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Michigan's Whistleblower Protection Act Does Not Extend To Contract Employee Seeking New Term Of Employment

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On April 25, the Michigan Supreme Court, in a matter of first impression, held that Michigan's Whistleblower Protection Act (the WPA), MCL 15.362, does not provide a cause of action for a contract employee seeking a new term of employment, even if that employee alleges his or her contract was not renewed because of the employee's whistleblowing activities. In *Wurtz v. Beecher Metropolitan District*, the plaintiff, an administrator for a metropolitan district, was hired under a fixed, 10-year contract. Eight years into his contract, plaintiff reported an alleged violation of the Open Meetings Act to the county prosecutor, who declined to prosecute. The tension between plaintiff and the District's board continued over the next year with plaintiff reporting alleged improprieties to the sheriff and the media. Ultimately, the board declined to renew plaintiff's contract, but permitted him to finish out his existing contract. Plaintiff claimed that the board did not renew his contract in violation of the WPA and Michigan public policy. In other words, he was not alleging that any actions were taken against him during the term of his contract, but rather only that his contract was not renewed because of his whistleblowing conduct. The lower court dismissed plaintiff's claims, finding the WPA was the exclusive remedy and plaintiff could not satisfy the adverse action element of a WPA claim because he had worked through his contract term. The Court of Appeals reversed in a split opinion. Upon hearing the case, the Michigan Supreme Court looked to the statutory language in the WPA and found two things of significance. First, the WPA defines employee as "a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied." MCL 15.361(a). Thus, unlike state and federal anti-discrimination statutes, the Michigan legislature specifically limited the coverage of the WPA to employees; there was no reference to job applicants or prospective employees. Second, the WPA prohibits an employee from being "discharged, threatened, or otherwise discriminated against regarding his or her compensation, terms, conditions, location, or privileges of employment." The Court reasoned that these actions could only be taken against a current employee. Accordingly, "the WPA, by its express language, has no application in the hiring context." Because a contract employee whose term is not renewed "occupies the same legal position as a prospective employee," the plaintiff's WPA claim was subject to dismissal. In reaching this conclusion, the Court cautioned that its holding has no bearing on at-will employees. Thus, while this decision provides some clarity as to the scope of the WPA, its holding is likely limited to circumstances where a fixed contract is not renewed.

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