

AN ABSTRACT OF THE THESIS OF

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This study is an investigation of the employment at will doctrine and the three exceptions to this doctrine. The purpose of this study is to examine the knowledge of human resource professionals pertaining to the three exceptions: implied contract, public policy, and covenant-of-good-faith. One hundred twenty-one participants were contacted by asking local Human Resources chapter presidents to distribute the cover letter and survey information to their members via email. Participants were randomly selected from chapters in fifteen different states. Several hypotheses were predicted and analyzed. Notable findings include a significant positive relationship between prohibited protected employment categories knowledge and employment at will knowledge, $r = .60$, $p = .0001$, and a significant positive relationship between education and employment at will, $r = .22$, $p = .03$. Training institutions and organizations can educate individuals on employment at will to prevent such litigation.

Keywords: Employment at Will Doctrine, Protected Classes, Human Resource Professionals

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EMPLOYMENT AT WILL

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CHAPTER 1

INTRODUCTION

Employment at will is often referred to as a default legal rule (“HRfocus,” 2007). Employment at will (EAW) is a blanket statement often referring to an employer’s ability to hire and fire at its discretion.

As long as related employment laws, such as equal opportunity legislation, are not being broken, all private sector employees not covered by a union contract or some other type of formal contract may be discharged for good cause, bad cause, or no cause at all. (Gibson & Lindley, 2010, p. 89)

Human resource practitioners should be aware of three exceptions to the EAW doctrine that exist. These three exceptions are public-policy, implied-contract, and covenant-of-good-faith; all these concepts are explained in the review of the literature. The three exceptions differ from state to state. The three exceptions and their state by state acceptance make the matter of true EAW unclear for human resource professionals. In personal conversations with human resource practitioners, it became apparent that many practitioners confuse the eleven prohibited protected employment categories (PPEC) and whistleblower protection acts for the three exceptions.

Another consideration practitioners should be aware of is just cause termination. Just cause termination (JCT) is a policy often adopted by corporations acknowledging, in writing, that an employee will be terminated for good cause reasons only or after a disciplinary procedure has been followed (Autor, Donohue, & Schwab, 2006). Adopting a JCT policy takes the place of the EAW doctrine for that organization. Thus, if an

employer does not specifically state it is a JCT employer, employment at will (EAW) is considered to exist (Newton & Kleiner, 2002).

Benefits exist on both sides of the argument. EAW supporters claim it gives an organization legal protection and competitive advantages (Janove, 2005). In opposition, JCT supporters assert organizational commitment, job security, and the promotion of diversity give organizations more competitive advantage and increased protection from legal action (Roehling & Wright, 2004). Many unionized workers have bargained for JCT policies. Due to the last recession, unions are currently at a turning point with 11.1% of workers unionized in 2014 (Union Members – 2014, 2015).

The field of law is so vast and seemingly complicated that individuals get lost in the laws, doctrines, and exceptions. A more in-depth, comprehensive look at one particular doctrine is necessary for human resource practitioners to be aware of the EAW doctrine. As applied human resource professionals, we cannot always rely on or wait for legal counsel to give their advice and knowledge. Often a decision must be made quickly to avoid losses. Without proper knowledge, and the old fall back saying hire and fire at will, managers may make the wrong decisions when firing an employee. These wrong decisions may have serious legal implications. Knowledge is power.

When approaching the three exceptions, JCT policies, and the EAW doctrine, practitioners may become confused about how to apply these in a consistent fashion. Because of their lack of, or unclear, knowledge of the true EAW doctrine, their organizations could be left vulnerable to serious legal consequences. Little research has been conducted on this topic and human resource practitioners are left with little guidance.

The purpose of this study was to find out how much human resources practitioners knew about the EAW doctrine and the three exceptions to the EAW doctrine. Also, the findings of this study could be used for developing education programs for human resource professionals on employment law and the EAW doctrine. Education in this area will help organizations be less susceptible to lawsuits from unlawful firings.

CHAPTER 2

REVIEW OF LITERATURE

Employment at Will History

Before the Employment at will doctrine, it was common practice to work for an employer for a year before either party could terminate the relationship (Decker, 1991). This practice originated in England from the Statute of Laborers. This statute was enacted in the 14th century as result of a shortage of labor created due to the Black Death (Poos, 1983). This practice was carried over to the United States during settlement.

The EAW doctrine was established in the United States in 1884 with the case of *Payne v. Western & Atlantic RR*. In this case the court ruled that “employers do not need a reason to fire employees - they may fire any or all of their workers at will - even if the reason for dismissal is morally wrong” (Butsch & Klenier, 1997, p. 54). The reasoning for the EAW doctrine was to give employers the ability to run their business as they saw fit by terminating employment relationships at any time. This gave organizations a competitive advantage in the newly industrialized world. The EAW doctrine also stated that employees had the right to move freely from one job to another. This allowed employers and employees to adapt more effectively in uncertain or constantly changing industries and circumstances.

The Industrial Revolution changed the practice of employment, now faster paced than ever before. During the Industrial Revolution, it was commonly believed that the employer and employee were on equal footing when it came to termination decisions (Muhl, 2001). As stated previously, EAW was established for employees and employers to adapt to changes in the economic environment. Since employees could leave a position

at any time, employers could terminate for any reason. In the 1920s, due in part to a number of abuses, the idea of an at will society began to become a problem (Muhl, 2001). Unions began to bargain for just cause policies. During the Great Depression, union workers who had previously endured harsh treatment began to strike and demand better treatment. This led to the National Labor Relations Act of 1935, which allowed employees to self-organize and to engage in collective bargaining (Bordo, Goldin & White, 2007). Following the passing of this act, a surge of employees joined unions with 20% of the workforce unionized by 1983 (Union Members – 2014 , 2015). As stated previously, unions were at a turning point in the EAW.

Because employment is attached to an employee's livelihood, an employee losing a job is viewed as more detrimental than an employer losing an employee. The wearing down of the EAW doctrine began in the 1960s when the Civil Rights Act of 1964 was passed (Gibson & Lindley, 2010). Prior to that, in 1959, the courts put forth the first of the three exceptions, with the other two to follow in the 1980s (Muhl, 2001). However, the exceptions were accepted on a state-by-state case very slowly. The EAW doctrine is first limited by statutory limitations of illegal discrimination and retaliation.

Federal Statutory Limitations

A statute is a written law enacted by a legislative authority. Two federal statutory limitations to the EAW doctrine exist, in addition to the three exceptions; illegal discrimination (eleven PPEC) and retaliation (Green, 2015). The acts that influence the EAW doctrine are the Civil Rights Acts of 1964 and 1991, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Pregnancy Discrimination Act of 1978, the Vietnam Era Veterans Readjustment Act of

1978, the Genetic Information Nondiscrimination Act of 2008, and the Whistleblower Protection Acts. The PPEC and whistleblower acts are statutory laws enacted at the federal (as opposed to the state) level. Because the three exceptions are state statutory laws, they are applied after these laws are taken into consideration. This distinction may confuse practitioners.

The first attempt at controlling discrimination in the work place was in the 13th and 14th amendments of the United States Constitution. Almost a century after these amendments were passed, the Civil Rights Act of 1964 was passed solidifying a protected class system, expanding and clarifying unlawful discrimination (Cascio & Aguinis, 2011). This act has several sections addressing many different discrimination laws. For the purposes of this study, Title VII is the focus. Title VII pertains to fair and equal opportunity employment. Title VII established the five protected classes which include race, color, religion, sex and national origin (Cascio & Aguinis, 2011). Notice race, color and national origin are separate classes. Discrimination based on pigmentation or origins were still occurring. Title VII clarified and set forth the protected classes.

