The Employment-at-Will Rule: The Development of Exceptions and Pennsylvania's Response

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I. INTRODUCTION

A major controversy in employer-employee relationships is brewing in the United States as a result of one silent majority's will to be heard. This silent majority consists of those workers, both blue and white collar, who have been burdened with the nomenclature "employee-at-will." The "employment-at-will" rule, sometimes referred to as the American rule, provides that employment relationships of an indefinite duration may be terminated by either party at any time with or without notice, "for good cause, for no cause or even for cause morally wrong . . . ." Further, the rule operates despite the number of years of service an employee has rendered.

Although the employment-at-will rule has been a part of the employment relationship in America for over a century and was at one time recognized as a right guaranteed under the Constitution, changing times, criticism, and the persistence of discharged employees have led to the development of exceptions to this rule. Today, some employees are shielded from unjust dismissal by the terms of a collective bargaining agreement, by certain federal and/

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3. Pearson v. Youngstown Sheet & Tube Co., 332 F.2d 439 (7th Cir. 1964) (no enforceable claim despite the fact that employee's ability to obtain other employment was limited by his long service to defendant); Hoblas v. Armour and Co., 270 F.2d 71 (8th Cir. 1959) (employee discharged without cause after 45 years of satisfactory service despite the fact that he was within one year of retirement).
6. The right to collective bargaining is secured by § 7 of the National Labor Relations Act, 29 U.S.C. §§ 151-169 (1976 & Supp. IV 1980). Approximately 80% of the collective bargaining agreements in the United States provide that employees cannot be discharged
or state statutes which prohibit various forms of discrimination and/or retaliation, and more recently by certain court fashioned exceptions based on public policy considerations, and/or upon the implied contractual right of good faith.

Recently, Pennsylvania courts have also tread onto the heretofore unchartered grounds of wrongful discharge. Their steps have been slow and careful, and have appeared at times to be overly cautious. Possibly in an attempt to spur the courts of this Commonwealth on or to remove the issue from them entirely, Pennsylvania State Representative James Manderino proposed House Bill 1742, entitled the “Unjust Dismissal Act.” This act was designed to open wide the doors previously closed to employees-at-will in this state, and to subject employers in the Commonwealth to scrutiny each time they dismissed an employee.

This comment will trace the history of the employment-at-will rule and discuss the growth of judicial exceptions, placing particular emphasis on Pennsylvania law, both common and statutory. It will also offer support in favor of a more lenient view of the public policy exception that will protect the employee-at-will from unjust dismissal, and protect the employer's normal right to discharge by establishing guidelines which will enable both the employer and employee to determine when a dismissal will be considered actionable.

II. HISTORY

Under common law, a contract for employment which specified its duration was simply enforced according to the will of the parties and continuation of work after the expiration of the first term

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7. See infra notes 47-54 and accompanying text.
8. See infra notes 74-97 and accompanying text.
9. See infra notes 63-73 and accompanying text.
10. Geary v. United States Steel Corp., 456 Pa. 171, 319 A.2d 174 (1974) (although recognizing that exceptions to the at-will rule can be founded upon public policy, the court refused a cause of action to plaintiff who was discharged for reporting a dangerous flaw in his employer's product to his employer. The court claimed that public safety was an insufficient basis upon which to recognize a cause of action).
12. Id. § 2.
was normally construed as a renewal for an identical period. In England, however, in the absence of a specified duration, a contract for employment was presumed to be a hiring for one year subject to renewal for each successive year of employment, and under certain conditions terminable only for "reasonable cause" and with notice. This is where American and English law parted ways.

By the latter part of the 19th century three major trends were evident in the American law of employer-employee relationships. The one which became the proverbial thorn in the side of the employee and which offers the most opposition to plaintiffs is wrongful discharge cases was promulgated by Horace Gray Wood, a nineteenth century lawyer/commentator who wrote a treatise in 1877 on the American law of master and servant relationships. In his treatise, Wood emphatically stated that:

[In America] the rule is inflexible that a general or indefinite hiring is prima facie a hiring at will, and if the servant seeks to make it out a yearly hiring, the burden is upon him to establish it by proof. A hiring at so much a day, week, month, or year, no time being specified, is an indefinite hiring, and no presumption attaches that it was for a day even, but only at the rate fixed

15. DeGiuseppe, supra note 1, at 4; Summers, supra note 6, at 485.
16. Note, Employment Contracts of Unspecified Duration, 42 COLUM. L. REV. 107, 107-08 (1942); DeGiuseppe, supra note 1, at 5-7; Note, supra note 5, at 341.
17. One approach, and the one which best suits the handling of wrongful discharge cases, analyzed the circumstances surrounding the employment situation to determine what type of contract might reasonably be inferred. The second created a presumption that a hiring continues for a period identical to the pay interval. The third was Wood's employment-at-will rule. See Note, supra note 5, at 341 n. 50 and accompanying text.

Many courts have used the first approach, circumstances surrounding the employment situation, to allow a cause of action for wrongful discharge if the employee rendered additional consideration, such as moving a great distance or selling one's business to their employer, if the discharge was without cause. See, e.g., Littell v. Evening Star Newspaper Co., 120 F.2d 36 (D.C. Cir. 1941); Foley v. Community Oil Co., 64 F.R.D. 561 (D. N.H. 1974); Foster Wheeler Corp. v. Zell, 250 Ala. 146, 33 So. 2d, 255 (1948); Rabago-Alvarez v. Dart Indus., 55 Cal. App. 3d 91, 127 Cal. Rptr. 222 (1976); Chatelier v. Robertson, 118 So. 2d 241 (Fla. Dist. Ct. App. 1960); Griffith v. Sollay Foundation Drilling, Inc., 373 So. 2d 979 (La. 1979); Bussard v. College of St. Thomas, Inc., 294 Minn. 215, 200 N.W.2d 155 (1972); Weidman v. United Cigar Stores Co., 223 Pa. 160, 72 A. 377 (1909); Weber v. Perry, 201 S.C. 8, 21 S.E.2d 193 (1942). But see Heideck v. Kent Gen. Hosp., Inc., Civ. No. 313 (Del. June 8, 1982); Morris v. Park Newspapers of Georgia, Inc., 149 Ga. App. 674, 255 S.E.2d 131 (1979). In addition, some courts have perceived the "surrounding circumstance" theory to include representations made in employee handbooks. See infra note 140.
for whatever time the party may serve.\textsuperscript{18}

Notwithstanding the fact that Wood lacked valid legal support for his rule,\textsuperscript{19} it became incorporated in American common law\textsuperscript{20} and remains the primary doctrine governing the duration of an employment relationship.\textsuperscript{21} The early courts adopting his rule offered little rationale to support it.\textsuperscript{22} As such, it has been inferred from the socio-economic times from which it sprang.\textsuperscript{23} Later, three major theories developed to explain and support the rule: freedom of contract,\textsuperscript{24} freedom of enterprise\textsuperscript{25} and mutuality of obligation.\textsuperscript{26}

\textsuperscript{18} H. \textsc{Wood}, \textit{Master and Servant} § 134 at 272-73 (1877).

\textsuperscript{19} Wood cited only four American cases as authority for his rule: Wilder \textit{v. United States}, 5 Ct. Cl. 462 (1869), rev'd \textit{on other grounds}, 80 U.S. 254 (1871); DeBriar \textit{v. Minturn}, 1 Cal. 450 (1851); Tatterson \textit{v. Suffolk Mfg. Co.}, 106 Mass. 56 (1870); and Franklin Mining \textit{Co. v. Harris}, 24 Mich. 115 (1871).

\textit{Wilder v. United States} concerned a contract between the Army and a private businessman for the transportation of goods. It had nothing to do with general hirings as such. \textit{DeBriar v. Minturn} involved a controversy between a discharged bartender and his ex-employer over his right to occupy a room in the tavern after the bartender had been given adequate notice to leave. It was essentially a case in unlawful ejection and only tangentially touched on the employment relationship. It held only that the innkeeper had the right to eject a person after proper notification. \textit{Tatterson v. Suffolk Mfg. Co.} actually contradicts Wood's assertion, since the court found no error in allowing a jury to determine the nature of the employment contract from written and oral communications, usages of the trade, the situation of the parties, the type of employment and all other circumstances which could shed light on the true intent/agreement of the parties. Finally, \textit{Franklin Mining Co. v. Harris} found that indefinite duration by itself did not give the employer unfettered discretion to dismiss its employees. See Note, \textit{supra} note 5, at 341-42 n. 54 and accompanying text; Annot. \textit{supra} note 14, at 476.


\textsuperscript{21} See cases collected in Annot., 11 A.L.R. 469 (1921); Annot., 62 A.L.R.3d 271 (1980).

\textsuperscript{22} See Note, \textit{supra} note 5, at 341-43.

\textsuperscript{23} \textit{Id. See also} Summers, \textit{supra} note 6, at 484-86.

\textsuperscript{24} In \textit{Adair v. United States}, 208 U.S. 161 (1908), the Supreme Court stated:

The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So 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 employees . . . .

\textit{Id. at 174-75.}

The principles of "freedom of contract" as well as "mutuality of obligation" are easily recognized in the above quotation. This was the idea fostered throughout the United States by the state courts in support of the rule. See DeGiuseppe, \textit{supra} note 1, at 7; Note, \textit{supra} note 5, at 341-43; Blades, \textit{supra} note 5, at 1419-21.

\textsuperscript{25} It was believed that the employment-at-will rule furthered economic growth and entrepreneurship by increasing the freedom of the employer to hire and fire employees and
The strongest use of the above theories was by the United States Supreme Court in *Adair v. United States.* In *Adair,* the Court used this rationale to support its holding that the right of an employer to discharge employees-at-will cannot be limited by federal legislation. The Court opined that such legislation was repugnant to the fifth amendment guarantees of personal liberty and liberty of contract. The Court further noted that the right of the employee to quit the service of the employer for whatever reason is the same as the right of the employer to terminate the services of the employee for whatever reason.

The first major break from the at-will rule came in 1930 when the Supreme Court recognized congressional power under the Commerce Clause to guarantee workers the right to organize and bargain collectively without the threat of discharge or coercion, in *Texas and New Orleans Railroad v. Brotherhood of Railway and Steamship Clerks.* In effect, the decision in *Texas and New Orleans* rejected *Adair* and cleared the way for future legislation designed to protect the rights of employees.

In the past, the employment-at-will rule has been used to sustain dismissals where the employees have filed complaints with governmental regulatory agencies concerning allegedly improper conduct of their employers, or generally appeared as a witness against their employer, filed worker's compensation claims, restricting its liability. SeeFeinman, *supra* note 5, at 131-35; Note, *supra* note 5, at 341-43.

26. See *supra* note 24.


28. 208 U.S. at 174-75.

29. *Id.* at 174-78. This rationale continues to be utilized through the present day. See Meadows v. Radio Indus., 222 F.2d 347 (7th Cir. 1955); Hinrichs v. Tranquillaire Hosp., 352 So. 2d 1130 (Ala. 1977); Dockery v. Lampart Table Co., 36 N.C. App. 293, 244 S.E.2d 272 cert. denied, 295 N.C. 465, 246 S.E.2d 215 (1978).

