DEVELOPMENTS IN INDIANA EMPLOYMENT LAW

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INTRODUCTION

Is Indiana still an employment-at-will state? When does the Indiana Statute of Frauds invalidate an oral employment contract? Does the National Labor Relations Act trump the Americans With Disabilities Act? This Article will focus on the foregoing labor and employment law questions which were addressed by Indiana state and federal courts during the survey period.

I. EMPLOYMENT-AT-WILL IS ON LIFE SUPPORT

Indiana continues to follow "the doctrine of employment at will, under which an employment relationship may be terminated by either party at will, with or without reason."[1] However, the numerous exceptions to Indiana's employment-at-will doctrine combine arguably to nullify the doctrine. These exceptions to the doctrine can be categorized broadly as public policy exceptions,[2] contractual exceptions,[3] and statutory exceptions.[4] Because the Indiana General Assembly has

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1. Wior v. Anchor Indus., Inc., 669 N.E.2d 172, 175 (Ind. 1996) (citations omitted).

2. *See* Frampton v. Central Ind. Gas Co., 297 N.E.2d 425 (Ind. 1973) (recognizing employment-at-will exception where employee is discharged for exercising statutory right to file workers' compensation claim); McClanahan v. Remington Freight Lines, Inc., 517 N.E.2d 390 (Ind. 1988) (recognizing exception to employment-at-will where employee is discharged for refusing to violate statutory duty to which the employee could be held personally liable). In *Wior*, the supreme court refused to expand the *Frampton* exception to protect managerial employees "who are themselves discharged for refusing to terminate subordinate employees with worker's compensation claims." *Wior*, 669 N.E.2d at 177.

3. *See* Romack v. Public Serv. Co., 511 N.E.2d 1024 (Ind. 1987) (*see infra* notes 13-15 and accompanying text); Jarboe v. Landmark Community Newspapers, Inc., 644 N.E.2d 118 (Ind. 1994) (promissory estoppel claim available to an at-will employee, but the remedy is limited to damages actually resulting from the detrimental reliance and does not include altering the employment status from an at-will relationship to one which requires just cause for termination).

4. Although employment-at-will employers can discharge an employee for "any or no reason," employers cannot discharge employees for a reason prohibited by statutory law. Furthermore, given the burden shifting method of proving discrimination claims, employers can in effect discharge an employee who is a member of a statutorily protected group only for legitimate, non-discriminatory, and well-documented reasons. For example, employers expose themselves to potentially significant liability if they discharge an employee for one of the following reasons: (1) protected concerted activity under the National Labor Relations Act (29 U.S.C. §§ 157-169 (1994)); (2) race, color, sex, religion, or national origin (42 U.S.C. § 2000e-2 (1994)); (3) age (age 40 or over) (29 U.S.C. §§ 623, 631(a) (1994)); (4) disability (42 U.S.C. § 12112 (1994)); (5) wage garnishment (15 U.S.C. § 304 (1994)); (6) filing safety complaints under the Indiana Occupational Safety and Health Act (IND. CODE § 22-8-1.1-38.1 (1993)).

been unwilling to enter the employment-at-will fracas, the Indiana Supreme Court has determined what remains of the doctrine. The court made its most recent decision affecting the employment-at-will doctrine in *Wior v. Anchor Industries, Inc.*[5]

A. Independent Consideration Required to Defeat Employment-At-Will

In *Wior*, the court confirmed that in Indiana where there is no enforceable argument to the contrary, an employer-employee relationship is terminable at the will of either party, with or without reason.[6] The parties may, of course, convert their at-will employment relationship to one in which the employer must have good cause to terminate the employee.[7] The court noted that, "[a]s a general rule, Indiana employment relationships are terminable at the will of either party. If an employee gives independent consideration for an employment contract, however, the employer may terminate the employee only for good cause without incurring liability for its action."[8]

