

A Closer Look at

# THE LAW



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Cunningham Dalman, P.C. is a full service law firm located in Holland, as well as in Douglas, Michigan. Our attorneys possess skill and experience in a broad spectrum of areas of practice, and have proudly served the lakeshore community for over 100 years.

# New Social Security Privacy Law

By: Michelle L. Steffen  
Associate

The Federal Trade Commission says that there were 6,784 reports of identity theft in Michigan in 2006. 228 of those reports were from the Holland/Grand Haven area. That's one complaint for every 1106 people. Even if it's never happened to you, you can be sure that your fees at the bank or for your credit card are a little bit higher because of identity theft.

Identity thieves still steal personal information by rummaging through trash cans, but they also take personal information from public documents that are filed with the State of Michigan. That's where the Michigan Legislature recently stepped in passing two new laws that will make it a little harder for would-be identity thieves.

The laws affect documents that are filed with the Register of deeds – for example deeds, mortgages, and liens. Since a lot of these documents are now accessible online, they are more obtainable than ever, and an easy target for would-be identity thieves. A thief who gets his hands on one has your full name and social security number, which could be all he needs to ruin your credit, and your life.

Under the new laws, the register of deeds can't record a document until the first five digits of any social security numbers that appear in the document are removed or blacked out. And you can

request that the register obscure the first five digits of your social security number in a document that was recorded previously. Also, the register can black out the first five digits of any social security numbers on a document before they provide a copy of the document. There's an exception for documents that, under Federal or State law, must have more than four digits of the social security number.

Proponents say the new requirements will make it that much tougher for identity thieves to get personal information. They argue that every little bit of privacy helps, and that the new requirements are reasonable and practical.

Critics say the new laws will have little impact. They say that since the individual must request to have any documents already on file altered, few documents will actually be changed. And since state employees can still access the documents with full social security numbers, they say personal information is still vulnerable.

So what should you do? Make sure any documents that you record with the State have all but the last four digits of your social security number blacked out, unless the documents absolutely have to have the whole number. If you've got any documents recorded with the register of deeds, request that the register

black out your social security number on those documents. And continue to do other things to protect your personal information – don't keep your social security number in your purse or wallet, and don't leave mail sitting in the mailbox.

## **“At Will” Employment Exposed!**

By: [James A. Bidol](#)  
Attorney at Law

Occasionally, we read in the popular press that an employee was fired and had "no rights" because he was an "at will" employee. Or more meticulous new employees who actually read their employee handbook see that the employer can terminate an employee's employment "with or without cause" and "with or without any notice", and the employee can do likewise. This doesn't seem fair or even right! Don't we have any legal rights and remedies if our employers "unjustly" terminate us? The correct answer to this question under Michigan law depends upon the analysis of a number of important factors in an employee's individual employment situation, including whether one's employment is legally on an "at will" basis. Even when there is no question that an employee is an "at will employee", he or she may have certain important legal rights and remedies when fired dependent upon the facts of the matter.

When an employee is hired for an indefinite duration, the employee is presumed under Michigan law to be terminable at the will of either party and for any reason or for no reason at all. Even the rare contracts for "lifetime" or "permanent" employment are

considered to be for an indefinite duration and therefore presumptively so terminable. Many, especially larger employers, do not rely only on this presumption under Michigan law, but commonly expressly set forth in their employment manuals, applications for employment or in free-standing acknowledgement forms signed by their new employees that the employee's employment is on an "at will" basis. The vast majority of all workers in Michigan are at will employees. Legally, the "at will" employment status also serves as the basis for an employer's right to demote, laterally move, add or subtract duties of, or cut the pay of employees in the employer's discretion. Courts generally will not second guess the employer's exercise of this discretion, unless violations of an employee's legal rights are implicated.

On the other hand, there are well recognized categories of Michigan employees who are not at will employees, including those public employees who have been certified as being civil servants; union workers who are covered by collective bargaining agreements; employees with individual "just cause" contracts, whether or not such contracts are in writing; and workers with "satisfaction" contracts. Simply because

you were hired with a written contract or letter agreement issued by an employer does not mean you are not legally an "at will" employee, as many employers when setting forth the terms and conditions of employment in a written contract or letter agreement expressly include provisions making the employee "at will". You should always read a contract completely, rather than be dazzled by its compensation and benefit terms! Even if it is clear that an employee is strictly employed on an "at will" basis, there are a number of legal protections available to the employee under both statutory laws and under Michigan's common law and public policy, which prevent employers from running rough shod over employees under cover of the "at will" employment doctrine (or at least provide legal remedies and recourses to the employees if their rights are violated). Despite an employee's "at will" status, an employer must not unlawfully discriminate or retaliate against such an employee by violating federal and state civil rights laws (on sex, gender, color, ethnicity, religion, age, disability or other protected status). Under other statutes, an at will employee has legal rights and remedies against an employer for a termination or other adverse employment action which is in retaliation against the employee for filing a workers' compensation claim or for whistle blowing to a public body by reporting an employer's violations of law or legal regulations.

Michigan law also recognizes an exception to the employment-at-will doctrine based upon settled public policy, i.e., the discharge, discipline or other adverse treatment of employees contrary to Michigan's public policy give rise to employees' rights and remedies. Under this exception, for example, an employee cannot

be terminated or disciplined simply because the employee was absent serving jury duty, was absent due to a subpoena to testify in a court proceeding, or where the employee refused to obey the employer who ordered the employee to violate a law or conspire to do so.

Yes, for most employees, the employment-at-will doctrine leaves us exposed to sometimes stupid, sometimes mistaken, sometimes whimsical, sometimes unfair, and sometimes even non-existent reasons for terminations, discipline or other adverse treatment by employers who primarily benefit from this long-standing legal doctrine and its accompanying legal presumption. By and large, however, most employers act in good faith and do not terminate employees just because they can usually do so without legal repercussions under this doctrine. They have an appreciable investment in their employees and they know that employee morale is likely to suffer, so, too, work force productivity, if they arbitrarily and "unjustifiably" wield their "at will" power indiscriminately. Behind most employee terminations and other adverse treatment of employees, employers usually find and express good reasons for taking such actions. Now you know the rest of the story: sometimes and under some circumstances, our legal rights, remedies and recourses can protect us in spite of our "at will" status.

*Jim Bidol, shareholder and senior litigator, has over thirty (30) years experience as a practitioner of preventive employment law and litigation, for both employers and employees, and invites you to consult with him on these and other legal concerns and issues you may have.*

