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The Doctrine of Wrongful Discharge in North Carolina: The Confusing Path from Sides to Guy and the Need for Reform

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ARTICLES

THE DOCTRINE OF WRONGFUL DISCHARGE IN NORTH CAROLINA: THE CONFUSING PATH FROM SIDES TO GUY AND THE NEED FOR REFORM

J. MICHAEL McGUIINNESS*

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Mr. McGuinness is also the author of Betsey v. Turtle Creek Associates: All-Adult Housing Policy May Violate the Fair Housing Act, 8 CAMPBELL L. REV. 47 (1985).
I. Introduction

[In a civilized state where reciprocal legal rights and duties abound the words “at will” can never mean “without limit or qualification” . . . for in such a state the rights of each person are necessarily and inherently limited by the rights of others and the interests of the public. An at will prerogative without limits could be suffered only in an anarchy, and not there for long — it certainly cannot be suffered in a society such as ours without weakening the bond of counterbalancing rights and obligations that holds such societies together. . . .] There can be no right to terminate such [an employment] contract for an unlawful reason or purpose that contravenes public policy.

[The law of North Carolina is well established. An employer may terminate any employee for any reason unless the employee has a specific duration contract, gave some additional consideration for permanent employment, or lost his job for refusing to give perjured testimony.

Traditionally, employers have relied upon the doctrine of employment at will to discharge employees “for good cause, for no cause or even for cause morally wrong.” In its pristine form, em-


Employment at will has long been generally recognized in North Carolina. E.g., Smith v. Ford Motor Co., 289 N.C. 71, 221 S.E.2d 282 (1976); Edwards v.
ployment at will provides that employment of indefinite duration can be terminated at the discretion of either party at any time. With the exception of several special purpose statutes\(^4\) that afford


The origins of the at will rule have been described as “bizarre.” Murphy v. American Home Prods. Corp., 58 N.Y.2d 293, 308, 448 N.E.2d 86, 93 (1983) (Meyer, J., dissenting). See also Toussaint v. Blue Cross & Blue Shield, 408 Mich. 579, 601-03, 292 N.W.2d 880, 886 (1980). Beginning with the seminal article of Blades, Employment at Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power, 67 Colum. L. Rev. 1404 (1967), scores of commentators have advocated abolition of the at will rule. E.g., Parker, supra; Perritt, supra, § 1.11, at n.47.

protection against discrimination and reprisal for exercising certain rights, there is no general principle that consistently alters the at will rule. Approximately two-thirds of all employees are governed by the at will rule; thus, it has a profound impact on employment relations law, particularly in North Carolina.

Many courts have recognized exceptions that limit the employer's right to discharge. Approximately four-fifths of the states now recognize some form of cause of action for wrongful discharge. The exceptions to the at will rule have generally taken three forms: public policy, implied contract terms, and the duty of good faith and fair dealing. The public policy exception is the most recognized and applies when an employee is discharged for reasons that contravene public policy.

Several courts have recognized implied contract theories in wrongful discharge litigation. Various employment policies and

vides employee protection from discharge to avoid vesting of pension benefits; see, e.g., Bittner v. Sadoff, 728 F.2d 820 (7th Cir. 1984); Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, 1367 (1982) (prohibits discharge of employees for reporting or testifying in proceedings against employer for violating the Act); Veteran's Preference Act, 38 U.S.C. § 2021 (1982) (grants veterans the right to return to their former jobs and prohibits discharge for one year); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (1982) (prohibits discrimination on the basis of race, color, religion, sex, or national origin, and reprisal for exercising certain Title VII rights); Clean Air Act, 42 U.S.C. §§ 7401, 7622 (1982) (prohibits discharge of employees for reporting or testifying in proceedings against employer for violating the Act); PERRITT, supra note 3, at §§ 2.1-2.24 (2d ed. 1987); LARSON, supra note 3, at § 11.03 (1987).


procedures have recognized implied contracts to discharge for just cause only. Statements in employment manuals and handbooks as well as verbal and written assurances have been afforded contractual status. However, North Carolina has rejected the proposition that unilaterally promulgated personnel policies may establish employment terms and conditions when the policies are not expressly incorporated into the employment contract.


In Harris, 319 N.C. 627, 356 S.E.2d 357, the North Carolina Supreme Court held that an employer's personnel manual or policy is not incorporated into an employment contract or relation where the personnel manual or policy does not contain any promises or representations to the employees. In Harris, the employee alleged that he was discharged without cause in violation of the employer's "management procedure manual." Id. at 628, 356 S.E.2d at 358. The manual was directed toward management personnel and related solely to the implementation of disciplinary actions against employees. Id. at 630, 356 S.E.2d at 360.

The court in Harris noted the at will rule and its exceptions. Id. at 629, 356 S.E.2d at 359-60. With respect to the identified exceptions to the at will rule, the court noted that "statutory authority often dictates that an otherwise terminable-at-will employee shall not be discharged in retaliation for certain protected activities . . ." Id. Cf. Guy, 812 F.2d 911 (4th Cir. 1987), with supra text accompanying note 2, and infra text accompanying notes 72-81. The court in Harris stated that the plaintiff's claim was not included within any of the exceptions to the at
Courts have also imposed an implied covenant of good faith and fair dealing in employment relations. Employers may breach

will rule and that plaintiff urged the court to join the jurisdictions recognizing the inclusion of a personnel policy into the employment contract. Harris, 319 N.C. at 629, 356 S.E.2d at 359. See, e.g., Annotation, supra, at §§ 3-4 (1984 & Supp. 1986); Note, Employee Handbooks and Employment at Will Contracts, 1985 Duke L.J. 196.

In Harris, the court observed that the court of appeals in Trought v. Richardson, 78 N.C. App. 758, 338 S.E.2d 617 (1986), and decisions from other jurisdictions provide that the personnel manual becomes part of the employment relation where it contains an express representation that employees will be discharged only for cause. 319 N.C. at 630-31, 356 S.E.2d at 360. The facts of Harris were "readily distinguished" from Trought because "of the specific no-discharge-except-for-cause allegation in Trought." Id. at 631, 356 S.E.2d at 360.