30. 281 U.S. 548 (1930). In *Texas and New Orleans Railroad* the carrier decided to discharge its unionized employees and deal only with a newly-created company union. The carrier charged that the Railway Labor Act was unconstitutional and claimed it violated its right under the first and fifth amendments to manage its property and to select and discharge its employees as it saw fit. The Court used the “compelling state reason” rationale to support its holding. *Accord* Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 187 (1941); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33-34 (1937).


33. Loucks v. Star City Glass Co., 551 F.2d 745 (7th Cir. 1977).
ported employer kickbacks,\textsuperscript{34} refused the sexual advances of their employer,\textsuperscript{35} or had their spouses refuse same,\textsuperscript{36} refused to take psychological stress tests,\textsuperscript{37} indicated their availability for jury duty,\textsuperscript{38} refused to support political candidates favored by their employer,\textsuperscript{39} expressed their concern about the safety of their employer's product,\textsuperscript{40} and filed a lawful claim against a fellow employee,\textsuperscript{41} or some third party.\textsuperscript{42} Moreover, the courts have used the employment-at-will rule to strike down contracts for "permanent" employment,\textsuperscript{43} or for an otherwise definite duration,\textsuperscript{44} where such contracts were not supported by adequate consideration,\textsuperscript{45} or where they were deemed to have violated the statute of frauds.\textsuperscript{46}

Today, there are federal and state statutes which protect an employee from some of the abuses of the past. An employer's right to discharge is no longer absolute if the discharge is based on union activity,\textsuperscript{47} race, color, religion, sex or national origin,\textsuperscript{48} age,\textsuperscript{49} physi-

\begin{itemize}
\item \textsuperscript{34} Martin v. Platt, 386 N.E.2d 1026 (Ind. App. 1979).
\item \textsuperscript{35} Fletcher v. Greiner, 106 Misc. 2d 564, 435 N.Y.S.2d 1005 (Sup. Ct. 1980).
\item \textsuperscript{36} Comerford v. International Harvester Co., 235 Ala. 376, 178 So. 894 (1938).
\item \textsuperscript{38} Mallard v. Boring, 182 Cal. App. 2d 390, 6 Cal. Rptr. 171 (1960).
\item \textsuperscript{39} Bell v. Faulkner, 75 S.W.2d 612 (Mo. Ct. App. 1934).
\item \textsuperscript{40} Geary v. United States Steel Corp., 456 Pa. 171, 319 A.2d 174 (1974).
\item \textsuperscript{41} Mitchell v. Stanolind Pipe Line Co., 184 F.2d 837 (10th Cir. 1950).
\item \textsuperscript{42} United States Fidelity & Guar. Co. v. Millonas, 206 Ala. 147, 89 So. 732 (1921).
\item \textsuperscript{43} See, e.g., Arentz v. Morse Dry Dock & Repair Co., 249 N.Y. 439, 164 N.E. 342 (1928)("permanent employment" is not lifetime employment, but is in fact indefinite employment and therefore terminable at will).
\item \textsuperscript{44} Atwood v. Curtiss Candy Co., 22 Ill. App. 2d 369, 161 N.E.2d 355 (1959).
\item \textsuperscript{45} Buian v. J. L. Jacobs & Co., 428 F.2d 531 (7th Cir. 1970). Generally, an employee's work performance and/or continued service is not considered sufficient consideration to support a contract for permanent employment or employment for a definite time. However, the presumption that a contract for an indefinite duration is terminable at will may be rebutted by proof that the employee gave additional consideration. See, e.g., McNulty v. Borden, Inc., 474 F. Supp. 1111 (E.D. Pa. 1979).
\item \textsuperscript{46} See, e.g., Lauter v. W & J Sloane, Inc., 417 F. Supp. 252 (S.D.N.Y. 1976) (three year oral contract of employment is unenforceable under the statute of frauds and is therefore a contract for indefinite duration and terminable at will). But see Rowe v. Noren Pattern & Foundry Co., 91 Mich. App. 254, 283 N.W.2d 713 (1979), where the court stated: "Where an oral contract may be completed in less than a year, even though it is clear that in all probability the contract will extend for a period of years, the statute of frauds is not violated." \textit{Id.} at 257, 283 N.W.2d at 715. As such, the court found that Rowe's contract of employment did not violate the statute of frauds because the occurrence of certain agreed on contingencies could have made it for a shorter time.
\item \textsuperscript{47} National Labor Relations Act §§ 7, 8(a)(1), 29 U.S.C. §§ 157, 158(a)(1)(1976).
\item \textsuperscript{48} 42 U.S.C. § 2000e-2 (1976). The Act makes it an unlawful employment practice for employers "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex, or national origin
cal handicap, or veteran status. Other federal statutes protect employees from discharge retaliation under certain "whistle blowing" provisions. Though similar protection against discrimination in discharge and hiring is found in various state statutes, an employer may still discharge employees for "good reason, bad reason, and no reason at all absent discrimination . . . ."

. . . . " Id. § 2000e-2(a). There are exceptions, however, for bona fide occupational requirements tied to religion, sex or national origin. Id. § 2000e-2(e).


51. 38 U.S.C. § 2021 (1976) (provides that returning Vietnam veterans cannot be discharged for one year except for "cause"). See also 38 U.S.C. § 2021(a)(2)(A)(1976) (provides that veterans discharged from the armed services can return to the jobs they held prior to such service).

52. See, e.g., 42 U.S.C. § 2000e-3(a) (1976) (prohibits retaliation or discharge for employee's support of other employee's civil rights); 42 U.S.C. § 5551(a)(3) (Supp. IV 1980) (provides that no employer shall discharge or otherwise discriminate against an employee who has "assisted or participated, or is about to assist or participate in any manner in . . . a proceeding under the [Energy Reorganization Act of 1974] or, in any other action to carry out the purposes of [the Act] . . . ."); 42 U.S.C. § 7622(a) (Supp. IV 1980) (provides that an employer may not discharge or otherwise discriminate against any employee because the employee commenced, caused to commence or testified at a proceeding against the employer for violation of the Air Pollution Prevention and Control Act); 33 U.S.C. § 1367 (1976) (provides that no employer may discharge or discriminate against an employee for instituting or testifying at a proceeding against the employer for violation of the Federal Water Pollution Control Act); 45 U.S.C. § 441(a) (1976) (provides that a railroad engaged in interstate or foreign commerce may not discharge or discriminate against an employee because the employee has filed a complaint, instituted any proceedings under, or related to the enforcement of the federal railroad safety laws or has testified or is about to testify at such a proceeding); id. § 441(b) (prohibits railroads from discharging or discriminating against an employee for refusing to work under hazardous conditions); 29 U.S.C. § 660(c) (1976) (prohibits employers from discharging or discriminating against employees who have filed a complaint or instituted a proceeding against the employer for violations of the Occupational Safety and Health Act of 1970 who refused to work under conditions they reasonably believed to be dangerous to their safety); 29 U.S.C. §§ 215(a)(3), 216(b) (1976) (prohibits employers from discharging or otherwise discriminating against employees for asserting their rights under the minimum wage and overtime provisions of the Fair Labor Standards Act); 15 U.S.C. § 1674(a) (1976) (prohibits an employer from terminating an employee because of garnishment of wages for any one indebtedness).

53. See, e.g., DeGiusepppe, supra note 1, at 20 n.84.


An attempt at federal legislative relief for employees-at-will was made in 1980, when United States Congressman Benjamin S. Rosenthal introduced "The Corporate Democracy Act" to the United States Congress which, if passed, was to be incorporated into the present National Labor Relations Act. H.R. 7010, 96th Cong., 2d Sess., 126 CONG. REC. 2490 (1980). Title IV of the bill provided in pertinent part:

It is further declared to be the policy of the United States to protect employees in the security of their employment by ensuring that they are not deprived of such employment on the basis of their having exercised their constitutional, civil, or other legal
In view of the limited protection expressly afforded at-will employees by federal and state statutes and in recognition of the gross injustices committed in the past by the application of the at-will rule, some courts have fashioned exceptions to the rule. The most common exceptions are those which focus on the implied covenant of good faith, and those which focus on public policy.

rights, or because of their refusal to engage in unlawful conduct as a condition of employment.

Id. § 401(a). The bill further provided that “[e]mployees shall have the further right to be secure in their employment from discharge or adverse action with respect to the terms or conditions of their employment except for just cause.” Id. § 401(c). The bill defined just cause as follows:

The term “just cause” shall be defined in accordance with the common law of labor contracts established pursuant to section 301 of the National Labor Relations Act, except that such term shall not include (A) the exercise of constitutional, civil, or legal rights; (B) the refusal to engage in unlawful conduct as a condition of employment; (C) the refusal to submit to polygraph or other similar tests; or (D) the refusal to submit to a search of someone's person or property, other than routine inspections, conducted by an employer without legal process.

Id. § 401(b)(15). Unfortunately, the Corporate Democracy Act died at the end of the 96th Congress with no formal action having been taken. Further, only a few states, Michigan, Pennsylvania, South Dakota and Wisconsin, have attempted to pass similar legislation to impose a “just cause” standard for discharge. It appears that the Michigan and Wisconsin bills are still pending. Id. Pennsylvania’s House Bill 1742 died in committee at the end of the 1982 session by operation of law. South Dakota did succeed in passing a just cause standard; however, it is specifically limited to contracts for employment at a stated annual salary, which under the statute are deemed to be a hiring for one year and terminable only for just cause during the initial year. S.D. CODIFIED LAWS ANN. §§ 60-1 to 60-4 (1982).

55. See supra note 47-53 and accompanying text.

56. See supra notes 31-42 and accompanying text.

57. See infra notes 63-71 and accompanying text.


Courts in at least another nine jurisdictions have indicated that they might adopt the public policy exception to the at-will doctrine under appropriate facts. Larsen v. Motor Supply Co., 117 Ariz. 507, 573 P.2d 907 ( Ct. App. 1977); M.B.M. Co. v. Counce, 268 Ark. 269,
Those courts which have recognized causes of action for wrongful discharge based on public policy considerations have found wrongful: discharges based on the employee's refusal to violate a criminal statute, whether or not the employee could be held individually liable, discharges resulting from the exercise of a statutory right, discharges resulting from the employee's fulfillment of a statutory duty, and discharges which violate general public policy.

III. GROWTH OF JUDICIAL EXCEPTIONS

A. Implied Covenant of Good Faith

Perhaps the broadest exception to the at-will rule yet to be developed is the supporting rationale in *Monge v. Beebe Rubber Co.* Until *Monge* in 1974, and since the inception of the at-will doctrine, the notion of good faith had never been viewed as a limitation on an employer's freedom to discharge at-will employees. Since *Monge*, other jurisdictions have recognized the employer's obligation to deal with their employees fairly and in good faith although they have not explicitly adopted *Monge*’s rationale.


