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An Exploratory Analysis of At-Will Employment Policy in the State of Georgia

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Abstract

In the American law, the at-will employment doctrine defines an employment relationship between an employer and the employee in which both parties can terminate the relationship at any time with no liability as long as there was no contract for a definite period. As an "at-will" state, an employee in Georgia works at the will of the employer, however employers cannot fire employees against any established federal public policy, which are discriminatory such as race, gender or national origin. This analysis deploys various sources to provide a descriptive evaluation of the nature and scope of at-will employment structure in the public sector, with special focus on the Georgia reform. The purpose of this exploratory analysis is to furnish scholars and human resource specialists with a good understanding of the reasons why the State of Georgia adopted an at-will employment reform and the policy implication of the current practice. The analysis concludes with recommendations on how to improve the employment relationship between employers and their employees.

1. Introduction

The at-will employment doctrine defines an employment relationship between an employer and the employee in which both parties can terminate the relationship at any time with no liability as long as there was no contract for a definite period. For many decades now, states such as Arizona, Connecticut, Delaware, Illinois, Indiana, Montana, New Hampshire, and Pennsylvania, to mention but a few, have started to move away from the at-will employment rule (Hays & Sowa, 2006; Dannin, 2007; Ballam, 2000). In those states, employees who are terminated wrongfully can sue their employers for wrongful dismissal and receive compensatory damages for their lost wages and opportunities. While Georgia remains one of the few states in the nation to furnish any form of employment protection for workers (Pfiffner & Brook, 2000), procedural, not sizeable, due process defense are established for Georgia workers. Nonetheless, these procedural protections have neither job safety measures nor employee privileges

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available in both traditional civil service systems and at-will policies (Tejuoso, 2010).

What to do about the increase in at-will policies has sparked attention in the impending repercussions of the reform for merit systems and public sector employment practices (Battaglio & Condrey, 2006; Condrey & Battaglio, 2007). Due to recent efforts at reform, the importance of this analysis with regard to at-will posits a daunting task to be accomplished. The at-will employment system in the State of Georgia is seen to be pendulous on the side of the employers. Public sector employees hired after July 1, 1996 are subject to the doctrine's caprices, without any option but to adhere to the terms imposed on them by at-will provisions (Tejuoso, 2010). Revisiting the same question raised by Tejuoso, we ask, can the reasons for at-will be validated, since it increases the rights of public managers at the expense of employee rights? While other states are confronted with the same challenges posed by at-will employment polices (Coggburn et al., 2010; Hays & Sowa, 2006; Summers, 2000), our analysis centers on the State of Georgia.

This exploratory analysis uses various sources to provide a descriptive assessment of the nature and scope of at-will employment structure in the public sector, focusing on the Georgia reform, with the purpose of furnishing scholars and human resource specialists with a good understanding of the reasons why the State of Georgia adopted an at-will employment reform and the policy implication of the current practice. The article begins with a brief overview of at-will employment doctrine, the discussion of the Georgia employment reform efforts, its policy implications and recommendations. The analysis concludes with several approaches on how to improve the employment relationship between employers and their employees.

2. An Overview of At-Will Employment

There is a proliferation of literature on the consequences of at-will employment policy (Dannin, 2007; Goodman & French, 2011; Bowman & West, 2006; Coggburn, 2006; Kellough & Nigro, 2006; Harcourt, Hannay & Lam, 2012; Selden; 2006; Wilson, 2006). Most scholars have concluded that the at-will doctrine benefits the employer more than it does the employee (Bowman & West, 2006; Coggburn, 2006; Kellough & Nigro, 2006; Summers, 2000), while a few others still believe that at-will is very beneficial (Hays & Sowa, 2006). One might ask, what exactly is at-will employment? The doctrine of at-will employment in the public sector postulates that employees may be dismissed at their employers' will, for good cause or no cause at all, except where the employees are hired on a fixed term (Battaglio, 2010). Under this employment relationship, employees lack equal bargaining power in dealing with their employers, access to procedural due process rights such as complaints or petition procedures of public employees is either constrained or not available (Condrey & Battaglio, 2007; Dannin, 2007).

This begs the question on how the due process clause protects individual workers in the public sector.

On the basis of the Fifth and Fourteenth Amendments to the U.S. Constitution, courts have held that an employee has a property interest on a job if there is a written or implied contract giving the employee such an interest on the job; if past practice of the employer demonstrates that the worker has a property interest on the job; or if a statute grants the employee such an interest on the job (Chemerinsky, 1992). If a public employee has a property interest on a job, s/he cannot be dismissed without due process. Due process mandates that the employee be provided with a notification of the reason for being dismissed and a fair hearing at which to appeal a termination decision (Chemerinsky, 1992; Tejuoso, 2010).

