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Failure to Renew Contract is Not Actionable under Whistleblower Protection Act

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According to a recent decision from Michigan's highest court, failure to renew a contract of employment is not considered an adverse action and is afforded no protection under the Michigan Whistleblower Protection Act ("WPA"). Michigan Supreme Court Justice Brian Zahra ruled that renewal of a contract is considered a new application process and employers are entitled to decide not to renew a contract for employment as long as it isn't discriminatory.

SECREST WARDLE NOTES:

***Wurtz* provides guidance for employers, including municipalities, who are faced with a whistle-blowing employee who is employed under a fixed-term contract. Failure to renew a contract of employment is not considered an adverse action and does not get protection under the WPA as long as the employer considers the pros and cons of engaging the applicant for a new employment term. During the contract period, if an employer decides to terminate a contract employee who has made complaints, it is imperative that the employer refrain from any adverse action against the employee because it may be construed as retaliation, and may subject them to civil liability.**

In *Wurtz v Beecher Metropolitan District*, __ NW2d__, rel'd 4/25/14 (No. 146157) a former district administrator, Richard Wurtz, filed a lawsuit against his former employer, Beecher Metropolitan District, and its board members, in the Genesee County Circuit Court, claiming wrongful termination in violation of the WPA. Wurtz began his tumultuous tenure on February 1, 2000, and served until February 1, 2010. During his employment, he sent letters to public officials alleging that members of the district's board had violated the Open Meetings Act. Wurtz also notified the sheriff's department and newspaper regarding the alleged improprieties in reimbursement to the board for attendance at an out-of-state conference. Prior to the expiration of his contract, the board voted not to renew his contract; however, the board did allow him to complete his 10-year term with salary and benefits.

The Court discussed the WPA under MCL 15.362, which encompasses the following elements that plaintiff must demonstrate to make out a prima facia case that the employer violated the WPA: (1) the employee was engaged in a protected activity listed in the WPA, (2) the employee was discharged, threatened, or otherwise discriminated against regarding his or her compensation, terms, condition, location, or privileges of employment, and (3) the casual connection existed between the employee's protected activity and the employer's act of discharging, threatening, or otherwise discriminating against the employee. The WPA applies only to individuals who experience one or more of the statute's enumerated adverse employment actions with respect to their status as employees.

The Court determined that during Wurtz's 10 years as an employee, when he was protected under the WPA, he endured no adverse action as he was not discharged, threatened, or discriminated against. He served the entire duration of his contract and received his salary and every benefit he was entitled to. Accordingly, the Court found

that Wurtz had no recourse against the district or its board members for the non-renewal of his contract because he only alleged that his former employer declined to renew his contract and did not allege that any adverse action was taken against him during his contract term.

The Court reversed the Court of Appeals, holding that the WPA has no application in the hiring context and does not apply when an employer declines to renew a contract employee's contract. A contract employee seeking a new term of employment should be treated the same as a prospective employee, for which the WPA affords no protection. A failure to renew without taking action during the contract term is not a viable basis for a claim under the WPA.

The Court reasoned, that the "employer must weigh the pros and cons of engaging the applicant for a new employment term, just as an employer must weigh the pros and cons of hiring a person in the first place. And as with any employment decision, the employer can make its decision for good reasons, bad reasons, or no reasons at all, as long as the reasons are not unlawful, such as those based on discrimination."

In this case, Wurtz failed to allege any discriminatory action or any adverse action other than the non-renewal of the contract. The employer's act of not interfering with the contract while it was in existence was a key component to there being no liability found in this case.

Finally, it is important to note the difference in protections afforded to an at-will employee versus a contract employee. *Wurtz* has no impact on at-will employees. At-will employees are afforded protection under the WPA, while contract employees are not.

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