For an in-depth listing of other cases from the above jurisdictions concerning the recognition and nonrecognition of causes of actions for wrongful/abusive discharge, see Annot. 12 A.L.R.4th 544 (1982); *The Employment-at-Will Issue* (BNA Spec. Report) at 11 (Nov. 22, 1982). See also infra notes 72-95 and accompanying text.

59. See *infra* notes 74-76 and accompanying text.

60. See *infra* notes 78-84 and accompanying text.

61. See *infra* notes 85-89 and accompanying text.

62. See *infra* notes 93-96 and accompanying text.


64. DeGiuseppe, *supra* note 1, at 24.

In *Monge*, the plaintiff-employee had been hired by the defendant for an indefinite period of time to work on a conversion machine. Shortly thereafter, when the plaintiff applied for a higher paying job as a press machine operator, she was told by her foreman that she would have to be "nice" in order to get the better job. Soon after the plaintiff received the higher paying job, the foreman invited her out on a date. The plaintiff declined. After only three weeks the press machine job was eliminated and Monge was demoted. The plaintiff claimed that she was harassed and ultimately fired because she refused to date her foreman. The foreman's actions were known to the defendant's personnel manager who, when approached by the plaintiff, asked her "not to make trouble." Monge sued for breach of an employment contract for an indefinite period of time and the court, in allowing the cause of action, held:

In all employment contracts, whether at will or for a definite term, the employer's interest in running his business as he sees fit must be balanced against the interest of the employee in maintaining his employment, and the public's interest in maintaining a proper balance between the two . . . . We hold that a termination by the employer of a contract of employment at will which is motivated by bad faith or malice or based on retaliation is not in the best interest of the economic system or the public good and constitutes a breach of the employment contract . . . .


67. *Id.* at 133, 316 A.2d at 551-52 (citations omitted). *Monge* is obviously a hybrid which combines the notions of good faith and public policy. Basically, the *Monge* court said public policy implies a covenant of good faith in all employment contracts. *Monge* has been cited for both propositions.

The dissent disagreed with the majority's rule, claiming that even if such a cause of action existed the facts of the case did not warrant the finding of same. The dissent noted that plaintiff's discharge came eight months after her foreman's invitation, that the press job was eliminated due to economic necessity and that Monge's lack of seniority was the controlling factor in her demotion. Further, the dissent noted that no evidence was presented showing that the foreman persisted in his endeavors, that the only evidence on Monge's behalf was her own testimony and, that the acts of harassment were two isolated incidents in which the foreman commented about the type of work she was assigned. Notwithstanding all of this, Justice Grimes claimed that the plaintiff should have been pre-
Another leading case which relied on the implied covenant of good faith was *Fortune v. National Cash Register Co.* In *Fortune*, the Supreme Court of Massachusetts relied on the *Monge* rational to sustain a jury verdict in the court below. Fortune was a sixty-one year old plaintiff who claimed he was wrongfully discharged to enable his employer to avoid paying him certain commissions due him on a five million dollar contract. Fortune's contract specifically provided for termination at will. The *Fortune* court, citing *Monge*, held that there was an implied covenant of good faith and fair dealing in the contract and that the defendant had breached the contract by using the at-will provision to avoid paying accrued commissions.

The overwhelming breadth of the *Monge* decision was short lived, however. Although it has been cited by a number of jurisdictions in cases concerning the concept of wrongful or abusive discharge, most jurisdictions which have addressed the concept of wrongful or abusive discharge have relied on violations of articulated public policy in finding that an employee had a valid cause of action for wrongful termination. Perhaps drawing in the reins of the "good faith" exception was judicially wise. Such a broad depa-

69. Id. at 103-04, 364 N.E.2d at 1256-57.
70. Recently, the Supreme Court of New Hampshire reexamined its holding in *Monge*. In *Howard v. Dorr Woolen Co.*, 120 N.H. 295, 414 A.2d 1273 (1980), the New Hampshire Supreme Court limited *Monge* by stating that *Monge* applies only "to a situation where an employee is discharged because he performed an act that public policy would encourage, or refused to do that which public policy would condemn." Id. at 297, 414 A.2d at 1274. The court went on to say that if an employee has a cause of action under state or federal statute, as *Howard* did, then that remedy is his exclusive remedy and a plaintiff may not look to the courts for another one. *Id.*

On the same day *Howard* was decided, the New Hampshire Supreme Court decided another case, *Tice v. Thomson*, 120 N.H. 313, 414 A.2d 1284 (1980), and again refused to use the *Monge* rationale to allow a cause of action for a discharged public employee whose job was terminable by the Governor, without cause. The court held that *Monge* only applied to the private sector. See *DeGiuseppe*, supra note 1, at 26.

Further, only a limited number of cases have explicitly followed *Monge*; see *Pstrawowski v. Metropolitan Life Ins. Co.*, 553 F.2d 1 (1st Cir. 1977); *Foley v. Community Oil Co.*, 64 F.R.D. 561 (D. N.H. 1974). These cases were decided by federal courts sitting in New Hampshire who were required to follow New Hampshire substantive law, which at the time was found in *Monge*. They could not impose limits on *Monge* as could the New Hampshire Supreme Court.

71. See supra note 58.
ture from the status quo may be unwarranted without legislative intervention to weigh the pros and cons of the “good faith” standard and to define clearly the metes and bounds of such claims. To open wide the doors of the courts to all employees who claim “bad faith” without legislative direction would result in years of litigation before workable guidelines could be determined. And, although both employers and employees would be economically harmed by such hit-and-miss tactics, it is possible that the employer would bear the brunt of the harm since juries may be swayed more easily to side with the employee when they have no guidelines to follow.\(^7\) Although this cannot be sanctioned, to conclude that no judicially created change is warranted would be equally wrong.\(^7\) A viable compromise can be seen in the creation of a cause of action for wrongful discharge when the discharge violates general public policy.

B. Public Policy Exceptions

1. Refusing to Violate Criminal Statutes

The seminal case which recognized a cause of action for wrongful discharge where the employee’s dismissal was based on his refusal to violate a criminal statute was *Petermann v. Local 396, International Brotherhood of Teamsters.*\(^7\) In *Petermann,* the employee, who was subpoenaed to testify at a legislative hearing, received instructions from his employer to commit perjury at the hearing. Nevertheless, the employee testified truthfully and was discharged the next day. Although the lower court refused a cause of action to *Petermann,* on appeal the California Court of Appeal reversed the lower court’s ruling. Despite its recognition of the at-will doctrine, the court of appeal claimed that such a rule had to be limited in view of the state’s public policy against perjury. The court stated:

> It would be obnoxious to the interests of the state and contrary to public policy and sound morality to allow an employer to discharge any employee . . . on the ground that the employee declined to commit perjury, an act specifically enjoined by statute. . . . \(\text{[I]}\)n order to more fully effectuate the state’s declared policy against perjury, the civil law, too, must deny the employer his generally unlimited right to discharge an employee whose employment is for an unspecified duration, when the reason for the dismissal is

\(^7\) See Blades, supra note 5, at 1431.

\(^7\) Id. Contra Note, Limiting the Right to Terminate at Will — Have the Courts Forgotten the Employer? 35 VAND. LAW. REV. 201 (1982).

the employee’s refusal to commit perjury.75

Since Petermann, other jurisdictions have allowed at-will employees to sue for wrongful discharge if the discharge was based on the employee’s refusal to violate a criminal statute.76

2. Exercising A Statutory Right

Some jurisdictions have recognized a cause of action for wrongful discharge when an employee has been discharged for exercising a statutory right.77 This situation most frequently occurs when an employee has been discharged for filing a worker’s compensation claim. Not all courts, however, have recognized a cause of action for wrongful discharge on these grounds.78 Those which have re-

75. Id. at 188, 344 P.2d at 27. California also has recognized a cause of action for wrongful discharge when an employee was discharged for refusing to participate in an alleged price-fixing scheme. See Tameny v. Atlantic Richfield Co., 27 Cal. 3d 167, 610 P.2d 1330, 164 Cal. Rptr. 839 (1980).

76. In Sheets v. Teddy’s Frosted Foods, Inc., 179 Conn. 471, 427 A.2d 385 (1980), a Connecticut court recognized a cause of action for wrongful discharge when the employee’s discharge was a direct result of advising his employer that certain products were mislabeled and in violation of the Connecticut Uniform Food, Drug & Cosmetic Act. The court noted that the Act also would have subjected the employee to personal criminal sanctions had he not reported the infringement to his employer. The court stated that “an employee should not be put to an election whether to risk criminal sanction or to jeopardize his continued employment.” Id. at 480, 427 A.2d at 389.

In Trombetta v. Detroit, T. & I.R.R., 81 Mich. App. 489, 265 N.W.2d 385 (1978), an at-will employee was discharged because he refused to falsify state pollution control reports. In recognizing a cause of action based upon an employee’s refusal to cover up his employer’s violation of the state air pollution statute, the court stated, “[i]t is without question that the public policy of this state does not condone attempts to violate its duly enacted laws... [Falsifying pollution reports] clearly violate[s] the law of this state.” Id. at 495-96, 265 N.W.2d at 388.

A New Jersey court recognized a cause of action for wrongful discharge in O’Sullivan v. Mallon, 160 N.J. Super. 416, 390 A.2d 149 (Law Div. 1978), where an x-ray technician, employed at-will, was discharged for refusing to perform unauthorized catheterizations. New Jersey state law prohibited all but licensed nurses from performing catheterizations. In view of this, the court stated that “an employment at will may not be terminated by an employer in retaliation for an employee’s refusal to perform an illegal act.” Id. at 418, 390 A.2d at 150.

But see, Ivy v. Army Times Publishing Co., 428 A.2d 831 (D.C. 1981). In Ivy, the lower court denied a cause of action to an employee whose dismissal was based solely upon his refusal to commit perjury at a state administrative proceeding before the District of Columbia’s Wage and Hour Board. This decision was reached despite the employer’s admission that that was the sole reason for his discharge. Ivy’s petition for a rehearing en banc was denied summarily without opinion since a majority did not vote in favor of granting it. The dissent would have granted the petition because it presented a question of “exceptional importance.” Id. at 831 (Ferren, J., dissenting).

77. See infra notes 80, 82 and accompanying text.

78. At least eight courts have refused to grant a cause of action to employees who were fired for filing worker’s compensation claims. Martin v. Tapley, 360 So. 2d 708 (Ala. 1978); Segal v. Arrow Indus. Corp., 364 So. 2d 89 (Fla. Dist. Ct. App. 1978); Johnson v. National
fused to recognize a cause of action in such cases have held that the employee's exclusive remedy lies in the state's worker's compensation statutes and the benefits provided therein for the employee's period of disability only.