From the legal perspectives, at-will employment was created through the elimination of the property interest in employment that public employees had previously in their favor (Brook & King, 2008). In conventional civil service, an employment property interest exists when a public employee has a reasonable expectation that s/he has a continuous employment with satisfactory on-the-job performance. A public employer of labor establishes such an interest when it promises employees, through merit system provisions or other statutory actions, that their employment will be terminated only for just cause. When a property interest is created, constitutionally required procedures for employment dismissal must be adhered to in compliance with the Fifth and Fourteenth Amendments' protections (William, 1968; Polinsky & Shavell, 1998). In employment dismissal proceedings, this mandate requires that there must be a prior notification as well as an opportunity for workers to respond to charges leveled against them before dismissal (Rubin, 2003). The difference between public employees and their private counterparts is that public employees have certain constitutional rights when they join public service; procedural due process is one of such rights. There are two primary goals served by the Due Process Clause embedded in the Constitution. First, there needs to be a documented utilization of fair procedures with good results to prevent inappropriate employee deprivation of interests. Second, the government has to treat employees with a human face by seeking and acknowledging their opinions on critical employment issues (Monaghan, 1986; Tejuoso, 2010).

In terms of its evolution, the at-will employment doctrine emerged as the dominant rule in wrongful dismissal cases in the United States during the latter part of the 19th century (Green et al., 2006; Summers, 2000). In the 21st century, this doctrine has been more expansive and employers understand that while the just cause is good for them, at-will employment is bad for them due to the skyrocketing cost of litigations in fighting termination cases. As a result, the Industrial Revolution and its aftermath have paved the way for the decline of the doctrine in some states with exception provisions (Ballam, 2000; Dannin, 2007; Muhl, 2001; Summers, 2000). For instance, when employees started forming unions, the collective bargaining agreements they signed with employers of labor

usually had just cause provisions for adverse employment terminations, and procedures for arbitrating workers grievances in states where unionization is legally permissible. The fact that employment is seen as a centrifugal force in an employee's source of income and wellbeing, coupled with the inability to protect a worker's livelihood from unjust dismissal, resulted in the creation of what is now known as judicial exceptions to the at-will employment doctrine, which started in the 1950s (Muhl, 2001). Most of these exceptions did not take place until the 1980s, when the doctrine experienced a weakening from both constitutional and legal protections against wrongful employment termination.

According to data compiled by the National Conference of State Legislatures (NCSL) in April of 2008, there are three major exceptions to employment termination under at-will provision: public policy; implied contract; and covenant of good faith and fair dealing in the majority of the states. The exception that prevents dismissal for reasons that violate a state's public policy is available in 42 states, while 41 states prohibit termination after an implied contract for employment has been established; such as through employer presentations of continued employment either in the form of oral statement or expectations embedded in employer handbooks, policies, or other written documents. Also, covenant of good faith/fair dealing exception is available in 20 states (NCSL, 2008; Green et al., 2006). The State of Georgia, among a few southern states, does not have any of the three major exceptions to at-will employment (West, 2002). In the public policy exception to at-will employment, a person is wrongfully dismissed when the termination contradicts any state public policy, rule or law. For instance, in some states, "an employer cannot terminate an employee for filing a workers' compensation claim after being injured on the job, or for refusing to break the law at the request of the employer" (Tejuoso, 2010, 7).

Among the states, the understanding is that a clause—in the form of public policy—may be found within a state constitution, legislative action or administrative regulatory provision, but some states have either restricted or expanded the doctrine beyond its original intent (Selden, 2006). The exception for a covenant of good faith/fair dealing is the most substantial shift from the conventional at-will employment doctrine (Facer, 1998). Instead of prohibiting dismissal on the basis of public policy or an implied contract, this particular exception factor, a covenant of good faith and fair dealing into every employment relationship, has been construed to mean that an employer's human resources decisions are subject to either a just cause standard or that dismissals made in bad faith or motivated by malice are forbidden (Kellough & Nigro, 2006).

Conversely, civil service protections provide for corrective evaluation of the ill-treatment associated with political prejudice; nonetheless, these same protections for career service employment in the 21st century have been noted as serious impediments requiring remedial attention by the legislature. For instance, courts, including those in Georgia have ruled in favor of employers that discharge their employees for refusing to perform an act forbidden by state law, reporting a

violation of the law by other employees, filing a claim under the state workers' compensation law, filing for bankruptcy, and testifying against an employer in a court case (Duffy, 1994; Tejuoso, 2010). The at-will employment doctrine that emerged in the late 19th century was crafted by courts as a legal and, of course, a political palatable mechanism for defining the rights and responsibilities of employers and their workers in the country for economic reasons.

