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A Workplace Law Update

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Employers Beware! Michigan Supreme Court Clarifies and Expands Public-Policy Exception to At-Will Employment Presumption

By: John T. Below, Member, Workplace Law Group

On July 15, 2022, the Michigan Supreme Court clarified and, arguably, expanded the public-policy exception to the well-established at-will employment presumption in Michigan. Although the case may conclude differently after remand, this ruling represents a bright-line allowance of certain "public-policy" claims, eroding the at-will employment presumption enjoyed by Michigan employers for decades.

In September 2019, the Michigan Court of Appeals ruled that plaintiff Cleveland Stegall's public-policy wrongful discharge claim failed because he only made an "internal report" of alleged asbestos contamination in the workplace, followed by his termination. The appellate court held the public-policy exception to the at-will presumption allows protection for only external (or public body) reports and retaliation for same.

The Michigan Supreme Court reversed in part the appellate court ruling and remanded the case for further consideration of plaintiff's public-policy claim. The Supreme Court stated that the appellate court erred by holding that the plaintiff's public-policy claim failed because the exception does not extend to discharges in retaliation for *internal reporting* of alleged violations of the law. The Supreme Court noted the plaintiff did not argue for any addition (or change) to the existing public-policy exceptions recognized in *Suchodolski v Mich Consolidated Gas Co*, 412 Mich 692 (1982); rather, the plaintiff's claim fit within two of the well-recognized *Suchodolski* exceptions, namely, he was discharged because (1) he exercised a right conferred by well-established legislative enactment; and/or (2) he failed or refused to violate the law. *Suchodolski*, 412 Mich at 695-696.

The Supreme Court found it noteworthy that these are two separate exceptions under *Suchodolski*. It was irrelevant to the first exception whether plaintiff externally reported an actual or alleged violation of the law and plaintiff's reliance on the exercise of a right conferred by a well-established legislative enactment such as the Occupational Safety and Health Act (OSHA) was sufficient. In closing, the Supreme Court stated: "to the extent that the Court of Appeals majority held that a public-policy claim fails when only internal reports are made, the Court of Appeals has previously held that a plaintiff could support a public-

policy claim on the basis of internal reporting. *Landin v Healthsource Saginaw, Inc*, 305 Mich App 519, 531-532 (2014)." From a policy standpoint, the Supreme Court commented: "We see no reason why limiting public-policy claims to external reports would serve the welfare of the people of Michigan, especially where the Whistleblowers' Protection Act, might otherwise preempt claims that involve reports to public bodies. In this case, plaintiff had a good-faith belief that there was a violation of asbestos regulations at his workplace and followed proper internal reporting procedures. His internal report was thus sufficient to state a public-policy claim."

An update on the ruling in this matter will be forthcoming. The case was remanded to the Court of Appeals for further consideration of whether plaintiff established a prima facie claim that he was actually discharged in violation of public policy, whether plaintiff's public-policy claim is nonetheless preempted by either state or federal law, and whether arguments that the claim has been preempted are preserved.

Contact any member of **Bodman's Workplace Law Group** for more information. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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