The first case which afforded a cause of action for wrongful discharge based on an employee's filing of a worker's compensation claim was Frampton v. Central Indiana Gas Co. In Frampton, the employee, having received a work related injury, filed a worker's compensation claim. The employee received a settlement check as a result of the claim, but one month later was fired when she attempted to return to work. The lower court dismissed her complaint claiming she failed to state a cause of action for which relief could be given. The Supreme Court of Indiana, however, reversed the lower court and reasoned that the denial of a cause of action to Frampton, and others similarly situated, would defeat the humane purposes of the worker's compensation act. The court stated:

The Act creates a duty in the employer to compensate employees for work-related injuries . . . and a right in the employee to receive such compensation. But in order for the goals of the Act to be realized and for public policy to be effectuated, the employee must be able to exercise his right in an unfettered fashion without being subject to reprisal. If employers are permitted to penalize employees for filing workmen's compensation claims, a most important public policy will be undermined. The fear of being discharged would have a deleterious effect on the exercise of a statutory right.

In Kelsay v. Motorola, Inc., the court dismissed the employer's contention that the worker's compensation statutes provide the sole remedy for an employee. The court reasoned that a wrongful discharge cause of action is separate and apart from a worker's compensation claim. In such an action the employee is not seeking additional compensation as a result of his or her injuries but rather is seeking retribution for an unjust dismissal based on the exercise of a statutory right.

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79. See supra note 78.
81. Id. at 251, 297 N.E.2d at 427 (emphasis in original).
82. 74 Ill. 2d 172, 384 N.E.2d 353 (1978).

Those courts which have not recognized a cause of action for wrongful discharge, when the discharge is based upon the filing of a worker's compensation claim, have placed the employee in a precarious position. In those jurisdictions, employees may be forced to choose between exercising their statutory rights, by receiving disability benefits for work related injuries, or maintaining their jobs. Unscrupulous employers, attempting to keep the costs of their worker's compensation coverage down, could use job security as a leverage to coerce injured employees into choosing between no pay or compensation during their periods of disability, or no job once their periods of disability have ended. Such an interpretation, which allows dismissals based on the filing of a worker's compensation claim, makes these acts self-defeating.\footnote{See Frampton v. Indiana Cent. Gas Co., 260 Ind. at 251, 297 N.E.2d at 427; Kelsay v. Motorola, Inc., 74 Ill. 2d at 184, 384 N.E.2d at 358.} A general public policy exception to the at-will rule would accommodate those instances where an employee was terminated because he filed a worker's compensation claim. Further, an exception based on general public policy will support the remedial purpose of all worker's compensation laws, which is to protect an employee who has been injured on the job from economic disaster. This economic protection should not extend just to the employee's period of disability. In many instances, as a result of his injuries, an employee may be unable to obtain employment elsewhere even though he is capable of performing his old job or another job available only through his employer. Thus, an injured employee would know he is protected by the worker's compensation laws during his period of disability, and by the common law against unjust dismissal once his disability has ceased. Further, without a general public policy exception to protect such employees, the entire state could be economically harmed by increased burdens on the welfare rolls. Clearly, protecting employees from unjust discharges based on their having filed a worker's compensation claim is in the public's best interest.
3. Fulfilling a Statutory Duty

The public policy exception has also been applied to situations in which an employee was terminated for fulfilling a statutory duty. All of the cases in this category thus far involve the performance of jury duty. The first case to recognize such a cause of action under this circumstance was Nees v. Hocks. In Nees, the court upheld a jury verdict in favor of an at-will employee who was discharged after being subpoenaed for jury duty. Against her employer's expressed wishes, Nees told the court clerk that she would serve on jury duty. Ultimately, she did serve and was fired. The court said that the jury system and jury duty are regarded as high priorities on the scale of American institutions and obligations and that, if an employer were permitted to discharge an employee with impunity for fulfilling her obligation of jury duty, the jury system would be adversely affected and the will of the community thwarted.

Nonetheless, not all jurisdictions have granted a cause of action to an employee when the dismissal was based on having reported for jury service. In Mallard v. Boring, the court did not seek to delineate a public policy exception from the state constitution or other statutes but instead declined, absent some statutory authorization, to intrude upon the rights of the parties to the at-will contract. The Mallard court held that "[i]f public policy requires that this protection [against dismissal] should be afforded prospective jurors, we feel it should be done by the Legislature . . . ."

Ironically, the Mallard decision came from the same state as did Petermann, where a cause of action was granted to an employee who refused to commit perjury. The divergent result appears to stem from the Mallard court's confusion of "cause of action" with "verdict for the plaintiff." The Mallard court said "[a]lthough we may feel that this would be a good public policy, to so hold would establish a rule which would apply in all instances where persons are discharged from their employment because they have made

85. 272 Or. 210, 536 P.2d 512 (1975).
86. Id. at 218-19, 536 P.2d at 516. See also Reuther v. Fowler & Williams, Inc., 255 Pa. Super. 28, 386 A.2d 119 (1978)(the necessity of having citizens freely available for jury service is a recognized facet of public policy, and an employer's intrusion into this area is actionable).
88. Id. at 396, 6 Cal. Rptr. at 175.
89. Id.
themselves available for jury service, regardless of the circumstances." The *Mallard* court failed to realize that if there are other circumstances, these circumstances would be the employer's defense. The recognition of a cause of action does not guarantee a verdict in favor of the plaintiff, it merely guarantees him his day in court. The question of whether a dismissal was based on jury service or other reasons is a question of fact to be determined by the trier of facts, the jury. Where it is clear that the public policy exists, the courts must recognize a cause of action to protect those persons seeking to effectuate it. The fact that prospective jurors are subject to contempt of court sanctions if they fail to report for jury service shows how strong a public policy surrounds jury duty. This public policy should not be ignored.

4. Violations of General Public Policy

The broadest application of the public policy exception has occurred where courts, unable to find express legislative or constitutional references upon which to base a cause of action for wrongful discharge, have permitted relief if the employer violated what the court considered to be the state's public policy in general. Nonetheless, most decisions based on the general public policy exception have attempted to reconcile their decisions by referring to some state statute upon which a cause of action could be drawn.

In *Harless v. First National Bank*, the plaintiff filed suit for wrongful discharge claiming that he was terminated solely because of his attempts to secure his employer's compliance with certain federal and state consumer protection laws. The *Harless* court found that the bank's action contravened the public policy articulated in a West Virginia consumer credit protection act. The state's policy to protect consumers from payment of illegal and unauthorized interest extended a cause of action for wrongful discharge to an employee who was dismissed as a result of his attempts to secure his employer's compliance with the act. The court reasoned that if a cause of action was not recognized, the public policy of the state of West Virginia would be frustrated.

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91. 182 Cal. App. 2d at 396, 6 Cal. Rptr. at 175.
92. See, e.g., Reuther v. Fowler & Williams, Inc., 255 Pa. Super. 28, 386 A.2d 119 (1978) (where two plausible reasons exist for the discharge, and one is in clear violation of the state's public policy, then it is within the province of the jury to decide which is the true one).
94. Id. at 276.
Another leading case in which the court adopted a general public policy exception to the at-will rule is *Palmateer v. International Harvester Co.* In *Palmateer*, an at-will employee was fired because he informed law enforcement officials that a fellow employee might have been violating Illinois criminal statutes. The plaintiff had agreed to work with the authorities to gather evidence against his co-employee. In recognizing a cause of action for Palmateer, the court stated:

There is no public policy more important and more fundamental than the one favoring the effective protection of the lives and property of citizens.

No specific constitutional or statutory provision requires a citizen to take an active part in the ferreting out and prosecution of crime, but public policy nevertheless favors citizen crime-fighters. "Public policy favors the exposure of crime, and the cooperation of citizens possessing knowledge thereof is essential to effective implementation of that policy. Persons acting in good faith who have probable cause to believe crimes have been committed should not be deterred from reporting them . . . ." Public policy favors Palmateer's conduct in volunteering information to the law-enforcement agency . . . [as well as his] agreement to assist in the investigation and prosecution of the suspected crime.

*Harless* and *Palmateer*, however, apparently represent the minority position. Most courts have denied relief to employees discharged for informing law enforcement authorities about the corruption or criminal activities of their employer. For instance, at-will employees have been denied relief when discharged for reporting, either to law enforcement agencies or to corporate officials, that corporate officers violated state security laws, for reporting that a corporate vice-president was taking kickbacks, for uncovering evidence of illegal foreign currency manipulations, and for possessing knowledge of criminal activity within the employer's corporation even though the knowledge was acquired through a corporate sanctioned investigation of which the plaintiff was in charge.

One is forced to ask, "Why are *Harless* and *Palmateer* the exception rather than the norm?" The answer is clear. This historical position of the at-will rule is so strongly embedded in American

95. 85 Ill. 2d 124, 421 N.E.2d 876 (1981).
96. *Id.* at 132-33, 421 N.E.2d at 879-80 (citation omitted) (quoting *Joiner v. Benton Community Bank*, 82 Ill. 2d 40, 411 N.E.2d 229 (1980)).
Employment-at-Will case law that few courts feel free to move away from its dictates. The courts generally are reluctant to make exceptions, unless the termination of an employee clearly constitutes a wrong expressly forbidden by statute. In view of this, one cannot help but feel that in addition to justice being blind, she is now deaf. Those courts which have denied relief have failed to realize that their legislatures, in enacting the crimes code and other statutes for their respective state, have given their courts the wherewithal to provide necessary relief in such instances. Since it is the duty of the courts to ensure that the law is enforced, it is also their duty to provide protection to those persons who seek to have the law upheld. In recognizing a cause of action based on general public policy for employees so discharged, the courts will ensure continued compliance with state law, or in the least ensure that those persons who have violated those laws will be called upon to answer for their actions.

In addition, courts have been overly cautious about employing the general public policy exception in other situations to redress wrongful discharges which resulted from conduct obviously in the community's best interest. In *Hinrichs v. Tranquilare Hospital*, suit was filed by a former hospital employee who claimed that she was dismissed for refusing to falsify hospital records. Summary judgment was affirmed as the court noted that employment-at-will may be terminated by either party with or without cause notwithstanding malice or improper reasons. The court concluded by stating that the creation of a cause of action for wrongful discharge is best left to the legislature.

The *Hinrichs* court was not the first court to justify its inaction by deferring to the powers of the legislature. Most courts defer in such cases because they do not wish to be accused of judicial legislation. However, one should question the soundness of such a deferral in this situation. The employment-at-will rule is a judicial creation. Few states have incorporated it into their statutory law, and even statutory law is subject to judicial interpretation.

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101. 352 So. 2d 1130 (Ala. 1977).
102. Id. at 1131.
103. See supra notes 13-29 and accompanying text.
104. California has codified the employment-at-will rule in *Cal. Lab. Code* § 2922 (West 1971), which provides: "An employment, having no specified term, may be terminated at the will of either party on notice to the other. . . . Employment for a specified term means no employment for a period greater than one month." *Id.* Notwithstanding codification of the rule, however, California courts have shown their willingness to find an "implied covenant of good faith and fair dealing" in employment-at-will contracts based on the totality of the parties' relationship with emphasis placed on the employee's longevity and the common
Moreover, the likelihood of statutory relief is dubious in this situation, in view of the fact that most statutory reforms are a result of a strong lobby. Although the employees-at-will constitute a majority of the American work force, they have no such lobby and it is doubtful that organized labor will volunteer.