The concurring opinion of Chief Justice Exum joined by Justice Martin clarifies the decision in Harris. The Chief Justice highlighted the critical distinction in the employer personnel manuals. The Chief Justice explained that the "management procedure" manual in Harris was not part of the employment contract because the manual made "no promises, express or implied, to defendant's employees." Id. at 633, 356 S.E.2d at 361. The majority opinion in Harris expressly noted that it did not address this issue in Trought. Id. at 631, 356 S.E.2d at 360. The Chief Justice went on to state:

[I]n my view, an employer's personnel policies, if couched in language that either expressly or by implication makes promises to employees, may bind the employer to these promises and restrict the employer's power to discharge even if the policies are unilaterally promulgated and are supported by no consideration apart from the employee's acceptance or continuation of employment.


this duty by terminating an employee arbitrarily or without just cause. Under this theory, a wrongful discharge action may be recognized where the termination was premised upon bad faith or malice. In *Haskins v. Royster*, the North Carolina Supreme Court in 1874 recognized a limited form of this theory of wrongful discharge by holding that an employer is not free to discharge in bad faith. However, recent North Carolina cases have not considered or applied the thrust of *Haskins*.

In *Sides v. Duke Hospital*, the North Carolina Court of Appeals first recognized the public policy exception to the at will rule.

12. 70 N.C. 601 (1874). *Cf. McCabe v. General Foods*, 811 F.2d 1336 (9th Cir. 1987) (bad faith theory of recovery permitted); *Monge*, 114 N.H. 130, 316 A.2d 549 (1974). *But see* *Satterfield*, 617 F. Supp. 1359, 1363-64 (D. S.C. 1985); *Trought*, 78 N.C. App. 758, 338 S.E.2d 617 (1986). There has been some support for the *Haskins* good faith requirement. In Malever v. Kay Jewelry Co., 223 N.C. 148, 25 S.E.2d 436 (1943), the court reaffirmed *Haskins* by holding that "an indefinite general hiring" is terminable in good faith at the will of either party." *Id. at* 149, 25 S.E.2d at 437. "Malever shows that *Haskins* is not an aberration." *Parker*, supra note 3, at 219. Professor Parker notes that "the North Carolina Supreme Court in *Haskins* was among the first courts in the nation to insist that employers act in good faith when discharging employees." *Id. at* 220. "[The] *Haskins* requirement of good faith has neither been overruled expressly nor sub silentio . . . ." *Id. at* 219.

13. *See* *Parker*, supra note 3, at 175. Parker states:

[T]he North Carolina Supreme Court of the era that first recognized the doctrine of terminable at will employment placed limits on the power employers enjoyed in dealing with their employees. In *Haskins v. Royster*, a case from 1874, the court clearly held that employers could not discharge employees in bad faith. This holding removes abusive discharges from the scope of the at will doctrine, for abusive discharges are unrelated to any legitimate expectations the employer could have regarding his contract with the employee and by definition are in bad faith. [footnotes omitted]

*Id.*

Sides held that the discharge of an at will employee on grounds offensive to public policy is an actionable tort. Judge Phillips's authoritative opinion in Sides presents a comprehensive review of the wrongful discharge doctrine. Sides appeared to represent a major development in North Carolina employment relations law. However, subsequent decisions by the North Carolina Court of Appeals have confusingly and narrowly construed Sides. Nevertheless, Sides provides fertile ground for further development of the doctrine of wrongful discharge in North Carolina.

In Guy v. Travenol Laboratories, Inc., the United States Court of Appeals for the Fourth Circuit substantially restricted the scope of the North Carolina public policy exception in the federal courts. In Guy, the Fourth Circuit affirmed the dismissal of a North Carolina wrongful discharge action premised upon the public policy exception. The employee alleged that he was discharged for refusing to falsify pharmaceutical records. Although the facts of Guy presented the most compelling scenario for application of the public policy exception, the Fourth Circuit interpreted the public policy exception as being limited to the egregious facts of Sides.

This article will analyze Sides, Guy, and other authorities relevant to the development of the doctrine of wrongful discharge in North Carolina. With support from recent commentary, this article concludes that the true meaning of the North Carolina public policy exception is not limited to the facts of Sides. Rather, Sides and earlier authorities provide that abusive employee discharges in violation of established public policy are not insulated by the at will rule.

II. ANALYSIS OF SIDES

A. Background of Sides

Plaintiff Marie Sides filed a wrongful discharge action premised upon the public policy exception against Duke University Hospital, two physicians, and the chief nurse anesthetist at Duke. Sides also alleged claims for breach of contract and interference with contractual relations. The trial court granted defendants' mo-

15. Id. at 343, 328 S.E.2d at 826-27.
16. 812 F.2d 911 (4th Cir. 1987).
17. Id. at 917.
18. Id. at 912.
19. See Parker, supra note 3.
tion to dismiss for failure to state a claim upon which relief could be granted.20

Sides alleged that she was employed by Duke as a nurse anesthetist in 1970.21 One of Sides' primary inducements for accepting the position at Duke was job security.22 Plaintiff was assured by Duke that nurse anesthetists could only be discharged for incompetence.23 This termination policy was shared by other Duke employees throughout Sides' eleven-year tenure at Duke.24

In 1980, the estate of a former Duke patient initiated a malpractice action against Duke and several individuals, including Doctors Harmel and Miller.25 In that case, the plaintiff allegedly suffered brain damage due to the negligent administration of anesthetics by Dr. Miller.26 When the patient came out of surgery, Sides was on duty and Dr. Miller instructed Sides to administer certain anesthetics to the patient.27 Sides refused to administer the anesthetics because she thought the anesthetics would harm the patient.28 Dr. Miller then administered the anesthetics to the patient, who suffered permanent brain damage.29

Prior to having her deposition taken in the malpractice action, Sides was advised by several Duke physicians, attorneys, and others that she should not testify to all that she had seen regarding the patient's treatment at Duke.30 Some of the doctors warned Sides that, if she did, she "would be in trouble."31 Similar pressures already had caused another nurse anesthetist to withhold information at her deposition. Despite the pressure, Sides testified fully and truthfully at her deposition.32 After the deposition, Duke physicians, particularly doctors Harmel and Miller, adopted hostile attitudes toward Sides.33 Sides testified fully and truthfully in the malpractice action and a verdict was returned for the patient's es-

20. Sides, 74 N.C. App. at 332, 328 S.E.2d at 820.
21. Id. at 332, 328 S.E.2d at 820.
22. Id., 328 S.E.2d at 820-21.
23. Id. at 332-33, 328 S.E.2d at 821.
24. Id. at 333, 328 S.E.2d at 821.
25. Id.
26. Id.
27. Id.
28. Id.
29. Id.
30. Id.
31. Id.
32. Id.
33. Id.
tate for $1,750,000. Dr. Harmel believed that Sides had caused them to lose the case.\textsuperscript{34} Concerned that her testimony might cause problems, Sides asked the chief nurse to advise her of any complaints about her work. The chief nurse refused to advise her of such.\textsuperscript{35}