Similarly, courts had found it difficult to settle labor disputes because most employees of large corporations did not have written employment contracts. Within at-will employment provision, employers of labor can employ and discharge workers without completing written contracts with their workers. In view of this, employees are left without a sustainable, legally permissible job security provisions (Battaglio, 2010). This problem is still ongoing in some states including Georgia, and these jurisdictions are known as either at-will or the right to work states. In fact, the rise of the labor unions in the early 1900s was partly motivated by the proliferation of at-will employment doctrine and the behavior of employers who benefitted from its provisions (Markey, 2002; Tejuoso, 2010). Collective bargaining enables workers in a labor union to bargain as a group with their employer for a contract that benefits every member of the workers' union. Generally, labor contracts require the employer not to demote, discharge, and punish an employee without a just cause. Usually, these contracts have grievance procedures to be followed by employees when they perceive any unfair treatment from their employers. In Georgia, a worker's right to employment relationship simply means that an individual employee can be fired for a good reason, bad reason or no reason. We now turn to Georgia reform efforts.

3. Georgia Employment Reform Efforts

As earlier stated, Georgia is one of the few states in the nation that is reluctant in providing any type of employment protection for workers. In all cases reviewed by Georgia courts, the judicial opinion has been that an employer can discharge an employee for no reason, and the affected worker cannot question the employer's decision regardless of the circumstances (Ballam, 2000). Nonetheless, some Georgia employees do have limited protections available to them from federal law and not from state statutes. For instance, employment discrimination on the basis of race, sex, age, religion, national origin and disability is prohibited by the federal government (Muhl, 2001; Wilson, 2006).

For an illustrative purpose, if an employee thinks s/he was terminated for one of these illegal reasons, and if that belief is eventually upheld in court or otherwise, the fired employee may be able to recover compensation or, in some instances, may get his or her job back. Under state law, a worker who has a written contract for a definite length of time may be able to file a lawsuit for breach of contract if the worker is fired. Moreover, federal regulations protect employees from unsafe working environment, reasonable compensation, benefit plans, family and medical leave, and the right to unionization. The U.S.

Constitution guarantees public employees the right to appeal any perceived unfair employment actions against them through an appropriate grievance channels (William, 1968; Polinsky & Shavell, 1998). To what extent this constitutional provision applies to Georgia public service employees is debatable.

Prior to the reform efforts, government agencies complained that the requirement for all applications to be reviewed by the merit system resulted in a backlog of up to six weeks in selecting potentially qualified employees, after some of them had received job offers from other jurisdictions. Some agencies expressed the difficulty in firing unproductive employees because of administrative protocols and documentation requirements for the process under merit system regulations (Walters, 1997). While some states have been reforming their civil service systems for a long time, the State of Georgia decided to exclude its civil service protection for government employees hired after July 1, 1996 through a reform legislation known as Act 816. As a result, the affected workers in the state civil service now know that their employment is "at-will" on the basis of good performance approved through periodic assessment by agency managers (West, 2002). The new civil service system led to the decentralization of recruitment and compensation functions to the state agencies, created "an at-will employment status for new hires, and changed the role of the central merit system from that of regulator to consultant and facilitator" Tejuoso, 2010, 10).

After steering Georgia through several good and problematic changes, the then Governor Zell Miller approved the most crucial reform measure under his administration through the reorganization of the state civil service system. The reform, called "GeorgiaGain," became a significant bureaucratic reform since the 1883 Pendleton Act (Sanders, 2004; Nigro & Kellough, 2000). It is pertinent to note here that through this reform, Georgia became the first state in the country to reorganize its civil service by establishing an unclassified category of employees through a decentralized human resources (HR) system. The new HR system eliminated traditional employment protections available to workers, and mandated for a new salary structure to be determined by operating agencies through assessments under a pay-for-performance system. Also in 1996, Governor Miller mobilized the state lawmakers to support him in approving the restructuring of merit service system in Georgia (Levin & Gebo, 1997). His vision was that operating agencies will not only inspire employees, but will also reward high quality performers. The reorganization was done on the premise that employees and their managers were mutually responsible for good satisfactory job performance in advancing their agency mission. Focusing on the principles of the new public management paradigm, the governor wanted to increase public productivity through a new compensatory mechanism based on position or job classifications in the state civil service.

Moreover, in his initial State of the State Address, Governor Miller explained to the citizens that his reason for modifying the civil service system was to enhance public productivity and performance. Prior to the reform, vacant positions were not filled on time due to bureaucratic red tape and administrative

due process protocols, which made it difficult to discharge state government employees with poor performance records (Sanders, 2004). The governor was certainly perturbed by the little or no training received by supervisors and managers on the use of the existing performance evaluation model in the state. The Governor's GeorgiaGain empowered government officials to provide recommendations on job or position classifications, and the state merit system and various agencies' HR offices in different operating agencies were charged with implementing the policy. In view of these changes in policy, the merit system function shifted from civil service regulatory enforcement to advisement in support of operating agencies' adopted HR rules.

