

IOWA

I. AT-WILL EMPLOYMENT

A. Statute

There is no statute on at-will employment in Iowa.

B. Case law

Iowa is an “at-will” employment state. *Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106, 109 (Iowa 2011). All employer-employee relationships are assumed to be non-contractual and subject to termination by either the employer or employee at any time for any lawful reason. For example, Iowa has refused to recognize the tort of negligent misrepresentation in an employment context because such a tort would undermine the at-will employment doctrine. See *Alderson v. Rockwell Int’l Corp.*, 561 N.W.2d 34, 36 (Iowa 1997).

"The employment-at-will doctrine, allowing an employer to terminate an employee for any lawful reason, is alive and well in Iowa." *Berg v. Norand Corp.*, 169 F.3d 1140, 1146 (8th Cir. 1999); see also *Stauter v. Walnut Grove Prods.*, 188 N.W.2d 305, 311 (Iowa 1971) (“Absent any consideration beyond the employee's promise to perform, a contract for permanent or lifetime employment is construed to be for an indefinite time, terminable at the will of either party.”).

The common-law at-will employment doctrine is applicable to public employees as well as private ones. *Lockhart v. Cedar Rapids Cmty. Sch. Dist.*, 577 N.W.2d 845, 846 (Iowa 1998).

II. EXCEPTIONS TO AT-WILL EMPLOYMENT

A. Implied Contracts

1. Employee Handbooks/Personnel Materials

The employment at-will doctrine does not apply if there is a contract of a set duration between the employer and the employee. The courts have recognized that a contractual relationship can arise between employers and employees via a unilateral contract – i.e., an offer to contract that can only be accepted by performance. Such contracts will not generally be said to arise under Iowa law provided the handbook or manuals at issue clearly state that there is no contract, that the parties’ relationship continues to be at-will, and such disclaimer

is conspicuous. However, in certain circumstances, an employee handbook can alter that employment-at-will relationship under theories of unilateral contract and promissory estoppel. See *Schoff v. Combined Ins. Co.*, 604 N.W.2d 43, 47-48 (Iowa 1999).

“An implied contract of employment can arise from an employee handbook if: (1) the handbook is sufficiently definite in its terms to create an offer, (2) it is communicated to and accepted by the employee so as to create an acceptance; and (3) the employee provides consideration.” *Jones v. Lake Park Care Ctr., Inc.*, 569 N.W.2d 369, 375 (Iowa 1997). “Merely reserving the right to change the provisions [of a handbook] is not sufficient to defeat the creation of an implied contract. To ensure no implied contract is created by a handbook, the employer would be wise to include an appropriately drafted disclaimer.” *Id.* at 376. Iowa Courts have recognized that disclaimer language prevents the formation of a contract because they highlight the employer’s intent not to be contractually bound by its policies. *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 204 (Iowa 1997) (noting that the disclaimer must be clear in its terms and its coverage must be unambiguous).

2. Provisions Regarding Fair Treatment

While the Iowa Supreme Court has considered fair treatment provisions in a handbook, the court ruled against the employee on the employee’s breach of contract claim. *Theisen v. Covenant Med. Ctr.*, 636 N.W.2d 74, 79 (Iowa 2001). However, because the court did not explicitly address the provision in its analysis, it is not entirely clear whether such provisions could impact the employment-at-will protection for employers.

3. Disclaimers

Disclaimers are effective in Iowa if they are clear and unambiguous. The disclaimer must indicate that the employment policy or handbook is not an offer and does not change the at-will status of the employment. To determine whether a disclaimer prevents the formation of a contract, the court examines the disclaimer’s language and its context to determine whether a reasonable employee would understand it to mean that the employer has not assented to be bound by the provisions of the handbook. *Jones v. Lake Park Care Center, Inc.*, 549 N.W.2d 369 (Iowa 1997); *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d at 202-03 (Iowa 1997).

4. Implied Covenants of Good Faith and Fair Dealing

a. As applied to the at-will status

The general rule is an employer may discharge an employee at will at any time, for any reason or for no reason at all. The two exceptions to this rule are: (1) the discharge violates a “well-recognized and defined public policy of the state” and (2) a contract is created by an employer’s handbook or policy manual. *Huegerich v. IBP, Inc.*, 547 N.W.2d 216, 220 (Iowa 1996).

However, the Iowa Supreme Court has expressly rejected a breach of implied covenant of good faith and fair dealing claim or “negligent discharge” claim as an exception to the employment at will doctrine. *Id.*

b. Duty of loyalty

Iowa recognizes a common law duty of loyalty which is implied in employment relationships for both at-will employment and employment based on a contract for a specific term. *Condon Auto Sales & Services, Inc. v. Crick*, 604 N.W.2d 587, 599 (Iowa 1999) (citing *Porth v. Iowa Dep't of Job Serv.*, 372 N.W.2d 269, 273-74 (Iowa 1985)). The duty of loyalty attaches once performance commences and continues until it is terminated. *Id.*

This duty has not been precisely defined, but has been applied several times in the context of employee competition and self-dealing, in response to claims for unemployment benefits, and claims for breach of employment contract without cause. See *Nelson v. Agro Globe Eng'g Inc.*, 578 N.W.2d 659, 662 (Iowa 1998); *Porth*, 372 N.W.2d at 271-74; *LaFontaine v. Developers & Builders, Inc.*, 156 N.W.2d 651, 658 (Iowa 1968).

B. Public Policy Exceptions

1. General

The Iowa Supreme Court has recognized that public policy clearly expressed in the state constitution and statutes may serve as a basis for finding an exception to the employment-at-will doctrine. *Borschel v. City of Perry*, 512 N.W.2d 565, 567 (Iowa 1994). While it has not been addressed by the Iowa Supreme Court, Iowa may allow both at-will and contractual employees to sue for wrongful discharge in violation of Iowa's public policy. See *Hagen v. Siouxland Obstetrics & Gynecology, P.C.*, 964 F.Supp. 2d 951, 972 (N.D. Iowa 2013). *But see, Clark v. Eagle Ottawa, LLC*, 2007 U.S. Dist. LEXIS 12061, *15 (N.D. Iowa Feb. 20, 2007) (finding a Plaintiff cannot avail himself of the protections of Iowa's public policy exceptions to the at-will employment doctrine, unless he has alleged that he is an at-will employee).

The Iowa Supreme Court has announced that an employee claiming wrongful discharge in violation of public policy must prove four factors: (1) the existence of a clearly defined public policy that protects the activity; (2) the policy would be undermined by a discharge from employment; (3) the discharge was the result of participating in the protected activity; (4) there was lack of other business justification for the termination. See *Davis v. Horton*, 661 N.W.2d 533, 535-36 (Iowa 2003) (holding that participation in employer sponsored mediation process is not a clearly defined public policy within the meaning of the public policy exception to the employment at-will doctrine).

"We do not limit the public-policy exception to at-will employment to the mandates of specific statutes but may imply a prohibition against termination if the policy basis for doing so clearly appears from other sources." *Davis*, 661 N.W.2d at 536, citing *Borschel v. City of Perry*, 512 N.W.2d at 568. "In doing so, however, we proceed cautiously and will only extend recognition to those policies that are well recognized and clearly defined." *Davis*, 661 N.W.2d at 536, citing *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d at 283. The Eighth Circuit, applying Iowa law, has stated the test in the following way: (1) the employee engaged in protected conduct; (2) the employer took adverse employment action; and (3) a causal relationship exists between the conduct and the adverse employment action. *Thomas v. Union Pac. R.R. Co.*, 308 F.3d 891, 894 (8th Cir. 2002).

There are three recognized protected categories of employee conduct which affirm that termination of an employee for engaging in such conduct is wrongful, including: (1) exercising a statutory right or civil obligation; (2) refusing to engage in illegal activities; or (3) reporting criminal conduct to supervisors or outside agencies. *Butts v. Univ. of Osteopathic Med. & Health Sciences*, 561 N.W.2d 838, 841 (Iowa Ct. App. 1997), *overruled on other grounds, Teachout v. Forest City Comm. Sch. Dist.*, 584 N.W.2d 296, 299 (Iowa 1998).

The protected conduct must be a determining factor, however, not just the predominant factor. See *Teachout*, 584 N.W.2d at 302. Evidence that an employer terminated an employee after learning of a protected activity, without more, is insufficient to show causation under the determinative factor test. A factor is determinative if it “tips the scales decisively one way or the other.” *Id.*

It is a fact issue for the jury to decide whether a factor is determinative. In examining wrongful discharge cases, Iowa courts would likely apply a burden-shifting analysis, initially requiring the plaintiff to prove a prima facie case of wrongful discharge, then shifting the burden to the employer to demonstrate a legitimate non-discriminatory reason for plaintiff’s discharge, after which the burden returns to the plaintiff to prove that the defendant’s proffered reason is merely pretext for unlawful conduct. See *Poage v. Cenex/Land O’Lakes Agronomy Co.*, 255 F. Supp. 2d 1005, 1009 (S.D. Iowa 2003) (applying burden-shifting analysis to wrongful discharge claims in violation of public policy).

The public policies largely center around protection of the legal enforcement of rights, the prevention of criminal conduct, and the reporting of improprieties. However, the Eighth Circuit Court of Appeals recently opined that by using the stated public policy of Iowa Code sections 88.1 and 88.9(3), if faced with the issue, the Iowa Supreme Court would likely extend the public policy exception to the employment at will doctrine to protect an employee who voiced occupational safety concerns. *Kohrt v. MidAmerican Energy Co.*, 364 F.3d 894, 900 (8th Cir. 2004). The U.S. District Court for the Northern District of Iowa had the opportunity to include complaints voiced about occupational safety concerns in *Horn v. Airway Services, Inc.*, when the plaintiff alleged he was fired after making occupational safety complaints. The Court did not affirmatively decline to add occupational safety complaints to the list of protected activities, but denied the plaintiff’s request for *Kohrt* protection because the gap between the plaintiff’s protected activity and his removal were too long to establish a causal connection. 2020 WL 420834 (N.D. Iowa 2020).