After the malpractice trial, some physicians displayed hostile attitudes toward Sides, and some refused to work with her. Dr. Miller told other physicians that they should have nothing to do with her, and Dr. Harmel encouraged these hostilities, which made the performance of Side's duties almost impossible.\textsuperscript{36} Sides again asked the chief nurse to assist her with these problems and was again refused. Sides was subsequently called into a meeting and was advised that her job performance was poor and that she had an "abusive attitude."\textsuperscript{37} Sides asked for specific examples of how her work performance was poor, but none were given. Later, the chief nurse and Dr. Harmel met with Sides and discharged her.\textsuperscript{38}

B. Sides' Wrongful Discharge Analysis

In \textit{Sides}, the court of appeals confronted the decision in \textit{Dockery v. Lampart Table Co.},\textsuperscript{39} which refused to recognize an action for wrongful discharge. \textit{Dockery} involved an alleged discharge in retaliation for filing a worker's compensation claim.\textsuperscript{40} The plaintiff in \textit{Dockery} argued that, notwithstanding the general at will rule, a wrongful discharge action should be recognized because the worker's compensation claim was authorized by statute and because public policy required it.\textsuperscript{41} The court concluded that the "failure of the General Assembly to specifically provide the claim for relief alleged by the Plaintiff was an indication of its intent that no such claim be created."\textsuperscript{42} However, in its next session, the General Assembly enacted legislation authorizing actions by employees demoted or discharged in retaliation for instituting a

\begin{itemize}
\item \textsuperscript{34} \textit{Id.} at 333-34, 328 S.E.2d at 821.
\item \textsuperscript{35} \textit{Id.}
\item \textsuperscript{36} \textit{Id.}
\item \textsuperscript{37} \textit{Id.}
\item \textsuperscript{38} \textit{Id.}
\item \textsuperscript{39} 36 N.C. App. 293, 244 S.E.2d 272, \textit{cert. denied}, 295 N.C. 465, 246 S.E.2d 215 (1978).
\item \textsuperscript{40} \textit{Id.} at 293, 244 S.E.2d at 273.
\item \textsuperscript{41} \textit{Id.} at 297-98, 244 S.E.2d at 275-76.
\item \textsuperscript{42} \textit{Id.} at 300, 244 S.E.2d at 277.
\end{itemize}
worker's compensation claim or for testifying in regard to it.\textsuperscript{43} Therefore, as noted in \textit{Sides}, the \textit{Dockery} court apparently misread the legislative intent concerning retaliatory discharges.\textsuperscript{44}

The \textit{Sides} court stated that "we think, that the legislature is not at all adverse to the courts of this state entertaining actions based on a violation of policies that have been enacted or otherwise established for the protection of the public."\textsuperscript{45} The court recognized the strong public interest in allowing workers to pursue their statutory remedies for compensation without fear of retaliation and noted that the public interest in preventing the obstruction of justice is even greater.\textsuperscript{46} The court stressed the problems associated with perjury and the resulting "affront to the integrity of our judicial system."\textsuperscript{47} Therefore, \textit{Dockery} was not controlling, and the court held that \textit{Sides} had stated an actionable claim.\textsuperscript{48}

In \textit{Sides}, the court relied upon the seminal California case of \textit{Petermann v. International Brotherhood of Teamsters},\textsuperscript{49} which held that an \textit{at will} employee stated a cause of action when he alleged that he had been fired for refusing to commit perjury. The \textit{Petermann} court noted that at will employees could usually be discharged for "any reason whatsoever; . . . [h]owever, the right to discharge an employee under such a contract may be limited by statute or considerations of public policy."\textsuperscript{50} The \textit{Sides} court then cited with approval numerous cases from other jurisdictions recognizing the doctrine of wrongful discharge.\textsuperscript{51}

\begin{itemize}
\item \textsuperscript{44} 74 N.C. App. at 337, 328 S.E.2d at 823.
\item \textsuperscript{46} 74 N.C. App. at 342, 328 S.E.2d at 826.
\item \textsuperscript{47} Id. at 337, 328 S.E.2d at 823.
\item \textsuperscript{48} Id.
\item \textsuperscript{49} 174 Cal. App. 2d 184, 344 P.2d 25 (1959).
\item \textsuperscript{50} Id. at 188, 344 P.2d at 27 (citations omitted).
\item \textsuperscript{51} E.g., Sheets v. Teddy's Frosted Foods, Inc., 179 Conn. 471, 427 A.2d 385 (1980) (quality control director discharged for insistence that employer comply with federal and state food, drug, and cosmetics laws; \textit{but see} \textit{Guy}, 812 F.2d 911
After recognizing the many cases eroding the doctrine of employment at will, the Sides court set forth a novel rationale for modification of the at will doctrine: "[I]n a civilized state where reciprocal legal rights and duties abound the words 'at will' can never mean without limit or qualification . . . An at will prerogative without limits could be suffered only in an anarchy."52 The court then stated that an at will employee cannot be discharged "for an unlawful reason or purpose that contravenes public policy."53

C. Breach of Contract and Tortious Interference

In addition to the wrongful discharge claim, Sides asserted a claim for breach of contract. Sides' complaint alleged that she was assured by Duke that she could only be discharged for incompetence and that this assurance induced her to move from Michigan to accept the position at Duke.54 Relying upon Tuttle v. Kernersville Lumber Co.55 and Burkhimer v. Gealy,56 the court held that Sides' relocation from Michigan was sufficient consideration to remove her employment contract from the terminable at will status.57 Thus, Sides stated an actionable claim for breach of an employment contract.

Sides also alleged a claim against doctors Harmel and Miller for wrongfully interfering with her contractual relations with Duke.


52. 74 N.C. App. at 342, 328 S.E.2d at 826.
53. Id. at 342, 328 S.E.2d at 826.
54. Id. at 332-33, 328 S.E.2d at 820-21.
55. 263 N.C. 216, 139 S.E.2d 249 (1964).
56. 39 N.C. App. 450, 250 S.E.2d 678, disc. rev. denied, 297 N.C. 298, 254 S.E.2d 918 (1979) (moving residence from one place to another to accept employment constitutes consideration for an employment contract).
57. 74 N.C. App. at 345, 328 S.E.2d at 828.
This claim is recognized in North Carolina and is applicable in an employment context even though the employment is terminable at will. The elements of this claim are that: 1) a valid contract existed between the plaintiff and a third person; 2) an outsider to the contract had knowledge of the contract; 3) the outsider intentionally induced the third person not to perform the contract with the plaintiff; 4) the outsider had no justification for so interfering; and 5) the plaintiff suffered damages as a result. The court held that Sides had sufficiently alleged this claim for relief.