It shall be an unlawful employment practice for an employer—(1) to fail or to refuse to hire or to discharge any individual or otherwise to discriminate against an individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individuals race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee

because of such individual's race, color, religion, sex, or national origin. (Cascio & Aguinis, 2011, p. 23)

In addition to the original five protected class, six more were added in the 40 years following the Civil Rights Act of 1964. In 1967, the Age Discrimination in Employment Act added age as a protected class. This prohibited discrimination against employees ages 40 and over. The Pregnancy Discrimination Act of 1978 prohibited discrimination based on pregnancy. The Vietnam Era Veterans Readjustment Act of 1978 prohibits discrimination based on being a Vietnam veteran. Stigma had surrounded these veterans since their return home. In 1990, the Americans with Disabilities Act was passed giving equal opportunity and protection to individuals with disabilities. Employers could no longer discriminate against qualified individuals who could perform the essential functions of the job. In addition, this act made it so employers must provide reasonable accommodations for individuals with disabilities.

The Uniformed Services Employment and Reemployment Rights Act of 1994 provides protection to individuals who are or will be in the uniformed services (e.g., Army, Marine Corps, Air Force, Navy). This allows members of the uniformed services to serve their country without fear of losing promotion or seniority in their current employment. The Civil Rights Act of 1991 expanded the five protected classes to government entities and foreign government entities. The Genetic Information Nondiscrimination Act of 2008 made it illegal to discriminate because of genetic information, such as individual or family medical history or information from obtained tests of genetic information.

The second statutory limitation is retaliation. The Whistleblower Protection Act of 1989 prevents employers from retaliating against an employee who informs proper authorities about violations the employer may be committing (Devine, 1999). This includes a spectrum of provisions: reporting safety violations, filing a workers' compensation claim, reporting corporate fraud, voicing environmental concerns or consumer product concerns, or reporting illegal discrimination. The whistleblower protections are filed under the Occupational Safety and Health Administration.

In conclusion, eleven PPEC stand today: sex, race, color, religion, national origin, pregnancy, Vietnam veterans, uniformed services, age, disability, and genetic background. As stated previously, as federal statutory laws these PPEC are considered before EAW is applied. An employer cannot hire or fire based on an individual's sex, race, color, religion, national origin, pregnancy status, Vietnam veterans status, current or potential uniformed services status, age, disability status, and/or individual or family genetic information. An employer also cannot fire an employee based on his or her whistleblower status.

Employment at Will Doctrine

Employment at will is a default legal rule referring to an employer's ability to hire and fire at their discretion (Butsch & Kleiner, 1997). EAW was intended to make American capitalist society function more smoothly and freely. Born out of the idea that the relationship between employer and employee was equal, employers and employees had the ability to terminate the relationship without having served one year. Due to abuses of discrimination and the change in the employee/employer relationship, federal statutory laws and unions began to limit the EAW doctrine. Throughout its history, EAW

has been challenged, and many organizations have raised ethical issues while still trying to keep their at will status. Discussed below are three ethical issues found in the process of keeping an EAW policy.

Roehling (2003) explains several unethical practices that may arise with EAW policies and ways to address these concerns. The first unethical practice is the need for informed consent. It is common practice for companies to manipulate their at will message to give the impression of a just cause policy, but still maintain their at will status. Often, employees overestimate the legal rights employers have in the at will agreement. Forbes and Jones (1986) found employees attribute a “good cause” norm, even after signing an EAW policy, meaning employees believe the employer will be ethical in his/her termination procedure (as cited in Roehling, 2003, p. 117). This “good cause” norm is perpetuated by grievance procedures or due process systems.

Another practice of managers or recruiters is to make just cause statements in the hiring process, knowing an at will policy exists along with a disclaimer that oral promises are not enforceable (Roehling, 2003). This contradiction allows for the attraction, morale and retention of a JCT policy, without having to legally enforce it. To correct this ethical injustice in keeping an EAW policy, employers should take steps to ensure that employees accurately understand the legal implications of the policy in place. While this is not required under the EAW doctrine, it will make an organization’s EAW policy more accepted. Managers and recruiters should be trained on how to respond to EAW questions. Appropriate, non-misleading responses, scripted beforehand would be beneficial to employers.

The second unethical practice discussed by Roehling (2003) is an unintended chilling effect that could occur on minority hiring when an employer has an EAW policy. Managers may subconsciously be less likely to hire minorities for fear of difficulty when termination occurs. Employers may also fear difficulty safely terminating a minority employee even if proper performance appraisal and evidence to support the termination exists. Carrying out recruiting practices that avoid hiring minorities can lead to litigation and affect diversity in the workplace. Hence this practice should be discouraged through the proper education of recruiters.

The final unethical practice with adopting an EAW policy is about to how the policies are exercised and implemented (Roehling, 2003). Having an EAW policy allows the employer to avoid the legal burden of establishing good reasons for an employee to be discharged. However, when looking at EAW from an ethical standpoint, this does not mean an employer may discharge an employee when the decision violates federal statutory laws or the three exceptions accepted by the employer's state. The common phrase of hire and fire at will can be misinterpreted. It is important for managers to be aware of these PPEC and the legal issues that could arise when firing such individuals. Other steps to correct this ethical issue could include having multiple decision makers in the termination process, a termination process, and routine review of discharge decisions and process.

While much criticism surrounds the practice of EAW, some argue the doctrine is not only still needed but essential. Janove (2005) argues that not all employers are unfair in their employment practices in regard to termination. Furthermore, Janove (2005) states that getting rid of the EAW doctrine can hurt small businesses and reasonable employers.

EAW gives these businesses flexibility in their human capital and allows for economic fluctuations (Janove, 2005). Supporters of the doctrine say that a small subset of employers tests the limits of EAW, giving critics reason to eliminate the doctrine; these few ruin it for many. Getting rid of EAW may lead employers to have to suffer from poor performers or a culture of ineffectiveness.

Another argument for the EAW doctrine is the concept of free enterprise. EAW is as much for the employee as it is for the employer. Despite the accepted norm that employers have the upper hand, Janove (2005) argues that employers and employees are both invested in an employment contract. Often employees gain training and experience from one employer then freely move to another employer taking these acquired skills.

The EAW doctrine is ever changing (Newton & Klenier, 2002). This doctrine could potentially be harmful to small businesses, which cannot afford the litigation involved in EAW cases. Due to the presence of many exceptions to the doctrine, some companies are choosing to give up their EAW for a more employee friendly JCT policy.

Three Exceptions

As stated, three major exceptions to the EAW doctrine exist in addition to the federal statutory limitations: public policy exception, implied-contract exception and covenant-of-good-faith exception. These exceptions are determined by each state, with different states accepting a mixture of these exceptions at varying levels of strictness. Only six states accept all three exceptions (Alaska, California, Idaho, Nevada, Utah, and Wyoming). Four states do not recognize any of the exceptions to the EAW doctrine (Florida, Georgia, Louisiana, and Rhode Island). Table 1 (Gibson & Lindsey, 2010) shows each state's acceptance of the three exceptions. The focus of this study is human

Table 1

States Acceptance of the Three Exceptions

State	Public-policy exception	Implied- contract exception	Covenant of good faith and fair dealing
Total	43	37	10
Alabama	No	Yes	Yes
Alaska	Yes	Yes	Yes
Arizona	Yes	No	No
Arkansas	Yes	Yes	No
California	Yes	Yes	Yes
Colorado	Yes	Yes	No
Connecticut	Yes	Yes	No
Delaware	Yes	No	Yes
District of Columbia	Yes	Yes	No
Florida	No	No	No
Georgia	No	No	No
Hawaii	Yes	Yes	No
Idaho	Yes	Yes	Yes
Illinois	Yes	Yes	No
Indiana	Yes	No	No
Iowa	Yes	Yes	No