Iowa has declined to extend public policy protections to independent contractors who are allegedly fired in violation of established public policy. *Harvey v. Care Initiatives, Inc.*, 634 N.W.2d 681 (Iowa 2001). Also, the court has been careful to note that tort cases for wrongful discharge will only be allowed in cases involving a “well-recognized and clear public policy.” *Mercer v. City of Cedar Rapids*, 308 F.3d 840, 846 (8th Cir. 2002) (holding that no public policy protects romantic relationship with co-worker); see also *Theisen v. Covenant Med. Ctr., Inc.*, 636 N.W.2d at 80 (terminating employee for failure to submit to voice print analysis is not enough like a polygraph test [prohibited by Iowa Code § 703.4] to warrant an exception to the at-will employment standard when employee was accused of making obscene phone call and voice print would confirm or disconfirm that allegation).

If the statute on which the public policy is based contains an enforcement scheme, the court will not condone a private right of action based on violation of that statute until the administrative remedies

built into the statute have been exhausted. See *Kornischuk v. Con-Way Cent. Express*, No. Civ. 1–03–CV–10013, 2003 U.S. Dist. LEXIS 14459 (S.D. Iowa June 4, 2003).

2. Exercising a Legal Right

Iowa prohibits retaliatory conduct against an employee who takes time off to vote, Iowa Code §§ 39A.2 – 39A.5 (2019); Iowa Code § 49.109 (2019); to serve on a jury, Iowa Code § 607A.45 (2019); or to serve in the military, Iowa Code § 29A.43 (2019).

Iowa also prohibits adverse action for filing an OSHA complaint, Iowa Code § 88.9 (3) (2019); filing a workers compensation claim, *Weinzetl v. Ruan Single Source Transp. Co.*, 587 N.W.2d 809, 811 (Iowa Ct. App. 1998); filing an unemployment claim, *Lara v. Thomas*, 512 N.W.2d 777, 782 (Iowa 1994); or consulting a lawyer, *Thompto v. Coborn’s*, 871 F. Supp. 1097, 1121 (N.D. Iowa 1994). Iowa law would also protect a public employee who engages in protected speech if the employee can demonstrate that the speech addresses a matter of public, not merely private, concern relevant to other employees. See *Koehn v. Indian Hills Cmty. Coll.*, 371 F.3d 394, 396-7 (8th Cir. 2004). The public policy exception to at-will employment is relatively new, however, so additional extensions of the protection should be anticipated.

The Iowa Code sets forth the public policy concerns addressed by the workers’ compensation law, from which the Iowa Supreme Court has inferred a retaliatory discharge cause of action. See *Teachout v. Forest City Comm. Sch. Dist.*, 584 N.W.2d at 300-301 (citing Iowa Code § 85.18).

If the purportedly protected conduct is bringing a claim of discrimination, however, a common-law wrongful discharge claim is not deemed to be the appropriate avenue for redress. The Eighth Circuit, applying Iowa law, has held that the Iowa Civil Rights Act is an employee’s exclusive remedy when alleging unlawful discrimination and it will preempt a common-law wrongful discharge claim. *Mitchell v. Iowa Protection and Advocacy Servs., Inc.*, 325 F.3d 1011, 1015 (8th Cir. 2003).

3. Enforcing a Statutory Right

An employee cannot be discharged in retaliation for enforcing a statutory right. *Springer v. Weeks & Leo Co.*, 429 N.W.2d 558, 560-561 (Iowa 1988). In *Springer*, the Court held that an employer who terminated an employee for filing a worker’s compensation claim could be liable for wrongful discharge. *Id.* The holding was extended to a person who filed for unemployment benefits. *Lara v. Thomas*, 512 N.W.2d 777, 782 (Iowa 1994). The Iowa Supreme Court reinforced the public policy underpinning, stating that “[e]mployers cannot be permitted to intimidate ‘employees into forgoing the benefits to which they are entitled in order to keep their jobs.’” *Id.* (quoting *Smith v. Smithway Motor Xpress, Inc.*, 464 N.W.2d 682, 686 (Iowa 1990).

4. Refusing to Violate the Law

Iowa statutes expressly prohibit retaliatory conduct against employees who refuse to perform or assist in abortions. Iowa Code § 146.1 (2019). Protected activity has also been found in: (1) refusing to commit sales tax violations, and (2) refusing to defraud the federal government. See *Butts v. Univ. of Osteopathic Med. & Health Scis.*, 561 N.W.2d at 842; *Smuck v. Nat’l Mgmt. Corp.*, 540 N.W.2d 669, 672 (Iowa Ct. App. 1995) (recognizing violation of federal law as possible state public policy violation); *Williams v. Borden Chem., Inc.*, 501 F. Supp. 2d 1219 (S.D. Iowa 2003).

Iowa also has an established public policy in favor of employees who testify truthfully in employment litigation. If an employer terminates an employee in a manner that could have a chilling effect on another employee's motivation to tell the truth in a judicial proceeding, such a termination may be wrongful. *See generally Fitzgerald v. Salsbury Chem. Inc.*, 613 N.W.2d 275 (Iowa 2000) and *Ackerman v. State*, 913 N.W.2d 610 (Iowa 2018) (*holding there is a clear public policy in Iowa to provide truthful testimony in legal proceedings and the court must decide, as a question of law, whether the discharge at issue undermined the public policy*)

An employee's refusal to violate administrative regulations can serve as a source of public policy to give rise to a claim of wrongful discharge from employment. *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 757 (Iowa 2009).

5. Exposing Illegal Activity (Whistleblowers)

Iowa's whistleblower statute only protects public employees who report criminal activity to law enforcement personnel. Iowa Code § 70A.29 (2019). However, Iowa has applied its public policy exception to at-will employment to protect private employees who report criminal activity. To date, case law has extended the exception to reporting violations of state sales tax law, child abuse, and of activity that jeopardized the safety and welfare of patients in an assisted living facility. *See Dorskhind v. Oak Park Place of Dubuque II, L.L.C.*, 835 N.W.2d 293, 309 (Iowa 2013) (*holding that employer wrongfully terminated assisted living employee when she internally reported violations of Iowa Administrative Code*); *Teachout v. Forest City Comm. Sch. Dist.*, 584 N.W.2d 296 (Iowa 1998) (*filing child abuse report protected activity*); *Butts v. Univ. of Osteopathic Med. & Health Sciences*, 561 N.W.2d 838 (Iowa 1997) (*overruled on other grounds by Teachout v. Forest City Comm. School Dist.*, 584 N.W.2d 296 (Iowa 1998)) (*reporting sales tax violations protected activity*).

Whether participation in the protected activity of "whistleblowing" is a "determinative factor" in an adverse employment decision is a question of fact for jury. *Shepard v. Wapello County*, 250 F. Supp. 2d 1112, 1117 (S.D. Iowa 2003).

Iowa Code Section 91A.10 provides that an employer shall not discharge or discriminate against an employee for filing a complaint, a claim, or bringing any action against the employer. Iowa Code § 91A.10(5) (2020). The Iowa Supreme Court has determined that internal complaints are protected for public policy reasons as well as complaints to an external agency. *See Tullis v. Merrill*, 584 N.W.2d 236 (Iowa 1998) (*affirming punitive damage award against an employer who retaliated against an employee in violation of the public policy expressed in Iowa's Wage Payment Collection Law*).

III. CONSTRUCTIVE DISCHARGE

Constructive discharge occurs when an employer purposely makes an employee's working conditions so intolerable the employee is forced to involuntarily resign. *Haberer v. Woodbury County*, 560 N.W.2d 571, 575 (Iowa 1997). To establish constructive discharge, the employee must prove that the working conditions were so difficult or unpleasant that a reasonable person in the employee's position would have been compelled to resign. *First Judicial Dist. Dept of Correctional Services v. Iowa Civil Rights Commission*, 315 N.W.2d 83, 87 (Iowa 1982).

However, constructive discharge, standing alone, is not an actionable tort. *Balmer v. Hawkeye Steel*, 604 N.W.2d 639, 643 (Iowa 2000). An accompanying claim that the discharge was a result of

illegal conduct is needed. *Id.* For example, a claim involving a violation of public policy or breach of unilateral contract of employment created through employment handbook or policy manual. *Id.*

IV. WRITTEN AGREEMENTS

A. Standard "For Cause" Termination

There is no Iowa law regarding standard "for cause" termination in written agreements.

B. Status of Arbitration Clauses

According to Iowa Code section 679A.1 arbitration agreements between employers and employees are not valid. However, the Federal Arbitration Act (FAA) preempts Iowa law if the interstate nexus requirement is met. *Heaberlin Farms, Inc. v. IGF Ins. Co.*, 641 N.W.2d 816, 818-19 (Iowa 2002).

V. ORAL AGREEMENTS

A. Promissory Estoppel

Promissory estoppel is a theory that creates liability for an individual who makes a promise despite the absence of consideration usually found in a contract. In Iowa the four elements of promissory estoppel are:

(1) a clear and definite promise; (2) the promise was made with the promisor's clear understanding that the promisee was seeking an assurance upon which the promisee could rely and without which he would not act; (3) the promisee acted to his substantial detriment in reasonable reliance on the promise; and (4) injustice can be avoided only by enforcement of the promise.