In *Wior*, the court recognized that it has previously "identified fact scenarios in which the employee's act or forbearance might provide adequate independent consideration sufficient to support an employment contract terminable only for good cause."[9] Under Indiana law, an employee may provide adequate consideration to establish an employment contract by (1) giving up a competing business to accept employment,[10] (2) conveying something of value to the employer in exchange for employment,[11] or (3) releasing the employer from liability on a personal injury claim.[12]

Furthermore, in *Romack v. Public Service Co.*,[13] the supreme court held that Romack demonstrated adequate independent consideration to establish an employment contract which required cause to terminate his employment where Romack:

> (1) was uniquely qualified for the position he filled with the employer by reason of his twenty-five years of training with the Indiana State Police, including his training in nuclear accident, SWAT team, bomb disposal, and similar security procedures;
> (2) had "lifetime employment" with the Indiana State Police;
> (3) was recruited by the employer to fill a position uniquely requiring a person possessing precisely the skills and abilities he had developed over his twenty-five years with the Indiana State Police;

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5. 669 N.E.2d 172 (Ind. 1996).
6. *Id.* at 175.
7. *Id.* (citations omitted).
8. *Id.* (citations omitted).
9. *Id.*
10. *See* Ohio Table Pad Co. v. Hogan, 424 N.E.2d 144, 146 (Ind. Ct. App. 1981).
11. *See* Mt. Pleasant Coal Co. v. Watts, 151 N.E. 7 (Ind. App. 1926) (en banc).
12. *See* Toni v. Kingan & Co., 15 N.E.2d 80 (Ind. 1938).
13. 511 N.E.2d 1024 (Ind. 1987).

> (4) advised the employer that he would leave his present position only if the new job offered the same permanency of employment, advancement and benefits; and
> (5) was told by the employer that he would have "permanent employment" if he accepted work with the employer.[14]

The court held that an employee is not an at-will employee if the employer knew the employee had a job "with assured permanency (or assured non-arbitrary termination policies)," and the employee only accepted the new job upon receiving assurances from the new employer guaranteeing similar job protection and termination policies.[15]

However, the *Wior* court recognized that:

> [t]he acts and actions involved in moving one's household to a new location, while sufficient to constitute consideration for an agreement to provide moving allowances or expenses, will not constitute independent consideration to support a contract of permanent employment so as to impose the requirement of good cause upon the right to terminate the employee.[16]

Furthermore, an employee's relinquishment of an "existing job, business, or profession, without more," will not result in a termination-for-good-cause relationship.[17]

> [T]he reason for this view is that in moving and/or giving up her prior job, the employee is merely placing herself in a position to accept the new employment. There is no independent detriment to the employee because she would have had to do the same things in order to accept the job on any basis, and there is no independent benefit bestowed upon the employer.[18]

Generally, where an employee pursues employment, and no other compelling consideration exists, the employment relationship will be at-will and terminable by either party for any or no reason.[19]

In *Wior*, the employee contended that he provided adequate independent consideration to convert his at-will employment relationship to one requiring good cause for discharge.[20] He "relocated himself and his family to Evansville, agreed to subject himself to dismissal should he do work for a competitor, and gave up

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14. *Romack*, 511 N.E.2d 1024, 1026 (Ind. 1987) (adopting and incorporating Romack v. Public Serv. Co., 499 N.E.2d 768, 776-77 (Ind. Ct. App. 1986) (Conover, J., dissenting)).
15. *Romack*, 499 N.E.2d at 778 (Conover, J., dissenting).
16. *Wior*, 669 N.E.2d at 176 (quoting *Ohio Table Pad Co.*, 424 N.E.2d at 146).
17. *See id.*
18. *Id.* (quoting *Ohio Table Pad Co.*, 424 N.E.2d at 146).
19. *See id.* (citing *Ohio Table Pad Co.*, 424 N.E.2d at 147).
20. *Id.* at 176.