In the new process, the merit system manages benefits and consults with the agencies in other areas such as data management, payroll, salary appraisal, job classification, and staff training and development. Staffing, selection, and termination are controlled by state agencies, all designed to achieve efficiency and effectiveness. Conversely, state operating agencies were empowered to ensure due process in any employment dismissal as well as making sure that all current anti-discrimination laws and regulations forbidding partisan politics in the work environment are adhered to. Nonetheless, it created a situation where different agencies adopt different mechanisms which led to inequity in the treatment of employees whose evaluation records show similar productivity performance (Kellough & Selden, 1997). To remedy this, GeorgiaGain was substituted with a system known as Performance PLUS, which was targeted at improving the rate of employee hires by focusing on pay rates that are equivalent to the prevailing market rates, and compensating workers whose performance exceeded expectations, with a lump-sum performance bonus (Georgia Merit System, 2001; Tejuoso, 2010).

Also, the Georgia reform had other administrative changes that encouraged the devolution and deregulation of public personnel issues, and thus giving each operating agency the administrative discretion and flexibility in structuring its human resource (HR) management. The policymakers anticipated the reorganization would enable government departments to implement simplified selection and recruitment procedures geared toward their specific needs and conditions (Condrey, 2002; Sanders 2004; Kellough & Nigro, 2006).

Furthermore, the decentralizing feature of the statute was certainly obvious for two reasons. First, state agencies were given full responsibility for defining position classifications and determining qualifications and pay scale for every job classification. Second, all agency positions were allocated on the basis of defined job classifications, and each agency was allowed to recruit and screen applicants for vacant positions, and develop pertinent required policies that are in compliance with state and federal labor laws (Georgia Merit System, 2001). While the reform was quickly approved by Governor Miller after its passage in the legislature, it attracted much public outcry unanticipated by the lawmakers. The general assumption of the policymakers was that the creation of an at-will workforce and other reform efforts would help them in providing an effective and

efficient civil service system. It is still unclear if that presumption is true in practice in contemporary era.

The Georgia reform has not existed without criticism. Stephen Condrey, in his analysis, argued that some operating agencies were not exactly ready to implement the new decentralized personnel system, and maintained that some elements of favoritism emerged in recruitment and hiring process four years after the reform. According to Condrey (2002), a major pitfall of the civil service reform has been an increase in new positions in the state operating agencies. In the quest of leveraging departmental control of job responsibilities and compensation structure, new agency job titles were created for various similar positions in the system, from secretarial to clerical categories. It became more challenging to analyze employment data to ensure equitable treatment of employees because individuals with various titles were performing similar duties on different pay grades (Condrey, 2002).

Since every change in an existing merit system tends to have some personnel implications, the nonexistent of either a centralized coordination or an oversight department in the state makes it hard to achieve a consistent discipline, dismissal, recruitment and hiring procedure (Walters, 1997; Nigro & Kellough, 2006). Also, agencies that were not used to the professional recruitment, selection, and termination procedures were instantly empowered to administer their own human resource (HR) systems. For example, one unanticipated HR damages in state operating agencies can be perceived in Jonathan Walters' description of the experience of a top level personnel officer's evaluation of Georgia's merit reform as follows: "We drafted policies for making personnel changes here, and top level management objected; they now think they're above the law" (Walters, 1997, 20). The personnel officer's assertion depicts the view that some top management officials were not apprehensive of the implications or the problems that may arise from changes in the agency policies. Certainly, this is a serious implementation problem for operating agencies in the state.

Robert Behn's management by groping touches on the major issue concerning the Georgia civil service reform. He opined immediately following the enactment of the Georgia legislation that "replacing a set of public sector rules that emphasize fairness and flexibility that the private sector employs to enhance performance will not produce nirvana" (Behn, 1996, 86). According to Behn (1998, 213), "The strategy of groping along is derived from the observation that you can never get it right the first time. Thus, from the beginning, this strategy consciously builds in flexibility—the capacity to make modifications in structures and systems as the organization learns." What this means is that public employers must apply their administrative discretion in dealing with legislative changes and ignore the idea of adopting the traditional government responsibility of fairness to ensure the flexibility that avails itself through decentralization mechanisms (Behn, 1998). While public agencies in Georgia now have more flexibility, the magnitude of responsibility mandated through the decentralization of civil service

functions had a dramatic impact on operating agencies, which can be remedied through training and development.

Thus far, a review of the relevant literature shows that there was no record of lawsuits emerging from the elimination of due process protections for public employees in the State of Georgia. Nonetheless, public agencies are required more than ever before to balance the rights of new, non-merit workers with those of employees in the classified category who are protected under the Georgia Merit System (Walters, 1997). The merit system guarantees for due process in dealing with grievance procedures on adverse employment decisions. Public employees hired under the merit system without any conversion to the non-merit job classification have their due process property rights, while new workers have no apparent property rights (State of Georgia, 1996). In his 2002 study, Stephen Condrey found that within 2 years after the elimination of the property rights to positions, 200 employees were discharged in Georgia public service without any legal challenges (Condrey, 2002, 119). The majority of these employees happened to be at the entry or lower levels of their departments Furthermore, a 2006 statewide survey of over 250 Georgia human resource professionals showed that employment relationship under at-will have created a less trusting environment between the employees and their employers (Battaglio, 2010; Battaglio & Condrey, 2009).