Schoff v. Combined Ins. Co. of Am., 604 N.W.2d at 49.

Promissory estoppel, in the employment at will context, is similar to a unilateral contract claim. It will not be rejected simply because it creates an obstacle to the employer's ability to terminate an employee at will, rather, promissory estoppel is another theory by which an employer may be held to his promise. *Id.*

B. Fraud

Seven elements must be proven in order to establish fraud: (1) Representation; (2) Falsity; (3) Materiality; (4) Scienter; (5) Intent to deceive; (6) Reliance; and (7) Resulting in injury and damage. *Robinson v. Perpetual Services Corp.*, 412 N.W.2d 562, 565 (Iowa 1987). If the party is only seeking restitution or rescission then the elements of scienter and intent to deceive are not required. *Hylar v. Garner*, 548 N.W.2d 864, 871 (Iowa 1996).

C. Statute of Frauds

Iowa Code section 622.32 codifies the statute of frauds and bars introduction of evidence of subsequent oral agreements in certain situations. If the contract is one that cannot be performed within one year, then it is barred by the statute of frauds. However, this analysis turns on the question of capability. If the contract is difficult or improbable but is still capable of being performed within a year, then the contract is not within the statute of frauds. *Smidt v. Porter*, 695 N.W.2d 9, 22 (Iowa 2005).

VI. DEFAMATION

A. General Rule

Iowa law recognizes the major defamation torts typically sanctioned by most common law. Generally, to establish a prima facie case in any defamatory action, a plaintiff must show the defendant (1) published a statement that was (2) defamatory (3) of and concerning the plaintiff, and (4) injury to reputation resulted. *Dillon v. Ruperto*, 786 N.W.2d 873, at *7 (Iowa Ct. App. 2010); *Kiesau v. Bantz*, 686 N.W.2d 164, 174 (Iowa 2004); *Bierman v. Weier*, 826 N.W.2d 436, 443 (Iowa 2013).

1. Libel

Iowa has not followed those states that have removed the damage-to-reputation element, thus permitting suit based upon hurt feelings and emotional anguish alone. *Schlegal v. Ottumwa Courier*, 585 N.W.2d 217, 222 (Iowa 1998). Under the traditional rule, malice is not an element of libel when it concerns a private figure seeking actual damages and will be presumed from the publication unless privilege is pleaded. *Johnson v. Nickerson*, 542 N.W.2d 506, 510 (Iowa 1996). A showing of actual malice is required to be shown by a private plaintiff bringing suit against a media defendant when the defamatory communication involves a matter of public concern. *Id.* at 511.

It is no longer necessary for a libel defendant to establish the literal truth of the publication in every detail as long as the “sting” or “gist” of the defamatory charge is substantially true. The gist or sting of the defamatory charge . . . is “the heart of the matter in question — the hurtfulness of the utterance.” *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 140-41 (Iowa 1996); *see also Delaney v. Int’l Union UAW Local 94*, 675 N.W.2d 832, 844-45 (Iowa 2004) (defendants published local union newsletter containing plaintiffs’ names on “scab lists,” of people who were not members of the local union. So long as the “sting” of the statements published were factually true [*i.e.*, that plaintiffs were actually “scabs” within the ordinary meaning of the word as one who refuses to join a union], plaintiffs’ state law defamation claims were preempted under the National Labor Relations Act). *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827-828 (2007) (Iowa Supreme Court has adopted defamation by implication which arises, not from what is stated, but from what is implied when a defendant: (1) juxtaposes a series of facts so as to imply a defamatory connection between them; or (2) creates a defamatory implication by omitting facts, such that he may be held responsible for the defamatory implication, unless it qualifies as an opinion, even though the particular facts are correct.) The 8th Circuit expanded on this opinion in *Nunes v. Lizza*, when they held the theory of defamation by implication is not limited to situations in which the implications arise from consecutive sentences. The Court held when a reader “connecting the dots,” could reasonably arrive at the implication, the author may be accountable, regardless of the section break in between defamatory statements. 2021 WL 4177754 (8th Cir. 2021).

2. Slander

Iowa also recognizes defamation per se. Language is defamatory per se if it is of such a nature, whether true or not, that the court is able to presume as a matter of law that its publication will have a libelous effect. See *Brass v. Incorporated City of Manly*, No. CO2–3004–PAZ, 2003 U.S. Dist. LEXIS 6684 (N.D. Iowa April 17, 2003). If a defendant publishes language that is defamatory per se, the plaintiff need not prove malice, falsity, or special harm. *Id.* at *10. Defamatory statements that would negatively affect a person’s business, trade, profession, or office are typically considered defamatory per se. *Id.* If the statement is not slanderous per se, “under Iowa law malice, falsity, and damage ‘must be proved by plaintiff before recovery can be had.’” *Mercer v. City of Cedar Rapids*, 308 F.3d 840, 848 (8th Cir. 2002) citing *Schlegel v. Ottumwa Courier*, 585 N.W.2d 217, 222 (Iowa 1998).

The Iowa courts do not consider truth to be an affirmative defense which must be proven by defendant in order to defeat a plaintiff’s claim. Rather, falsity is an element of the claim which plaintiff must prove before recovery will be allowed. *Mercer v. City of Cedar Rapids*, 308 F.3d at 848.

B. References

Employers have a limited immunity from civil liability for employers providing reference responses to persons believed in good faith to be representatives of a prospective employer unless:

1. The work-related information violates a civil right of the current or former employee;
2. The work-related information is knowingly provided to a person who has no legitimate and common interest in receiving the work-related information or;
3. The work-related information is not relevant to the inquiry being made, is provided with malice, or is provided with no good-faith belief that it is true. Iowa Code § 91B.2 (2019).

See *Hlubek v. Pelecky*, 701 N.W.2d 93, 99 (Iowa 2005), finding that a teacher who had been investigated for sexual misconduct failed to raise a jury question based on Section 91B.2(2)’s “no good faith belief that it is true” provision, because he could not demonstrate that the school to which he applied after termination received any information from former employer.

C. Privileges

Privileged communications are either (1) absolutely privileged or (2) qualifiedly or conditionally privileged. *Barreca v. Nickolas*, 683 N.W.2d 111, 117 (Iowa 2004), citing *Mills v. Denny*, 245 Iowa 584, 586, 63 N.W.2d 222, 224 (Iowa 1954).

Iowa has recognized an absolute privilege under Iowa Code section 96.11(6)(b)(2) for a letter from an employer to the Iowa Job Service stating reasons for an employee’s termination, *Palmer v. Women’s Christian Ass’n of Council Bluffs*, 485 N.W.2d 93, 97 (Iowa Ct. App. 1992) (holding, however, that this “absolute” privilege can be overcome); for defamation that takes place in judicial proceedings, *Spencer v. Spencer*, 479 N.W.2d 293, 295 (Iowa 1991); and for publication made with the subject’s consent, as long as the publication does not exceed the scope of consent granted, *Anderson v. Low Rent Hous. Comm’n*, 304 N.W.2d 239, 251 (Iowa 1981).

A qualified privilege will be available for a defendant in defense of statements otherwise defamatory if the following elements are present: (1) the statement was made in good faith; (2) the defendant had an interest to uphold; (3) the scope of the statement was limited to the identified interest; and (4) the statement was published on a proper occasion, in a proper manner, and to proper parties only. *Barreca*, 683 N.W.2d at 118, citing *Winckel v. Von Maur, Inc.*, 652 N.W.2d 453, 458 (Iowa 2002). A qualified privilege will be lost when it is abused. *Barreca*, 683 N.W.2d at 117, citing *Jones v. Palmer Commc'ns*, 440 N.W.2d 884, 892 (Iowa 1989).

D. Other Defenses

1. Truth

The Iowa courts do not consider truth to be an affirmative defense which must be proven by the defendant in order to defeat a plaintiff's claim; instead, falsity is an element of the claim which plaintiff must prove before recovery will be allowed. *Mercer v. City of Cedar Rapids*, 308 F.3d at 848 (8th Cir. 2002).

2. No Publication

Publication is an element of slander. *Bauer v. Brinkman*, 958 N.W.2d 194 (Iowa 2021). Accordingly, "no publication" is a defense only to the extent that it defeats an element of the offense. However, the Iowa Supreme Court has held that the mere publication of a statement on social media does not automatically categorize it as a protected opinion. *Id.* Self-Publication

The Iowa Supreme Court has recognized the general rule that a plaintiff cannot create a defamation action by "repeating the statement originally made only to him or her." *Theisen v. Covenant Med. Ctr.*, 636 N.W.2d 74, 83 (Iowa 2001). There is, however, an exception for when "the subject is under 'strong compulsion' to repeat the allegedly defamatory statement." *Id.*, citing *Belcher v. Little*, 315 N.W.2d 734, 738 (Iowa 1982).

3. Invited Libel

The Iowa Supreme Court has cited another jurisdiction with approval for the position that "the publication of a libel or slander invited or procured by the plaintiff is not sufficient to support an action for defamation." *Robinson v. Home Fire & Marine Ins. Co.*, 49 N.W.2d 521, 524 (Iowa 1951) (citation omitted).

4. Opinion

Iowa has recognized that "opinion is absolutely protected under the First Amendment." *Park v. Hill*, 380 F. Supp. 2d 1002, 1017 (N.D. Iowa 2005), citing *Kiesau v. Bantz*, 686 N.W.2d at 177. Such protected statements cannot give rise to liability for defamation. Hence, the Iowa Supreme Court has uses the following factors to analyze whether a statement is a fact or opinion:

- (1) The precision and specificity of the statement;
- (2) The verifiability of the statement; and

(3) The literary context in which the statement was made.