a business with good prospects for the future."[21] Additionally, the employee contended that "there was mutuality of obligation in that, just as Anchor could not terminate him, he could not quit the job."[22]

The Indiana Supreme Court concluded that Wior did not give his employer adequate independent consideration to create an employment contract.[23] Wior had been in business for only a short time, realizing relatively limited income and profits, and he had been actively seeking other positions, including the position with Anchor.[24] The court was "not persuaded by Wior's suggestion that Anchor somehow recruited him by placing a blind advertisement in a newspaper and inviting Wior for an interview."[25] Acknowledging that Wior brought unique skills to his position, the court found that "this fact alone [did] not constitute adequate independent consideration for a permanent employment contract."[26] The court concluded that "while Wior suffered some change in position in accepting the position with Anchor, any disadvantage stemming from this change did not rise to that level of independent consideration necessary to [establish an employment contract] requir[ing] cause for termination."[27]

The supreme court's decision in *Wior* leaves Indiana employees, employers, and their attorneys knowing only that the facts in *Romack* were sufficient to establish independent consideration for an employment contract, while the facts in *Wior* were not. Although the *Wior* decision did not specifically expand the *Romack* "independent consideration employment contract" exception to the employment-at-will doctrine, it did state that the *Romack* facts were not a "strict recipe" for independent consideration necessary to establish an enforceable employment contract. Stated otherwise, the supreme court has left the door open to find "independent consideration" sufficient to form an enforceable employment contract whenever the courts determine that the facts are "compelling."[28]

The uncertainty brought about by the *Wior* and *Romack* cases should lead employers to be cautious about any representations they make to potential employees. In addition, if an employer intends an at-will employment relationship, employers should require every employee to expressly acknowledge, in writing, that the employee is an at-will employee.[29] Likewise, an employee should insist that the employer put the termination-for-cause-only status in writing if that is the employment relationship the employee intends. Therefore, while the *Wior* decision leaves the breadth of the contractual employment-at-will exception

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21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.* at 177.
27. *Id.*
28. *Id.*
29. Employers typically have employees acknowledge their employment-at-will status by signing at-will "disclaimer" statements contained in the employer's employment application and/or employee handbook receipt.

in question, employees and employers should remember that clarity and certainty concerning their employment relationship is best secured through carefully drafted statements of the parties' intent.

B. Employee Handbooks Can Produce Employment Contracts and Defeat the Employment-At-Will Status of Employees

In *Orr v. Westminster Village North, Inc.*,[30] the Indiana Court of Appeals may have further restricted the employment-at-will doctrine when it expanded the right of terminated employees to attack the employment-at-will doctrine based on the theory that an employee handbook can form terms of an enforceable employment agreement between the employer and employee. In *Orr*, the employer adopted an employee handbook which included provisions for job security and promotion, a progressive discipline system, and a grievance procedure to challenge disciplinary actions.[31] Like most employers, Westminster issued the handbook to all new employees who had to sign "receipts" indicating that they had read the handbook.[32] In *Orr*, three employees who were fired for misconduct, filed a lawsuit alleging that their discharges breached their employment contracts.[33]

The terminated employees argued that the handbook was part of their employment contracts.[34] The employees contended that these contracts were breached when their employer fired them without following the discipline and grievance procedures outlined in the handbook.[35] They further contended that they could only be discharged for the offenses described in the handbook and only in strict conformity with the handbook's grievance procedures.[36] The employer maintained that the handbook was not an employment contract and that the employees were at-will employees who could be discharged without cause.[37]

In *Orr*, the court held that an employee handbook can become part of the employment contract between an employer and its employees if the employees "reasonably relied upon it as a term of their employment when they began work."[38] The court adopted a three-part test to make this determination: (1) "the language of the policy statement must contain a promise clear enough that an employee would reasonably believe that an offer had been made"; (2) "the statement must be disseminated to the employee in such a manner that the employee is aware of its contents and reasonably believes it to be an offer"; and (3) "the employee must accept the offer by commencing or continuing to work after learning of the policy