Kansas	Yes	Yes	No
Kentucky	Yes	Yes	No
Louisiana	No	No	No
Maine	No	Yes	No
Maryland	Yes	Yes	No
Massachusetts	Yes	No	Yes
Michigan	Yes	Yes	No
Minnesota	Yes	Yes	No
Mississippi	Yes	Yes	No
Missouri	Yes	No	No
Montana	Yes	No	Yes
Nebraska	No	Yes	No
Nevada	Yes	Yes	Yes
New Hampshire	Yes	Yes	No
New Jersey	Yes	Yes	No
New Mexico	Yes	Yes	No
New York	No	Yes	No
North Carolina	Yes	No	No
North Dakota	Yes	Yes	No
Ohio	Yes	Yes	No
Oklahoma	Yes	Yes	No
Oregon	Yes	Yes	No

Pennsylvania	Yes	No	No
Rhode Island	No	No	No
South Carolina	Yes	Yes	No
South Dakota	Yes	Yes	No
Tennessee	Yes	Yes	No
Texas	Yes	No	No
Utah	Yes	Yes	Yes
Vermont	Yes	Yes	No
Virginia	Yes	No	No
Washington	Yes	Yes	No
West Virginia	Yes	Yes	No
Wisconsin	Yes	Yes	No
Wyoming	Yes	Yes	Yes

Note. From *The evolution of employment-at will: Past, present, and future predictions* by Gibson and Lindley, 2010, *American Journal of Business Education*, 3(2), p. 89-100.

¹This table is a static compilation from this cited source and is not represented as being authoritative in regard to the law in each state.

²“No” in the second column of this table means the courts of that state strictly apply the implied contract doctrine. No case has been identified in that jurisdiction in which the plaintiff was successful in a wrongful termination case based on the implied contract theory.

resource practitioner's knowledge of these exceptions and their ability to differentiate these three exceptions from the statutory laws discussed previously. The implications of this research could be used to further the knowledge of the employment law or to develop education programs for human resource professionals on the EAW doctrine.

Public-policy exception. The first and most accepted exception (with 43 states) to the EAW doctrine is the public policy exception (Muhl, 2001). This exception states that an employee is wrongfully discharged if he or she is terminated because of a well-established public-policy of the state and covers acts that could be harmful to the public. Some examples of state public-policy are serving on jury duty, joining a union, or refusing to break the law at the request of the employer. A large reason the public-policy exception is so widely accepted is because many courts have reasoned that since jobs are becoming more specialized, employers and employees are, again, not on equal footing. This exception serves to help society and social responsibility to the state (Gibson & Lindley, 2010).

Implied-contract exception. The second exception to the EAW doctrine is the implied-contract exception (Muhl, 2001). Many states accept this exception (37 states). This exception deems termination is wrongful if a written or oral agreement expresses job security or procedures that will be followed when adverse actions take place. These contracts often revolve around the employee handbook or hiring documents, although any company document that expresses job security can be deemed a contract. In 1980, the Michigan Supreme Court ruled in *Toussaini v. Blue Cross and Blue Shield of Michigan* that the handbook could be used to imply a contract of employment. Common phrases

that say firing will only be based on job performance are enough to imply a contract of just cause termination.

Preserving the EAW policy in a company usually starts and can depend highly on the employee handbook. States such as California have set up guidelines to ensure employers implement EAW status properly. Adding a statement of EAW in the handbook or on other documents helps secure an organization's EAW status. In a study by Wayland, Clay, and Payne (1993), researchers found that applicants perceived organizations as riskier and the company as lacking concern for the employee because of their EAW statements in the employment application. Wording the EAW statement harshly could turn away applicants. Furthermore, employers should know that just stating EAW is not enough to make the statement legally binding. It is suggested that employees be provided a copy of the handbook, read the statement, then sign and date a separate employment contract acknowledging his or her understanding of the EAW policy (Flynn, 2000).

In addition to the handbook, to keep their EAW status, employers should reword other documents such as employment advertisements, employment applications and offer letters to ensure nothing can be construed as a promise or procedure of termination (Jenner, 1994). Simple statements like duration of employment, the word "permanent" or "long term commitment" have been taken to imply a contract with the employee. The implied contract often holds up in courts. Even orally implied contracts have held, as in the case of *Ohanian vs. Avis Rent-A-Car Systems Inc., 1985*. In this case, the regional vice president was given verbal assurance that if his new position did not work out, he would be transferred back to his old one. When the job did not work out, Ohanian was

terminated. Ohanian won his case because of the oral promise made. Training is recommended for interviewers, managers and executives to avoid making oral promises. Including that oral promises are not enforceable in the employee handbook can prevent the oral contract from being created.

Covenant-of-good-faith. The last exception is covenant-of-good-faith (Muhl, 2001). This exception is recognized by only ten states. It is by far the most liberal exception to the EAW doctrine. This exception has been interpreted such that terminations made in bad faith or motivated by malice are subject to a just cause standard. This is often applied when an employee has a long employment history with the company, has had satisfactory job performance and is terminated without cause. The courts have ruled that abusive, irresponsible and arbitrary dismissals give rise to tort liabilities. The courts have further explained that the relationship between the employer and employee has changed. Employees are now more dependent on their employer for their livelihood and have more specialized skills. Some examples of violating the good-faith exception are intentional infliction of emotional distress, intentional interference with a contract, constructive discharge, wrongful transfers, forced resignations, and detrimental promissory reliance on employer representations (Muhl, 2001).

Because of the statutory limitations and the three exceptions, some organizations have chosen to give up their EAW status. The next section explores what giving up EAW would be and what being a JCT employer entails.

Just Cause Termination

The EAW doctrine, as stated previously, is the default law for termination. However, some are saying that EAW is no longer an appropriate outlet for companies;

used often as a crutch for poor management and unethical business practices (Fulmer & Casey, 1990). In addition, courts are looking more closely at discrepancies between why the employer *says* termination is taking place and the *real reason* termination is taking place. Some organizations have chosen to give up their EAW rights and become JCT organizations. JCT has been gaining in popularity in recent years. Becoming a JCT organization entails acknowledging, in writing, that an employee will be terminated for good cause reasons only or after a disciplinary procedure has been followed. There are several reasons researchers and practitioners would suggest becoming a JCT organization. Two of the most researched reasons for becoming a JCT organization are perceptions of job security and psychological contract theory.

Job security is “the belief that one will retain employment with the same organization until retirement” (Cascio & Aguinis, 2011, p. 11). Schwoerer and Rosen (1989) wanted to look at the relationship between EAW statements on the effects of organizational efforts to attract new employees. Job security and compensation are commonly at the top of prospective employees’ lists when looking for new employment. An EAW policy may reflect negatively on job security perceptions in the hiring process compared to JCT policies. Researchers also included a compensation component, hypothesizing that higher pay would lead applicants to forego the job security JCT could give.

With an average age of 21, Schwoerer and Rosen (1989) used 101 undergraduate business students who were preparing for employment after college to test these hypotheses. The students were given a brochure depicting a fictitious company to manipulate the conditions where a paragraph was included that declared the company’s

EAW policy or JCT policy. A different paragraph indicated whether the company was above industry standards in pay or the same as industry standards. As predicted, researchers found that an EAW statement significantly lowers evaluation of the company to prospective employees and that higher compensation offset the negative effects of an EAW policy.

Although Schwoerer and Rosen's (1989) research may not generalize to a greater population, it should be noted that an interaction could be happening between job seekers who strongly value job security and the EAW doctrine. Looking more closely at this job security variable, Schwoerer and Rosen's (1989) have posited that psychological contract theory could factor into job security.

The psychological contract can have an impact on the way employees and employers relate to the EAW versus JCT. The psychological contract theory refers to the terms of exchange subjectively believed to occur between employee and employer or vice versa (Roehling & Boswell, 2004). The psychological contract is highly subjective, usually not enforceable and extremely fragile. These contracts are typically influenced by a wide range of factors that include social norms, organizational culture, employer policies/practices, and interactions between employer and employee. Often, legal and psychological contracts are seen as interchangeable by employees. The good cause norm for termination (or just cause) is often a part of these psychological contracts.