Id., citing *Kiesau v. Bantz*, 686 N.W.2d at 177. Explaining the third factor, the Iowa Supreme Court has stated that “the third factor, literary context, includes the ‘social context’ which focuses on the category of the publication, its style and intended audience, and the ‘political context’ in which the statement was made.” *Id.*, citing *Kiesau*, 686 N.W.2d at 177.

E. Job References and Blacklisting Statutes

Employers who authorize or allow any of their agents to blacklist any former employee from obtaining further employment are liable in treble damages to such employee. Iowa Code § 730.2 (2019). In addition, any employer who prevents or attempts to prevent a former employee from obtaining employment is guilty of a serious misdemeanor. Iowa Code § 730.1 (2019). An employer does not violate either statute by furnishing in writing on request a truthful statement as to the cause of the former employee’s discharge. *Id.*

F. Non-Disparagement Clauses

There is no Iowa statute on non-disparagement clauses. However, the Iowa Court of Appeals issued an opinion on May 12, 2021, regarding a dispute over disparaging statements. The plaintiff in the case successfully argued that the non-disparagement clause had been breached and sanctions were issued against the other party. The takeaway from this case is that anti-disparagement agreements, although not regulated by statute, may be upheld by the Iowa Courts, especially if all parties to the agreement are represented by counsel. *Hoffmann v. Clark*, 2021 WL 1907746 (Iowa Ct. App. 2021).

VII. EMOTIONAL DISTRESS CLAIMS

A. Intentional Infliction of Emotional Distress

The elements of intentional infliction of emotional distress are: (1) Outrageous conduct by the defendant;(2) The defendant's intentional causing, or reckless disregard of the probability of causing emotional distress;(3) Plaintiff suffering severe or extreme emotional distress; and(4) Actual and proximate causation of the emotional distress by the defendant's outrageous conduct. *Vinson v. Linn-Mar Community School Dist.*, 360 N.W.2d 108, 118 (Iowa 1984) (citing *Powell v. Khodari-Intergree Co.*, 334 N.W.2d 127, 129 (Iowa 1983)).

Outrageous conduct must be “so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community” *Id.* (quoting *Harsha v. State Savings Bank*, 346 N.W.2d 791, 801 (Iowa 1984)). Moreover, for conduct to be outrageous it must be more than an insult, bad manners, or hurt feelings. *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 156-57 (Iowa 1996). However, it is for the court to determine first whether the conduct is regarded as outrageous, and in making this determination the court should look to the relationship of the parties. *Roalson v. Chaney*, 334 N.W.2d 754, 756 (Iowa 1983).

B. Negligent Infliction of Emotional Distress

In a case that is grounded in negligence “where there is no duty to exercise ordinary care to avoid causing emotional harm, recovery is generally denied for the infliction of mental distress without an accompanying physical injury.” *Niblo v. Parr Mfg.*, 445 N.W.2d 351, 354 (Iowa 1989).

VIII. PRIVACY RIGHTS

A. Generally

Where an employee was accused of making an obscene phone call and voice print analysis would confirm or refute that allegation, terminating him for his refusal to submit to voice print analysis did not violate Iowa Code § 730.4 (prohibiting employers from requiring an employee to submit to polygraph testing), nor was it sufficiently similar to a polygraph test to warrant an exception to the at-will employment standard. *Theisen v. Covenant Med. Ctr., Inc.*, 636 N.W.2d at 80-81.

Prior to employment in a health care facility; which includes residential care facilities, nursing facilities, and intermediate care facilities for persons with mental illness or mental retardation, the facility must request that the department of public safety perform a criminal history check, and the department of human services perform a child and dependent adult abuse record check. Iowa Code § 135C.33 (2019).

There is no specific law in Iowa limiting an employer’s use or ability to request the Social Security Number of an employee or prospective employee. Iowa Code Section 715A.8, defines and proscribes identity theft. This provision was not considered a strong enough “public policy” basis on which to ground a claim for wrongful termination where an employer had mistakenly printed and had distributed menus containing employee information including social security numbers. *Schmit v. Iowa Mach. Shed Co.*, No. 05-1927, 2006 WL 2872944 (Iowa App. Oct. 11, 2006).

B. New Hire Processing

1. Eligibility Verification & Reporting Procedures

Iowa has no regulations separate from the Federal regulations regarding verification in U.S. Code Section 1324a. (2019). Iowa has a Central Employee Registry to maintain information on newly hired or rehired employees by employers. Iowa Code § 252G.2 (2019). Within fifteen days of hiring or rehiring an employee, and employer submit a report to the Central Employee Registry including information like the employee’s name, address, and social security number and the employers’ Tax Identification Number. Iowa Code § 252G.3 (2019). A payor of income who enters into an agreement for the performance of services by a contractor, shall report the contract to the contractor to the agency. Iowa Code § 252G.4 (2019).

2. Background Checks

Background checks are required for police officers, health and child care providers, lottery employees, teachers, and other select public employees. Iowa Admin Code r.501-2.1(4),(5)(2019) (Law Enforcement); Iowa Code § 218.13 (2019) (Institutional employees); Iowa Code § 99G.10(8) (2019) (Lottery). Private employers seeking criminal background checks can submit their employees to background checks by the Iowa Department of Public Safety, but must obtain permission from employee first to gain access to any confidential information. Iowa Code § 692.1 et. seq. (2019).

C. Other Specific Issues

1. Workplace Searches

There is no Iowa law regarding workplace searches.

2. Electronic Monitoring

No Iowa statute restricts or otherwise addresses electronic monitoring of employees. However:

Any person, having no right or authority to do so, who taps into or connects a listening or recording device to any telephone or other communication wire, or who by any electronic or mechanical means listens to, records, or otherwise intercepts a conversation or communication of any kind, commits a serious misdemeanor; provided, that the sender or recipient of a message or one who is openly present and participating in or listening to a communication shall not be prohibited hereby from recording such message or communication; and further provided, that nothing herein shall restrict the use of any radio or television receiver to receive any communication transmitted by radio or wireless signal or the use of a monitoring device.

Iowa Code § 727.8 (2019); see *Iowa v. Philpott*, 702 N.W.2d 500, 502 (Iowa 2005) (conviction of court employee for illegal eavesdropping upheld, where she had left her recorder turned on while at lunch, resulting in her recording a conversation between a court employee and a juvenile probation officer to which she was not a party in violation of the recording laws).

3. Social Media

4. Iowa does not have a state statute addressing employee's social media privacy rights. Taping of Employees

See Electronic Monitoring, above.

5. Release of Personal Information on Employees

Generally, current employees may access their personnel files. Iowa recently amended its open records laws for governmental employees, but certain personal information remains confidential. Iowa Code § 22.7 (2019).

6. Medical Information

HIV related test results may be released to an employer if the test was authorized to be required under any other provision of the law. Iowa Code § 141A.9(2)(h) (2019).

7. Restrictions on Requesting Salary History

Iowa does not currently have a statute that prohibits employers from requesting an applicant's previous salary history.

IX. WORKPLACE SAFETY

A. Negligent Hiring

Iowa recognizes claims for negligent hiring, supervision, and retention. An employer has a duty to exercise reasonable care in hiring individuals, who, because of their employment, may pose a threat of injury to members of the public. *See Estate of Fields by Fields v. Shaw*, 954 N.W.2d 451 (Iowa Ct. App. 2020). However, in *Godar v. Edwards*, 588 N.W.2d 701, 709 (Iowa 1999), the court refused to find liability after a student was sexually abused because the school did not know, and should not have known, about the situation as a matter of law. The abused student had not told anyone, there was no evidence that the employee had a history of inappropriate conduct, and no evidence was presented that the school failed to follow its procedures for appropriate hiring.

The amount of care to be exercised by an employer varies with the amount of contact an employee has with the public and the amount of power over third parties the employee has as a result of his employment. The elements required to make a prima facie case for negligent hiring are: (1) that the employer knew, or in the exercise of ordinary care should have known, of its employee's unfitness at the time of hiring; (2) that through the negligent hiring of the employee, the employee's incompetence, unfitness, or dangerous characteristics proximately caused the resulting injuries; and (3) that there is some employment or agency relationship between the tortfeasor and the defendant employer.

Godar, 588 N.W.2d at 708-709.

Where damages claimed are purely economic, Iowa has declined to extend an employer's duty of care to supervise and hire. *Graves v. Iowa Lakes Cmty. Coll.*, 639 N.W.2d 22 (Iowa 2002). *Graves* was overruled to the extent that a negligent hiring, retention, and supervision claim requires a showing of physical injury. *Kiesau v. Bantz*, 686 N.W.2d at 173 (2004).

B. Negligent Supervision/Retention

With regard to negligent supervision specifically, Iowa recognizes the duty of a supervisor/employer to properly supervise. *See generally United Fire & Cas. Co. v. Shelly Funeral Home, Inc.*, 642 N.W.2d 648, 659 (Iowa 2002) (finding liability of corporation for negligent supervision covered under policy). The elements of negligent supervision under Iowa law are: "(1) the employer knew, or . . . should have known of the employee's unfitness at the time the employee engaged in wrongful or tortious conduct; (2) through the negligent . . . supervision, the employee's incompetence, unfitness, or dangerous characteristics proximately caused injuries to the plaintiff; and (3) there is some employment or agency relationship between the employee and the defendant employer." *Godar v. Edwards*, 588 NW 2d at 708-09. A claim of negligent supervision must include some underlying tort or wrongful act committed by the unfit employee as an essential element. *But see Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 681 (Iowa 2004) (holding that workers' compensation laws provided exclusive remedy for employer's negligent supervision of employee's supervisor who punched

employee in the chest after employee reported that supervisor had had improper sexual relations with a subordinate).