IV. PENNSYLVANIA

A. The Case Law

The at-will rule is as embedded in Pennsylvania law as it is in most jurisdictions and, as in most jurisdictions, Pennsylvania holds that a contract for "permanent" employment is actually a contract for an indefinite duration and therefore terminable at will. Employees-at-will in Pennsylvania are no different from those in other states of the union. They have been subject to the same abuses, have striven for the same relief, and recently have been successful in obtaining relief in limited circumstances. Pennsylvania courts, though expressing a willingness to listen to practices of the employer. See Cleary v. American Airlines, 111 Cal. App. 3d 443, 455-56, 168 Cal. Rptr. 722, 729 (1980); Pugh v. See's Candies, Inc., 116 Cal. App. 3d 311, 313, 171 Cal. Rptr. 917, 919-20, modified, 117 Cal. App. 3d 520a (1981). See Blades, supra note 5, at 1433-34; Peck, supra note 5, at 3.

Pennsylvania does recognize the doctrine of additional consideration, and if the plaintiff can show additional consideration has been given then the contract will be taken out of the at-will rule. Weidman v. United Cigar Stores Co., 223 Pa. 160, 72 A. 377 (1909). Additionally, Pennsylvania recognizes the presumption that a contract for a specific term renews itself for an identical term if the employee continues to work beyond the end of the initial term. Smith v. Shallcross, 165 Pa. Super. 472, 69 A.2d 156 (1949). It appears that Pennsylvania never employed the rationale that a hiring at so much per stated term is a contract for that term. Hogle v. DeLong Hook & Eye Co., 248 Pa. 471, 94 A. 190 (1915); Tainer v. Laird, 320 Pa. 414, 183 A. 40 (1936). See, e.g., Tomkins v. Public Serv. E. & G. Co., 568 F.2d 1044 (3d Cir. 1977) (cause of action denied an employee who refused to comply with a supervisor's demands for a sexual relationship); Corgan v. George F. Lee Coal Co., 218 Pa. 386, 67 A. 655 (1907) (cause of action denied employee/shareholder who was dismissed because he demanded to see the corporate books).

Pennsylvania Supreme Court acknowledged its willingness to develop an exception to the at-will rule under the proper circumstances; see also Reuther v. Fowler & Williams, Inc., 355 Pa. Super. 28, 386 A.2d 119 (1978); Perks v. Firestone Tire and Rubber Co., 611 F.2d 1363 (3d Cir. 1979).
their claims, have narrowly defined the exceptions and have strictly construed them in favor of the employer.

The public policy exception was first tested in Pennsylvania in the case of *Geary v. United States Steel Corp.*111 In Geary, a salesman sued for wrongful discharge, claiming his dismissal was in retaliation for bringing the unsafe nature of certain tubular products manufactured for the oil and gas industry to the attention of his superiors. By the time the case came to trial the tubular products had been pulled from the market because the re-evaluation conducted at plaintiff's insistence proved them to be dangerous.118 The *Geary* court felt this was sufficient recompense. Clinging to the fact that Geary went over his immediate supervisor's head before he could get any action on retesting the tubes, the court said he obviously made a "nuisance" of himself and that his discharge was to "preserve administrative order."113 As such, the court held:

[W]here the complaint itself discloses a plausible and legitimate reason for terminating an at will employment relationship [i.e., Geary's constant efforts to bring a defective product to the attention of his employer] and no clear public policy is violated thereby, an employee at will has no right of action against his employer for wrongful discharge.114

111. 456 Pa. 171, 319 A.2d 174 (1974). *Geary* was a four-to-three decision. Since the composition of the Pennsylvania Supreme Court has changed considerably since 1974, it is possible that should a similar case now come before it that the result would be in favor of recognizing a cause of action based on the facts presented in *Geary*.

112. It should be noted that U.S. Steel denied that the product was withdrawn from the market as a result of Geary's efforts and offered to prove that it had been marketed successfully, without incident, for several years. The court held that such proof was irrelevant at the preliminary objection stage, *id.* at 174 n.3, 319 A.2d at 175 n.3, since the court was obligated to accept all properly pled facts as admitted for the purpose of testing the complaint. *Id.* at 174, 319 A.2d at 175, (citing Balsbaugh v. Rowland, 447 Pa. 423, 290 A.2d 85 (1972)).

113. 456 Pa. at 184-85, 319 A.2d at 180. In *Geary*, the appellant proposed another theory under which he sought relief. Geary asserted that the tort of "interference with prospective business advantage" was applicable to his situation. He argued that the expectancies which the law protects from interference by outsiders should also be protected from the actions of the parties to the relationship if one of the parties abuses its rights. The court found that even if a cause of action could be carved from the general rule, the facts in *Geary* did not support such an action since specific intent to harm, not general or incidental, is one of the prerequisites for such a tort action. *Id.* at 178-79, 319 A.2d at 177-78. However, in McNulty v. Borden, Inc., 474 F. Supp. 1111 (E.D. Pa. 1979) the court, relying on the dicta of *Geary*, found the requisite intent to support a cause of action for wrongful discharge on these grounds. See *infra* notes 147-50 and accompanying text.

114. 456 Pa. at 184-85, 319 A.2d at 180. Justice Roberts wrote a fiery dissent in which he stated:

[S]ociety's interest in protecting itself from dangerous products manifestly presents a mandate to the court to recognize a cause of action for wrongful discharge. That a
Although the *Geary* court denied relief to the plaintiff, it has been hailed as a giant step forward, for it did acknowledge Pennsylvania's willingness to recognize a cause of action for wrongful discharge where a clear and compelling mandate of public policy is violated.\(^{115}\) Unfortunately, the majority in *Geary* was convinced that no clear mandate of public policy was threatened or violated by Geary's discharge. It refused to recognize a concern for public safety as a public policy of the state.\(^{116}\) The *Geary* court claimed that there was no Pennsylvania statutory or constitutional provision upon which to base such an exception. A close examination of Pennsylvania statutory law will reveal that the majority overlooked many sources on which it could have based a public policy exception.

Since the *Geary* court insisted on finding an exception to the rule only where the public policy was expressed clearly by statute or state constitution, fairness to the plaintiff required that the court exhaust all of the statutory and constitutional provisions available. It is possible that the court could have found an exception based on section 2705 of the Pennsylvania Crimes Code,\(^{117}\) which makes it a second degree misdemeanor for a person to engage in conduct which places or may place another person in danger of death or serious bodily injury. A manufacturer who places defective merchandise on the market recklessly endangers the life of another.\(^{118}\)

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loyal and responsible employee should be summarily and without cause or notice discharged for complying with his duty to communicate relevant information to his superiors provides further justification for affording [Geary] an opportunity to present his claim. That [Geary] was discharged without cause for doing that which, had he failed to do, he would have been subject to dismissal with cause amply demonstrates the illogic of the majority's refusal to recognize in these circumstances a cause of action for wrongful discharge.

*Id.* at 191-92, 319 A.2d at 184 (Roberts, J., dissenting).

\(^{115}\) 456 Pa. at 184, 319 A.2d at 180.

\(^{116}\) *Id.* at 184, 319 A.2d at 180.

\(^{117}\) 18 PA. CON. STAT. ANN. § 2705 (Purdon 1973).

\(^{118}\) *Id.* Since at least 1904, corporations have been considered capable of committing "personal crimes" such as homicide. See United States v. Van Schaick, 134 F. 592 (S.D.N.Y. 1904) (corporation which failed to provide adequate life preservers on its ships can be tried and convicted of manslaughter even though no appropriate punishment was provided by statute under such circumstances); People v. Ebasco Serva., Inc., 77 Misc. 2d 784, 354 N.Y.S.2d 807 (1974); State v. Ford Motor Co., No. 5324 (Ind. Super. Ct. filed Sept. 13, 1978) (corporation indicted for reckless homicide and charged with recklessly designing and manufacturing a vehicle and allowing it to remain on the public highways). See generally Note, *Corporate Homicide: A New Assault on Corporate Decision-making*, 54 *Notre Dame Law.* 911 (1979). In view of the above, there should be no prohibition in turning to the crimes code of a state to determine if public safety is a recognized policy supported by statute.
Perhaps more to the point would be the health and safety statutes promulgated in regard to the Department of Labor and Industry.119 The general purpose of the Act was revealed in its title, "An act to provide for the safety and to protect the health and morals of persons while employed; prescribing certain regulations and restrictions concerning places where persons are employed, and the equipment, apparatus, materials, devices and machinery used therein . . . ."120 Although this section has been held not to specifically cover manufacturers or suppliers so as to subject them to negligence per se by violating a statute,121 it clearly articulates that safety in the work place is a recognized public policy of Pennsylvania.

In addition, the Geary court could have used certain sections of the Pennsylvania Constitution to support the recognition of a cause of action for wrongful discharge when the discharge resulted from the employee's reporting of a life threatening flaw in his employer's product. In article 1, section 2, the Pennsylvania Constitution provides that "[a]ll power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness . . . ."122 This section clearly indicates that one of the greatest concerns of the state of Pennsylvania, and of all governments no doubt, is the safety of its people. The above section, when viewed with article 1, section 11, which provides that "[a]ll courts shall be open, and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law . . . ."123 would have supported, in Geary, the adoption of a broad public policy exception to the at-will rule in order that the policy of public safety, inherent in our constitution, should not be frustrated.

Notwithstanding the above, by referring to cases which permitted a cause of action based on statute and/or state constitution, the Geary court incorrectly concluded that the fount of public policy is limited to these two sources. It overlooked the most obvious source of public policy considerations, the public policy expressed

119. 43 PA. CON. STAT. ANN. §§ 25-1 to -15 (Purdon Supp. 1982). This act was in effect prior to the Geary incident and remains the viable law of Pennsylvania.
120. Id.
122. PA. CONST. art. 1, § 2.
123. PA. CONST. art. 1, § 11.
by the common law of Pennsylvania. The dissent in Geary did not suffer from such tunnel-vision. Justice Roberts quickly noted that Pennsylvania decisions have clearly expressed that public safety is a major concern of Pennsylvania courts. Pennsylvania courts have granted relief to those injured by defective merchandise, albeit consumer or commercial in nature. Why not, then, view the prevention of injury as a fundamental and desirable objective of Pennsylvania and acknowledge it as a “recognized facet of public policy” promoted by the common law. It is upon this basis that the courts should grant a cause of action for wrongful discharge if the discharge is an employer’s retaliation against an employee who found a dangerous flaw in its product.