As seen in research mentioned previously, employees believe their employer will not terminate without a good reason, even if an EAW policy exists. Roehling and Boswell (2004) proposed that the psychological contract mediates this interaction. Along with this hypothesis, the researchers also proposed that employees felt less obligated to

have a good reason to leave their employer if the employer had an explicit EAW policy. Interestingly, the researchers finally posited that the longer the employee works for the organization the stronger his or her belief will be that the employer must give a good reason for termination.

Roehling and Boswell (2004) surveyed 525 participants from fifteen different organizations to assess these hypotheses. Using a five-item Likert scale, participants answered questions relating to the believed obligations employers and employees had toward each other and demographic information. Of the 15 organizations used, ten had EAW policies; the remaining five had formal protection against arbitrary discharge (JCT). Roehling and Boswell found that 92% of participants in the at will condition indicated that the employer was obligated to have a good reason to terminate employees. While this was the only major finding, the researchers also found that participants felt less obligated to give a good reason when leaving at will organizations. This finding could imply a lack of commitment to the organization from employees due to the at will policy.

Similarly, McKinney, Whitaker, and Hindman (2012) investigated the psychological contract theory and the implied promise of job security (JCT). Using a job offer letter as the manipulation tool, researchers hypothesized the presence of an at will disclaimer would decrease levels of organizational attractiveness and psychological contract obligations. Conversely, researchers hypothesized that the implied promise of job security would increase organizational attractiveness and psychological contract obligations. Last, researchers speculated that the presence of both an implied promise of job security and an at will statement (a practice commonly used by recruiters and

discussed previously in this paper) will lower organizational attractiveness and psychological contract obligations. These hypotheses were supported, except increased levels of psychological contract obligation in the implied promise condition. The implications of these findings are clear that at will disclaimers reduce organizational attractiveness, even if the disclaimer is embedded with an implied promise of job security. However, these results are for potential employees and when working professionals are used, the results are often non-significant (Roehling & Boswell, 2004).

Some have said better human resource practices are needed instead of stricter at will policies. Fulmer and Casey (1990) outlined several ways to improve hiring, training, performance appraisal, promotions, discipline actions that will make EAW less needed. Strengthening hiring procedures is the first step in making more sound HR practices. During orientation, managers should give clear expectations for appropriate and inappropriate performance. Performance appraisals should reflect these expectations. Timely, accurate, documented feedback should be given with goals attached to improve performance. Promotions should not be made as a result of seniority or loyalty. Instead, promotions should be based on the performance appraisals. Promoting an employee with poor performance will only raise questions when that employee is later terminated. According to Longnecker, Sims and Giola (1987), many performance appraisals are based on politics and not performance. When a problem does occur, proper disciplinary processes should be followed. Keeping a record of warnings given to an employee is a good practice and can be used to provide evidence when termination of that employee occurs.

Because courts are looking at the real reason organizations are terminating employees, becoming a JCT organization may be in the best interest of some organizations. Namely, job security and preservation of the psychological contract are two good reasons. Also, better human resource practices could be considered. The decision to give up EAW should not be taken lightly.

Montana. The state of Montana is the only state in the United States to adopt a JCT statute. In 1987, Montana enacted the Montana Wrongful Discharge from Employment Act (Montana Wrongful Discharge from Employment Act of 1987). This act means private sector employers must have just cause to dismiss an employee. The reason behind this act was to combat racial injustices, lower unemployment rates and to provide job growth. A claim filed under this act must be done so within one year of the discharge. A plaintiff can be awarded lost wages, fringe benefits for up to four years, and punitive damages. As of 2008, Montana had one of the lowest unemployment rates in the country (Roseman, 2008).

Main Hypotheses

Often research in the area of employment law focuses on organizational procedures in regards to hiring, firing, selection, promotion, and performance appraisal. General knowledge of the laws involving these practices is assumed. However, practitioners may not be aware of some of these laws or the exceptions or amendments to laws. In 2014, more than 88,000 claims of violations of the protected class acts were filed and resolved with the EEOC, with monetary benefits reaching almost 300 million dollars (All Statutes FY 1994 – FY 2014). With numbers this high, organizations must protect themselves; knowledge and differentiation of these laws is key. My first hypothesis is

based on the idea that human resource professionals who know about one area of the law will know more about other areas of the law.

H1: The overall relationship between employee knowledge of PPEC and employee knowledge of EAW doctrine will be positive.

Since the three exceptions to the EAW doctrine are accepted on a state by state basis, human resource professionals may be more aware of the exceptions in states that have accepted all three exceptions. This leads to my second hypothesis.

H2: The relationship between participants' states acceptance of the three exceptions and knowledge of EAW exceptions will be positive.

Since the legal system is complex, more formal education may develop the critical thinking skills needed to consolidate the information, amendments, and exceptions to employment laws. In addition to college degrees, specialized certifications can be obtained in the human resource field. Thus the following two hypotheses were formulated:

H 3: Knowledge of the EAW exceptions will have a positive relationship with education level.

H 4: Individuals with human resources certifications will have more knowledge of the EAW exceptions than individuals with no human resources certifications.

The higher employment status a person has may lead to more knowledge in a specialty area in their chosen field. Age may also increase exposure to employment laws and conflict within employment laws, leading to a better understanding of certain laws.

With this in mind, the following two hypotheses are proposed:

H 5: Knowledge of the EAW exceptions will have a positive relationship with human resource professionals higher in employment status.

H 6: Knowledge of the EAW exceptions will have a positive relationship with age.

Because larger organizations with larger human resource departments have human resource professionals with more specialized knowledge, I assume that their human resource departments as a whole will be more knowledgeable because of knowledge sharing.

H 7: Organizations with larger human resource departments will have more knowledge of the EAW exceptions than those with smaller human resource departments.

Finally, because EAW is a default position, I expect companies that have taken the time to craft specific termination policies to have also taken the time to educate themselves on EAW laws.

H 8: Organizations with written and specific termination policies will have more knowledge of EAW exceptions than those who do not have written and specific termination policies.

CHAPTER 3

METHOD

Participants

Participants were contacted by asking local Human Resources chapter presidents to distribute the cover letter and survey information to their members via email.

Participants were randomly selected from chapters in sixteen different states. The survey was anonymous and on Survey Monkey to protect confidentiality. Through this method 121 participants responded. Participants included eighteen males and 102 females, consisting of 93.4% White/Non-Hispanics (113) and 6.6% Non-Whites (8). Participants had various HR certifications, which included PHR (34), SPHR (25), SPHR Plus (4), and other (1) for a total of 64 individuals certified. Participants ranged in age with 21 individuals between 25-34 years of age, 35 between individuals 35-44 years of age, 33 between individuals 45-54 years of age, 26 individuals between 55-64 years of age, four individuals between 65-74 years of age, and one individual over 75 years of age. Salary of participants ranged from less than 30,000 (1), 30,000-40,000 (12), 40,001-50,000 (17), 50,001-60,000 (16), 60,001-80,000 (27), 80,001-100,000 (19) and more than 100,000 (26).

In addition to the personal demographics of each participant, company demographics were collected. Participants were from a variety of industries including Consumer products (1), Entertainment & Leisure (1), Financial Services (5), Health Care (18), Manufacturing (23), Retail & Wholesale (3), Technology (2), Transportation (3)

and other (60). Size of each organization ranged from 1 to more than 50,000 (see Table 2). Seventeen percent of the participants' organizations were unionized. Of the 121 participants, 105 of their organizations had specific written termination policies. Thirty-one percent of participants reported that their company had been sued in the last five years. Forty participants reported their company had downsized in the last five years. Of those that downsized, 55% laid off between one and five percent of their workforce, while the remaining 45% laid off more than 6%. Lastly, 25 of the participants were from states that accepted all three exceptions, 65 participants were from states that accepted one or two of the exceptions and seventeen of the participants were from states that accepted none of the exceptions. Three participants were from Montana.