D. The Public Policy Exception

1. Beyond Sides

The public policy exception is the most recognized modification of the at will doctrine and is the only wrongful discharge rationale expressly adopted by the court in Sides. To state a claim under this theory, the employee must demonstrate that he was discharged because he “performed an act that public policy would encourage or refused to do something that public policy would condemn.”

Courts have applied the public policy exception to three general categories of discharges. First, the refusal to commit an unlawful act provides a basis for a wrongful discharge action under the public policy exception. Sides neatly fits into this category. Examples of other cases within this category include claims where an employee was dismissed for refusing to participate in an illegal

59. 74 N.C. App. at 346, 328 S.E.2d at 828.
60. Id. at 343, 328 S.E.2d at 826-27.
61. Vandegrift v. American Brands Corp., 572 F. Supp. 496, 497 (D. N.H. 1983). See Garibaldi v. Lucky Food Stores, Inc., 726 F.2d 1367, 1373-74 (9th Cir. 1984); Novosel v. Nationwide Ins. Co., 721 F.2d 894, 897-900 (3d Cir. 1983). In McClung v. Marion County Comm’n, 360 S.E.2d 221, 227 (W. Va. 1987), the court noted that “[o]ne of the fundamental rights of an employee is the right not to be the victim of a ‘realtiatory discharge,’ that is, a discharge from employment where the employer’s motivation for the discharge is in contravention of a substantial public policy.”
price-fixing scheme,\textsuperscript{62} for refusing to perform a medical procedure that the employee could not lawfully perform,\textsuperscript{63} and for refusing to perform unethical tasks.\textsuperscript{64} The second category of actionable discharges involves a discharge due to the employee's performance of a public obligation. Examples include cases where employees have been discharged for serving on a jury\textsuperscript{65} and for various forms of "whistle blowing" of illegal conduct.\textsuperscript{66} The court in \emph{Sides} approvingly cited numerous whistle-blowing and public obligation cases. The third category of actionable discharges involves discharges premised upon the exercise of an employee's legal rights or privileges. Examples include cases involving discharges for filing a workers' compensation claim\textsuperscript{67} and for refusing to take polygraph tests.\textsuperscript{68}

\begin{itemize}
  \item 64. See Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58, 417 A.2d 505 (1980); cf. Meredith v. C.E. Walther, Inc., 422 So. 2d 761, 763 (Ala. 1982).
  \item 65. Nees v. Hocks, 272 Or. 210, 536 P.2d 512 (1975). See Wiskotoni v. Michigan Nat'l Bank-West, 716 F.2d 378 (6th Cir. 1983); Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985) (Following \emph{Sides}, the South Carolina Supreme Court recognized the public policy exception where an employee was discharged after honoring a subpoena to appear at a state employment security commission hearing.).
The Third Circuit opened a new avenue of relief in this third category by recognizing a wrongful discharge claim premised upon an employee's constitutional and political rights. In Novosel v. Nationwide Insurance Co., the court recognized that the political and associational rights guaranteed by federal and state constitutional provisions constitute a public policy basis for a wrongful discharge claim. In Novosel, the plaintiff alleged that he had been discharged for refusing to participate in his employer's lobbying efforts in favor of no-fault insurance legislation and for privately opposing his employer's political positions. The court in Novosel noted that "the protection of an employee’s freedom of political expression would appear to involve no less compelling a societal interest than the fulfillment of jury service or the filing of a worker's compensation claim." Novosel represents a novel appli-


In Crawford v. Avon Prods., Inc., No. 87-3589 (4th Cir. 1987)(appeal dock-
eted), the Fourth Circuit is presented with the question of whether age discrimi-
nation may form the basis for a wrongful discharge action premised upon the public policy exception in North Carolina. N.C. GEN. STAT § 143-422.2 (1987) forbids age discrimination in employment; thus the public policy basis in Crawford seems clear. However, the district court in Crawford relied upon Guy as a basis for the dismissal of Crawford’s wrongful discharge claim. See 2 EGLIT, AGE DIS-
CRIMINATION § 15.23 at 88-89 (the Age Discrimination in Employment Act of 1967 may properly form a public policy basis to support a common law wrongful dis-
charge action). Preemption was not raised as a defense in Crawford. See infra
note 80.

69. 721 F.2d 894 (3d Cir. 1983). In McClung, 360 S.E.2d at 227, the Supreme Court of Appeals of West Virginia held that:

[c]ertainly it is in contravention of substantial public policies for an em-
ployer to discharge an employee in retaliation for the employee’s exercis-
his or her state constitutional rights to petition for redress of griev-
ances . . . and to seek access to the courts of this State . . . by filing an
action . . . for overtime wages.

In McClung, the employee alleged that he was discharged for pursuing remedies to obtain wages under the state wage and hour laws. Id. at 226. McClung did not cite Novosel as authority but nevertheless expressly relied upon the West Virginia Constitution as a public policy in which to form the basis of a wrongful discharge action. Id. Cf. Mansour v. Abrams, 120 A.D.2d 933, 502 N.Y.S.2d 877 (1986). But see Newman v. Legal Servs. Corp., 628 F. Supp. 535, 540 (D.D.C. 1986), where the court did not adopt the Novosel approach and required state action.

70. Novosel at 896.

cation of constitutional rights to private employees and may serve as a blueprint for substantially expanding the wrongful discharge doctrine.

2. What is Public Policy?

The threshold question to be addressed in a wrongful discharge case premised upon the public policy exception is whether or not a sufficient expression of public policy is alleged. As the court in Petermann noted, the “term ‘Public Policy’ is inherently not subject to precise definition . . . Public Policy is a vague expression, and few cases can arise in which its application may not be disputed.”72 “A public policy conceivably could be so clear as to be established or not established as a matter of law . . . .”73 However, in most instances, the existence of public policy necessitates a balancing process that is properly decided by the jury.74


Public policy may be found in "legislation; administrative rules, regulations or decisions; and judicial decisions . . . and in certain instances, a professional code of ethics may contain an expression of public policy."\(^7\)\(^5\) Certainly, when a legislature has enacted legislation forbidding certain conduct, that conduct is against public policy.\(^7\)\(^6\) As noted in Sides, the North Carolina legislature has expressly prohibited perjury; thus, the expression of public policy was clear. Sides also noted that courts may entertain "actions based on a violation of policies that have been enacted or otherwise established . . . ."\(^7\)\(^7\) Sides therefore expressly suggested that North Carolina courts may employ nonstatutory sources of public policy. A careful reading of Sides leads one to the inescapable conclusion that the court intended to define public policy broadly; however, this reading is not legitimzed in subsequent cases.

