STATE OF MICHIGAN

COURT OF APPEALS

BOBBY ANN ROBINSON, PH.D.,

Plaintiff-Appellant,

v

PETER A. COHL, KATHLEEN M. ABBOTT, SAGINAW BAY SUBSTANCE ABUSE SERVICES COMMISSION, MICHAEL J. WEGNER, EUGENE GWIZDALA, WALTER AVERILL, E.J. HOULE, PHILIP GRIMALDI, and THOMAS LOCK,

Defendants-Appellees.

UNPUBLISHED
December 29, 1998

No. 193303
Saginaw Circuit Court
LC No. 94-001261-CZ

Before: O'Connell, P.J., and White and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's orders granting defendants' motions for summary disposition in this action alleging wrongful discharge, race discrimination, retaliatory discharge, and defamation by defendant Saginaw Bay Substance Abuse Services Commission (Commission) and six of its Board members, Michael Wegner, Eugene Gwizdala, Walter Averill, E.J. Houle, Philip Grimaldi and Thomas Lock. Plaintiff also alleged that defendants Peter Cohl and Kathleen Abbott, attorneys hired by the Commission to investigate plaintiff's job performance, defamed her. We affirm.

I

Defendant Commission was created through an interlocal agreement by the Board of Commissioners of Bay and Saginaw Counties. The defendant Commission was charged with designing, implementing, and carrying out a substance abuse services program for the Saginaw and Bay county areas, guided by review and recommendation of the Michigan Department of Public Health.

The facts viewed in a light most favorable to plaintiff are that plaintiff, an African-American female, was the Executive Director of the Commission from its formation in 1983 until her termination in April 1994. Plaintiff's troubles with the Board began when the original chairman, who was African-

American, left and was replaced by a white male Board member in early February 1993. It is undisputed that plaintiff's performance from 1983 until February 1993 was positive and that her performance had not been called into question. Subsequently and at pertinent times, the Commission had a nine-member all-male Board; six of whom were white and three of whom were African-American. The six Board members who are named defendants are white.

Between February and July 1993, certain defendant Board members criticized plaintiff's job performance two times, and plaintiff was reprimanded once, regarding a third criticism. See ns 8, 9 *infra*. On July 12, 1993, plaintiff wrote a letter to the Board in which she rebutted the Board's criticisms and claimed that the criticisms demonstrated "an increasing trend of harassment that I have endured by the SBSASC Board since February 1993." Plaintiff's letter was carbon copied to her personal attorney and the Civil Rights Commission. Around mid-August 1993, the Commission passed a resolution authorizing the hiring of attorneys Cohl and Abbott to investigate plaintiff's job performance. In September 1993, defendants approved a recommendation that plaintiff's salary be reduced by approximately $6,667.00.[1]

Cohl and Abbott presented a report to defendants dated November 12, 1993, that was highly critical of plaintiff's performance and management of the Commission. The report addressed plaintiff's performance dating back to fiscal year 1986/1987. Defendant Board members accepted the report as true. In March 1994, defendants voted to authorize Cohl and Abbott to prepare an at-will employment agreement for plaintiff to sign. Plaintiff refused to sign the agreement. Plaintiff's employment was terminated in April 1994 because of plaintiff's refusal to sign the employment agreement, the Cohl report findings regarding plaintiff's job performance, and plaintiff's "various acts of insubordination." Plaintiff was replaced by an African-American.

We review summary disposition decisions de novo. *Offerdahl v Silverstein*, 224 Mich App 417, 419; 569 NW2d 834 (1997). The circuit court granted summary disposition to the Commission and its Board members pursuant to MCR 2.116(C)(10). A motion for summary disposition under that subrule should be granted when except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. MCR 2.116(C)(10). The court must be satisfied that it is impossible for the claim or defense to be supported at trial because of some deficiency which cannot be overcome. *Weymers v Khera*, 454 Mich 639, 646-647; 563 NW2d 647 (1997). The court must consider all affidavits, pleadings, depositions, admissions and other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *Id*.

II

Plaintiff first argues that the circuit court erred in dismissing her wrongful discharge claim because a question of fact remained regarding whether she could be terminated only for just cause pursuant to the Commission's policies manual. We disagree.