Measures

Personal demographics. Demographic information on age, gender, race, education, certification status, salary, job title, number of employees in company, number of members employed in human resources, and how many human resource employees report to the participant can be found in Appendix A.

Company demographics. Information was also collected on company demographics, industry, union status, and state headquarter (see Appendix B). In addition, participants were asked to answer if to their knowledge, the company has been sued due to employment practices in the last five years and has the company downsized in the last five years? Lastly, the participant were asked if the company has a written and specific termination policy or procedure.

Table 2

Organizational Size

Number of Employees	Frequency	Percent
1-50	15	13.0
51-100	19	16.5
101-500	40	34.8
501-1,000	15	13.0
1,001-5,000	14	12.2
5,001-10,000	6	5.2
10,001-50,000	4	3.5
more than 50,000	2	1.7

Knowledge of PPEC test. The purpose of this test was to determine participants' knowledge of the federal statutory laws on discrimination, PPEC, and the whistleblower law. Two items measured knowledge of whistleblower status (retaliation and union status). The remaining eight items measured knowledge of discrimination laws and PPEC. I created the test. HR professionals from the Emporia HR-Page group were used as subject matter experts to judge the content validity of my test. Based on their responses and feedback, adjustments were made to items for better understanding and interpretation. Ten items were eventually used to measure this variable (see Appendix C). Based on a coefficient alpha of .56, there was not a great deal of internal consistency in the participants' knowledge of PPEC. This indicates that their knowledge is multi-dimensional. A factor analysis revealed four factors with Eigenvalues greater than one (see Table 3).

Knowledge of EAW exceptions test. The purpose of this test was to determine participants' knowledge of the EAW doctrine and the three exceptions. I created the test. I used HR professionals from the Emporia HR-Page group as subject matter experts to judge the content validity of my test. Based on their responses and feedback, adjustments were made to items for better understanding and interpretation. Ten items were eventually used to measure this variable (see Appendix D). Based on a coefficient alpha of .60, there was not a great deal of internal consistency in the participants' knowledge of PPEC. This indicates that their knowledge is multi-dimensional. A factor analysis revealed three factors with Eigenvalues greater than one (see Table 4).

Table 3

Rotated Component Matrix of Knowledge of PPEC

Items	Component			
	1	2	3	4
PC1	.084	.276	-.489	-.551
PC2	.148	.072	-.152	.855
PC3	-.068	.762	-.091	.104
PC4	.041	.790	.135	-.138
PC5	.864	-.172	-.059	.045
PC6	.795	.022	.123	.078
PC7	.862	-.084	-.014	.078
PC8	.702	.349	.104	-.083
PC9	.220	-.029	.684	-.087
PC10	-.078	.114	.744	.002

Note: Extraction Method: Principal Component Analysis. Rotation Method: Varimax with Kaiser Normalization.

Table 4

Rotated Component Matrix of Knowledge of EAW Exceptions

Items	Component		
	1	2	3
EAW1	.677	-.005	-.160
EAW2	.472	.449	-.001
EAW3	.810	.084	.042
EAW4	.549	.037	-.483
EAW5	.463	.639	.103
EAW6	.164	-.713	.049
EAW7	.085	.220	.753
EAW8	-.007	-.203	.588
EAW9	.484	-.424	.310
EAW10	.623	-.056	.321

Note: Extraction Method: Principal Component Analysis. Rotation Method: Varimax with Kaiser Normalization.

Procedure

Before collecting any data I first obtained IRB approval (see Appendix E). Data was first collected from participants in the states of Alaska, California, Florida, Georgia, Idaho, Louisiana, Nevada, Rhode Island, Utah and Wyoming. These ten states were selected because they accept either all or none of the exceptions. Data were also collected from the state of Montana because of its unique JCT status. Five additional states were added after initial collection for better response ratings, these include Maryland, Missouri, Kansas, Indiana and Texas. These five additional states accept one or two of the exceptions.

To develop an email distribution list, I visited each SHRM chapter website and contacted the president/communication liaison of each chapter. If a direct email could not be located, I submitted a request to the 'contact us' function of the website. When contacting the individual through email, I asked if he/she would be willing to distribute a SurveyMonkey link to their members. The link contained a cover letter informing the participants about the study and his/her rights as human subjects (see Appendix F). The SurveyMonkey link contained the demographic survey, company survey, and knowledge test. Consent to participate was determined by clicking on the web link to answer questions. The survey was anonymous. Data were collected and sent to me from SurveyMonkey for analysis and storage. To analyze hypotheses 1, 2, 3, 5 and 6 Pearson's correlation test was used. For Hypotheses 4,7,8, and 9 an independent samples t-test was used.

CHAPTER 4

RESULTS

Main Hypotheses

H1: The first hypothesis predicted an overall positive relationship between employee knowledge of PPEC and employee knowledge of the EAW doctrine. A significant positive relationship between PPEC knowledge and EAW knowledge, $r = .60$, $p = .001$, supported hypothesis 1.

I also found that the HR professionals had significantly more knowledge of PPEC ($M = 8.52$, $SD = 1.57$) than EAW ($M = 6.19$, $SD = 2.11$); $t(101) = 8.52$, $p < .001$. However, the HR professionals scored higher on their EAW knowledge test (61.9%) than I had expected from my personal conversations with HR professionals. This was a pleasant surprise.

H2: The second hypothesis predicted a positive relationship between participants' states acceptance of the three exceptions and knowledge of EAW exceptions. To examine this hypothesis I gave the states with three exceptions a score of three, two exceptions a score of two, one exception a score of one, and zero exceptions a score of zero. The correlation between the number of exceptions an HR professional's state had with his or her knowledge of EAW exceptions was -0.01 ($p = .95$). Thus, this hypothesis was not supported.

H 3: The third hypothesis predicted a positive relationship between knowledge of the EAW exceptions and education level. A significant positive relationship between education and EAW supported this hypothesis, $r = .22$, $p = .03$. These results suggests that the more education an individual has, the more knowledge of EAW exceptions

he/she possesses. However, education was not significantly related to knowledge of PPEC, ($r = .15, p > .05$).

H 4: Regarding the fourth hypothesis, I predicted individuals with human resources certifications ($M = 6.54, SD = 1.78$) would have more knowledge of the EAW exceptions than individuals with no human resources certifications ($M = 5.73, SD = 2.41$). Although close, this hypothesis was not supported; $t(78.8) = -1.89, p = .06$. However, human resources certifications were significantly related to knowledge of PPEC; $t(83.8) = -2.33, p = .02$. Those with a certification ($M = 8.84, SD = 1.71$) had more knowledge than those without one ($M = 8.11, SD = 1.39$).

H 5: The fifth hypothesis predicted that knowledge of the EAW exceptions will have a positive relationship with human resource professionals higher in employment status. I used annual salary to determine employment status, assuming positions higher in status would have a higher annual salary. A positive significant relationship supported this hypothesis, $r = .29, p = .003$. These results suggest those higher in employment status have more knowledge of EAW exceptions. In addition, employment status had a positive relationship with knowledge of PPEC, $r = .30, p = .002$.

H 6: The sixth hypothesis predicted that knowledge of the EAW exceptions will have a positive relationship with age. This hypothesis was not supported, $r = .00, p = .99$. Also, I found that age was not significantly related to knowledge of PPEC, $r = -0.01, p = .99$.

H 7: The seventh hypothesis predicted organizations with larger human resource departments will have more knowledge of the EAW exceptions than those with smaller human resource departments. This hypothesis was not only unsupported, but in the

opposite direction predicted, $r = -0.12$, $p = .24$. The same was true for HR department size and knowledge of PPEC, $r = -0.08$, $p > .05$).

