J. INDIVIDUAL EMPLOYMENT RIGHTS, Vol. 4(1) 15-29, 1995-96

IS IT TIME YET FOR A STATUTE TO END EMPLOYMENT AT WILL?: LESSONS FROM THE HISTORY OF WORKERS' COMPENSATION

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ABSTRACT

Numerous proposals to end employment at will and restrict wrongful discharge suits have been offered. Advocates contend that employers have an incentive to support such legislation, just as employers had an incentive to support workers' compensation laws. However, such legislation has made little headway. This article takes a close look at the analogy with workers' compensation and argues that legislation to end employment at will is unlikely to succeed unless it, like workers' compensation, involves a broad shift in employment law with principled appeal to employers as well as employees. It suggests that provisions affirming duties for employees as well as employers have the potential to break the current legislative impasse.

Nearly twenty years ago, Clyde Summers wrote an influential article in which he argued it was time for a statute to protect employees from unfair dismissals not covered by labor law or civil rights law [1]. Since then, court cases in most states have carved out certain exceptions to the employment-at-will doctrine that an employer can dismiss employees for any reason or no reason [2-3], but legislative action has taken place only on a limited basis. The lack of action has not been for lack of trying. Numerous articles have been written that propose and outline legislation dealing with the issue of wrongful discharge [3, 4-17], and numerous bills on the subject have been introduced in state legislatures [7, 11, 18-19].

While there are significant differences among the proposed bills, with some proposals designed to win employer support [3, 8, 20] and others less concerned with acceptability to employers [1, 10], in general the proposals have a similar structure. Most proposed legislation contains provisions ending employment at will in favor of a standard under which there must be a valid reason ("good cause"

doi: 10.2190/EHXB-MN6X-79T6-BFDC
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