

MICHIGAN PUBLIC POLICY CLAIMS ALLEGING UNLAWFUL DISCHARGE MAY BE PREEMPTED BY STATE OR FEDERAL LAW

In August 2022, in [this post](#), we alerted Michigan employers defending wrongful discharge claims in violation of public policy that *internal*, as well as external complaints, will suffice to support such claims. In facts stemming from the same case (after remand from the Michigan Supreme Court), Michigan employers should also recognize that wrongful discharge claims in violation of public policy may be preempted (i.e., dismissed) where other applicable statutory prohibitions against discharge exist.

The Plaintiff initiated a lawsuit, alleging that FCA US, LLC and a staffing agency were his joint employers and each unlawfully discharged him in violation of the Whistleblowers' Protection Act ("WPA") and in violation of public policy. Prior to initiating his lawsuit, and prior to his separation of employment, Plaintiff filed a complaint with the Michigan Occupational Safety and Health Administration ("MIOSHA"), which complaint he later withdrew.

After his claims were dismissed and affirmed on appeal, he appealed to the Michigan Supreme Court. The Michigan Supreme Court directed the Court of Appeals to consider whether the plaintiff's "public policy claim" was "preempted by either state or federal law." The Supreme Court's Order is available [here](#).

With respect to Plaintiff's public policy claim, the Court of Appeals affirmed dismissal (opinion available [here](#)) stating: "MIOSHA and OSHA [Occupational Safety and Health Administration] both prohibit retaliatory discharge and thus preempt plaintiff's public-policy claim." Additionally, the Court of Appeals held "preemption" and dismissal of wrongful discharge claims in violation of public policy are appropriate where WPA claims are also brought - the reason being the WPA contains "a specific prohibition against retaliatory discharge."

PRACTICAL TAKEAWAY

For employers defending wrongful discharge claims in violation of public policy (one of the exceptions to the employment-at-will doctrine), the Michigan Court of Appeals has made clear that where a statute exists explicitly prohibiting an adverse employment action, that statute is the exclusive remedy for a plaintiff and no other "public policy" claims for wrongful discharge can be maintained.

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