H 8: The last hypothesis predicted that organizations with written and specific termination policies will have more knowledge of EAW exceptions than those who do not have written and specific termination policies. Not only was there not a significant difference for knowledge of EAW exceptions; $t(100) = -1.68$, $p = .10$. The organizations with written and specific termination policies scored slightly lower ($M = 6.09$, $SD = 2.13$) than those without any ($M = 7.38$, $SD = 1.41$).

There was also not a significant difference for knowledge of PPEC; $t(100) = .50$, $p = .62$. The organizations with written and specific termination policies scored just slightly higher ($M = 8.54$, $SD = 1.58$) than those without any ($M = 8.25$, $SD = 1.58$).

Exploratory Analyses

There was not a significant difference for knowledge of EAW exceptions between HR professionals who worked in unionized organizations versus those who worked in non-unionized organizations; $t(99) = 1.16$, $p = .25$. The HR professionals at organizations with unionized workers scored slightly higher ($M = 6.79$, $SD = 1.81$) than those without any unionized workers ($M = 6.08$, $SD = 2.16$).

However, there was a significant difference for knowledge of PPEC; $t(21.6) = 3.48$, $p = .006$. The HR professionals at organizations with unionized workers scored higher ($M = 9.57$, $SD = 1.16$) than those without any unionized workers ($M = 8.34$, $SD = 1.58$).

One of the applications this research could be used for is education. Therefore, analysis was conducted on HR certification and employment status. HR certifications are

good predictors of employment status, $r = .41, p < .001$. Since higher employment status was positively correlated with EAW knowledge, putting HR professionals through HR certification programs might raise knowledge of EAW.

Another avenue of analysis that was explored was EAW knowledge and downsizing. A positive significant relationship was found between EAW knowledge and downsizing, $r = .23, p = .02$. This suggests HR professionals are more knowledgeable of EAW after downsizing.

CHAPTER 5

DISCUSSION

The field of law is so massive that individuals get lost in the laws, doctrines, and exceptions. Employment at will (EAW) is a blanket statement often referring to an employer's ability to hire and fire at its own discretion (Butsch & Kleiner, 1997). Three exceptions to EAW doctrine (public-policy, implied-contract, and covenant-of-good-faith) are accepted on a state by state basis. This may make the matter of true EAW unclear for human resource professionals. Often a decision must be made quickly to avoid losses. The purpose of this study was to find out how much human resources practitioners knew about the EAW doctrine and the three exceptions to the EAW doctrine.

Results support my first hypothesis, which predicted an overall positive relationship between an HR professional's knowledge of PPEC and an HR professional's knowledge of the EAW doctrine. The more HR professionals knew about the PPEC, the more they knew about the EAW doctrine and its exceptions. With more than 88,000 claims of violations of the protected class acts filed in 2014, HR practitioners need to be knowledgeable to prevent their organization from being involved in such litigation (All Statutes FY 1994 – FY 2014). In addition to these findings, the HR professionals knew more about EAW and the exceptions than I had expected. This finding is good and contrary to my personal knowledge. The EAW doctrine has been in existence for over 100 years and defended many times over. In 2005, 54% of US general counsels greatest concern was employment litigation (Dannin, 2007). It is clear, legal issues surrounding EAW are not going away and as the saying goes, the best offense is a good defense. Most

organizations' first line of defense is their HR department and it is encouraging to know they have a base understanding of EAW.

Results failed to support my second hypothesis, which predicted a positive relationship between participants' states acceptance of the three exceptions and knowledge of EAW exceptions. This theory was hypothesized with the intent that HR professionals in states that accepted all of the exceptions would know more than those who do not. This was not the case. Due to low response rates, I had to add states that accept one or two exceptions. However, I still find it interesting that HR professionals in states that accepted any of the exceptions did not know more than those who do not accept any. A possible explanation for this could be that the exceptions confuse HR departments and what they mean for their organization (Gibson & Lindley, 2010). The exceptions make this common law much more complex.

My third hypothesis, that knowledge of the EAW exceptions will have a positive relationship with education level, was supported. Education may help individuals develop the critical thinking skills needed to navigate difficult legal situations. While education level was not significantly related to knowledge of PPEC, it was a positive correlation. One possible reason for the lower correlation between education and knowledge of PPEC might be range restriction. The average test score on the EAW exceptions test was 62%, while the average test score on the knowledge of PPEC test was 85%, significantly higher. The HR professionals of all educational levels were well versed on the PPEC.

Results failed to support Hypothesis 4; individuals with human resources certifications will have more knowledge of the EAW exceptions than individuals with no human resources certifications. However, human resources certifications were

significantly related to knowledge of PPEC, suggesting that more education and specialized knowledge in human resources will help individuals in the legal realm. Certain certifications discuss EAW in their legal teachings, for example SHRM. SHRM includes EAW in several legal handbooks and PowerPoints (Gusdorf, 2008). A quick search of their website can provide resources for EAW. If anything it shows that steps are being taken to educate HR professionals on EAW; steps that may or may not be helping.

Results supported the fifth hypothesis which predicted knowledge of the EAW exceptions will have a positive relationship with human resource professionals higher in employment status. Reason for this finding could be that individuals with higher employment status may have had more exposure to legal practices regarding EAW either through learning or through litigation (Dannin, 2007).

The sixth hypothesis was not supported, predicting that knowledge of the EAW exceptions would have a positive relationship with age. This was hypothesized with the assumption that increased age would lead to more knowledge because of exposure and knowledge acquisition. It seems this is not the case. This finding could be explained by the Flynn Effect. According to Trahan, Stuebing, Fletcher and Hiscock (2014) the Flynn Effect refers to “an observed rise over time in standardized intelligence test scores” (p. 1332). Several explanations for this rise have been posited, but for our purposes education seems to be the most likely event. Individuals are spending more time in formal educational settings, thus the increase in standardized intelligence. We can then posit that younger HR professionals may have more educational opportunities and be better at test taking.

Not only did results fail to support my seventh hypothesis, but results were in the opposite direction. Hypothesis 7 predicted that HR professionals in organizations with larger human resource departments will have more knowledge of the EAW exceptions than those in smaller human resource departments. A possible explanation for the opposite direction results could be that human resources professionals in smaller organizations take on more generalist roles, having to be more knowledgeable. Human resource professionals in larger organizations may have more collective knowledge, but the knowledge sharing I assumed takes place may not happen. This also applies to exposure where in small organizations the human resources department may be highly involved in legal litigation but may not be in larger ones.

My final hypothesis was not only unsupported, but in the opposite direction. This hypothesis predicted organizations with written and specific termination policies will have more knowledge of EAW exceptions than those that do not have written and specific termination policies. I assumed the HR professionals at companies who had taken the time to craft a specific termination policy would take the time to educate themselves about EAW laws. However, it seems that the opposite may be true. Companies with no policy in place may have to be more careful, thus have more knowledge of EAW. As Dannin (2007) explains, EAW does not mean employers are free from legal actions. It also seems reasonable to postulate that organizations with a specific written policy may no longer employ the individual who originally created and enacted the policy. That individual may have the knowledge of EAW, but took that knowledge with him or her when moving to a different organization.

During my exploratory analyses, HR professionals who worked in unionized organizations did not have greater knowledge of EAW exceptions versus those who worked in non-unionized organizations. However, there was a significant difference when looking at knowledge of PPEC. This makes sense because organizations with unions may have negotiated termination policies and not have EAW policies. Union organizations must still be knowledgeable of PPEC regardless of EAW status.