Employment contracts for an indefinite duration are presumptively terminable at the will of either party. *Rood v General Dynamics Corp,* 444 Mich 107, 116; 507 NW2d 591 (1993). To overcome

this presumption, a party must present sufficient proof either of a contractual provision for a definite term of employment or a provision forbidding discharge absent just cause. *Id.* at 117. Such provisions may become part of an employment contract as a result of explicit promises or promises implied in fact. *Id.* Employer policies and procedures may also become a legally enforceable part of an employment relationship if such policies and procedures instill "legitimate expectations" of job security in employees. *Id.* at 117-118.

The Commission's policies manual was distributed to all employees, including plaintiff. Section 1.3 of the manual provided that "[t]he rules and regulations herein set forth apply to all employees paid by SBSASC except: Personnel providing services through contractual agreement . . . and others paid on a fee basis." Section 1.4 stated that the rules and regulations set forth in the manual "are not a contract between SBSASC employees [sic] and may be unilaterally changed or amended by the Commission." Rule VI of the policies manual, § 6.1, provided that Commission employees "may be separated from the SBSASC for good cause or because of the curtailment of work or lack of funds."[2] The policies manual contained a grievance procedure and provided in § 8.2 that "[A]ll employees discharged or disciplined for cause not in violation of this manual shall have the right to use this grievance procedure." The Executive Director was charged with reviewing employee grievances following discharge or discipline, and responding to the grievances in writing.

The Commission's by-laws, Article IX, stated:

> The Commission Board shall appoint an Executive Director to administer the affairs of the agency. The Executive Director, when appointed shall carry-out the policies of the Commission and shall manage the day-to-day affairs of the agency, subject to the approval of the Commission.

The circuit court dismissed plaintiff's wrongful discharge claim on the basis that plaintiff was "as a matter of fact and law, an at-will employee." The circuit court concluded that plaintiff had been appointed, and found that while plaintiff "may have been, generically speaking, an 'employee' of the agency, she clearly does not fall within the categories of employees covered by the personnel manual and that any fair reading of said manual could not lead to a legitimate expectation on the part of plaintiff of job security." The circuit court noted that there was no evidence that plaintiff had been required to serve a six-month probationary period, which, under the policies manual was required of each new permanent full-time employee. The court concluded that plaintiff did not fit under any of the employee classifications set forth in the manual and, in particular, the managerial classification, because she herself was charged with reviewing the employee classification plan. The circuit court further found that the grievance procedure could not apply to plaintiff because she was charged with reviewing employee grievances. We agree.

We further note that defendant took measures to make plaintiff's employment status clear before terminating her. While plaintiff argues that defendants' attempt to modify her employment status to at-will failed because she had an express contract of just-cause employment and she refused to sign the employment agreement defendants submitted to her around March 1994, plaintiff's contractual arguments are not based on an alleged express contract for just-cause employment, but rather on an

implied contract arising from defendant's policies. Such promises are enforceable as a matter of public policy, not contract law. *In re Certified Question*, 432 Mich 438, 453-457; 443 NW2d 112 (1989); *Rood, supra* at 117-118.

Thus, even assuming plaintiff had a legitimate expectation of just-cause employment, defendants could unilaterally alter plaintiff's employment's status to at-will by giving her reasonable notice of the change. The Michigan Supreme Court in *Rowe v Montgomery Ward*, 437 Mich 627, 647-648; 473 NW2d 268 (1991), discussed this issue:

> In *In re Certified Question, supra*, the Sixth Circuit Court of Appeals certified the following question to this Court:
>
> > "Once a provision that an employee shall not be discharged except for cause becomes legally enforceable under *Toussaint* [supra], as a result of an employee's legitimate expectations grounded in the employer's written policy statements, may the employer thereafter unilaterally change those written policy statements by adopting a generally applicable policy and alter the employment relationship of existing employees to one at the will of the employer in the absence of an express notification to the employees from the outset that the employer reserves the right to make such a change?" [432 Mich 441.]
>
> In responding to the certified question, this Court held that a company's written policy statements, which created legitimate expectations in the employee of discharge for cause only, could be unilaterally modified by the employer. The Court stated that
>
> > [a]n employer may, without an express reservation of the right to do so, unilaterally change its written policy from one of discharge for cause to one of termination at will, provided that the employer gives affected employees reasonable notice of the policy change. [432 Mich 441.]
>
> The Court also required that the notice be uniformly given to employees affected by the policy change.