Numerous courts have recognized that federal public policy may properly form the basis for a wrongful discharge claim in state court.\(^7\)\(^8\) The Third Circuit in Novosel squarely held that a recognizable expression of public policy may be derived from the United States Constitution as well as a state constitution.\(^7\)\(^9\) Courts have also recognized a common law claim for wrongful discharge even where a legislature has provided a remedy to enforce the same right. For instance, in McKinney v. National Dairy Council,\(^8\)\(^0\) the

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77. 74 N.C. App. at 337, 328 S.E.2d at 823.


79. 721 F.2d at 900.

80. 491 F. Supp. 1108 (D. Mass. 1980). However, issues of preemption are presented when a statutory remedy and a common law remedy exist for the same conduct. See Garibaldi, 726 F.2d 1367 (9th Cir. 1984) (wrongful discharge claim not preempted by Labor Management Relations Act, 29 U.S.C. § 185(a) [1982]); Stepanischen v. Merchants Dispatch Trans. Corp., 722 F.2d 922 (1st Cir. 1983) (anti-union animus violates public policy); Cancellier v. Federated Dept. Stores, 672 F.2d 1312 (9th Cir. 1982) (ADEA does not preempt state tort claim). Perritt,
court held that alleged age discrimination stated a common law claim for wrongful discharge, even though this permitted the plaintiff to circumvent the administrative requirements in state and federal age discrimination statutes. The wrongful discharge claim usually allows for recovery of compensatory and punitive damages that are unavailable under the statutory provisions; thus, a wrongful discharge action offers numerous advantages for plaintiffs to consider.

E. Damages

In Sides, the court held that the plaintiff sufficiently stated a claim for compensatory and punitive damages by alleging that the defendants acted willfully and maliciously. Wrongful discharge litigation often results in substantial verdicts. In Rawson v. Sears, Roebuck & Co., the court upheld a staggering $19 million verdict in a wrongful discharge action as not excessive. In Cancellier v. Federated Department Stores, three employees were awarded $1.9 million in actual and punitive damages plus $400,000 in attor-


82. 615 F. Supp. 1546 (D. Col. 1985).

83. 672 F.2d 1312 (9th Cir 1982), cert. denied, 459 U.S. 859 (1983).
ney's fees. In *McGrath v. Zenith Radio Corp.*, a single employee was awarded $1.3 million in actual and punitive damages. Two recent California studies of wrongful discharge litigation indicated a ninety and ninety-five percent plaintiff success rate. The studies reported a $450,000.00 average and $548,000.00 median damage award.

North Carolina juries are not immune to such substantial verdicts. In *Chaudron v. Pasquotank County Department of Social Services*, an eastern North Carolina jury awarded $320,000.00 in compensatory damages and $100,000.00 in punitive damages in a discharge case premised upon the fourteenth amendment. Plaintiff Chaudron was discharged for "conduct unbecoming a public employee" which allegedly involved "romantic overtures" toward the public agency director. In *Chaudron*, the plaintiff established that her substantive due process rights were abridged.

The trend of huge damage awards in wrongful discharge cases is well established. The Supreme Court has often recognized "the severity of depriving a person of the means of livelihood . . . ."

When compared with the federal statutory protections, the wrongful discharge theory is an economically attractive alternative for employees.

F. Sides' North Carolina Progeny

In *Walker v. Westinghouse Electric Corp.*, the court of ap-
peals characterized Sides as "a major exception to the general rule that an indefinite contract of employment is terminable at will" and that an "employer's power to terminate 'at will' cannot be absolute, in view of the many other societal obligations shared by employers and employees." In Walker, the plaintiff alleged that he was discharged in retaliation for raising job-related safety concerns. Walker noted that "workplace safety is a major public issue" but nevertheless hesitated "to establish a general cause of action for wrongful discharge for any employee discharged after raising safety concerns." In Walker, the court granted summary judgment for the employer and reasoned that the record contained no evidence of the time interval between when the safety concerns were raised and the discharge. The court further reasoned that the safety concerns raised were actually unpleasant working conditions and that the plaintiff presented no evidence from others who worked in the unsafe conditions and no evidence of state or federal safety requirements that were violated.

The plaintiff in Walker also proceeded under a contract theory by arguing that an employee handbook became part of the employment contract. The employee handbook promised to "become more than a handbook . . . it will become an understanding" and acknowledged "the responsibility of each management employee to fairly and consistently apply" the policies therein. The court recognized the "strong equitable and social policy reasons militating against allowing employers to promulgate for their employees potentially misleading personnel manuals while reserving their right to deviate from them at their own caprice." Nevertheless, the court concluded that the employment contract did not include the terms and conditions contained in the handbook.

The Walker court failed to follow through on its recognition of Sides as a "major exception" to the at will rule as the most compelling public policy considerations support a wrongful discharge action for raising safety concerns. The decision in Kilpatrick v.

92. Id. at 262, 335 S.E.2d at 85 (emphasis added).
93. Id. at 263, 335 S.E.2d at 85.
94. Id. at 263, 335 S.E.2d at 86 (emphasis in original).
95. Id.
96. Id.
97. Id. at 260.
98. Id. See supra note 8.
99. Id. at 259.
100. Id.
Delaware County Society for Prevention of Cruelty to Animals\textsuperscript{101} explains why:

The United States Congress has recognized, as any rational person must, that America's workplaces will not be made safe unless workers are encouraged to take an active role in monitoring the health and safety implications in which they are told to work. Few employees would have the courage to report a suspected occupational hazard to an appropriate government agency if they knew they could be fired for taking legitimate measures to protect themselves and their co-workers.\textsuperscript{102}

In \textit{Kilpatrick}, the court held that the Occupational Health and Safety Act "announces a clear and significant public policy sufficient under Pennsylvania law to give rise to a cause of action for wrongful termination . . . ."\textsuperscript{103} Numerous cases have similarly recognized the wrongful discharge doctrine under these circumstances.\textsuperscript{104}

In \textit{Walker}, the reasons cited for granting summary judgment to the employer seem quite inadequate in light of the serious nature of occupational health and safety concerns. \textit{Walker} presents a classic jury question concerning the motive for the discharge. The court's holding reveals that \textit{Sides} is certainly not the "major exception" that \textit{Walker} noted. Rather, \textit{Walker} represents a disappointing rejection of an obviously strong basis for the public policy exception to the at will rule.

