policies are violated, and prohibited discharging of

nonprobationary employees except for good cause. If the bill had not represented a classic example of compromise between competing interests, it probably would have met the same fate as wrongful-discharge bills in other states. In the final days of the legislative session, the compromise bill passed in the Montana Senate 49-0 and in the House 8-16.

The final irony for proponents of tort reform occurred when a district court invalidated the restrictions on damage awards and preemption of tort remedies while leaving the three elements of wrongful-discharge in force.[20] The district court felt bound by a Montana Supreme Court ruling that citizens have a constitutional right to "full legal redress." That right would have been violated by restrictions on damages and tort remedies.[21]

CONCLUSIONS

The significance of Montana's wrongful-discharge law goes well beyond the fact that all nonprobationary employees, not just those covered by "just cause" provisions in collective bargaining agreements, will now enjoy greater job protections. First, it establishes a precedent that may speed enactment of similar legislation in other states. Second, it represents an effort by the legislature to codify, at least in part, judicially recognized exceptions to the at-will doctrine while restricting other common-law remedies. As such, it may signal a new stage in the development of employment law in which legislatures exert greater control over the nature and direction of public policy issuing from the courts. Finally, it represents a rare willingness among state governments in the United States to prescribe legislatively the nature of the employment relationship, indicative perhaps of an emerging societal interest in restructuring the employment relationship according to evolving norms of workplace justice.

Montana's wrongful-discharge law grew out of a perceived liability crisis that in itself had little to do with the nature of the employment relationship. Once introduced, however, it created an opportunity to fashion a law that established greater job protections for employees. In its willingness to enact this statute, Montana's legislature recognized that employment law must change with changing institutional conditions and societal values and served notice to the judicial branch that it intends to play a role in defining the nature and direction of that change.

NOTES

1. Feinman, "The Development of the Employment at Will Rule," 20 *Am. J. of Leg. Hist.* 118 (1976).

2. Not all legal scholars are willing to conclude that the at-will rule is anachronistic. (*See, e.g.*, Epstein, "In Defense of the Contract at Will," 51 *U. of Chi. L. Rev.* 947 (1984); and Power, "A Defense of the Employment At Will Rule," 27 *St. Louis U. L. J.* 881 (1983).

3. Abbassi, Hollman, and Murrey, "Employment at Will: An Eroding Concept in Employment Relationships," 38 *Lab. L. J.* 21 (1987); Blades, "Employment At Will vs. Individual

Freedom: On Limiting the Abusive Exercise of Employer Power," 67 *Colum. L. Rev.*1404 (1967); Heshizer, "The New Common Law of Employment: Changes in the Concept of Employment at Will," 36 *Lab. L. J.* 95 (1985); St. Antoine, "The Revision of Employment-at-Will Enters a New Phase," 36 *Lab. L. J.*563 (1985); and Summers, "Individual Protection Against Unjust Dismissal: Time for a Statute," 62 *Va. L. Rev.* 481 (1976).

4. Hoerr, "Beyond Unions: A Revolution in Employee Rights in the Making," *Bus. Week*, July 8, 1985.

5. Phillips, "Their Own Brand of Industrial Justice: Arbitrators' Excesses in Discharge Cases," 10 *Empl. Rel. L. J.* 48 (1984); Malinowski, "An Empirical Analysis of Discharge Cases and the Work History of Employees Reinstated by Labor Arbitrators," 36 *Arb.J.* 31 (1981).

6. Selznick, *Law, Society, and Industrial Justice*, (Russell Sage Foundation, 1969).

7. Dahl, "Democracy in the Workplace: Is It a Right or a Privilege?" 31 *Dissent* 54 (1984).

8. Hames, "The Current Status of the Doctrine of Employment-At-Will," 39 *Lab. L. J.* 19 (1988). *See also supra* note 3.

9. *See, e.g., Petermann v. Teamsters*, 344 P.2d 25 (1959).

10. *See, e.g., Nees v. Hocks*, 536 P.2d 512 (1975).

11. *See, e.g., Frampton v. Central Indiana Gas Co.*, 297 N.E. 2d 249 (1973).

12. By 1986, only seven states had accepted this exception as grounds for tort-based wrongful-discharge suits: Alaska, Arizona, California, Connecticut, Massachusetts, Minnesota, and Montana. *See supra*, note 8.

13. Heshizer, "The Implied Contract Exception to At-Will Employment," 35 *Lab. L. J.* 131 (1984).

14. *See, e.g., Pine River State Bank v. Metille*, 333 N.W. 2d 622 (1983).

15. Hilder, "Insurer's Push to Limit Civil Damage Awards Begins to Slow Down," *Wall St. J.*, Aug. 1, 1986, at 1, col. 6. *See also* Burke, "Constitutional Initiative 30: What Constitutional Rights Did Montanans Surrender in Hopes of Securing Liability Insurance?" 48 *Mont. L. Rev.* 53 (1987).

16. *See, e.g., Gates v. Life of Montana Insurance Co.*, 638 P.2d 1063 (1982); *Gates II*, 668 P.2d 213 (1983); *Dare v. Montana Petroleum Marketing Co.*, 687 P.2d 1015 (1984); *Crenshaw v. Bozeman Deaconess Hospital*, 93 P.2d 487 (1984).

17. *Wrongful Discharge of Employees, 1987: Hearings on H.B. 241 Before the Montana House Judiciary Committee*, 50th Legislature (1987) unpublished.

18. For a review of legislation in California and Michigan, see Stieber, "Recent Developments in Employment-At-Will," 36 *Lab. L.J.* 557 (1985). *See also* Senate Bill 5965, as introduced in the Washington State Legislature, 1987.

19. Perritt, Jr., "Employee Dismissals: An Opportunity for Legal Simplification," 35 *Lab. L. J.* 407 at 413 (1984).

20. *See, e.g., Johnson v. State of Montana*, No. 87-900 (Mont. Dist. Ct., First Jud. Dist., 1988).

21. *See, e.g., White v. State of Montana*, 661 P.2d 1272 (1983); *Pfost v. State of Montana, 713 P.2d 495 (1985).*