Practical Application

The current study sheds light on HR professionals' knowledge of the EAW doctrine and PPEC. Organizations must protect themselves; knowledge and differentiation of these laws is key to avoiding legal consequences. The practical application of this research is education. As we have seen with the results of hypothesis one, HR professionals have more knowledge than expected about the EAW doctrine. These results are encouraging. However, we cannot assume this knowledge is due to education. Knowledge could be acquired reactively as a result of legal involvement in a case related to EAW. With the law ever changing, untold financial costs could result (Dannin, 2007). Training institutions and organizations can be proactive using education to prevent such litigation.

In addition to education, this study adds to the growing research of the ethics behind EAW. As previously discussed, Roehling (2003), outlines several unethical behaviors organizations have used regarding EAW including manipulation of EAW statements, the chilling effect, and misinterpretation of fire at will. Knowing the extent of knowledge HR professionals have leads me to question whether these behaviors have malicious intent or are based out of ignorance. In contrast to Roehling, Janove (2005)

argues that not all employers are unfair in their employment practices regarding termination, only a small subset of organizations display unethical behaviors.

Limitations

Despite significant results, the study did have limitations that should be addressed. The sample size was small and homogenous (mostly White females), limiting the generalizability. A longer collection time could have increased participation, which would increase the amount of diversity in the sample.

The instruments used had low internal consistency. However, this suggests participants' knowledge is multi-dimensional. Also, only ten items were used to measure EAW knowledge and protect classes knowledge. By adding more items, I might have been able to better differentiate the multiple factors. As mentioned before, future research would benefit from creating more specific knowledge tests per state.

Adding the states that accept only one or two of the exceptions turned out to be a big limitation, skewing the results of Hypothesis 2. Several reasons for this result could exist. First, because participation was low in states with no exceptions and all the exceptions, results were based on too small a sample. The second reason could be that adding the states that accept one or two of the exceptions might have muddled the results. This addition skewed the black and white picture this hypothesis was intended to paint. Individuals in states that accept only one or two of the exceptions may be knowledgeable of all three exceptions, but fail to know which applies to their own state. While states who accept all three must be knowledgeable of and apply all three.

Future Research

While the fifth hypothesis was supported, I would suggest a better measure to predict employment status for future research. I used annual salary to determine employment status. Higher income does not necessarily mean we are accurately capturing an individual's status in an organization. Cost of living and incomes differ in certain regions (National Compensation Survey – Wages, 2011). Also, we are not capturing specializations and management. Since the human resource field can be so broad, a Human Resources Director could make the same as a Training Manager but their knowledge base is different (Summary Report for: 13-1071.00 - Human Resources Specialists, 2015; Summary Report for: 11-3121.00 - Human Resources Managers, 2015).

I would also suggest future researchers look more specifically at knowledge of each individual exception a state accepts, as opposed to all three exceptions as a group. General knowledge of all three exceptions to the EAW doctrine is good, however, this does not mean the exceptions are being followed in that state. In particular, it would be interesting to compare each states compliance and litigation rates against Montana, the only JCT state.

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Appendix A
Personal Demographic Survey

Directions: Answer the following questions by checking the appropriate boxes below.

Gender: Female Male Other **Age:**

Race: (please select one)

- White/Non-Hispanic African American
Hispanic/Latino Asian
Native Hawaiian/Other Pacific Islander American Indian/ Alaskan Native
Other (e.g., a combination of categories above)

Level of Education: Please indicate the highest level of education you have obtained.

- High School Masters Degree
Associates degree or some college Doctoral Degree
Bachelor's degree

Degree concentration: Please indicate the degree concentration of your highest level of education.

- Psychology I-O Psychology
Business Human resources management
Education Other

HR certifications: Check all that apply.

SHRM/HRCI

- PHR
SPHR
GPHR
PHR-CA
SPHR-CA

ASTD

- CPLP

WorldatWork

- CCP
CBP
WLCP
CSCP
CECP
GRP

IFEBP

- CEBS
GBA
RPA
CMS

Job title:

Salary:

- Less than \$20,000 \$30,001-\$40,000 \$60,001-\$80,000
\$20,000-\$25,000 \$40,001-\$50,000 \$80,001-\$100,000
\$25,001-\$30,000 \$50,001-\$60,000 more than \$100,000

Appendix B

Company Demographic Survey

Company Demographics

Directions: Answer the following questions by checking the appropriate boxes below.

Approximately how many people work in HR in your organization?

- | | | |
|---|--|--|
| <input type="checkbox"/> 1 HR employee employees | <input type="checkbox"/> 4 HR employees | <input type="checkbox"/> 11-20 HR |
| <input type="checkbox"/> 2 HR employees employees | <input type="checkbox"/> 5 HR employees | <input type="checkbox"/> 21-50 HR |
| <input type="checkbox"/> 3 HR employees | <input type="checkbox"/> 6-10 HR employees | <input type="checkbox"/> More than 50 HR employees |

What is the approximate size of your organization?

- | | | |
|---|---|---|
| <input type="checkbox"/> 1-50 employees employees | <input type="checkbox"/> 501-1,000 employees | <input type="checkbox"/> 10,001-50,000 |
| <input type="checkbox"/> 51-100 employees | <input type="checkbox"/> 1,001-5,000 employees | <input type="checkbox"/> More than 50,000 employees |
| <input type="checkbox"/> 101-500 employees | <input type="checkbox"/> 5,001-10,000 employees | |

Approximately how many HR employees report to you?

- | | | |
|---|--|--|
| <input type="checkbox"/> 1 HR employee employees | <input type="checkbox"/> 4 HR employees | <input type="checkbox"/> 11-20 HR |
| <input type="checkbox"/> 2 HR employees employees | <input type="checkbox"/> 5 HR employees | <input type="checkbox"/> 21-50 HR |
| <input type="checkbox"/> 3 HR employees | <input type="checkbox"/> 6-10 HR employees | <input type="checkbox"/> More than 50 HR employees |

What industry category best describes your organization?

- | | | |
|---|---|-------------------------------------|
| <input type="checkbox"/> Consumer Products | <input type="checkbox"/> Health Care | <input type="checkbox"/> Technology |
| <input type="checkbox"/> Entertainment & Leisure
<input type="checkbox"/> Transportation | <input type="checkbox"/> Manufacturing | |
| <input type="checkbox"/> Financial Services | <input type="checkbox"/> Retail & Wholesale | <input type="checkbox"/> Other |

Are any of your organization's employees unionized?

- Yes No

What percentage of employees is unionized?

- | | | |
|----------------------------------|----------------------------------|----------------------------------|
| <input type="checkbox"/> 1%-10% | <input type="checkbox"/> 31%-40% | <input type="checkbox"/> 61%-70% |
| <input type="checkbox"/> 11%-20% | <input type="checkbox"/> 41%-50% | <input type="checkbox"/> 71%-80% |

21%-30%51%-60%81%-100%

Where is the state headquarters of your organization?

To your knowledge, does your organization have written and specific termination policies and procedures?

YesNo

To your knowledge, has your organization been sued due to employment practices in the last 5 years?

YesNo

In the last 5 years, has your organization downsized?

YesNo

If yes, what percentage did your organization downsize?

1%-5%21%-30%6%-10%More than 30%11%-20%

Appendix C
PPEC Knowledge Items

In the following test you will be asked questions on your knowledge of certain legal practices relating to human resources. Please answer the questions to the best of your ability.

Directions: On this Multiple-Choice Test each question or item is followed by a series of possible answers or choices. Read each question and decide which answer or choice is best using any material normally in your office to which you would refer.