In \textit{Trought v. Richardson},\textsuperscript{105} the court of appeals, relying upon \textit{Walker}, held that a discharge for following state law and hospital policy in transferring two licensed nurses was insufficient "to come within or enlarge the exception created by \textit{Sides}."\textsuperscript{106} In \textit{Trought}, the employee alleged that it would have been a violation of the State Nursing Practices Act to allow practical nurses to perform

\begin{itemize}
  \item \textsuperscript{102} 632 F. Supp. at 546.
  \item \textsuperscript{103} \textit{Id}.
  \item \textsuperscript{106} \textit{Id}. at 762, 338 S.E.2d at 619. The court in \textit{Trought} also rejected claims for invasion of privacy and intentional infliction of emotional distress. \textit{Id}. at 763, 338 S.E. 2d 620.
\end{itemize}
the duties that they were performing in the emergency room.\textsuperscript{107} The employee argued that the discharge violated the covenant of good faith and fair dealing implied in the employment contract.\textsuperscript{108} Nevertheless, the court, without analysis, affirmed the dismissal of that wrongful discharge theory.\textsuperscript{109}

The employee in \textit{Trought} also contended that an employment manual requiring cause for dismissal was part of the employment contract. The court denominated this theory as wrongful discharge and reversed the dismissal of this claim.\textsuperscript{110} The employment manual was signed by the employee, thus escaping the general North Carolina rule that a unilaterally promulgated employment policy does not become part of the contract unless expressly included.\textsuperscript{111}

In \textit{Hogan v. Forsyth Country Club Co.},\textsuperscript{112} the court of appeals noted that "[t]hough the \textit{Sides} court spoke in the broad terms of 'public policy,' its holding was actually very narrow."\textsuperscript{113} In \textit{Hogan}, three discharged employees alleged several claims for relief including wrongful termination, intentional infliction of emotional distress, and negligent hiring and retention. One plaintiff alleged that she was sexually harassed by a co-worker and was wrongfully discharged for complaining.\textsuperscript{114} Another employee alleged that she was harassed because she was required to perform tasks which she was unable to do on account of her pregnancy and that she was discharged for leaving work to receive medical treatment.\textsuperscript{115} Another employee alleged that she was discharged in retaliation for complaining about verbal harassment by a co-worker.\textsuperscript{116}

The \textit{Hogan} court held that one employee had presented a valid claim for intentional infliction of emotional distress based on the allegations of sexual harassment.\textsuperscript{117} The court reasoned that

\begin{itemize}
\item 107. \textit{Id.} at 760, 338 S.E.2d at 618.
\item 108. \textit{Id.}
\item 109. \textit{Id.} at 762, 338 S.E.2d at 619.
\item 110. \textit{Id.} at 762, 338 S.E.2d at 620.
\item 111. \textit{See} Walker, 77 N.C. App. at 259; Harris, 83 N.C. App. 195, 198, 349 S.E.2d 394, 396 (1986) (In \textit{Trought}, "because plaintiff was required to sign the statement, the manual became an express part of her contract of employment"); \textit{supra} note 9.
\item 113. \textit{Id.} at 497-98, 340 S.E.2d at 125.
\item 114. \textit{Id.} at 485, 340 S.E.2d at 118.
\item 115. \textit{Id.} at 486, 340 S.E.2d at 118-19.
\item 116. \textit{Id.} at 485-86, 340 S.E.2d at 118.
\item 117. \textit{Id.} at 492-93, 340 S.E.2d at 122.
\end{itemize}
"[n]o person should have to be subjected to non-consensual sexual touchings, constant suggestive remarks and the on-going sexual harassment . . . without being afforded remedial recourse through our legal system." The plaintiffs in Hogan argued that their discharge was retaliatory and in contravention of public policy, but the court refused to apply the public policy exception. "We interpret Sides as recognizing a common law claim for relief in tort in favor of an employee at will who is discharged from his employment in retaliation for (1) his refusal to perform an act prohibited by law, or (2) his performance of an act required by law." Even if Hogan was accurate in its narrow view of Sides, the court’s failure to recognize a valid public policy prohibiting sexual harassment seems unconscionable. A plethora of federal and state statutes and case law constitutes a compelling source of public policy forbidding sexual harassment. The court recognized sexual harassment to be so extreme and outrageous as to warrant a claim for intentional infliction of emotional distress, yet the court would not even recognize a valid public policy prohibiting sexual harassment.

The Hogan court similarly rejected the wrongful discharge claim premised upon the employee’s pregnancy and need for medical treatment. The court noted that "[a]lthough we sympathize with her situation and find the manager’s reason for terminating her to be irrational, her firing was neither protected by statute nor for an unlawful purpose." Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, protects employees from discharge on account of pregnancy. However, the Hogan court either overlooked this or refused to consider it as a

118. 79 N.C. App. at 491, 340 S.E.2d at 121. The court in Hogan also held the claim of negligent hiring and retention to be sufficient. See Crawford v. ITT Consumer Fin. Corp., 653 F. Supp. 1184 (S.D. Ohio 1986); M.B.M. Co. v. Counce, 268 Ark. 269, 596 S.W.2d 681 (1980); Agis v. Howard Johnson, 371 Mass. 140, 355 N.E.2d 315 (1976); PERRITT, supra note 3, at § 5.23. But see Shreve v. Duke Power Co., 85 N.C. App. 253, 354 S.E.2d 357 (1987) (where the court of appeals in an employee discharge case found that the allegations were insufficient to constitute such extreme and outrageous conduct).

119. 79 N.C. App. at 498, 340 S.E.2d at 126.


121. 79 N.C. App. at 500, 340 S.E.2d at 126.

122. 42 U.S.C. § 2000(e)-(k) (1978). In Hogan, the court did not address the preemption issue.
valid public policy basis.

In *Rupinsky v. Miller Brewing Co.*, a federal court in Pennsylvania applying North Carolina law analyzed *Sides* and *Walker*. The court noted that *Walker* "qualified its decision in *Sides.*" After recognizing "the disparity of power and the potential for unfair results which is inherent in an employment relationship . . . ," the court noted the North Carolina "judicial conservatism toward allowing relief for discharged-at-will employees."

**G. Implications of Sides**

*Sides* represents a long overdue improvement in North Carolina employment relations law by finally joining the growing trend recognizing wrongful discharge. *Sides* advances the public interest by condemning perjury and other conduct offensive to public policy. However, *Sides*’ progeny has simply failed to consider and apply fairly the thrust of *Sides*. One case notes that *Sides* is a major exception, while others insist on the most narrow interpretation of *Sides*. However, given the sweeping analysis contained in *Sides*, it is quite illogical to so narrowly limit the public policy exception.