Since the 1996 legislation, numerous Georgia cases dealing with at-will employment tend to originate from the private sector organizations operating in the state. Two of such cases are reviewed here for illustrative purposes. In Eckhardt et al. v. Yerkes Regional Primate Center (2002), former employees brought suit against their employer, Yerkes Regional, for wrongful termination because they documented and internally reported a transfer procedure of macaque monkeys, infected with contagious and virulent Herpes B virus, that presented a danger to them and the public. These employees further argued that since they are whistleblowers to the hazard involved in the transportation of infected monkeys, their dismissal violated the public policy exception to the at-will employment relationship. The Georgia Court of Appeals affirmed judgment in favor of Yerkes Regional for two reasons. First, the Georgia General Assembly has not created a public policy exception enabling former employees to receive financial compensation for wrongful termination under whistleblower laws. Second, since the state legislature has not established such a public policy, the court can only interpret laws and not change them.

In Balmer et al. v. Elan Corporation (2004), former employees brought action against their employer, Elan, for breach of contract, promissory estoppel, fraud, defamation, and violations of whistleblower laws after they have cooperated with a Federal Drug Administration's inspection of the employer's facility despite Elan's oral assurance that such cooperation would not result in termination. Both the Superior Court of Hall County and the Georgia Court of Appeals affirmed the employer's right of dismissal for no cause or just cause.

The Georgia Supreme Court affirmed and ruled in favor of Elan for three reasons: the oral assurance under at-will employment was not enforceable, the oral promise was also not enforceable by the doctrine of promissory estoppel, and appellants did not prove that employer's oral promise constituted fraud (for a list of other cases, see Hass, Clifton & Martin, 2005).

Other potential problems with at-will employment were covered by Dannin (2007). Dannin, in her examination of officially authorized aspects of at-will employment, cautions that public agencies should eliminate this system and replace it with just cause as the preferred option. Her analysis is important because she provides a persuasive argument against the use of an at-will system in the public sector through a comparative exploration of problems in the private sector as a conceptual framework. Her contention is that at-will employment not only affects the employers' bottom line, but it also causes a threat to the national economy. Whereas one may argue that this system excludes employment litigations, Dannin provides evidence to the contrary, and persuasively argues that employers are better off by adopting the just-cause system. She cited Thomas Kohler's 2000 study showing that "Between 1970 and 1989, the overall caseload in federal courts grew 125%. During the same period, the employment discrimination caseload before those courts grew by 2,166%. In 1989, there were 8,993 employment discrimination matters filed in federal courts; and in 1997, plaintiffs filed 24,174 cases. Presently, approximately one in every eleven civil cases on federal court dockets involves a question of employment discrimination" (Kohler, 2000, 106; Dannin, 2007, 7).

Furthermore, the obvious trend is the proliferation of employment lawsuits which creates serious problems for courts and public agencies. Certainly, the money spent in defending these cases directly affects the operating agencies' budgets. The fact that courts have consistently ruled in favor of employers does not eliminate the financial burdens on both the plaintiffs and defendants. Consequently, Ellen Dannin's (2007) argument is that there are no verifiable data showing that at-will employment relation is better for both employers and the national economy. For instance, "fifty-four percent of US general counsels cited employment litigation as their greatest concerns" (Dannin, 2007, 7; Fulbright & Jaworski, 2006). Her most convincing argument is that a just-cause system helps employers in eliminating litigations and improving their bottom line. It is easier to defend lawsuits under a just-cause system because employers are required to carefully document workers' performance, feedback, and their failure to meet expectations, notices, as well as opportunities for them to respond to queries. Also, lack of documentation increases the probability of federal investigations for termination and employer treatment of workers (Dannin 2007).

In their 2006 study, Kellough and Nigro explored the inefficiency in government, lack of responsiveness of employees, and the failure of top line managers to effectively lead their agencies. To further contribute to our understanding of the effect of at-will employment in the public sector, Kellough and Nigro (2006) analyzed the consequences of eliminating civil service

protections and replacing it with at-will employment and warned that "employees may be terminated under this system with or without cause, provided that termination is not carried out of illegal discriminatory reasons or as an attempt to prevent an employee from exercising constitutionally protected rights" (Kellough & Nigro, 2006, 449). When the property interests of workers are removed, it puts them at the mercy of employers of labor. At-will has the proclivity of confusing and alienating workers in the employment relationship if not properly understood. Kellough and Nigro also explored the perception of both classified and unclassified employees of the at-will system with the goal of identifying whether different perceptions of the at-will status exist between employees in both classification categories.