Here plaintiff was given one month to sign the employment agreement. While an employer's change in policy must be done uniformly in good faith,[3] here, as the executive director appointed by the board, plaintiff was the only employee in her classification, and the fact that the policy was not uniformly altered does not demonstrate unfair manipulation.

II

Plaintiff next argues that genuine issues of fact remained regarding her race discrimination claim. We disagree.

Under the Civil Rights Act (CRA), MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, to prevail on a claim of intentional discrimination, a plaintiff must demonstrate that (1) she was a member of a protected class, (2) she was discharged or discriminated against with respect to her employment, (3) defendant was predisposed to discriminate against persons in plaintiff's protected class, and (4) defendant acted on that predisposition in making the employment decision at issue. *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 651; 513 NW2d 441 (1994); MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). To prevail on a claim of disparate treatment, a plaintiff must establish that (1) she was a member of a class entitled to protection and (2) she was treated differently than persons of a different class for the same or similar conduct. *Dixon v W W Grainger, Inc*, 168 Mich App 107, 114; 423 NW2d 580 (1987).

Plaintiff did not establish a prima facie case of intentional discrimination. Although she established that she is a member of a protected class and was the subject of adverse employment actions, she presented no evidence, other than multiple hearsay, that defendant Board members were predisposed to discriminate against African-Americans or that they did so in terminating her. Further, it is undisputed that defendants replaced plaintiff with an African-American. Plaintiff also failed to establish a prima facie case of disparate treatment. Although plaintiff presented evidence that no other employee was asked to sign an at-will employment agreement, plaintiff presented no evidence that there were similarly situated non-African-American employees who were treated differently than she for the same conduct or performance.

The circuit court properly dismissed plaintiff's race discrimination claim.

III

Plaintiff next argues that the circuit court erred in dismissing her retaliatory discharge claim because questions of fact remained whether defendants retaliated against her for raising the spectre of a race discrimination claim. We disagree.

The CRA prohibits employers from retaliating against an employee for making a charge, filing a complaint, testifying, assisting, or participating in an investigation, proceeding, or hearing under the Act.

MCL 37.2701; MSA 3.548(701) states, in part:

> Two or more persons shall not conspire to, or a person shall not:
>
> (a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

To establish a prima facie case of unlawful retaliation under this section

> a plaintiff must show (1) that he engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the

> plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. [*DeFlaviis v Lord & Taylor*, 223 Mich App 432, 436; 566 NW2d 661 (1997).]

This Court has further stated:

> Regardless of the vagueness of the charge or the lack of formal invocation of the protection of the act, if an employer's decision to terminate or otherwise adversely effect an employee is a result of that employee raising the specter of a discrimination complaint, retaliation prohibited by the act occurs. [*McLemore v Detroit Rec Hosp*, 196 Mich App 391, 396; 493 NW2d 441 (1992).]

In *McLemore*, the plaintiff, a clinical instructor in the defendant's school of radiologic technology, had received good performance reviews when she applied for a position of educational coordinator. The defendant hired a man for the job and the plaintiff filed a complaint with the defendant expressing her concerns that the hiring of the man may have been the result of "bias" and requesting an explanation for the defendant's decision in order to avoid "litigation." In response to the plaintiff's complaint, the director and associate director of radiology gave the plaintiff memoranda criticizing her job performance. When the first man hired did not work out, the plaintiff again applied for the job and it was given to another man. That man almost immediately also began criticizing the plaintiff's performance. The plaintiff filed a complaint with the EEOC and, shortly thereafter was laid off in a hospital-wide staff reduction. The plaintiff did not dispute that the defendant's financial distress was genuine and produced no direct evidence that it's "motives were less than pure." *Id*. This Court concluded that "[t]he question therefore is whether the circumstantial evidence plaintiff did produce, when viewed in the light most favorable to plaintiff, was sufficient for the jury to legitimately infer that defendants were motivated by a desire to retaliate." *Id*.