As noted before, although the Geary court denied relief to Geary, it did acknowledge Pennsylvania’s willingness to recognize a cause of action for wrongful discharge where a clear and compelling mandate of public policy was violated. In Reuther v. Fowler & Williams, Inc., this dictum from Geary was used by the Superior Court of Pennsylvania to grant a cause of action to an employee who had been discharged for serving on jury duty. “In our view, the necessity of having citizens freely available for jury service is just the sort of ‘recognized facet of public policy’ alluded to by our Supreme Court in Geary . . . .” In Reuther, Judge Spaeth recognized that there were two plausible reasons for the plaintiff’s dismissal. One reason cited was the plaintiff served on jury duty against the wishes of his employer, who had advised the plaintiff of ways to evade jury service. The other plausible reason was that the plaintiff had failed to notify his employer that he was serving and would be absent for one week. In view of these two contradictory reasons, the court found that it was within the province of the jury to decide which one was the true reason for Reuther’s dismissal and thus vacated the lower court’s compulsory non-suit and re-

124. In Commonwealth v. McCreary, 343 Pa. 355, 22 A.2d 686 (1941), the Pennsylvania Supreme Court held:

The power of the court to determine what is against public policy, in a proper case, is well recognized. . . . [W]hen a given policy is so obviously for or against the public health, safety, morals, or welfare [and] there is a virtual unanimity of opinion in regard to it . . . a court may constitute itself the voice of the community . . . .

Id. at 360, 22 A.2d at 689 (citations omitted).


126. Id.

127. Id. at 187, 319 A.2d at 184 (Roberts, J., dissenting).


129. Id. at 33, 386 A.2d at 121 (citations omitted).

130. Id.
manded for trial. 131

Both *Geary* and *Reuther* were used by the Third Circuit in *Perks v. Firestone Tire and Rubber Co.* 132 to grant a cause of action to an at-will employee who claimed he was discharged because he refused to submit to a polygraph test. The court found that the Pennsylvania statute forbidding employers from requiring polygraph tests 133 as a condition for employment, or continuation of employment, embodies a "recognized facet of public policy" of the type proscribed by the Pennsylvania courts in *Geary* and *Reuther.* 134

As in *Reuther,* two plausible reasons existed for plaintiff Perk's discharge. The first, as previously discussed, was Perk's refusal to submit to a polygraph test. The second, as Firestone contended, was based on the plaintiff's acceptance of gratuities from a representative of a supplier in violation of corporate policy. Firestone argued *Geary*'s rationale that, "even when an important public policy is involved, 'an employer may discharge an employee if he has a separate, plausible, and legitimate reason for doing so.'" 135 However, the court concluded that when genuine issues of material fact exist, it is the province of the jury to decide the controversy. 136

In 1979, John J. McNulty brought a three count cause of action against Borden, Inc., 137 alleging anti-trust violations, breach of contract, and defamation. 138 McNulty, a former unit manager for Borden, claimed that during the course of his employment for Borden he became aware that a Mr. Matthews, Borden's district manager, either personally or through other unit managers, offered special

131. *Id.* at 34, 386 A.2d at 122. Cf. 456 Pa. at 184-85, 319 A.2d at 180. The majority in *Geary* specifically said where a "plausible and legitimate reason" exists for terminating an at-will employee and "no clear mandate of public policy is violated thereby, an employee at will has no right of action against his employer for wrongful discharge." *Id.* (emphasis added). The "and" in the majority's holding has been used by Pennsylvania courts and federal courts sitting in Pennsylvania to allow the factual question to go to the jury. See *Reuther v. Fowler & Williams, Inc.,* 255 Pa. Super. 28, 386 A.2d 119 (1978); *Perks v. Firestone Tire and Rubber Co.,* 611 F.2d 1363 (3d Cir. 1979).

132. 611 F.2d 1363 (3d Cir. 1979).

133. 18 PA. CON. STAT. ANN. § 7321(a) (Purdon 1973) provides: "A person is guilty of a misdemeanor of the second degree if he requires as a condition for employment or continuation of employment that an employee or other individual shall take a polygraph test or any form of a mechanical or electrical lie detector test." *Id.*

134. 611 F.2d at 1366.


136. *Id.* See supra note 126 and accompanying text.


138. *Id.* at 1114.
pricing arrangements to certain customers but not to others. When the plaintiff refused to take part in the granting of these special pricing arrangements he came into severe conflict with Matthews, who then compiled a file allegedly filled with false accusations and reports, to justify the plaintiff’s dismissal.\textsuperscript{139} McNulty claimed his dismissal was an effort to prevent discovery of the special pricing arrangements, that his termination was wrongful and was not in conformity with established company policy,\textsuperscript{140} and that the defendant knowingly furnished the contents of the falsified reports to prospective employers.\textsuperscript{141}

Defendant Borden filed a motion to dismiss all three counts of plaintiff McNulty’s complaint claiming as follows: (1) plaintiff did not have standing to sue under the Clayton Act for anti-trust violations,\textsuperscript{142} (2) plaintiff was an employee-at-will and therefore terminable at will without cause, with or without notice,\textsuperscript{143} and (3) defendant’s communications to prospective employers were privileged and therefore could not support a cause of action for defamation.\textsuperscript{144} The trial court denied defendant’s motion as to all three

\begin{itemize}
  \item \textsuperscript{139} Id.
  \item \textsuperscript{140} The \textit{McNulty} court noted that the defendant’s failure to adhere to certain company guidelines in discharging the plaintiff did not constitute a breach of his employment contract. \textit{Id.} at 1119 n.3. \textit{But see} DeFrank v. County of Greene, 50 Pa. Commw. 30, 412 A.2d 663 (1980). In \textit{DeFrank}, the court found a contract by estoppel based on an employment manual which provided for certain termination procedures which were not followed in DeFrank’s termination. However, Pennsylvania law is scant in this area and it is unclear whether written termination procedures by private employers will be enforceable in a court of law or whether such written procedures are enforceable only against governmental bodies, as in \textit{DeFrank}. Some courts have specifically adopted the “contract by estoppel” theory as applicable against private employers when a written personnel manual provided for termination “for cause” or only after certain procedures were followed. \textit{See, e.g.}, Cleary v. American Airlines, Inc., 111 Cal. App. 3d 443, 168 Cal. Rptr. 722 (1980) (company bound by expressed procedures for adjudicating employee’s rights); Toussaint v. Blue Cross & Blue Shield of Mich., 408 Mich. 579, 292 N.W.2d 880 (1980) (employers cannot defeat legitimate expectations by arbitrarily departing from written policies); Weiner v. McGraw-Hill, Inc., N.Y. Ct. App., No. 485, (Nov. 18, 1982) (personnel handbooks which provided for termination only for “just and sufficient cause” created an enforceable contract). Since Pennsylvania treats the at-will rule as a rebuttable presumption, \textit{see} Cummings v. Kelling Nut Co., 368 Pa. 448, 84 A.2d 323 (1951), personnel manuals, as well as oral representations, should be admissible as evidence to refute the at-will status of an employee if they provide for terminations only “for cause.” The \textit{McNulty} court did not completely foreclose the plaintiff’s attempt to remove his contract from the operation of the employment-at-will rule, however, for it acknowledged Pennsylvania’s recognition of the doctrine of additional consideration. 474 F. Supp. at 1119.
  \item \textsuperscript{141} Id. at 1114.
  \item \textsuperscript{142} Id. at 1115.
  \item \textsuperscript{143} Id. at 1118.
  \item \textsuperscript{144} Id. at 1120 n.5.
\end{itemize}
counts and the denial was sustained upon a motion for reconsideration.\textsuperscript{145}

In sustaining McNulty's cause of action for wrongful discharge, the court read \textit{Geary}\textsuperscript{144} as allowing a cause of action for wrongful termination if either specific intent to cause harm to the employee can be shown\textsuperscript{147} or a clear mandate of public policy is violated by the discharge.\textsuperscript{148} The court used the specific intent averred in McNulty's claim for defamation to supply the requisite intent to sustain a cause of action for wrongful discharge.\textsuperscript{149} Additionally, the court found that McNulty had been discharged because he refused to commit a crime and that his discharge was an act in furtherance of the illegal pricing scheme.\textsuperscript{150} Thus, the court held that a clear mandate of public policy had been violated by his termination.\textsuperscript{151} As such, the court denied the defendant's motion to dismiss and scheduled the case for trial.\textsuperscript{152}

In 1980, the Superior Court of Pennsylvania was faced with a case similar to that of \textit{Geary}. In \textit{Yaindl v. Ingersoll-Rand Co.},\textsuperscript{153} the plaintiff claimed he was discharged for reporting a defective product to his employer. The facts of \textit{Yaindl} do not appear to support as strongly a cause of action for wrongful discharge as did

\textsuperscript{145} \textit{Id.} at 1120-22. Although Count I did not deal with terminating employees-at-will, it did raise an interesting topic for future challenges to the at-will rule. In finding that McNulty had standing under the Clayton Act, which requires a plaintiff to have sustained injuries to his business or property, 15 U.S.C. § 15 (1976), the court held that "an employee who suffers the loss of his job has been injured in his property." 474 F. Supp. at 1116. This could possibly open the door to a future constitutional challenge of the at-will rule based on denial of due process and/or equal protection. Professor Cornelius J. Peck of the University of Washington School of Law has discussed the possibility of a due process and/or equal protection challenge to the at-will rule. His argument is based on federal and state intervention to protect certain classes of employees from arbitrary dismissal while ignoring or sanctioning by silence the arbitrary dismissals of at-will employees. \textit{See Peck, supra} note 5, at 34-42 (equal protection) and 46-49 (due process).

In addition, it should be noted that causes of action for defamation, as in \textit{McNulty}, have been utilized by at-will employees to supply "backdoor" relief in a limited number of cases for wrongful termination. \textit{See, e.g.}, \textit{Berg v. Consolidated Freightways}, 280 Pa. Super. 495, 421 A.2d 831 (1980) (employee had been forced to resign during theft investigation along with actual thieves and the employer, either willfully or in reckless disregard of the truth, communicated the employee's involvement to third persons although such accusations were false).

\textsuperscript{146} \textit{See supra} notes 111-30 and accompanying text.

\textsuperscript{147} 474 F. Supp. at 1119.