Kellough and Nigro discovered that at-will workers had positive views of the unclassified system compared to their classified counterparts. While there were no documented reasons for these perceptions, one could speculate that it may be due to factors such as length of time in the agency, age, and agency expectations. Before the new system, 61 percent of the employees surveyed indicated they would recommend employment with the state; and four years after the new system, only about 40 percent held this same view (Kellough & Nigro 2006, 452). Overall, more than half of the respondents contended that they do not trust their employer. This is an obvious revelation that employees have negative perceptions of the new civil service system based on at-will doctrine, which can be attributed to more inefficiency, lack of responsiveness, and performance of public employees.

A more extensive analysis of at-will employment was done by Green and his colleagues in 2006, and they expressed their concerns on the ramifications it poses not only to public agencies and managers, but also workers. Usually, the popular reasons for replacing classified workers with at-will centers on "a desire to get rid of specific employees; frustration with costly and time-consuming personnel rules; a strong felt need for increased managerial flexibility; and a desire to meet demands for higher pay by trading off employment status" (Green et al., 2006, 308). Green and his colleagues' contention is that while at-will reform is required, the state constitution does not recognize the legal, managerial and political problems it creates for operating agencies and their managers. Although exceptions to the at-will system are based on public policy, covenant-of-good-faith, and implied-contract provisions as earlier discussed, these exceptions serve to furnish workers with protections against wrongful termination when doing otherwise usually, in some jurisdictions, violates legislative created policy. As we discussed earlier in this section, courts in Georgia have consistently refused to acknowledge the exceptions to at-will because they have not been enacted into employment and labor laws by the legislature.

These exceptions notwithstanding, their political and managerial consequences outweigh the benefits of at-will employment relationship. Green and his colleagues (2006) maintain that at-will doctrine was created to improve managerial flexibility, efficiency and productivity in public service and can be

used as patronage tools to control operating agencies and their managers, including public employees. It is pertinent to note here that Green and his colleagues' analysis centers on the negative impacts of at-will doctrine on public employees, and underscores the distinction between the private and public sector of our national economy. For instance, whereas this mechanism could not be the case in the private sector where employees are motivated by financial gains, public sector employees will not be rewarded by the same token. Moreover, existing theories regarding the motivation of employees tend to be antithetical to the at-will employment doctrine. In public agencies, top administrative managers tend to have wrong perception of what it takes to motivate workers; thus this depicts job security as an ineffective motivator for public servants. The idea of using a market-based mechanism to remove job security has a serious negative effect on productivity and efficiency, however defined (Green et al., 2006).

In view of the motivation concern, Green and his colleagues (2006) include McGregor's theory X and Y in their study. As an option to theory X, a style of management that perceives workers in the public sector as being lazy, inefficient, self-centered and resistant to change, these authors suggest another theory Y. The latter posits a positive method for workers' motivation instead of the fear system recommended by theory X. In contrast to theory X, these scholars contend that public sector employees devote much time to their work, and factors such as "challenging nature of the work, career ladders, and good colleagues, bring far more job satisfaction" to them than financial rewards (Green et al. 2006, 318). Also crucial are the sense of stability and balance that provide more motivation for them rather than the fear of their employment termination. At-will employment removes public agencies' institutional capacity to compete for young talents in concert with new demographic trends, since these talents tend to move away from public agencies to the private sector organizations because they offer better financial compensation to their employees. One might ask: what role does motivation play in assuring public sector employees the right attitudes on their employment?

Usually, at-will employment focuses on several basic wrong assumptions that undergird its goal in the public sector. Firstly, it presumes that public sector organizations can operate like their counterparts in the private sector. This is, in fact, a false assumption because it is well understood that managerial values, legal context, and funding differ between the public and private sectors. Similarly, the assumption that at-will system will strive in the public sector because it works well in the private has not been empirically proven. As a result, the idea that at-will system in the private sector is negated by the existence of better compensation is unfounded. Nonetheless, this trade-off is not available in the public sector. The private sector's utilization of the at-will system may be accepted because it replaces job security with better employment compensation. This is not the case with public sector. Public sector compensation lags behind the private sector, and during the economic downtown, many agencies do resort to furloughs and lay-offs to make up for budget cuts. In fact, government has no

leverage to argue that job security is replaced by better compensation for its workforce.

Secondly, the defense for at-will is usually based on financial system theories. The employer has invested on recruitment and training, and has profit making motive in keeping productive workers and tend to ignore any charges of its unfair treatment of employees. In view of this, many employers try to establish standards for discharging employees without cause; and evaluate whether or not to terminate average workers on productivity reasons. Uninformed dismissals can be very expensive and therefore not frequently used. Whether supervisors at the lower managerial levels terminate employees arbitrarily, management will eventually find these abuses and remedy them, and hopefully provide corrective plans to deal with any abuses rather than waiting for external decision makers to do so for them. While some employees will prefer higher wages to job security, which may increase employers' financial burdens and reduce wages, one might conclude that at-will employment prevails due to this reason.