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30. 651 N.E.2d 795 (Ind. Ct. App. 1995), *trans. granted*, (Ind. Jan. 31, 1996).
31. *Id.* at 797.
32. *See id.*
33. *Id.*
34. *Id.* at 798.
35. *Id.* at 799.
36. *Id.*
37. *Id.*
38. *Id.* at 801.

statement."[39]

The *Orr* court circumvented the "independent consideration" issue addressed in *Romack* and *Wior*,[40] by determining that the evidence supported the employees contentions that they had performed their part of the employment agreement in reliance on the employer's promises contained in the employee handbook.[41] Accordingly, the court concluded the employees could have an enforceable unilateral contract regardless of whether the employees had provided adequate independent consideration for an employment contract under *Romack*.[42] Therefore, under *Orr*, an employee who begins to work for an employer, in reliance on the promises of the employer, can have an enforceable employment contract. *Orr* is written so broadly that almost every employer who has any sort of employment handbook or policy which restricts the employer's disciplinary or termination decisions could be subject to an *Orr* type claim.[43]

The Indiana Supreme Court granted transfer in *Orr* and heard oral argument in February 1996. As of the writing of this Article, the supreme court has not issued its decision in *Orr*. If the *Orr* decision is not overturned or severely restricted, Indiana's employment-at-will doctrine will lose much of its impact on Indiana employment law.

C. At-Will Employers Must Exercise Good Faith and Fair Dealing

In *Weiser v. Godby Bros.*, the Indiana Court of Appeals further weakened employment-at-will doctrine when it apparently imposed a "good faith and fair dealing" duty on employers who employ at-will employees.[44] The court held that Indiana employers are under a duty to exercise good faith and fair dealing when revising terms and conditions for employee compensation.[45] In *Weiser*, the employer allegedly told the employee to sign a new sales commission contract "or clean out your desk and you will be fired."[46] The employee claimed he was under the impression that he would not be paid $5000 of his previously earned commissions if he refused to sign the contract regarding future commissions.[47]

The court held that even if the employee was an at-will employee, the sales

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39. *Id.*

40. *See supra* notes 13-29 and accompanying text.

41. *Orr*, 651 N.E.2d at 800-01.

42. *Id.*

43. The *Orr* court did not address whether the employee handbook at issue contained an employment-at-will disclaimer, or whether such a disclaimer would be sufficient to prevent an employee from relying on the handbook under the court's previously noted three part test.

44. 659 N.E.2d 237 (Ind. Ct. App. 1996), *trans. denied.*

45. *Id.* at 239-40 (citing Prudential Ins. Co. v. Crouch, 606 F. Supp. 464 (S.D. Ind. 1986), *aff'd*, 796 F.2d 477 (7th Cir. 1986)).

46. *Id.* at 239.

47. *Id.* This contract excused the employer from paying commissions after the employee's termination.

commission contract was subject to the good faith and fair dealing requirement.[48] Therefore, if the contract was the result of undue influence and bad faith (a question for the trier of fact), it could be unenforceable. Although the decision does not directly impose a good faith and fair dealing limitation on the employer's right to discharge at-will employees, it nevertheless opens the door for employees to claim that employers must exercise good faith and fair dealing whenever the employer changes any term or condition of employment.

"Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement."[49] The *Weiser* court concluded that the foregoing concept was applicable to employment compensation contracts.[50] However, it left unanswered the question of whether other terms of an at-will employment relationship, that are not covered by a specific compensation agreement, will be subject to the good faith and fair dealing requirement. As such, this decision could lead employees to claim that employers have a general duty of good faith and fair dealing in an employment-at-will relationship. If Indiana courts agree with this position, then Indiana's employment-at-will doctrine will essentially cease to exist.