Statutory immunity may apply in certain public-sector cases. For instance, in *Cubit v. Mahaska County*, 677 N.W.2d 777 (Iowa 2004), the court held that the defendant county was entitled to statutory immunity for negligent supervision under Iowa Code section 670.4(11). In *Cubit*, a trainee dispatcher received an emergency call informing her that a man was going to ram his vehicle into the police officers' vehicle. The dispatcher failed to notify the officers of the man's intentions before the officers began pursuit of his vehicle. An officer was subsequently injured when the suspect rammied his car into the officers' vehicle. The officer then brought negligent supervision claim against the county alleging that the county was negligent in allowing the trainee dispatcher to answer calls unsupervised. The court held that the acts or omissions claimed arose out of an emergency response and, that, therefore, county was thereby granted statutory immunity. *Id.* at 782.

Conversely, in *Doe v. Cedar Rapids Community School District*, 652 N.W.2d 439 (Iowa 2002), the court held that the defendant school district was not entitled to statutory immunity under Iowa Code section 670.4 which provides immunity from any claim based on the exercise of a discretionary function. The court enunciated the test as an initial inquiry into whether the challenged conduct was a matter of choice for the defendant. If that test is satisfied, the court looks at whether the judgment is of the type that the discretionary function exception was designed to protect. The exception was designed to protect decisions based on public policy considerations such as social, economic, and political reasons. The court determined that the hiring, retention, and supervision of a teacher known to pose a danger to children were an exercise of the school's discretion. The court then found that the hiring, retention, and supervision of a particular teacher was not the type of policy choice the statute was designed to protect. The defendant claiming the statutory immunity bears the burden of proving that its conduct is entitled to the statutory shield. *Id.* at 446.

C. Interplay with Worker's Comp. Bar

Iowa Code section 85.20 provides that injuries, occupational diseases, or occupational hearing loss arising out of and in the course of employment caused by gross negligence of co-employee are not controlled by worker's compensation. Under Iowa law, "gross negligence" is a legal term rooted in workers' compensation statute, and can be established if it can be shown that co-employee (1) had knowledge of the peril to be apprehended; (2) knew that injury was a probable, as opposed to possible, result of the peril; and (3) consciously failed to avoid the peril. *Walker v. Ryan Companies US, Inc.*, 149 F. Supp. 2d 849, 853 (S.D. Iowa 2001).

D. Firearms in the Workplace

Iowa law makes it unlawful to carry a concealed weapon or any loaded firearm of any kind without a permit, but one of the exceptions allows persons to go armed in *their own* places of business. Iowa Code § 724.4(4)(a) (2019).

E. Use of Mobile Devices

Iowa does not have a statute on mobile devices in the workplace at this time.

X. TORT LIABILITY**A. Respondeat Superior Liability**

Under the doctrine of respondeat superior, an employer will be liable for the negligence of an employee committed while the employee is acting in the scope of his employment. *Burr v. Apex Concrete Co.*, 242 N.W.2d 272, 276 (Iowa 1976). A claim brought under the doctrine of respondeat superior requires proof of two elements: (1) the existence of an employer/employee relationship and (2) proof the injury occurred within the scope of that relationship. *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 201 (Iowa 2007). An employee acts within the scope of his employment when the employer has the right to direct the means and manner of doing work, and has the right of control over the employee. *Jones v. Blair*, 387 N.W.2d 349, 355 (Iowa 1986). As a general rule, an employee is not acting in the scope of his employment while driving to and from work. *Halstead v. Johnson's Texaco*, 264 N.W.2d 757, 759 (Iowa 1978). **B. Tortious Interference with Business/Contractual Relations**

Generally a co-employee, *e.g.* supervisor, cannot be held liable for interference with contractual relations between the employer and an employee because the co-employee is acting as an employee to a party to the contract. However, a co-employee may be held liable if the person acted maliciously beyond the scope of their employment. That is, if the co-employee abused the qualified privilege, he or she may be personally liable.

In Iowa, to support a claim for wrongful interference with contractual relations, the plaintiff must show: (1) a valid contractual relationship, (2) the defendant knew of that relationship, (3) the defendant intentionally interfered with that relationship, (4) the defendant's action caused the third party to breach its contractual relationship with the plaintiff, and (5) the amount of damages. *See generally Grimm v. U.S. West Communics., Inc.*, 644 N.W.2d 8, 12 (Iowa 2002); *Toney v. Casey's Gen. Stores, Inc.*, 372 N.W.2d 220, 221 (Iowa 1985).

XI. RESTRICTIVE COVENANTS/NON-COMPETE AGREEMENTS**A. General Rule**

"Under Iowa law, 'there is no public policy or rule of law which condemns or holds in disfavor a fair and reasonable non-compete agreement . . .'" *Thrasher v. Grip-Tite Mfg. Co., Inc.*, 535 F.Supp.2d 937, 943 (S.D. Iowa 2008) (citations omitted). Covenants not to compete are not specifically addressed in the Iowa Code.

Iowa courts will negate a restrictive covenant if the provision is not necessary or designed to protect the legitimate business interests of a former employer, or if the terms are unreasonable. *See, e.g., Lemmon v. Hendrickson*, 559 N.W.2d 278, 281-282 (Iowa 1997). Iowa courts use a three-part test to determine whether a covenant not to compete is overly restrictive. First, the court will determine whether the restriction is reasonably necessary for the protection of the employer's business. Second, the court will determine whether the covenant is unreasonably restrictive of the employee's rights. Finally, a covenant not to compete will not be enforced if it is prejudicial to the public interest. The employer has the burden of proof to show that the covenant is not overly restrictive. *See Dental E. P.C. v. Westercamp*, 423 N.W.2d 553, 555 (Iowa Ct. App. 1988); *Lamp v. Am. Prosthetics, Inc.*, 379 N.W.2d 909,

911 (Iowa 1986); *Efco Corp. v. Alumna Systems Concrete Construction, LLC*, 2020 WL 8257209 (S.D. Iowa 2021).

Covenants not to compete may be unreasonably restrictive unless they are carefully crafted as to both time and geographic area limitations. See *Lemmon v. Hendrickson*, 559 N.W.2d 278, 282 (Iowa 1997); *Nelson v. Argo Globe Eng'g, Inc.*, 578 N.W.2d 659, 662 (Iowa 1998) (employee bound to four-year non-compete agreement, even though provision in agreement stated that provision ended day after employment ended); *Curtis 1000, Inc. v. Youngblade*, 878 F. Supp. 1224, 1258 (N.D. Iowa 1995) (covenant not to compete may be unenforceable if the restrictions are oppressive or the agreement was obtained under circumstances indicating bad faith on the part of the employer).

Further, a party wishing to enforce a covenant not to compete must establish that the reasons for such a covenant are legitimate. To establish the existence of a legitimate business interest for protection, the employer must demonstrate, based upon the nature of the business, that the employee: (1) misappropriated or had the opportunity to take a portion of the employer's business; (2) took or had the opportunity to take the employer's good will; (3) had access to sensitive (i.e., trade secret) information; (4) has peculiar or particular knowledge regarding the employer's customers; (5) had extensive contact with or worked in close proximity of customers; or (6) that it would be expected, based upon the employee's departure from the business, that some of the employer's customers would follow that employee. *Id.* at 1260-61.

In determining whether there was meaningful competition in violation of a non-compete agreement in a products case, the court may focus upon whether products could be used for the same purposes, not necessarily the means of manufacture of the products. *AMPC, Inc. v. Meyer*, 669 N.W.2d 262 (Iowa Ct. App. June 25, 2003).

The enforceability of a restrictive covenant requires application of a reasonableness standard to maintain a proper balance between the interests of the employer and the employee. The business interests of the employer may be protected but the restriction on the employee can be no greater than is necessary to protect the employer. A court may modify a covenant to make it no more restrictive than is necessary. *Moore Bus. Forms, Inc. v. Wilson*, 953 F. Supp. 1056, 1064 (N.D. Iowa 1996).

A covenant not to compete differs in Iowa from a covenant for exclusive services. A covenant for exclusive services is enforced more broadly. Generally, covenants not to compete are unethical with regard to lawyer employees in Iowa. See *Donnelly v. Brown, Winick, Graves, Gross, Baskerville, Schoenebaum & Walker, P.L.C.*, 599 N.W.2d 677, 680 (Iowa 1999) (limited restriction on competition in a firm Operating Agreement that retirement benefits will not be paid to someone who leaves after working for the firm 25 years [triggering event] deemed not to be an unethical "covenant not to compete" under DR 2-108 of the Iowa Code of Professional Conduct).

B. Blue Penciling

Iowa courts have the authority to modify covenants that are unduly restrictive. *Ehlers v. Iowa Warehouse Co.*, 188 N.W.2d 368, 373-74 (Iowa 1971). The duration of a typical restrictive covenant in Iowa ranges from two to three years. *Rasmussen Heating & Cooling, Inc. v. Idso*, 463 N.W.2d 703, 704-05 (Iowa Ct. App. 1990). Restrictive covenants beyond five years have not been enforced. *Id.* Restrictive covenants that extend beyond the geographic area of the employer's established business are likely

unreasonable. See *Phone Connection, Inc. v. Harbst*, 494 N.W.2d 445, 450 (Iowa App.1992) (upholding a modification of a restrictive covenant to those areas where The Phone Company had established business). More recently, the court in *Doyle v. Otto* held the Court balances three factors when deciding whether a noncompete covenant is enforceable: (1) the reasonable necessity of the restriction to protect the business; (2) the reasonableness of the restriction on the former owner's rights; (3) any prejudice to the public. 942 N.W.2d 2 (Iowa Ct. App. 2020) (citing *Sutton v. Iowa Trenchless, LC*, 808 N.W.2d 744).