*Sides* clearly left open the door for wrongful discharge actions premised upon non-legislative sources of public policy where such policy has been "otherwise established." Nevertheless, the court of appeals continues to brush aside this and other important aspects of the *Sides* analysis. In the *Sides* progeny, the court of appeals seems to be preoccupied with *stare decisis*, but the court must recognize its own common law analysis as explained in *Sides*:

> [T]he common law is not a collection of archaic, abstract legal principles as the briefs of defendants imply — it is a living system of law that, like the skin of a child, grows and develops as the customs, practices and necessities of the people it was adopted for change. The common law had its genesis in the customs and practices of the people, and its genius . . . is not only its age and continuity, but its vitality and adaptability.

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123. 627 F. Supp. 1181 (W.D. Pa. 1986). *Rupinsky* was approvingly cited by the court in *Guy* as a basis for limiting the North Carolina public policy exception. 812 F.2d at 914.
124. *Id.* at 1185.
125. 627 F. Supp. at 1189.
126. 74 N.C. App. at 337, 328 S.E.2d at 823.
III. ANALYSIS OF GUY

A. The Restriction of Sides in Federal Courts

The employee in Guy brought his wrongful discharge action after he was discharged from his supervisory position at a drug manufacturing facility. Guy alleged that he was discharged for refusing to falsify certain production and control records. Guy contended that employees were falsifying records concerning the quality and quantity of pharmaceuticals that drug manufacturers are required to keep under Food and Drug Administration regulations. Falsification of these pharmaceutical records may violate the Food, Drug and Cosmetic Act.

In Guy, Judge Wilkinson, writing for the Fourth Circuit, briefly traced the history of the at will rule and noted "North Carolina's manifest commitment to the doctrine of employment at will." While the court summarily treated several North Carolina cases in its brief history of the at will rule, it apparently failed to recognize that the cases relied upon did not involve alleged violations of public policy. The court in Guy further analyzed Sides

128. 812 F.2d at 912.
129. Id.
132. 812 F.2d at 912. The "North Carolina Supreme Court has continuously accorded employers broad freedom in employment decisions. As these cases reveal, the at will doctrine commands long and continued support in the North Carolina courts even in what may appear unusual and extenuating circumstances." Id. at 913. But see Parker, supra note 3, at 174-75. Professor Parker states:

[T]here is no North Carolina Supreme Court precedent for including abusive discharges within the at will rule; such a stance would amount to the court abandoning its historically recognized role of regulating employment relations [footnotes omitted].

[T]he North Carolina Supreme Court that adopted the doctrine of employment at will did not intend to insulate abusive discharges.

Id.


While there are many North Carolina cases recognizing indefinite hires as terminable at will, the North Carolina Supreme Court has never applied the rule to a discharge which violated public policy . . . The fact
and its progeny, concluding that "Sides does not provide Guy with a viable cause of action." Guy stressed the "specific" holding in Sides and concluded that "Sides was intended to be a limited perjury exception."

Guy noted that the employee alleged that he was discharged for "refusal to perform a wrongful act." Guy recognized that Hogan does offer some support for Guy's position because it characterized Sides as creating a cause of action for employees who refuse 'to perform an act prohibited by law.' However, the court in Guy then characterized this reasoning in Hogan as dicta and "not sufficient to create a new cause of action for Guy." As an additional basis for rejecting Guy's claim, the court noted that the Food, Drug and Cosmetic Act establishes a complex statutory enforcement scheme to prohibit the sale of adulterated drugs.

remains that the North Carolina Supreme Court has never applied the terminable at will rule to an indefinite term employee who is discharged for a reason which violated public policy.

In Guy, the Fourth Circuit failed to address the good faith principle noted in Malever. See supra note 12.

134. 812 F.2d at 914.
135. Id. at 915.

137. Id. at 915, citing Hogan, 79 N.C. App. at 498, 340 S.E.2d at 126.
138. 812 F.2d at 915. However, Hogan expressly stated that it interpreted Sides as recognizing a claim for refusing to perform an act prohibited by law. 79 N.C. App. at 498, 340 S.E.2d at 126. Likewise, Professor Parker clarifies the question abusive discharges pose to the courts:

Properly understood, abusive discharges which violate public policy present a court with the same institutional issue as if an employer attempted to enforce an illegal condition in a term employment contract. If a court would not enforce an illegal condition in a contract for a term, that court should not condone the abusive conduct by a party to an agreement for an indefinite period. [footnote omitted]

Parker, supra note 3, at 215.
139. 812 F.2d at 915.
retaliation provision for employees who refuse to violate the statute.\textsuperscript{140}

B. Criticism of Guy

Guy indeed represents the most narrow view of the North Carolina public policy exception. Guy expressly characterized Sides as a "limited perjury exception" restricted to the egregious facts of Sides.\textsuperscript{141} The fundamental reasoning of Guy is inherently flawed. The denial of a wrongful discharge action to Guy serves to encourage and sanction the lawlessness that Sides so strongly condemned. Guy stated that "[a]ny Travenol employees who violate the statute by falsifying required records are subject to criminal sanctions."\textsuperscript{142} Thus, criminal implications similar to those in Sides were present in Guy.

The court in Guy apparently failed to consider the persuasive analysis of Sheets v. Teddy’s Frosted Foods,\textsuperscript{143} in which a quality

\begin{itemize}
\item \textsuperscript{141} 812 F.2d at 915.
\item \textsuperscript{142} Id. at 916.
\item \textsuperscript{143} 179 Conn. 471, 427 A.2d 385 (1980). Cf. Trombetta, 81 Mich. App. 489, 265 N.W.2d 385 (1978) (discharge for refusal to alter pollution control report). But see Adler v. American Standard Corp., 290 Md. 615, 432 A.2d 464 (1981), where the court found that the mandate of public policy was not sufficiently clear to support a claim where the employee was allegedly fired after reporting to company officials that his supervisors were falsifying business records and taking bribes. After being certified to the Maryland Court of Appeals in 291 Md. 31, 432 A.2d 464 (1981), Adler survived a motion to dismiss in 538 F. Supp. 572 (D. Md. 1982), which was later reversed by the Fourth Circuit in 830 F.2d 1303 (4th Cir. 1987). In Adler, the Fourth Circuit characterized the employee’s allegations as “his intention to ‘blow the whistle’ on illegal activities condoned by his supervisors.” Id. at 1307. The Fourth Circuit found that the employee’s knowledge of and intent to report wrongdoing to higher corporate officials does not violate a clearly mandated Maryland public policy. Id. Cf. Harless, 162 W. Va. 116, 246 S.E.2d 270, where the Supreme Court of West Virginia concluded that internal complaints to higher officers were sufficient to contravene public policy contained in a state consumer protection statute.