II. STATUTE OF FRAUDS ERASES ORAL EMPLOYMENT CONTRACTS

In *Wior v. Anchor Industries, Inc.*, the supreme court also addressed when employment contracts must be in writing in order to be enforceable.[51] Indiana's Statute of Frauds invalidates

> any agreement that is not to be performed within one (1) year from the making thereof . . . [u]nless the promise, contract or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized, excepting however, leases not exceeding the term of three (3) years.[52]

In *Wior*, the employer assured the employee that the position offered was not a temporary one, but was a position in which the employee could work until a traditional retirement age, thus allowing him "20 plus" years with the employer.[53] The court of appeals held that the Statute of Frauds did not apply and, thus, a written contract was not required.[54] The court of appeals concluded that death was a contingency which renders a contract of lifetime employment fully performed

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48. *Id.*

49. *Crouch*, 606 F. Supp. at 469 (citing RESTATEMENT (SECOND) OF CONTRACTS § 205 (1981)).

50. *Weiser*, 659 N.E.2d at 240.

51. 669 N.E.2d 172 (Ind. 1996).

52. IND. CODE § 32-2-1-1 (1993).

53. *Wior*, 669 N.E.2d at 173.

54. Wior v. Anchor Indus., Inc., 641 N.E.2d 1275, 1278-79 (Ind. Ct. App. 1994), *vacated*, 669 N.E.2d 172 (Ind. 1996).

and the employee could have died within one year of entering into the contract with the employer.[55] Therefore, the court of appeals held that the employment contract was capable of being "performed" within one year and, thus, did not require a writing under the Statute of Frauds.[56]

The supreme court reversed the court of appeals' decision and concluded that the employer and employee understood that retirement in "20 plus" years would occur only at an age that the employee could not attain within one year, and therefore the Statute of Frauds required the agreement to be in writing.[57] The court further concluded that while death may serve as a contingency constituting full performance within one year "in a lifetime employment contract, death does not constitute [a possible] performance in contracts involving employment until retirement where the parties intend that the employee will retire only after a number of years greater than one."[58]

In *Wior*, the supreme court noted that if it were "to rule otherwise, the Statute of Frauds' continued vitality in service contracts would be substantially eroded."[59] The supreme court noted that "[u]nder the court of appeals' analysis, any person with a service agreement intended to span a long period of time could avoid the writing requirement of the Statute of Frauds, since death could always occur within one year."[60] The supreme court rejected "the analysis offered by the majority below as incompatible with the purposes of the Statute of Frauds [and declined] to interpret death as a contingency constituting performance in an agreement for employment" until retirement.[61] The supreme court found that "Wior's breach of contract claim [was] within the Statute of Frauds and because the contract was not reduced to writing, it was unenforceable."[62]

The points to remember in light of the holding in *Wior* are (1) that employment contracts for a period less than one year are enforceable even though they are not in writing; (2) that promises of employment for "life," even if not in writing, are nevertheless enforceable since the risk of death may serve as a contingency constituting performance within one year; and (3) employment contracts greater than one year, or until retirement if the parties understand that retirement could not occur within one year, must be in writing to be enforceable under the Statute of Frauds.

III. National Labor Relations Act Trumps Americans with Disabilities Act

During the survey period, the Seventh Circuit affirmed the decision of the

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55. *Id.* at 1278.
56. *Id.* at 1278-79.
57. *Wior*, 669 N.E.2d at 175.
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*

U.S. District Court for the Southern District of Indiana in *Eckles v. Consolidated Rail Corp.*[63] *Eckles* addresses the "important issue about the relationship between an employer's duty of reasonable accommodation under the Americans with Disabilities Act (ADA) and its duty to comply with seniority systems established by collective bargaining."[64]