C. Confidentiality Agreements

Typically non-disclosure agreements or confidentiality agreements enjoy more favorable treatment in the law than do non-compete agreements. *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751, 762 (Iowa 1999). Non-disclosure statements are usually not viewed as restraints on trade but rather they seek to restrict disclosure of information. Moreover, imposing geographic or durational limitations defeats the entire purpose of restricting disclosure since confidentiality knows no temporal or geographical boundaries. Therefore, non-disclosure agreements lacking in geographic or time limitations have been held to be enforceable. *Id.*

D. Trade Secrets Statute

The Iowa trade secrets statute allows the owner of a trade secret to enjoin actual or threatened misappropriation. Iowa Code § 550.3 (2019). An injunction shall be terminated when the trade secret has ceased to exist, unless the continuation of the injunction would eliminate a commercial advantage that otherwise would be derived from the misappropriation. *Id.* In exceptional circumstances, an injunction may condition future use of a trade secret upon payment of a reasonable royalty. *Id.*

The owner of a misappropriated trade secret is entitled to damages. Iowa Code § 550.4 (2019). Damages may include actual loss from the misappropriation and the unjust enrichment caused by the misappropriation. *Id.* Damages that cannot be ascertained with reasonable certainty under standard formulas for measures of damages are left to the sound discretion of the trier of fact, based upon the best evidence available. *Olson v. Nieman's, Ltd.*, 579 N.W.2d 299, 310 (Iowa 1998). If a person commits a willful and malicious misappropriation, the court may award exemplary damages in an amount not exceeding twice the original award. Iowa Code 550.4 (2019).

E. Fiduciary Duty and Other Considerations

1. Fiduciary Duty

The principal/agent relationship necessarily gives rise to the fiduciary relationship. *Condon Auto Sales & Serv. v. Crick*, 604 N.W.2d at 587, 599 (Iowa 1999). A principal and agent relationship necessarily includes an employer and employee relationship. *Economy Roofing & Insulating Co. v. Zumaris*, 538 N.W.2d 641, 648 (Iowa 1995). Employees have a fiduciary duty maintain secrecy of employer's trade secrets or proprietary information. *Id.*

Directors and officers of a corporation have a fiduciary duty to act in all things wholly for the benefit of the corporation. *Midwest Mgmt. Corp. v. Stephens*, 353 N.W.2d 76, 80 (Iowa 1984). The breach of fiduciary duty may form the basis for a punitive damage award if the breach also constitutes an intentional tort. *NCMIC Finance Corp. v. Artino*, 638 F. Supp. 2d 1042, 1085 (2009).

2. Invention Rights

In the absence of a special agreement to the contrary, the general rule in Iowa is that an invention is the property of the inventor regardless of the subject matter of the invention as compared to the subject matter of the employment. Iowa recognizes and enforces agreements assigning invention rights to employers using the same three-part test used for non-compete agreements and non-disclosure agreements. *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d at 762 (Iowa 1999).

XII. DRUG TESTING LAWS

A. Public Employers

The legality of drug testing public employees is subject to a balancing test which weighs the employee's reasonable expectation of privacy against the government's interest in maintaining a drug-free work force. *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 633 (1989). Factors to be examined include the actual danger of the workplace; the frequency of testing; the degree to which the employee's privacy is invaded by the testing; and the amount of discretion left to the testing agency. *Id.*

B. Private Employers

An employer may choose to test its employees and may choose to test employees or prospective employees as a condition of continued employment or hiring. Iowa Code § 730.5 (2019). In its broadest sense, section 730.5 is intended to protect and employer's right to ensure a drug free workplace. *Sims v. NCI Holding Corp.*, 759 N.W.2d 333, 338 (Iowa 2009). However, the statute does contain a notice requirement in order to protect employees who are required to submit to drug testing. If an employer wishes to drug test employees there must be a written drug policy and a written notice provision. Iowa Code § 730.5(9)(a)(1) (2019). In 2019, Iowa law was modified to allow companies to demand a hair sample (Iowa law previously only permitted companies to demand blood, urine, saliva, or breath samples). Iowa Code § 730.5.

XIII. STATE ANTI-DISCRIMINATION STATUTE(S)

A. Employers/Employees Covered

The Iowa Civil Rights Act, Iowa Code Chapter 216, applies to employers with four or more employees. Iowa Code § 216.6(6)(a)(2019). The statute does not protect independent contractors from discriminatory employment practices. *Stricker v. Fort Dodge Corr. Facility*, No. 02-1764, 2003 Iowa App. LEXIS 1110 (Iowa Ct. App. Dec. 24, 2003). In contrast to federal anti-discrimination laws that have not been found to authorize a cause of action against individual supervisors, Iowa's civil rights law allows such claims against individual managers. *Vivian v. Madison*, 601 N.W.2d 872, 878 (Iowa 1999). In 2020, the Iowa courts declined to extend the *Vivian* ruling to individuals who solely give performance feedback. The Court held an individual, in order to be held liable, must be acting in such a way that he or she is in a position to control the company's employment decision. *Neppel v. Wells Fargo Bank, National Association*, 2020 WL 3446280 (S.D. Iowa 2020).

B. Types of Conduct Prohibited

The statute bars discrimination against employees based on race, religion, color, sex, national origin, age, disability, creed, marital status, or sexual orientation Iowa Code § 216.6 (2019).

Iowa Code Section 216.6A provides that the practice of discriminating against any employee because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability by paying wages to such an employee at a rate less than the rate paid to other employees does all of the following: (1) unjustly discriminates against the person receiving the lesser rate; (2) leads to low employee morale, high turnover, and frequent labor unrest; (3) discourages employees paid at lesser wage rates from training for higher level jobs; (4) curtails employment opportunities, decreases employees' mobility and increases labor costs; (5) impairs purchasing power and threatens the maintenance of an adequate standard of living by such employees and their families; (6) prevents optimum utilization of the state's available labor resources; and (7) threatens the well-being of citizens of this state and adversely affects the general welfare. *Id.* § 216.6A.

C. Administrative Requirements

According to Iowa Code section 216.15(1) (2019):

Any person claiming to be aggrieved by a discriminatory or unfair practice may, in person or by an attorney, make, sign, and file with the commission a verified, written complaint which shall state the name and address of the person, employer, employment agency, or labor organization alleged to have committed the discriminatory or unfair practice of which complained, shall set forth the particulars thereof, and shall contain such other information as may be required by the commission. The commission, a commissioner, or the attorney general may in like manner make, sign, and file such complaint.

D. Remedies Available

Available damages include, but are not limited to actual damages, court costs, and reasonable attorney fees. Iowa Code § 216.15(9)(a)(8) (2019). Iowa does not allow punitive damages for state discrimination claims. *Ackelson v. Manley Toy Direct, L.L.C.*, 832 N.W.2d 678 (Iowa 2013).

A plaintiff seeking money damages under the Iowa Civil Rights Act is entitled to a jury trial. *McElroy v. State*, 703 N.W.2d 385, 395 (Iowa 2005).

XVI. STATE LEAVE LAWS

A. Jury/Witness Duty

Iowa has not enacted a statute specifically requiring employers to grant employees a certain amount of leave to fulfill jury duty or witness obligations. However, Iowa Code section 607A.45 expressly prohibits employers from threatening or otherwise coercing an employee because he or she receives a notice to report, responds to the notice, serves as a juror, or attends court for prospective juror service. It is also against the law to deprive any employee of employment because he or

she is called for jury duty. An employer who violates this law can be charged with contempt, and is also subject to a civil action by the discharged employee. Iowa Code § 607A.45(2) (2019).

B. Voting

Iowa Code section 49.109 requires that employers allow employees time off from work to vote, without a deduction in pay. This law applies to employees who do not have two consecutive hours in the period between the time of the opening and the time of the closing of the polls during which the person is not required to be at work. Thus, if polls open at 7 a.m. and close at 7 p.m., and an employee is required to work from 8 a.m. to 5 p.m., the employer would be required to grant the employee time off to vote because he would not have two consecutive hours of time away from work during the period the polls are open. The employer can require the employee to submit a written application for his or her absence prior to the date of the election, and the employer must designate the period of time to be taken. Under Iowa Code Section 39A.5(1), a violation of Section 49.109 constitutes fourth degree election misconduct which is punishable as a simple misdemeanor. Iowa Code Section 903.1(1)(a) (2019) allows for a fine of \$105 but not more than \$850. The court may also order imprisonment not to exceed thirty days in lieu of a fine or in addition to a fine.

C. Family/Medical Leave

The Iowa Civil Rights Act, Iowa Code section 216.6(2)(e), requires employers to provide an unpaid leave of absence of up to eight (8) weeks to pregnant employees or those who have recently given birth, when sufficient leave is not available under any health, temporary disability insurance, or sick leave plan. This leave could, under certain circumstances, be in addition to the 12 weeks of leave required under the Federal Family and Medical Leave Act. Section 216.6 does not apply to employers who regularly employ less than four individuals. Iowa Code § 216.6(6)(a) (2019).