As in *McLemore*, plaintiff in the instant case did not specifically allege race or sex discrimination, but she did set forth in her July 12, 1993 letter that the board's actions amounted to harassment. Also as in *McLemore*, the plaintiff is a black female and the board could have been concerned that, by harassment, she meant race or sex discrimination. It was after that letter that Cohl and Abbott were hired to investigate plaintiff and plaintiff's complaints. In the report by Cohl and Abbott, they stated that they found no evidence of the racial or sexual discrimination alleged by plaintiff. As to the Commission's argument that, because there was no racial discrimination, this retaliation claim cannot be brought, it should be noted that, in *McLemore*, a verdict was directed against plaintiff on her sex discrimination charge, but this Court still found that the trial court did not err in denying defendant's motion for judgment notwithstanding the verdict on the retaliation count.

However, a major difference between this case and *McLemore* is that, in *McLemore*, the plaintiff presented evidence of prior favorable reviews that changed to criticisms after her internal complaint. 196 Mich App at 397. In the instant case, plaintiff does not point to a string of positive reviews that suddenly changed after her complaint. Instead, in the instant case, the criticisms started long before her letter of July 12, 1993. In fact, her letter of July 12 referenced actions dating back to February 11, 1993. Therefore, the adverse employment actions began at least five months before her

complaint of harassment. Further, these employment actions resulted from the board's concerns over a significant issue – the perception that plaintiff was acting in an insubordinate manner in collusion with another employee of the organization whom she thought the board wrongly wanted to discharge. Thus, it is clear that the board was unhappy with plaintiff and reviewing her actions prior to her complaint. It is also apparent that the board took the action of hiring the law firm in order to make sure that there were no problems rather than in retaliation. Because the board's unhappiness with plaintiff predated her complaint, their actions were not in retaliation for that complaint.[4] The trial court did not err in granting summary disposition on this claim.

IV

Plaintiff next argues that the circuit court erred in granting defendants summary disposition of her defamation claim because questions of fact remained. We disagree.

A

Cohl and Abbott moved for summary disposition pursuant to MCR 2.116 (C)(8), failure to state a claim, and MCR 2.116(C)(7), governmental immunity.[5] The circuit court granted the motion under MCR 2.116(C)(8), on the basis that the report was qualifiedly privileged because plaintiff was a public official and because defendants had published the report to a supervising State agency that had a legitimate interest in plaintiff's job performance, and on the basis that plaintiff failed to adequately plead actual malice. Plaintiff filed a motion for reconsideration. Without ruling on plaintiff's motion, the circuit court permitted plaintiff to submit a (second) amended complaint[6] to plead additional facts of actual malice against Cohl and Abbott. The circuit later denied plaintiff's motion for reconsideration on the basis that plaintiff's proposed second amended complaint failed to sufficiently allege actual malice, and for the reasons the court previously had stated in its opinion and order granting Cohl and Abbott summary disposition.

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim and is tested on the pleadings alone. *Singerman v Municipal Serv Bureau, Inc*, 455 Mich 135, 139; 565 NW2d 383 (1997). The court must consider all factual allegations, and any reasonable inferences that may be drawn from them, as pleaded. *Id.* If no factual development could justify the claim, the motion must be granted. *Id.*

The elements of a defamation claim are (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication concerning the plaintiff, (3) fault amounting to at least negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication. *DeFlaviis*, *supra* at 443-444. The plaintiff must specifically plead the defamatory words, the connection between the plaintiff and the defamatory words and the publication of those defamatory words. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 77; 480 NW2d 297 (1991).

The circuit court found that Cohl and Abbott's report was protected by two qualified privileges: (1) the existence of a shared interest between the Commission and Michigan Department of Public

Health/Center for Substance Abuse Services (MDPH/CSAS), the entity to which Cohl and Abbott published the report, and (2) that plaintiff was a public official.