Before discussing the facts and decision of *Eckles*, a brief discussion of the applicable principles of the ADA[65] and National Labor Relations Act (NLRA)[66] is in order. Subchapter I of the ADA prohibits discrimination against a qualified individual with a disability in any of the terms, conditions, or privileges of employment.[67] The ADA's definition of discrimination encompasses an employer's failure to make "reasonable accommodations" for a qualified individual with a disability without demonstrating that an accommodation would impose an "undue burden" on the employer.[68]

The ADA defines reasonable accommodations as including:

> (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
> (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modifications of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.[69]

Although the above-quoted list of reasonable accommodations under the ADA is not exhaustive, "the specific reference in the statute to reassignment to a vacant position reflects a deliberate choice—Congress did not intend to require reasonable accommodation that would include 'bumping' other employees from positions they hold."[70] However, "[t]he ADA likewise prohibits 'discrimination' defined as 'participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited under this subchapter.'"[71]

A basic principle of federal labor law is that an employer who violates a collective bargaining agreement may be challenged by an injured employee under the grievance and arbitration procedure of the collective bargaining agreement

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63. 890 F. Supp. 1391 (S.D. Ind. 1995), *aff'd*, 94 F.3d 1041 (7th Cir. 1996), *cert. denied*, 117 S. Ct. 1318 (1997).

64. *Eckles*, 890 F. Supp. at 1394.

65. 42 U.S.C. §§ 12101-12219 (1994).

66. 29 U.S.C. §§ 151-169 (1994).

67. 42 U.S.C. § 12112(a).

68. 42 U.S.C. § 12112(b)(5)(A). *See also* Vande Zande v. Wisconsin Dep't of Admin., 851 F. Supp. 353, 359 (W.D. Wis. 1994), *aff'd*, 44 F.3d 538 (7th Cir. 1995).

69. 42 U.S.C. § 12111(9).

70. *Eckles*, 890 F. Supp. at 1401.

71. *Eckles*, 94 F.3d at 1046 (quoting 42 U.S.C. § 12112(b)(2)).

and/or sued under section 301 of the Labor Management Relations Act.[72] Therefore, if an employer violates the terms of its collective bargaining agreement, even if the violation results from the employer's attempt to comply with its obligations under the ADA, the employer exposes itself to a section 301 suit by the employee who was injured by the employer's breach of contract.

In *Eckles*, the employee "demanded certain 'reasonable accommodations' under the ADA for his epilepsy, which the parties agree would have required infringement of the seniority rights of other employees under the collective bargaining agreement."[73] Initially, the employer and union agreed to place the employee in a position that he was not entitled to under the seniority provisions of the parties' collective bargaining agreement to accommodate his disability.[74] Eckles was allowed to bump an employee with more seniority so that Eckles could work in a position that met his medical restrictions.[75] "In fact, because the ADA does not require 'bumping,' Conrail and the Union initially gave Eckles more accommodation than the ADA requires when they gave him a special placement under Rule 2-H-1."[76] However, the union rescinded its agreement allowing Eckles to be placed in a position to which he was not entitled under the seniority provisions of the collective bargaining agreement.[77] Consequently, Eckles was "bumped" from his position by a more senior employee under the terms of the agreement.[78]

The first issue presented in *Eckles* is whether the ADA required the employer to provide Eckles with a "reasonable accommodation" that entailed a special job placement and job protection (against bumping) in violation of the bona fide seniority rights of other employees, when such accommodation was the only way Eckles could have returned to work.[79] Eckles also argued that his employer and union violated the ADA by participating in a contractual relationship that resulted in discrimination against Eckles because of his disability.[80] However, the court found that, to show that the contract between the employer and the union was unlawful discrimination, Eckles had to show that he was denied a reasonable accommodation—the only form of discrimination Eckles actually alleged.[81]

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72. 29 U.S.C. § 185 (1994). In *Eckles*, the Labor Management Relations Act was not at issue because the employer was covered by the Railway Labor Act. However, as the Seventh Circuit noted, "the governing principles of the Railway Labor Act in this regard are not substantially different from those that apply under the National Labor Relations Act." *Eckles*, 94 F.3d at 1045 n.5.