D. Pregnancy/Maternity/Paternity Leave

Iowa employers with more than four employees must grant a pregnant employee's request for a leave of absence due to a disability connected with the pregnancy. The leave of absence will last for the lesser of eight weeks or the period that the employee is disabled due to pregnancy, childbirth, or related medical conditions. However, the statute requires the employee to provide timely notice of the period of leave requested and the employer must approve any change in the period requested before the change is effective. The employer may require the employee's disability resulting from pregnancy be verified by medical certification statute that the employee is not able to reasonably perform the duties of employment. Iowa Code § 216.6(2)(e) (2019).

E. Day of Rest Statutes

There is no Iowa Day of Rest statute.

F. Military Leave

Iowa Code section 29A.43 imposes obligations upon employers similar to those found in the Uniformed Services Employment and Reemployment Rights Act (USERRA), codified at 38 U.S.C. §§ 4301, *et seq.* (citing Iowa Code § 29A.43 (2019)). Members of the National Guard or Reserves are entitled to a

leave-of-absence during their period of service. Iowa law, however, does not specify a maximum amount of leave. Employers are required to restore the employee to the position held prior to the leave-of-absence or employ the person in a similar position. The period of absence must be considered as an absence with leave, and must in no way affect the employee's rights to vacation, sick leave, bonus, or other employment benefits. A violation of Iowa Code section 29A.43 is considered a simple misdemeanor.

G. Sick Leave

An employer in Iowa is not required to provide paid or unpaid sick leave benefits. If the employer does offer sick leave under an agreement with the employee or under one of the employer's policies, then the employer must administer the sick leave in accordance with that agreement or policy. See Iowa Code § 91A.2(7)(c) (2019).

H. Domestic Violence Leave

Iowa does not statutorily grant leave to an employee who is a victim of domestic violence. Employers may not take retaliatory action, however, against an employee who is serving as a witness in a criminal proceeding or as a plaintiff, defendant, or witness in a civil elder abuse or domestic abuse proceeding. An employer who violates this section commits a simple misdemeanor and an employee whose employer violates this section is entitled to recover damages from the employer, including, but not limited to, actual damages, court costs, and reasonable attorney fees. See Iowa Code § 915.23 (2019).

I. Other Leave Laws

Other than what is described above, Iowa does not have any other generally applicable leave laws.

XV. STATE WAGE AND HOUR LAWS

A. Current Minimum Wage in State

The state hourly wage shall be at least \$7.25 as of January 1, 2008. Iowa Code § 91D.1 (2019). Generally, they tend to mimic the federal requirements. See 29 U.S. Code § 206 (2014). In 2017, the Governor of Iowa signed a law preventing cities and counties from exercising local control on the issue of minimum wage, and froze minimum wage state-wide at \$7.25 per hour.

B. Deductions from Pay

Iowa has a wage payment collection law that requires employers to pay wages which are due within a certain time, including earned wages after the employment relationship ceases. See Iowa Code § 91A.4 (2019). The employer may not withhold any amount not consented to by the employee and not allowed by federal or state law or court order. Iowa Code § 91A.5(1)(b) (2019). The employer generally cannot withhold wages to offset debts due the employer. See *Condon Auto Sales & Serv., Inc. v. Crick*, 604 N.W.2d at 596-97.

If the employer is inaccurate as to the amount of wages paid, the employee can recover wages, costs and attorney's fees. Iowa Code § 91A.8 (2019). If the employer withholds the wrong amount for any reason other than a genuine dispute as to the amount of wages earned, the employer may be liable for liquidated damages, generally in the amount of two times the actual damages. *Id.*

Every "withholding agent" who fails to withhold or pay to the department any sums required to be withheld and paid, shall be personally, individually, and corporately liable therefor to the state of Iowa, and any sum or sums shall be deemed to be held in trust for the state of Iowa, This liability applies a member or manager of a limited liability company. Iowa Code § 422.16(4) (2019). Further, if any corporate withholding agent fails to withhold, make the required returns, or remit to the department the amounts withheld, the director may certify this fact to the Secretary of State, who shall thereupon cancel the Articles of Incorporation or certificate of authority (as the case may be) of such corporation. Iowa Code § 422.16(5) (2019).

The Iowa Legislature did not intend for the Iowa Wage Payment Collection statute to apply to persons not actually employed in the state of Iowa. However, the statute does not limit its application to the employee's state of residence. Rather, the focus is on whether the employee is employed in the state. *Runyon v. Kubota Tractor Corp.*, 653 N.W.2d 582, 586 (Iowa 2002). In *Runyon*, because the employee's dispute with his employer involved services rendered for wages earned in the state of Iowa, Iowa's Wage Payment Collection Law applied. *Id.* at 585. However, in *Guy v. Ford Storage & Moving Co.*, the Court further clarified the requirement of "employed in the state." 2019 WL 4804644 (S.D. Iowa 2019). In *Guy*, the Court held the plaintiff did not conduct enough business in Iowa to apply Iowa's Wage Payment Collection Law because the evidence showed relatively infrequent—sometimes only monthly visits—to the state of Iowa for work-related deliveries. *Id.*

Iowa law requires wage and withholding information to be kept for at least three calendar years and to be available to employees on written request. Iowa Code § 91A.6 (2019).

C. Overtime Rules

The state of Iowa follows the Fair Labor Standards Act, 29 U.S.C. Sections 207-213, to regulate overtime. Section 207 limits the workweek for employees to forty hours, and any work over the forty hours must be paid at time and a half. Section 213 lists employees who are exempt from overtime pay. Employees working in an executive, administrative, or professional capacity are exempt from the wage minimums and maximums outlined in sections 206 and 207. 29 U.S.C. §§ 206-213 (2019).

D. Time for Payment Upon Termination

Upon termination, an employer is required to pay all wages earned by the employee, minus any lawful deductions, no later than the next regular pay day for the pay period in which the wages were earned. Iowa Code § 91A.4 (2019). A non-English speaking employee who was recruited by an employer and who resigns employment within four weeks of the initial date of employment may, within three business days of the termination of employment, request the employer to provide the employee transportation to return to the location from which the employee was recruited by the employer, provided that such point is 500 or more miles from the place of employment. Iowa Code § 91E.3(2)

(2019). State law also affects group health care coverage provided by an employer upon the employee's termination.

Iowa Code Section 509B.3 requires group life, accident or health insurance policies issued or delivered in the state to continue to cover employees under the policy where the policy would otherwise end upon termination of employment. The employee has the right to continue the coverage no more than thirty-one days after the date of termination, and without supplying evidence of insurability if the employee had been covered under the group policy for at least three months prior to the date of termination. As of 2020, an employee or member who wishes continuation of coverage must request continuation in writing to the employer or group policyholder within the ten-day period following the later of either (1) the date of termination or (2) the date the employee is given notice of the right of continuation by the employer or the group policyholder. On that note, employers are required to: 1) notify all employees of their continuation rights within ten days of termination of employment, and 2) notify employees and persons receiving continuation benefits if there is a substantial modification or termination of the agreement to provide coverage. Iowa Code § 509B.5 (2019).

E. Breaks and Meal Periods

Iowa employers must grant a break of at least thirty minutes to employees under the age of sixteen if the employee works for five or more hours a day. Iowa Code § 92.7 (2019). These employees cannot be employed for more than eight hours in one day and no more than forty hours in one week.

F. Employee Scheduling Laws

Iowa is an at-will employment state, and as such, employers may change work schedules. See Section I.B. There are statutory protections for workers under sixteen years of age. Children under the age of sixteen cannot be scheduled for more than four hours in one day or twenty-eight hours in one week while school is in session. Iowa Code §92.7 (2020).

XVI. MISCELLANEOUS STATE STATUTES REGULATING EMPLOYMENT PRACTICES

A. Smoking in the Workplace

Chapter 142D of the Iowa Code, the "Smokefree Air Act," requires that employers communicate to all existing and prospective employees the smoking prohibitions prescribed in the Act. Smoking is prohibited in all "public places," which specifically includes employee lounges and vehicles provided by an employer. The Act exempts from its prohibitions hotel and motel rooms not designated as "non-smoking," retail tobacco stores, rooms in long-term care facilities, private clubs with no employees (except when the public is invited), privately-owned limousines, and enclosed areas within a place of employment that provides a smoking cessation plan or program or scientific or research program if smoking is an integral part of the program. Iowa Code § 142D.4 (2019). Also exempted are the gaming floors of gambling structures, gambling boats, and racetracks as defined in Chapter 99F of the Iowa Code. The employer has a duty to clearly and conspicuously post in and at every entrance "no smoking" signs or the international "no smoking" symbol. Iowa Code § 142D.6 (2019). The signs must contain the telephone number for reporting complaints and the internet site of the department of public health. For a single violation, the penalty shall not exceed one hundred dollars. The penalty for a second violation within the same year shall not exceed

two hundred dollars, and for every subsequent violation within the same year, the penalty shall not exceed five hundred dollars for each additional violation. Iowa Code § 142D.9 (2019). An employer is not allowed to discharge, refuse to hire, or in any way retaliate against an employee for registering a complaint or attempting to prosecute a violation of the Chapter. Iowa Code § 142D.7 (2019).

B. Health Benefit Mandates for Employers

Iowa Code 509B.3 provides for a continuation of benefits when a group policy for employees terminates because of termination of employment or membership. Continuation is conditioned. The statute provides that (1) continuation shall only be available to an employee or member if the employee or member was continuously insured under the group policy; (2) continuation shall not be available for a person who is or could be covered by Medicare or another group insured or uninsured arrangement; (3) continuation may exclude dental care, vision care, or prescription drug benefits; (4) employee or member must request continuation in writing to the employer or group policyholder within ten days after termination of benefit notice or, when no notice is given, no more than thirty-one days after the date of termination; and (5) employee pays monthly to employer or group policyholder. A covered spouse or any dependent children shall have the same rights of continuation as employee.