The determination whether a privilege exists in a libel action is a question of law. *Koniak v Heritage Newspapers, Inc*, 190 Mich App 516, 520; 476 NW2d 441 (1991).[7] A public official plaintiff is prohibited from recovering damages for a defamatory falsehood relating to his or her official conduct unless the plaintiff proves that the statement was made with actual malice, i.e., with knowledge that it was false or with reckless disregard whether it was false. *New York Times Co v Sullivan*, 376 US 254; 11 L Ed 2d 686; 84 S Ct 710 (1964); *Peterfish v Frantz*, 168 Mich App 43, 52-53; 424 NW2d 25 (1988).

Whether the plaintiff is a "public official" is a question of law for the court. *Bufalino v Detroit Magazine, Inc*, 433 Mich 766, 774; 449 NW2d 410 (1989).

> [T]he "public official" designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.
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> * * *
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> . . . Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees, both elements we identified in New York Times are present and the New York Times malice standards apply.[13]

> [13] . . . The employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy. [*Peterfish*, *supra* at 50-51, adopting the definition of "public official" set forth in *Rosenblatt v Baer*, 383 US 75; 86 S Ct 669; 15 L Ed 2d 597 (1966).]

We agree with the circuit court that plaintiff was a public official. Plaintiff was the Executive Director of the Commission, a governmental entity created pursuant to MCL 124.501 *et seq.*; MSA 5.4088(1) *et seq.*, to carry out the provisions of MCL 333.6228; MSA 14.15(6228). As Executive Director, plaintiff was charged with administering the affairs of the Commission by carrying out its policies and managing its day-to-day affairs, and thus had substantial responsibility and control over the conduct of the Commission's affairs.

Because plaintiff was a public official, Cohl and Abbott's report was protected by a qualified privilege and plaintiff was required to allege actual malice.

Malice in a libel case must exist at the time of the original publication to overcome a qualified privilege to publish. *Peisner v Detroit Free Press*, 104 Mich App 59, 64; 304 NW2d 814 (1981), mod on other grounds 421 Mich 125 (1984). To satisfy the reckless disregard test of actual malice, the plaintiff must present evidence that the communication in question was published with a high degree of awareness of probable falsity and that defendant entertained serious doubts as to the truth of the matters published. *Peterfish, supra* at 53. Mere proof of failure to investigate, without more, cannot establish reckless disregard for the truth. *Gertz v Robert Welch, Inc*, 418 US 323, 332; 94 S Ct 2997; 41 L Ed 2d 789 (1974). Nor does a plaintiff establish the "reckless disregard" element by showing only that a defendant made the allegedly libelous statements on the basis of insufficient investigation. *Johnson v The Herald Co*, 116 Mich App 523, 525-526; 323 NW2d 468 (1982). "Ill will, spite, or even hatred . . . do not alone amount to the constitutionally required actual malice." *Postill v Booth Newspapers Inc*, 118 Mich App 608, 626; 325 NW2d 511 (1982). The determination to be made is not whether a defendant acted in good faith, but whether he knew the statements were false or acted with reckless disregard of whether they were false or not. *Peterfish*, 168 Mich App at 54.

We conclude that plaintiff's proposed second amended complaint did not adequately plead actual malice. Plaintiff's allegations that Cohl and Abbott "based their report on documents obtained from the Michigan Department of Public Health/Center for Substance Abuse Services (CSAS), interviews of State officials, interviews with individual Defendants and two staff employees," belie plaintiff's allegations of actual malice and, when read with plaintiff's remaining allegations, indicate that Cohl and Abbott, at most, published their report having done insufficient investigation. *Johnson, supra* at 525-526. Further, Cohl and Abbott's report stated:

> Dr. Robinson indicated that the Board has been aware of problems with SBSASC since 1987, and that if there is any fault it is with the Board. Dr. Robinson suggested that we review the Board's minutes. We followed Dr. Robinson's recommendation that the copies be requested through the Board. It is our understanding that the Board requested copies of the minutes since 1986 from Dr. Robinson on October 29, 1993. We have yet to receive copies of the minutes and proceed without benefit of that review. We are satisfied that, even if the minutes were to reflect knowledge on the part of former board members, this would not mitigate Dr. Robinson's responsibility for the deficiencies cited herein.