73. *Eckles*, 94 F.3d at 1043.

74. *Id.* at 1043-44.

75. *Id.* at 1044.

76. *Eckles*, 890 F. Supp. at 1413.

77. *Eckles*, 94 F.3d at 1044.

78. *Id.*

79. *Id.* at 1045.

80. *Id.* at 1046.

81. *Id.* The court held that although it is true that an employer and union cannot enter into a contractual relationship, or manipulate same, to avoid their ADA duties, there was simply no

In addressing the first question presented by Eckles the court concluded, "[a]fter examining the text, background, and legislative history of the ADA duty of 'reasonable accommodation,' we conclude that the ADA does not require disabled individuals to be accommodated by sacrificing the collectively bargained, bona fide seniority rights of other employees."[82]

Importantly, the court considered and rejected the position taken by the Equal Employment Opportunity Commission (EEOC), which filed an amicus brief in support of Eckles. The EEOC acknowledged that the ADA does not require "bumping" of another employee to accommodate a disabled employee.[83] However, the EEOC argued that employers and unions faced with the dilemma presented in Eckles have a duty to negotiate a variance from the collectively bargained seniority rules when the only available accommodation violated the seniority rules and other employees would not be unduly burdened by the variance.[84] The Seventh Circuit noted that the EEOC's position was "admirable in its desire for moderation and compromise," but rejected the EEOC's position as lacking any foundation in the text or legislative history of the ADA.[85]

Although the *Eckles* district and appellate court decisions are certainly well reasoned, and the EEOC's position is not required by the ADA, it seems apparent that employers and unions may wish to consider negotiating possible accommodations which balance the needs of disabled employees with the seniority rights of other employees. By doing so, employers and unions can attempt to return disabled employees to work they can perform, while protecting legitimate rights of other employees.

CONCLUSION

During the survey period, Indiana's courts continued to develop Indiana's employment-at-will doctrine and its exceptions. The supreme court's forthcoming decision in *Orr*,[86] and the courts' development of the "good faith and fair dealing" requirement in *Weiser*,[87] could decide whether the employment-at-will doctrine still exists in Indiana. However, any attorney practicing employment law in Indiana should make certain that clients understand that the vitality of the employment-at-will doctrine has already been severely restricted by public policy, contractual, and statutory exceptions to the doctrine. Accordingly, employers

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evidence that the collective bargaining agreement was established or administered in order to circumvent the ADA. *Id.*

82. *Id.* at 1051. The court emphasized that its conclusion was "limited to individual seniority rights and should not be interpreted as a general finding that all provisions found in collective bargaining agreements are immune from limitation by the ADA duty to reasonably accommodate." *Id.* at 1052.

83. *Id.* at 1051.

84. *Id.*

85. *Id.*

86. 651 N.E.2d 795 (Ind. Ct. App. 1995), *trans. granted*, (Ind. Jan. 31, 1996).

87. 659 N.E.2d 237 (Ind. Ct. App. 1996).

should never prospectively rely on the employment-at-will doctrine when dealing with current or future employees.

The employment relationship in Indiana is highly regulated by state and federal governments. Furthermore, the laws concerning that relationship are subject to change at any time. For example, while the interaction between the ADA and NLRA was clarified by *Eckles*,[88] the ADA also has complex and illusive overlaps with the Family and Medical Leave Act (FMLA)[89] and Indiana's Workers' Compensation System[90] that certainly will be clarified by the courts in the near future. Stay tuned to your advance sheets.

88. 890 F. Supp. 1391 (S.D. Ind. 1995), *aff'd*, 94 F.3d 1041 (7th Cir. 1996).

89. 29 U.S.C. §§ 2611-2654 (1994).

90. IND. CODE §§ 22-3-1-1 to -3-12-5 (1993 & Supp. 1996).