4. Policy Implications and Recommendations

It is pertinent to note here that in public administration "the success of any policy issue, such as at-will employment should include equity, fairness, and equal treatment in public service delivery and public policy implementation" (Tejuoso, 2010, 32). In fact, public service values require practitioners in government agencies to adhere to the public administration principles. In the case of the at-will employment reform in Georgia, it is an anomaly because it was not backed by the theory of economics (Condrey, 2002). The discussion in this analysis has shown that it was politically motivated and championed by then Governor Miller. On effectiveness and efficiency, these concepts could be interpreted differently in public and private sector organizations. This is why we see diverging opinions on scholars' support for or opposition against at-will doctrine. Nonetheless, the principle of equity compels public administrators to adhere to public interest in the delivery of public goods and services. Since the Georgia reform is aimed at creating a more effective workforce, it did not consider the three other crucial principles that pertain to policy issues in the public sector, and this is why the reform is an anomaly.

The removal of civil service protections enjoyed by workers in government represents a serious public policy matter. Overall, at-will doctrine may serve as a pathway for workforce that complies with administrative changes and innovations that empowers career public managers and appointed political executives in state bureaucracy. While a bureaucracy that abides by the wishes of a chief executive at the top of the organizational pyramid is important, what are the implications of such compliance in the public sector? There are obvious implications for managerial authority, but there is no clear empirical evidence that public goods and services will be effectively and efficiently delivered by employees under at-will employment relationship. More importantly, the due process rights for public

employees have no proven negative effects on the operations of government agencies as some reformers might posit. In fact, due process rights are designed to protect workers in the public sector from wrongful or unfair dismissal. Certainly, those rights are available to promote organizational justice within public sector organizations and a workplace imbued with trust in employment relationship among all the parties involved (Kellough & Nigro, 2006).

Workers' perceptions of fairness in their operating agencies is known as organizational justice, which in turn affects their morale and ultimately their productivity performance in the implementation of the organizational mission (Cropanzano, Bowen & Gilliland, 2007; Cole et al., 2010). A survey of Georgia public human resource professionals, ten years after the implementation of at-will reform in the state, showed that it not only created a less trusting workplace but also undermined employees' perceptions of fairness (Battaglio, 2006; 2010; Battagalio & Condrey, 2009). Battaglio's 2006 study revealed that there was no evidence of an increase in productivity performance partly because employees felt that their work environment was not motivational, and this result is contrary to what the reformers anticipated. In terms of dismissal as punishment for poor performance, Harcourt, Hannay, and Lam (2012) argue that under the at-will doctrine, the discharged worker does not have to be a poor, an average or a top performer because employees level of performance protect a person from being fired. While pay for performance systems are used by some employers in the United States, these scholars contend that their fairness will depend on how well employers' discretion will be used in deploying performance measures that are accurate with clear performance standards communicated to employees.

Under the at-will doctrine, employees can be fired for just cause or no cause at all—other than violations of the exceptions discussed earlier in this analysis as well as problems involving tort and employment discrimination prohibited by federal laws. While the Georgia courts have consistently ruled in favor of employers on at-will lawsuits, actions on the majority of similarly situated cases in other states are challenged in courts. The Equal Employment Opportunity Commission assists employees in dealing with termination cases involving discrimination. The likelihood of successes in these cases tends to be very minimal due to what is now known as "jackpot justice." According to Orey (2007, 60), 7,000 out of 10,000 cases involving wrongful dismissal are resolved out of the judicial system, "2,400 are resolved by summary judgment and other pretrial rulings, 600 proceed to trial and 186 are won by plaintiffs but only 13 plaintiff victories survive on appeal" (Harcourt, Hannay & Lam, 2012, 6).

From the foregoing analysis, it appears that the fear of legal challenges will embolden employers to give neutral job references, which, in turn, will result in shifting deadwood workers to other employers. Conversely, however, employers' fear of a new reason for a lawsuit will discourage them from firing unproductive employees. Furthermore, the financial consequences of dismissing incompetent employees may unwittingly compel employers not recruit potential workers; and this constitutes an unexpected effect of laws that protect of workers' rights.

Nonetheless, at-will principle ought to protect workers just as it does employers. This protection will empower workers to acquire perquisite knowledge, skills, and abilities, while developing cordial relationships with one public agency, before joining another organization (Tejuoso, 2010). At-will employment doctrine should not favor employers engaging in unprofessional behavior, but instead embolden good employers to including every employment decision into the future litigation equation. The attractiveness of the at-will doctrine is that, when factored into the practice of fairness, employers of labor are able to effectively bolster workers' morale and increase their productivity. Employers can do this by opening all communication channels with employees, to enable them make the desired changes for the sustainability of their organizations. The expectation here is that if employees fail to compromise, the management can then implement the desired change in employment status with fairness and consistency, while respecting the workers' dignity, and without any legal encroachment.