Judge Butzner dissented from the majority decision in Adler. Judge Butzner noted that the “critical aspect of the case is the content of the disclosure Adler intended to make.” 830 F.2d at 1308. Judge Butzner highlighted the pleadings where Adler specifically alleged that he “would not participate in, permit or condone continuation of the improper and illegal activities . . . .” Id. (emphasis added). Judge Butzner then nailed down the critical flaw in the majority’s reasoning: Adler refused to commit unlawful acts which is clearly distinguishable from
control director was dismissed for complaining to his employer about substandard raw materials in food products. There the employer practices caused a violation of the Connecticut labeling statute.\footnote{144} In reversing the trial court, the Connecticut Supreme Court emphasized that the employee might have been exposed to criminal liability under the state food labeling statute. "[A]n employee should not be put to an election whether to risk criminal sanction or to jeopardize his continued employment."\footnote{146} The court in \textit{Sides} approvingly cited \textit{Sheets};\footnote{146} nevertheless, the Fourth Circuit in \textit{Guy} either overlooked \textit{Sheets} or did not consider it as persuasive.

The court’s holding in \textit{Guy} presents employees with quite a dilemma: falsify records and go to jail or refuse to falsify records and be fired. Therefore, Guy’s predicament closely resembled that of Sides. Both Guy and Sides were discharged because of their refusal to participate in and condone criminal activity. It is difficult to conceive that the Fourth Circuit did not consider the obvious, dangerous and far-reaching implications of its decision: the consumption of impure drugs by the public along with the obstruction of justice inherent in the interference with the Food, Drug and Cosmetic Act and Food and Drug Administration’s regulations. To allow employers to discharge workers for complying with such important national safety legislation represents a most blatant form of obstruction of justice and a threat to the public health and safety. The facts of Guy presented the most compelling scenario for application of the public policy exception. Numerous courts have recognized wrongful discharge theories for refusing to commit an unlawful or wrongful act.\footnote{147}

being a mere whistle blower. Refusing to act in an unlawful manner was expressly characterized by the Maryland Court of Appeals as being protected by the public policy exception. \textit{Id.} at 1307; 291 Md. 31, 42, 432 A.2d 464, 470 (1981). Judge Butzner’s reasoning is most compelling. The implications of the majority decision are dangerous in that illegality is condoned. \textit{Cf. supra} text accompanying note 101 and \textit{infra} text accompanying notes 103-09. \textit{See} \textit{Perritt, supra} note 3, at §§ 5.16, 5.17.

\footnote{144} \textit{CONN. GEN. STAT.} § 19-222, \textit{superseded by CONN. GEN. STAT. ANN.} § 21a-102 (West 1983).


\footnote{146} 74 N.C. App. at 341, 328 S.E.2d at 825.

\footnote{147} \textit{See, e.g., supra} notes 37-39 and accompanying text; Tamney v. Atlantic Richfield Co., 27 Cal. 3d 167, 610 P.2d 1330 (1980) (discharge for refusal to participate in an illegal price fixing scheme); McQuary v. Bel Air Convalescent Home,
In Ludwick v. This Minute of Carolina, Inc., the South Carolina Supreme Court recently recognized a public policy exception. In Ludwick, the court held that:

[t]he public policy exception is invoked when an employer requires an at-will employee, as a condition of retaining employment, to violate the law. To hold otherwise would sanction defiance of the legal process legislated by the General Assembly.

In a nation of laws the mere encouragement that one violate the law is unsavory; the threat of retaliation for refusing to do so is intolerable and impermissible.

Hogan's observation that Sides created a cause of action for employees discharged for refusing to perform an act prohibited by law is most compelling and is strongly supported by the South Carolina decision in Ludwick. This, along with the sweeping analysis in Sides, provides sufficient guidance for the federal courts to realistically employ the public policy exception in North Carolina. However, the court in Guy noted that “[i]n applying state law, federal courts have always found the road straighter and the going smoother when, instead of blazing new paths, they restrict their travels to the pavement.” The facts of Guy did not necessitate blazing a new path but simply required an application of the fundamental framework of Sides and Hogan. While the North Carolina Court of Appeals in its three post-Sides decisions did not apply the Sides doctrine to recognize new public policy theories, the facts of Guy were substantially closer to the facts of Sides than


149. Id. at 225, 337 S.E.2d at 216.
150. 812 F.2d at 917. Cf. Adler, 830 F.2d 1303, 1306 (4th Cir. 1987) (“Courts must use care in creating new public policy.”)
those cases. Consequently, the concerns identified in the post-
Sides North Carolina cases were not present in Guy.

IV. CONCLUSION

The Sides doctrine presents a fair and workable framework for
addressing discharge disputes. It strikes a balance between genuine
public policy interests on a case-by-case basis and the employer's
right to terminate where the termination does not contravene es-
tablished public policy. However, given the extremely narrow in-
terpretation by the post-Sides cases, the impact of Sides has been
only minimal.

While Sides opened the door to wrongful discharge in North
Carolina, the subsequent cases have sorely missed the mark. Re-
cent cases have ignored controlling precedent in Haskins and
Malever. The decision in Guy is palpably flawed and its dangerous
implications should help convince the North Carolina courts to ful-
fill the true meaning of Sides. The issues are ripe for clarification
by the North Carolina Supreme Court. The supreme court should
reaffirm the fundamental reasoning of Sides but clarify and ex-
pend its potential application to the more typical discharge dis-
pute. Moreover, the good faith principle adopted in Haskins and
reaffirmed in Malever must be given new life. The North Carolina
General Assembly should enact wrongful discharge legislation to
clarify and reform the law in this confusing area.152 “The courts

(Ultimate solution for flood of wrongful discharge cases is for legislatures to artic-
ulate standards.).

Montana enacted the Wrongful Discharge From Employment Act. The legis-
lation provides that:
A discharge is wrongful only if:
(1) it was in retaliation for the employee's refusal to violate public policy
or for reporting a violation of public policy; or
(2) the discharge was not for good cause and the employee had com-
pleted the employer's probationary period of employment; or
(3) the employer violated the express provisions of its own written per-
sonnel policy.

Public policy is defined as "a policy in effect at the time of the discharge
concerning the public health, safety or welfare established by constitutional pro-
vision, statute, or administrative rule." Id. at § 39-2-903(7).

This legislation has broad implications substantively. Further, it provides for
up to four years of back pay with interest along with punitive damages under
some circumstances but generally excludes compensatory damages, pain and suf-
will be very derelict in their duty if they do not force justice in favor of employees as well as the public." Employment at will and abusive discharges simply have no place in modern North Carolina law.