Under these circumstances, we agree with the following portions of the circuit court's opinion and order :

> . . . . Defendants were hired by the Board to investigate Ms. Robinson's job performance. The report largely, if not exclusively, was based upon documents and materials obtained from a state supervisory agency and from interviews of various employees and officials from that agency. . . . Any disagreement in the substance of the report between defendants and plaintiff does not, however, in the Court's view, stem from any "malice," as that term is used in the law of defamation, on the part of these defendants. Reckless disregard is not measured by whether a reasonably prudent person would have published or would have investigated before publishing, but by

whether the publisher, in fact, entertained serious doubts concerning the truth of the statements published. Peterfish, supra; Grebner v Runyon, 132 Mich App 327; 347 NW2d 741 (1984). . . . The fact that defendants may have been told that their report contained errors, false statements

and untruthful conclusions is insufficient to raise such an inference. See Dougherty v Capital Cities Communications Inc, 631 F Supp 1566 (E.D. Mich, 1986); Spreen v Smith, 153 Mich App 1; 394 NW2d 123 (1986).

B

The Commission and defendant Board members' motion for summary disposition was brought pursuant to MCR 2.116(C)(10). The circuit court initially denied the motion, but granted it on reconsideration under MCR 2.116(C)(8), failure to state a claim. At that time, the circuit court gave plaintiff fourteen days to amend her complaint to set forth factual details regarding her claim. Plaintiff did not amend her complaint.

Plaintiff's second amended complaint alleged only that "based on information and belief" defendant Commission or the individual Board member defendants gave a copy of the report to the Saginaw News; that defendant Wegner's mother was employed by the Saginaw News, and that the Saginaw News printed portions of the report, causing plaintiff embarrassment, humiliation and damage to her reputation as a result of the falsehoods in the report.

Plaintiff failed to specifically plead actual malice as to these defendants. Plaintiff did not allege that the Commission knew the statements in the report were false or acted in reckless disregard of the truth in giving a copy of the report to the newspaper. She also did not specifically plead the publication element; she did not allege when the publication occurred. Plaintiff failed to specifically plead her defamation claim and failed to amend her complaint to correct these deficiencies when given the opportunity by the circuit court. Under these circumstances, the circuit court's grant of summary disposition under MCR 2.116(C)(8) was proper.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra

[1] Plaintiff's salary was not in fact reduced. Plaintiff testified at deposition that she received her full salary for 1993 and for the portion of 1994 during which she remained employed by the Commission.

[2] Defendants do not argue that plaintiff was terminated because of curtailment of work or lack of funds.

[3] The Michigan Supreme Court noted in *In re Certified Question, supra* at 456-457:

> While we hold today that an employer may make changes in a written discharge-for-cause policy applicable to its entire work force or to specific classifications without having reserved in advance the right to do so, we caution against an assumption that our answer would condone changes made in bad faith—for example, the temporary suspension of a discharge for cause policy to facilitate the firing of a particular employee in contravention of that policy.

> The principles on which *Toussaint* [*v Blue Cross & Blue Shield of Michigan*, 408 Mich 579; 292 NW2d 880 (1980),] is based would be undermined if an employer could benefit from the good will generated by a discharge-for-cause policy while unfairly manipulating the way in which it is revoked. Fairness suggests that a discharge-for-cause policy announced with flourishes and fanfare at noonday should not be revoked by a pennywhistle trill at midnight. We hold that for the revocation of a discharge-for-cause policy to become legally effective, reasonable notice of the change must be uniformly given to affected employees.

[4] The dissent argues that a reasonable fact-finder could conclude that the defendants' adverse employment actions concerning plaintiff escalated after the July 12 letter. We concur with the dissent that plaintiff's employment was subsequently terminated and this termination and other acts were adverse employment actions that occurred subsequent to the July 12, 1993 letter. However, we again note that their adverse employment actions began five months prior to her letter and continued until her termination. Plaintiff has presented no direct evidence that the commission's actions were in response to the July 12 letter.

[5] The circuit court did not address the governmental immunity issue.

[6] It is clear from the record that the circuit court considered plaintiff's proposed second amended complaint in denying plaintiff's motion for reconsideration. The circuit court's order notes that the second amended complaint would be retained as a matter of record.

[7] *Koniak* was remanded on other grounds at 441 Mich 858 (1992).