\textsuperscript{148} \textit{Id.}

\textsuperscript{149} \textit{Id.}

\textsuperscript{150} \textit{Id.}

\textsuperscript{151} \textit{Id.}

\textsuperscript{152} \textit{Id.} at 1113.

those in *Geary*, but a close review shows that Yaindl also deserved his day in court. Three months had passed between Yaindl's report and his discharge. As in *Geary*, Yaindl's report was heeded and his employer began to look for ways to repair and/or replace the defective product. For three months after reporting the defect, Yaindl minced no words in expressing his beliefs as to the cause of the defect. These beliefs were expressed to upper-management and especially to Mr. Burns, the person whom Yaindl felt was responsible for placing the defective item on the market. Although management was aware of the animosity which grew between Yaindl and Burns, as a result of Yaindl's report and expressed beliefs, Yaindl, originally a field representative, was reassigned to work under Burns in the manufacturing department. Repeated, heated arguments between Yaindl and his new supervisor ensued. These arguments necessitated numerous mediation efforts from upper-management. 154 The final battle between Yaindl and his new supervisor was a "you're fired," "I quit" situation. 155 After Yaindl's discharge, a group manager of Ingersoll-Rand, at Yaindl's request, conducted an investigation and found that Burns terminated him due to insubordination. 156 The court concluded that even if the public policy exception extended to public safety considerations, the true reason for Yaindl's discharge was to rid the defendant of a "disruptive employee" and that reasonable minds could not differ under the facts of the case. 157

By reaching such a conclusion, it appears that Judge Spaeth placed too little emphasis upon the facts that Yaindl was fired by the man who he felt was responsible for marketing the defective product and that the only reason Yaindl was able to be fired by him was due to what may not have been a fortuitous reassignment. Although the defendant claimed that Yaindl was reassigned out of business necessity, 158 it is also possible that the defendant, able to predict with reasonable certainty the result of such an assignment, deliberately placed Yaindl in a potentially "disruptive" environ-

154. *Id.* at 566-68, 442 A.2d at 614-16. Yaindl's criticism of the product antagonized Burns. Approximately six weeks after Yaindl's report, Burns, who had previously been friendly to Yaindl, asked him into his office and cursed him for writing his report and sending it to all the department heads. During the meeting, Yaindl accused Burns of falsifying the inspection reports. Upper management entered to mediate between them. Subsequent meetings between Burns and Yaindl also required mediation by upper management. *Id.*

155. *Id.* at 567, 422 A.2d at 614-15.

156. *Id.* at 567-68, 422 A.2d at 616.

157. *Id.* at 578-80, 422 A.2d at 620-21.

158. *Id.* at 566-67, 422 A.2d at 614.
ment and patiently waited for the result.\textsuperscript{159} Another possibility is that Burns, upon learning that Yaindl was going to be assigned to him, made his own plans on how to rid himself of a constant reminder that he had been accused of falsifying test results. But, even if Burns' actions had such a personal motive,\textsuperscript{160} the fact that his act was later sanctioned by the defendant-employer returns the liability for discharge to the defendant.\textsuperscript{161} Thus, despite Judge Spaeth's conviction that reasonable minds could not differ as to the reason for Yaindl's dismissal, the facts of the case present two plausible causes for Yaindl's discharge, one legitimate, the other not. Yaindl should have been reversed and remanded to allow a jury to decide the disputed issues of fact.

\textbf{B. The Proposed Legislation}

Today, the law in Pennsylvania in regard to at-will employees remains relatively unchanged. The reluctance of the supreme court to delineate what it considers to be a "recognized facet of public policy" has left advocates and employees in a situation virtually identical to one they found themselves in one hundred years ago. In an apparent response to the Geary decision and those which followed suit by narrowly construing the public policy exception, State Representative James Manderino submitted a bill to the Pennsylvania House of Representatives on July 1, 1981, House Bill

\textsuperscript{159} See supra note 137. The defendant knew that Yaindl's report antagonized Burns, and responded by removing Yaindl from the project. During the period in which these events occurred, the decision to transfer Yaindl to work under Burns was made. 281 Pa. Super. at 566-67, 422 A.2d at 614-15. It seems too coincidental that of all the field representatives who worked for defendant, Yaindl was the one chosen to work under Burns. The fact that the reassignment of Yaindl to work under Burns, a man with whom the plaintiff clearly could not work, was made by the defendant with the knowledge of their animosity, is certainly a point of consideration which a jury would weigh in determining the true motivation behind Yaindl's transfer and subsequent discharge.

\textsuperscript{160} When an employee acts solely for his own personal benefit in discharging another employee, the employer is not liable. See Campbell v. Ford Indus., 274 Or. 243, 252-58, 546 P.2d 141, 147-50 (1976). See generally Howard v. Zaney Bar, 369 Pa. 155, 85 A.2d 401 (1952) (an employer is not presumed liable for every act of an employee even though the act is a means of accomplishing an authorized result; the act may be deemed so outrageous and/or privately motivated that it is outside the scope of employment).

\textsuperscript{161} An agent of the defendant conducted an investigation of the plaintiff's dismissal. After this investigation, the company advised the plaintiff that his dismissal was deemed proper. 281 Pa. Super. at 570, 422 A.2d at 616. The company, therefore, adopted or ratified the actions of Burns. See, e.g., Evans v. Ruth, 129 Pa. Super. 192, 195 A. 163 (1937) (ratification is the affirmation by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act is given effect as if originally authorized by him).
1742, to protect employees against unjust dismissal.\textsuperscript{162} House Bill 1742 was a broad, all encompassing attempt to resolve the dilemma of the employee-at-will by requiring all employers to terminate only for "just cause."\textsuperscript{163} However, this bill suffered the fate of most bills proposed by a minority representative when there is no lobby to fight for its passage; it died in committee.

House Bill 1742 would have caused a change more drastic than any which could be conceived under the general public policy exception. It mandated written notice to an employee, within fifteen days after termination, setting forth all the reasons for discharge.\textsuperscript{164} The employee would have thirty days in which to file a complaint with the labor bureau from the date of receipt of notice or within thirty days after the initial fifteen day notice waiting period, whichever occurred first.\textsuperscript{165} Upon receipt of the complaint by the bureau, a mediator would be appointed to assist the employee and employer in resolving the dispute.\textsuperscript{166} If the dispute was not resolved within thirty days after the commencement of the mediation procedure, the employee could request an extended period of mediation if he or she thought a peaceful resolution could be had. If not, then the employee could request the bureau to arrange for a hearing of binding arbitration to resolve the matter.\textsuperscript{167} If binding arbitration were requested, a hearing date would be set within sixty days from the date of the appointment of the arbitrator. The arbitrator would then have thirty days in which to render a decision and an opinion.\textsuperscript{168}

The remedies under House Bill 1742 included, but were not limited to, sustaining the discharge, reinstating the employee with no, partial, or full back pay, and severance pay.\textsuperscript{169} House Bill 1742 also provided for limited judicial review to determine questions of jurisdiction and whether or not the award was the result of fraud, collusion or other similar unlawful means.\textsuperscript{170} Further, the employee could have petitioned the court to order the award paid if the employer refused to comply with the arbitrator's decision. It also provided that an employer who refused to comply with the court en-

\textsuperscript{163} Id. § 3(a).
\textsuperscript{164} Id. § 3(b).
\textsuperscript{165} Id. § 4(a), (b).
\textsuperscript{166} Id. § 5(a).
\textsuperscript{167} Id. §§ 5(b), 6(a).
\textsuperscript{168} Id. §§ 6(b), 7(a).
\textsuperscript{169} Id. § 7(b)(1)-(3).
\textsuperscript{170} Id. § 9.
Employment-at-Will enforcement order was subject to contempt charges and could have been fined in an amount not to exceed two-hundred fifty dollars per day.  

Interestingly, the bill specifically excluded from the definition of employees those employees who were protected by a collective bargaining agreement, civil service employees, and those persons having a written employment contract for two years or more. It further provided that the proposed act would not supersede an employer's grievance procedure if that procedure provided for an impartial, final and binding arbitration of discharge-related grievances and the procedure met the standards of the bill.

However, five shortcomings appeared on the face of the bill. First, it did not define "just cause." Second, it did not indicate who should bear the costs of the mediator and/or arbitrator. Third, it appeared to place the burden of proof upon the employer. Fourth, it did not distinguish as to employer size. Fifth, it did not exclude actions against employers for which the employee already had an adequate statutory remedy at law, such as racial, sex or age discrimination. Thus, under House Bill 1742 the employer may have been forced into a vulnerable position, one which he would not have experienced under the general public policy exception. Since House Bill 1742 died in committee, Representative Manderino could make a few revisions prior to resubmission. These revisions would make House Bill 1742 a more effective piece of legislation from which both the employer and employee could determine their stance.

For example, "just cause" could be defined in a manner similar to the now defunct United States House Bill 7010, with a few pertinent changes, as follows: "Just cause" shall be defined in accordance with the common law of labor contracts established pursuant to section 301 of the National Labor Relations Act, except that "just cause" shall not include (A) the exercise of a constitutional, civil, or legal right; (B) the refusal to engage in or acquiesce in unlawful conduct as a condition of employment; (C) the refusal to submit to polygraph or other similar tests; (D) the refusal to submit to a search of one's person or property, other than routine inspections, conducted by an employer without legal process; (E) refusal to commit or acquiesce in acts which detrimentally affect

171. Id. § 10.
172. Id. § 2.
173. Id. § 11.
174. See supra note 54.
the health, safety and welfare of the general public." In addition, some affirmative examples of "just cause" could be given, such as repeated, unexcused tardiness or absences; insubordination; procurement of job by fraud or deceit; intoxication on the job; behavior, both on and off the job, which adversely reflects on the employer's business reputation; gross incompetence; unreasonable refusal to perform an assigned task; exposing the employer to criminal and/or civil liability; and economic business necessity. With "just cause" thus defined, both the employer and employee will be on sufficient notice as to whether their behavior is protected by the statute.

The act should provide that the costs should follow the verdict and add a punitive provision authorizing allowance of attorney's fees if the losing party's conduct is found to be outrageous. This would make employees think twice about filing a frivolous complaint and cause the employer to make certain of his reasons before terminating an employee. Additionally, the burden of proof should clearly be on the employee not the employer. The employee would have to show that his or her dismissal was without cause as defined by the act and would have to proffer and support the reason or reasons he or she believes was the true cause for dismissal. The employer would then be given an opportunity to rebut the employee's allegations. Without this safeguard, the employer would be presumed guilty before being proved innocent.176

Further, the act should not be applicable to all employers. Small businesses, those with five or less employees unrelated to the owner, should be exempt. This limitation could be likened to the exception provided for in the Federal Civil Rights Act of 1964,176 where the "small" landlord is specifically excluded from its provisions.177 Finally, the act should specifically exclude actions against

175. Although worker's compensation laws impose liability without fault, there is no compelling reason to do so in wrongful discharge cases. Thus, the employee should bear the burden of proof as he or she would have done had the case been brought in a court of law.
177. The Civil Rights Act makes unlawful discrimination "because of race, color, religion, sex, or national origin," 42 U.S.C. § 3604(a), in the sale or rental of housing that is "owned or operated by the Federal Government," or financed or supported by various government programs, id. § 3603(a)(1)(A), (C). The act is also applicable to all other dwellings, except "any single family house" when its owner then "does not own" nor have "any interest in . . . more than three such . . ." and the private owner does not use a real estate broker, or advertising that states a discriminatory preference, id. § 3603(b)(i). Section 3603(b)(2) further exempts "rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence."
employers for which there is already an adequate statutory remedy such as racial, sex or age discrimination. This is necessary to limit the arbitrator's case load and to ensure that such questions are handled by those agencies with specific subject matter expertise who have the means to investigate fully the accusations which are made.

It must be noted, however, that even in its original form, House Bill 1742 would have been a workable reform act which would have provided needed relief to at-will employees in Pennsylvania. Although it lacked certain details, mediators and arbitrators would have had a wealth of decisions from which to draw the definition of "just cause." In view of this, it is possible that Representative Manderino's decision not to include a definition of "just cause" was deliberate, not accidental. Further, while the other proposed modifications would have made the bill more palatable to employers, their absence was not fatal. However, since House Bill 1742 died in committee, and the prospect of its resubmission is unlikely in view of the lack of organized support, the burden ricochets back to the courts.