While the centrifugal force of this analysis centers on the State of Georgia, its recommendations apply to other jurisdictions. For current and future public employees in other jurisdictions, it is crucial to understand whether an employer has an at-will employment policy. It is equally critical to understand all the existing protections and limitations in an employment arrangement before joining any public organization or establishment. Although the equity of the at-will employment is seen in the light of certain deficiencies, the criteria for judging employee performance may be inaccurate and biased. There is, however, a tendency for employers to deploy some aspects of favoritism in assessing workers' performance. The importance of this topic cannot be overemphasized because it is crucial for inclusion in the development and training of future public administrators, and public personnel specialists. Whereas the concept of equity depicts fairness and equal treatment, pay-for-performance—a subsidiary of GeorgiaGain—certainly does not obviously touch on this concept in the new public management. Georgia public employees understand that their employment is not a life entitlement, but is based on performance and relevance (West, 2002; Tejuoso, 2010), a weakness also acknowledged by Stephen Condrey in 2002.

5. Concluding Remarks

Using an exploratory mechanism, this analysis assessed the reforms initiated by the State of Georgia in 1996 and raised some concerns about how successful they have been in either developing more effective personnel processes or motivating public employees. Due to the inadequacy of organizational change, both scholars and practitioners must be very careful in their quest for a productive workforce development. Basically, the at-will doctrine emboldens a system of employment relationship between an employer and employee that brings about inequities and as a result should be eliminated or restrained, not only in Georgia but in other jurisdictions, where there are stringent rules on the doctrine. An alternative option

may be deployed as a substitute, thus supporting a plan that achieves a balance between crucial social interests such as job security, productivity, and employer independence. At-will rule may be replaced with a politically palatable legislation that requires employers to provide, at least, some types of warning or a notice before an employee is fired.

The major proposition for the establishment of an at-will doctrine was that it produces a workforce that can be managed effectively. The lack of protections against any unanticipated job dismissal may have some unnerving outcomes on policy deliberations within government organizations. While it is appropriate for the public sector to explore new approaches to improve its performance and productivity, at-will employment model is not the most efficient system. Its efficacy rests on its ability to dismiss unproductive employees, but the basic fundamentals that emerge from its practice weaken this robustness. To remedy this concern, the public sector needs to deploy a new mechanism that fits its operation, and create an approach different from what is obtainable in the private sector, which is adaptable to its problems and issues. The premise that government can function as the private sector has to be abandoned due to their different interests, challenges and demands. Moreover, government employees' motivations are different and should be identified by human resource specialists in building a good system of public employee performance review.

Since public sector salaries are usually below what are available in the private sector, an improved compensation structure may be considered as the second approach. Enhancing the compensation structure will help not only in retaining current workers but in attracting potential talented employees to public sector positions. It is now a reality that jobs in the private sector offer attractive benefits as pull factors for potential workers including those already in government agencies. Whereas various theories have delineated some effective motivating factors for employees, financial compensation has always been identified as the most crucial variable.

The restoration of a mutual obligation between employees and their employers is seen as a third approach (Tejuoso, 2010). This is because supervisors and their subordinates can no longer satisfy the goals of their respective organizations without the knowledge, skills, abilities as well as commitments from employees at all levels of the establishments. While the restoration envisioned here is crucial, it is not a sufficient condition to make public sector organizations more efficient, effective, or responsive to the needs of employees. Valuing and appreciating employees in the workforce are not properly assured under the caprices of at-will employment practices, because it leaves workers at the mercy of their employers, and this is not the method to achieve a sense of mutual obligation that may positively increase organizational performance. In fact, the literature of organizational justice suggests to us that employees mentally and behaviorally withdraw from their organizations when they perceive that the outcomes they receive or the treatments within their

organizations are not in concert with equitable, fairness, moral and professional ethical principles (Cole et al., 2010; Cropanzano, Bowen & Gilliland, 2007).

In the State of Georgia, what can aggrieved employees from violations of at-will employment relations do to pursue remedies either in the form of breach of contract or tort? The answer to this question is twofold. First, individuals have rights under the United States Constitution to file legal suits against their employers in violation of federal laws. However, the likelihood of winning is very slim within the state courts because the exceptions to at-will policies discussed earlier in this analysis have not been created by the state legislature, and thus will not be honored by the judiciary in Georgia (see Hass, Clifton & Martin, 2005). Second, the only political alternative remedy is for employees to convey their grievances to their representatives in the Georgia General Assembly. Since employers of labor are frequently and consistently lobbying legislators to vote against laws that would protect employees, workers have constitutional rights to lobby their state legislators not only for fair treatment, but also for the enactment of legislation that will provide them with public policy exceptions under the at-will provisions in Georgia.

The issue of at-will employment is a contentious, litigious problem and will remain so for long time in some jurisdictions in the United States. Although this analysis cannot empirically address organizational justice concerns usually associated with this type of research, it is expected that future scholarly inquiry will deploy quantitative data to examine this further. Overall, the sustainability of employer-employee employment relationship in Georgia, and elsewhere, will depend on the willingness of all the actors in the modern public organizations to accept and understand justice as a core public value that must be appreciated and nurtured as a win-win policy solution for employees, employers, legislators, and taxpayers.

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