1. An employee does not get a promotion because she is 39 years of age. The hiring committee felt she was too young, in spite of the fact that she is the best person for the job. Could this employee file a discrimination case?
 - a. No, because she is not protected by the Age Discrimination Act of 1967.
 - b. Yes, because he/she is protected by the Age Discrimination Act of 1967.
 - c. Yes, because discrimination of any kind is not permitted.
 - d. No, because of a precedent set by *Ohanian vs. Avis Rent-A-Car Systems Inc.*
2. A recruiter can ask a potential employee if she is or will become pregnant.
 - a. True
 - b. False
3. It is illegal for an organization to retaliate against an employee because he/she filed a charge of discrimination or participated in an employment discrimination lawsuit.
 - a. True
 - b. False
4. Which of the following questions is illegal to ask during the interview process?
 - a. Are you 18 or older?
 - b. This position requires language skills. What languages do you speak?
 - c. Where were you born?
 - d. If hired, can you show evidence of being legally allowed to work in the United States?
5. An employer must make reasonable accommodations for a Muslim individual if he/she requests to have time to pray seven times a day.
 - a. True
 - b. False
6. Can an employment agencies honor an employer's requests to avoid referring applicants of a particular race, color, or national origin?
 - a. Yes, if the employment agency is recruiting from a diverse population.
 - b. Yes, but only if the employer and agency have a contract to do so.
 - c. No, this violates the Americans with Disabilities act of 1990.

- d. No, this is considered discrimination and both parties can be held liable.
7. An employer must reasonably accommodate an employee with disabilities.
 - a. True
 - b. False
 8. Can an individual's medical history be used as a determining factor when hiring/firing an employee?
 - a. Yes, because organizations often need this information to determine insurance benefits.
 - b. No, because the individual is protected by the Genetic Information Nondiscrimination Act of 2008
 - c. Yes, because the organization needs to know the reason for sick leave.
 - d. No, because the individual is protected by a precedent set in *Payne v. Western & Atlantic RR.*
 9. Can an employer discriminate against individuals who join a labor union?
 - a. Yes, but only if it is a private organization
 - b. Yes, but only if it is a government or government contracted facility
 - c. No
 10. An individual who joins the Army, Marine Corps, Air Force, Navy, etc. can lose their promotion or seniority in their civil employment.
 - a. True
 - b. False

Appendix D

EAW Knowledge Items

In the following test you will be asked questions on your knowledge of certain legal practices relating to human resources. Please answer the questions to the best of your ability.

Directions: On this Multiple-Choice Test each question or item is followed by a series of possible answers or choices. Read each question and decide which answer or choice is best using any material normally in your office to which you would refer.

1. An employee handbook with an explicit termination procedure_____.
 - a. Is useless in court cases.
 - b. Is used under a covenant of good faith exception to the Employment at will doctrine.
 - c. Forms an implied contract that can be used as an employee contract.
2. Refusing to break the law at the request of an employer _____.
 - a. Is recommended to test loyalty of an employee.
 - b. Is in violation of the implied contract exception to the Employment at will doctrine.
 - c. Violates the precedent set in *Toussaini v. Blue Cross and Blue Shield of Michigan*.
 - d. Is in violation of the public policy exception to the Employment at will doctrine.
3. An oral agreement that expresses job security can be used to imply a contract according to the implied contract exception of the Employment at will doctrine.
 - a. True
 - b. False
4. According to the public policy exception to the Employment at will doctrine an employee cannot be terminated because he/she serves on jury duty.
 - a. True
 - b. False
5. The least accepted exception to the Employment at will doctrine is the Covenant of Good Faith exception.
 - a. True
 - b. False
6. An employee who has had a long employment history with the company, has had satisfactory job performance and is terminated without cause _____.
 - a. Can use *Toussaini v. Blue Cross and Blue Shield of Michigan* to sue his/her employer.
 - b. Can use the implied contract exception to the Employment at will doctrine to sue his/her former employer.

- c. Can use the Covenant of Good Faith exception to the Employment at will doctrine to sue his/her former employer.
 - d. Cannot sue their employer.
7. A wrongful discharge of an employee has occurred if an employee is terminated because he/she _____.
- a. Joined a union
 - b. Was a poor performer
 - c. Repeatedly failed to come to work
 - d. Did not follow safety procedures
8. The Employment-at will doctrine is a written contract between an employer and employee that allows either party to terminate the relationship “at will.”
- a. True
 - b. False
9. An example of an implied contract exception to the Employment at will doctrine would be “Firing will only be based on job performance”.
- a. True
 - b. False
10. The Covenant of Good Faith exception to the Employment at will doctrine exists:
- a. To erode the employment at will doctrine, giving more reason to shift to a just cause nation.
 - b. To create just cause terminations throughout the country.
 - c. To give employees another reason to sue their employers.
 - d. So that employees who were terminated in an abusive, irresponsible manner have an outlet in court.

Appendix E
IRB Approval

EMPORIA STATE UNIVERSITY

■ GRADUATE SCHOOL AND
DISTANCE EDUCATION

Research and Grants Center
Campus Box 4003
1 Kellogg Circle
Emporia, Kansas 66801-5415
620-341-5351
620-341-5909 fax
www.emporia.edu/research

May 14, 2015

Hillary Melvin
Psychology
422 South Cottonwood St.
Emporia, KS 66801

Dear Ms. Melvin:

Your application for approval to use human subjects has been reviewed. I am pleased to inform you that your application was approved and you may begin your research as outlined in your application materials. Please reference the protocol number below when corresponding about this research study.

Title:	Human Resource Professionals' Knowledge of Employment At Will
Protocol ID Number:	15111
Type of Review:	Expedited
Time Period:	May 1, 2015 to December 1, 2015

If it is necessary to conduct research with subjects past this expiration date, it will be necessary to submit a request for a time extension. If the time period is longer than one year, you must submit an annual update. If there are any modifications to the original approved protocol, such as changes in survey instruments, changes in procedures, or changes to possible risks to subjects, you must submit a request for approval for modifications. The above requests should be submitted on the form Request for Time Extension, Annual Update, or Modification to Research Protocol. This form is available at www.emporia.edu/research/irb.html.

Requests for extensions should be submitted at least 30 days before the expiration date. Annual updates should be submitted within 30 days after each 12-month period. Modifications should be submitted as soon as it becomes evident that changes have occurred or will need to be made.

On behalf of the Institutional Review Board, I wish you success with your research project. If I can help you in any way, do not hesitate to contact me.

Sincerely,



Dr. Pamelyn MacDonald
Chair, Institutional Review Board

pf

cc: George Yancey

Appendix F
Informed Consent

Cover Letter

Dear HR Professional,

Hello, my name is Hillary Melvin and I am a graduate student at Emporia State University in Kansas. I would like to ask you to complete a short survey about human resources and employment laws. The survey should take no more than twenty minutes to complete.

By participating in this research project, you will help identify the employment knowledge of human resources professionals. You will also help me to complete my Master's thesis. If you are interested in receiving a copy of the findings, you can email me at the email address provided below.

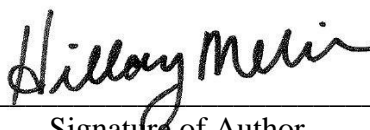
To maintain your confidentiality, the results will be used for research purposes only. Only summarized results of the data will be reported. Your participation in this study is completely voluntary. Should you wish to terminate your participation, you are welcome to do so at any point in the study. If you have any questions or concerns, please feel free to contact me. Thank you for your time.

Sincerely,

Hillary Melvin
hmelvin@g.emporia.edu

PERMISSION TO COPY

I, Hillary Melvin, hereby submit this thesis to Emporia State University as partial fulfillment of the requirements for an advanced degree. I agree that the Library of the University may make it available for use in accordance with its regulations governing materials of this type. I further agree that quoting, photocopying, or other reproduction of this document is allowed for private study, scholarship (including teaching) and research purposes of a nonprofit nature. No copying which involves potential financial gain will be allowed without written permission of the author. I also agree to permit the Graduate School at Emporia State University to digitize and place this thesis in the ESU institutional repository.



Signature of Author

Date

Human Resource Professionals' Knowledge of Employment at Will
Title of Thesis

Signature of Graduate Office Staff Member

Date Received