V. CONCLUSION

In Geary, the majority discussed the problems it experienced in

Id. 178. See, e.g., Lowenstein v. President and Fellows of Harvard College, 319 F. Supp. 1096 (D. Mass. 1970) (employee inefficiency is just cause for dismissal); Texas Employment Comm'n v. Ryan, 481 S.W.2d 172 (Tex. Civ. App. 1976) (employee dishonesty is just cause for dismissal). For a more complete overview of the wide scope of activities found to be just cause for dismissal, see the topical index to LAB. L. REP. (CCH) at 13,271-73.

179. St. Antoine, You're Fired!, 10 HUM. RTS. 32 (Winter 1982). Mr. St. Antoine believes that, if the at-will rule is eliminated by a statute requiring the just cause standard, "just cause" should not be defined. He stated that it is possible that the definition would suffer from underinclusiveness and that experienced arbitrators or other tribunals of law which will hear the case are more than qualified in interpreting and recognizing "just cause." Id. at 36-37, 53.

On June 22, 1982, the International Labor Organization, in an attempt to alleviate the harshness of the at-will termination doctrine through a statutory scheme, ratified a Convention on Termination of Employment. The Convention, which is a binding rule on those countries which ratified it, provides in pertinent part: "The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service." INTERNATIONAL LABOR CONFERENCE 1982, Convention on Termination of Employment, Art. 4. The full text of this Convention can be found in The Employment-at-Will Issue, LAB. REL. REP. (BNA Spec. Report) at 72 (Nov. 22, 1982). Perhaps such a statement-like definition of "good cause" would be best. This would leave arbitrators free to weigh the facts on a case by case basis.

180. See supra note 105 and accompanying text.
dealing with a cause of action for wrongful discharge. Two of the reasons for the Pennsylvania Supreme Court's caution are not new to the judicial arena. The court was first concerned that the granting of a cause of action for wrongful discharge would create a "heavy burden on our judicial system."\(^{181}\) The court's second concern was that "thorny problems of proof would be presented."\(^{182}\) Acknowledging that these alone were insufficient to deny a cause of action, the Geary court asserted that its greatest concern was the "possible impact of such suits on the legitimate interests of employers in hiring and retaining the best personnel available."\(^{183}\)

Admittedly, the primary concern of any court that considers a cause of action for wrongful discharge should be developing a rule which affords the at-will employee a certain stability of employment but which does not interfere with the employer's normal exercise of his right to discharge.\(^{184}\) The question thus becomes which standard will do the most justice without unduly restricting the employer's normal exercise of its right to terminate.

Of the three exceptions presently considered by the courts, the good faith standard appears to offer the most job security to the at-will employee.\(^{185}\) However, it may be more susceptible to abuse by disgruntled employees,\(^{186}\) and thus place an unreasonable financial burden on the employer.\(^{187}\) Further, it is possible that the

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\(^{181}\) 456 Pa. at 181, 319 A.2d at 179.

\(^{182}\) Id.

\(^{183}\) Id.


\(^{185}\) The courts have not considered implementing the "good cause" standard which would be the epitome of job security for the at-will employee. The closest any court has come to adopting this standard was Cleary v. American Airlines, Inc., 111 Cal. App. 3d 443, 168 Cal. Rptr. 722 (1980). In Cleary, the California Court of Appeal described the "good faith" standard as one which varies according to the circumstances of employment. The Cleary court said that an employer's subjective dissatisfaction with a long-term employee's performance would not be a sufficient reason for termination under the "good faith" test. Id. at 449, 168 Cal. Rptr. at 729-30. This implies that the longer a person is employed, the closer the "good faith" standard approaches "good cause." However, this would not affect the termination of a short-term employee who had been discharged in good faith without cause. Thus, the "good faith" standard affords less protection to the at-will employee than the "good cause" standard.

\(^{186}\) See Note, supra note 73, at 224.

\(^{187}\) Obviously, the costs of defending a wrongful discharge matter becomes a part of the employer's cost of doing business. To recoup the cost of doing business, employers may elect a lower profit margin, pass the increases along to the consumer of their goods or services, or offer lower salaries to their employees. Although a reasonable amount may be absorbed by a combination of these three items, excessive amounts cannot. If the cost of this protection is too unreasonable, an employer can find himself in a position where he cannot afford the quality of employees he needs to run his business efficiently, or he is unable to
“good faith” standard would translate into “good cause” in the minds of the jury\textsuperscript{188} as well as in the minds of the judiciary.\textsuperscript{189} Since the good faith standard implies an action for breach of contract, it is possible that an employer would be called upon to defend a cause of action for wrongful discharge up to six years after the discharge has occurred.\textsuperscript{190} Thus, if the good faith standard is to be imposed upon the employer, it may be best left to the legislature who has the wherewithal to provide for economical administrative tribunals, as well as provide guidelines and statutes of limitations more amenable to such causes of actions.\textsuperscript{191}

Notwithstanding the fact that some courts, including those in Pennsylvania, have relied upon the strict public policy exception based on explicit statutory or constitutional provisions,\textsuperscript{192} such an exception renders very little security to the at-will employee. As shown in the above discussion of Geary,\textsuperscript{193} there were statutes upon which a cause of action could have been based. Nevertheless, Geary found himself out of court and out of a job without recourse.\textsuperscript{194} Geary was not the only wrongfully discharged employee who suffered from the application of the strict public policy exception. The Hinrichs plaintiff, who refused to falsify hospital records,\textsuperscript{195} and the Ivy plaintiff, who refused to commit perjury at

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188. See Blades, supra note 5, at 1431.
190. Pennsylvania has a six year statute of limitations for all assumpsit actions not controlled by the Uniform Commercial Code. 42 PA. CON. STAT. ANN. § 5527 (Purdon 1981). This period seems unreasonably long to apply to contract actions based on a breach of an employment at-will. Generally when an action for breach of contract is brought, there is a written expression of the intention of the parties. Since there is no written contract in at-will situations, a shorter statute of limitations seems needed to ensure that memories and witnesses have not faded over the lapse of time.
191. See H.B. 1742, supra notes 162-73 and accompanying text. House Bill 1742 placed a 45 day maximum statute of limitations on the bringing of a wrongful discharge action. Although this is short, it is not unreasonable in view of the fact that an employee should know on the date of discharge whether he feels his discharge was made in bad faith.
192. See supra notes 74-92 and accompanying text.
193. See supra notes 111-26 and accompanying text.
194. Id.
195. See supra notes 101-02 and accompanying text.
his employer's behest, also found themselves without recourse from terminations which clearly violated general public policy. Thus, the strict public policy exception appears to be as disadvantageous to the employee as the good faith standard would be to the employer. Since it is the proper balancing of an employee’s interest in maintaining his job and the employer’s interest in exercising his normal right of termination which is sought in wrongful discharge matters, both the good faith and strict public policy exceptions must be discarded as inadequate.

The general public policy exception seems to be the best suited for satisfying both the needs of the employer as well as the needs of the employee. General public policy, that underlying current in statutory, constitutional, and common law, can be easily recognized. It is with us in our everyday lives and is basically anything which concerns the health, safety and welfare of the citizens of a state. Courts which have employed the general public policy exception have recognized causes of actions for employees who were terminated for cooperating with law enforcement officials, for seeking to have their employer comply with state banking laws, and who refused to participate in an alleged price fixing scheme.

We are living in an age of apathy where American employees have been accused of not caring about the quality of their work.

196. See supra note 76.
197. Under the strict public policy exception, the plaintiffs in Harless and Palmateer would have found themselves without recourse because there was no statute which specifically protected “citizen crime fighters” or “citizen consumer protectors.” Fortunately, the Harless and Palmateer courts employed the general public policy exception and granted a cause of action for employees whose actions were clearly designed to inure a benefit to society as a whole. See supra notes 93-96 and accompanying text. Additionally, it is not known whether Geary’s public policy exception will extend to terminations made in retaliation for filing a worker’s compensation claim. Pennsylvania Worker’s Compensation Statute, Pa. Stat. Ann. tit. 77, §§ 1-1603 (Purdon 1952 and Supp. 1982-1983), does not provide an express remedy against such retaliation and no case on this issue has been reported from any of the Pennsylvania courts as yet.
198. When addressing the issue of what constitutes public policy, the Illinois Supreme Court, in Palmateer v. International Harvester Co., 85 Ill. 2d 124, 421 N.E.2d 876 (1981), stated:

There is no precise definition of the term. In general, it can be said that public policy concerns what is right and just and what affects the citizens of the state collectively. It is to be found in the state’s constitution and statutes and, when they are silent, in its judicial decisions.

Id. at 131, 421 N.E.2d at 878.
199. Id.
Given the strict enforcement of the at-will rule in the past, it is possible that American employees have been lulled into this complacency from fear for their job. Even if they know there is a defect in the product which they are making or selling, history has proven that it is best to keep quiet and follow instructions. If a general public policy exception to the at-will rule were recognized, benefits would flow to both employer and employee alike. It would promote and maintain good personnel relations and thus result in fewer turnovers in staff. Fewer turnovers would result in less time and money spent on training and more time spent productively. A general public policy exception will give employees some sense of stability in their job and encourage the employee to bring defects to their employer's attention. This will inure a benefit to the safety of the consuming public. In addition, a general public policy exception will prevent employees from being economically coerced into refraining from reporting to law enforcement officials illegal conduct on the part of fellow employees or their employer. Again, this will benefit the public at large which has an interest in bringing criminals to justice.

This commentator supports the recognition of a cause of action for wrongful discharge based on general public policy considerations which are reflected in every day life and the common law, as well as those espoused by statute and the constitution. Generally, any conduct of an employer which offends or infringes upon the policies of a state regarding public health, safety and welfare should be actionable. The employer is already familiar with the various "whistle-blowing" statutes of both federal and state government. The public policy exception would be comparable to a "whistle-blowing" provision implied by law. Further, the employer would have the opportunity to rebut an employee's charge by proving a separate, plausible, legitimate reason for the discharge. The factual question would be one for the jury, however.

By granting a cause of action for wrongful discharge based on these grounds, the courts would not guarantee an employee the right to unfettered behavior in the work place. It would simply provide a means of redress when his employer's actions were un-

203. In Howard v. Dorr Woolen Co., 120 N.H. 295, 414 A.2d 1273 (1980), the New Hampshire Supreme Court described when the public policy exception is applicable. It should be applied "to a situation where an employee is discharged because he performed an act that public policy would encourage, or refused to do that which public policy would condemn." Id. at 297, 414 A.2d at 1274.
conscionable in view of the public policy of this state. When such obvious abuses exist, it is the duty of the courts, the creators of the at-will rule, to provide protection against such abuses to those employees harmed.

Dolores Jacobs Krawec