C. Immigration Laws

Iowa Administrative Code requires that an interpreter shall be made available at the work site when an employer has more than 10 percent of its employees that are non-English speaking and speak the same non-English language. At least one interpreter shall be available at each work site for each entire shift on which the non-English speaking employees are employed. Iowa Admin. Code r. 875-160.4(91E) (2019).

D. Right to Work Laws

Iowa Code Chapters 731 and 732 set out rules for union membership and prohibited union activities, respectively. *See, e.g.*, Iowa Code § 731.1 (2019) (establishing Iowa's right to work); *id.* § 732.1 (prohibiting agreements to boycott or strike in sympathy).

Iowa is a right-to-work state by statute. Iowa Code Section 731.1 states “[i]t is declared to be the policy of the state of Iowa that no person within its boundaries shall be deprived of the right to work at the person's chosen occupation for any employer because of membership in, affiliation with, withdrawal or expulsion from, or refusal to join, any labor union, organization, or association, and any contract which contravenes this policy is illegal and void.” Iowa Code § 731.1 (2019). This statute prohibits both “union shop” and “closed shop” contracts. *See Master Builders of Iowa, Inc. v. Polk County*, 653 N.W.2d 382 (Iowa 2002) (court held that project labor agreement entered into by defendant county and intervenor construction trades council did not violate state's right-to-work and competitive bidding laws. The court found that Iowa's right-to-work laws existed only to prevent “compulsory unionism.” The court also found that the use of union hiring halls in the project was not, per se, invalid and would only violate right-to-work laws if it is used to discriminate between union and non-union members).

E. Lawful Off-Duty Conduct (including lawful marijuana use)

Use of marijuana is currently illegal in Iowa.

F. Gender/Transgender Expression

Iowa does not currently have statutes specifically relating to gender/transgender expression.

G. Other Key State Statutes

1. Veterans' Preference. Veterans who work for government entities in Iowa are given preference in employment over other equally qualified employees, under Iowa Code section 35C. The Veterans Preference Law essentially guarantees permanent public employment to veterans unless they have been fired from a job for incompetence or misconduct, after a hearing with due notice on the stated charges and a right for judicial review.
2. Safety. Employers are required to keep the workplace free from hazards and to keep track of occupational illnesses and injuries, make reports of those illnesses and injuries as required by the OSHA Commissioner, and make the workplace available for inspection. See Iowa Code §§ 88.1, *et seq.* (2019); *IBP, Inc. v. Iowa Employment Appeal Bd.*, 604 N.W.2d 307 (Iowa 1999) (Iowa state courts can apply federal OSHA requirements). Willful violation of OSHA requirements subjects the employer to a minimum penalty of \$5,000 and a maximum penalty of \$70,000 for each violation. Iowa Code §§ 88.14 (2019).
3. Personnel Records. Employees shall have access to and shall be permitted to obtain a copy of their personnel file including performance evaluations, disciplinary records, and other information concerning employer-employee relations under Iowa Code Section 91B.1.
4. Child Labor. Pursuant to Iowa Code Chapter 92, no person under 10 shall be employed or permitted to work with or without compensation at any time within the state. However, the Labor Commission shall issue a work permit to a child under 10 if ordered by a judge of the juvenile court. Additionally, no person under 12 shall be employed or permitted to work with or without compensation at any time in connection with migratory labor, except when ordered by a judge of the juvenile court.

Age restrictions are strict liability offenses. That is, children under the legal age required for the particular job are not "employees" regardless of fault or circumstances. For example, one case has specifically denied an employer protection under the workers' compensation statutes when an underage employee was killed on the job. See *Sechlich v. Harris-Emery Co.*, 169 N.W. 327 (Iowa 1918) (misstatement of age by underage "employee" so that employer believed Worker's Compensation Act should prevent suit by estate of such underage employee is no defense to suit for wrongful death of a child younger than minimum age to be eligible for employment).

- e. Non-English Speaking Employees. Under Iowa Code Chapter 91E, if an employer has more than 10% of its employees who are non-English speakers speaking the same language, Iowa law imposes on those employers a duty to have interpreters available to those employees when they work and to hire someone whose primary responsibility is

to direct those employees to civil programs. Iowa Code § 91E.2 (2019). Further, Iowa law imposes certain restrictions on employers that recruit non-English speaking employees from outside of Iowa, including a registration requirement. Iowa Code § 91E.3 (2019).

- f. State “WARN” Act. Iowa has a state equivalent to the WARN act, which can be found at Iowa Code chapter 84C. Generally speaking, employers must give written notice to affected employees at least thirty (30) days before business closing or mass layoffs. Iowa Code § 84C.3 (2019).
- g. Labor Statistics. Iowa Code § 91.12 (2019) requires employers to report to the Iowa Department of Labor for labor statistical compilation. This does not include information containing identifiable financial account numbers.
- h. Public Sector Collective Bargaining. Iowa Code chapter 20 permits collective bargaining in public employment. However, there are a number of restrictions; for example, employees are not permitted to engage in picketing in support of a strike. Iowa Code § 20.10(3)(h) (2019). In 2017, these restrictions were further intensified. Most public-sector union contract negotiations in Iowa are now limited to base wages. Unions are banned from negotiating with employers over issues such as health insurance, evaluation procedures, staff reduction, and leaves of absence for political purposes. Public safety workers (police, firefighters, etc.) may have a broader list of issues to be considered in contract talks, which includes the exclusion of all retirement systems, dues checkoffs, and other payroll deductions for political action committees. Iowa Code § 20.9 (2019).
- i. State and local governments can no longer require project labor agreements for public construction projects. Additionally, a governmental entity shall not require a potential bidder on a public improvement project to provide any information they deem to be confidential or proprietary. Iowa Code § 26.9 (2019).

XVII. OTHER DEVELOPMENTS

A. Same-Sex Couples

Iowa law recognizes same sex marriage, but has not extended benefits to unmarried couples. See *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009).

B. “Borrowed Servant” Doctrine

Iowa recognizes the borrowed servant doctrine, but is hesitant to apply it in most cases. See, e.g., *Jeffries v. Kopp*, 2004 Iowa App. LEXIS 709 (Iowa Ct. App. 2004). See generally *Horn v. Airway Services, Inc.*, 2020 WL 420834 (N.D. Iowa 2020). The primary consideration in determining whether an employment relationship exists focuses on control, but the primary factor in answering the question of whether an individual is a borrowed servant is the intent of the parties. There is a presumption that the primary employer continues as the sole employer. *Bride v. Heckart*, 556 N.W.2d 449, 452 (Iowa 1996). There must be evidence that the employee was loaned to the special employer by the general employer with the general employer surrendering full control and the special employer receiving full direction and control of the employee’s activities. Because the inference is

that an employee remained in his original employment, the general employer has the burden to show that it lent the employee to the special employer and that it relinquished control of the employee to the special employer.

A special employer may be liable for the employee's conduct in respondeat superior if the amount of control available to the special employer involves more than just the ability to point out the work to be done. *Bride v. Heckart*, 556 N.W.2d 449 (Iowa 1996). Iowa courts have looked to the intent of the parties and five factors to determine whether borrowed employee status has arisen. The five factors are: (1) the right of selection or to employ at will; (2) responsibility for the payment of wages by the employer; (3) the right to discharge or terminate the relationship; (4) the right to control the work; and (5) whether the party sought to be held as the employer is the responsible authority in charge of the work or for whose benefit the work is performed. *Bride v. Heckart*, 556 N.W.2d 449 (Iowa 1996) (providing five factors); see also *Jeffries v. Kopp*, 2004 Iowa App. LEXIS 709 (Iowa Ct. App. 2004) (finding that there was not enough evidence for a reasonable jury to conclude that employee driving asphalt truck was a borrowed servant of the company when undisputed evidence demonstrated that the truck driver was working under an independent hauling agreement between an unrelated contractor and independent truck owner). *Vivone v. Broadlawns Med. Center*, 2006 Iowa App LEXIS 1855 (Iowa Ct. App. Dec. 13, 2006). (When an employee is borrowed by another entity, an issue of fact may arise as to whether the employee becomes a "borrowed servant." The Court infers that the employee remains in their original employment.)

C. Political Rights. Iowa has no general provision regarding political rights as they relate to the employer-employee context. However, certain public officials and government employees are restricted from certain activities. See Iowa Code Sections 123.17; 341A.18; 8A.416; and 48A.25.

D. Transportation Networking Companies. With the growing popularity of transportation network companies, or "ride-share" services, like Uber and Lyft, many states have yet to establish legislation that regulates these types of businesses. Iowa defines a "transportation network company" as a corporation or entity that uses a digital network to connect riders to transportation network company drivers who provide prearranged rides and who uses a personal vehicle to offer or provide those prearranged rides in return for compensation or payment of a fee. Iowa Code § 321N.1 (2020). Iowa recently became one of the first states to regulate these companies. Originally, bills in the Iowa Legislature called for all transportation network companies to provide an uninsured or underinsured insurance provision within the policies they give to network drivers, in the event of an accident. 2015 Bill Text H.B. 96 (2016). However, these bills were not originally enacted. What resulted was the adoption of Iowa Code 321N.6 which will give insurers the ability to exclude uninsured and underinsured coverage from their policies to transportation network services. Iowa Code § 321N.6 (2020). However, this chapter does not preclude an insurer from providing coverage for a transportation network company driver's personal vehicle, if the insurer chooses to do so by contract or endorsement.