

Understanding At Will Employment

Both employers and employees should be aware of the basic law relating to the termination of employment in Pennsylvania. Employers should understand these principles so that they can terminate problem employees with diminished legal risk; employees should understand these principles so they understand their rights in the event they lose their jobs.

A cursory examination of the newspaper reveals that employment termination presents legal problems. Mishandled terminations can result in lawsuits which are expensive to defend even if the employer prevails, and can result in jury verdicts in the hundreds of thousands or millions of dollars if the employee prevails.

The foundation for understanding the law of employment termination is understanding the presumption that employment is "at will" in most instances. Under Pennsylvania law, employees who are not hired for a definite term (e.g. one year, three years, etc.) or who do not have employment rights protected by contract or statute are presumed to be at will. An at will employee may terminate the employment relationship at any time for any reason or no reason, and may be terminated by his or her employer at any time, for any or no reason, as long as the reason for termination is not an illegal reason. The employer does not need "cause" i.e. poor performance, misconduct, or an economic reason, to terminate an at will employee. A desire to terminate the employment relationship is legally sufficient, so long as there is no illegal reason which can be proven by the employee.

There are, however, numerous statutory and court created exceptions to the general principle that employment is at will. The existence of these exceptions creates risks for employers in an employment termination, and may create opportunities for terminated employees to seek relief for an allegedly illegal termination. Coming articles will explore the most significant exceptions to the general rule that in Pennsylvania, employment is "at will."

Last week, this column explored the presumption in Pennsylvania that employment is "at will." In this and following weeks, some of the major exceptions to this rule will be explained.

One large group of employees who change their at will status through negotiation are unionized employees. In most work places where the work force is represented by a union, the employees so represented are able to achieve through a collectively bargained contract the protection that they may not be discharged except for "just cause." Employees so protected normally may not be fired unless they commit serious offenses, or unless

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their employers document and progressively discipline them for a series of less serious offenses. Most union contracts also have clauses requiring that employers arbitrate grievances, including termination grievances.

While many union employees enjoy job protection through collectively bargained contracts which modify, for the group, at-will status, some individual employees are able to secure their jobs through individual bargaining power. Thus, in individual contracts of employment, the parties themselves, through their expressions to one another in the course of entering into the employment relationship, agree that employment is not "at will." Employers may contract away the right to terminate an employee at will, either by agreeing to employment for a fixed period of time, e.g. one year, or by agreeing to terminate only for "cause" in the nature of misconduct.

A contract changing an employee's at-will status need not be written, but an employee seeking to establish an oral contract to modify at will employment has a heavy burden. Statements such as "You can expect to work here until you retire," or "You will have a job here as long as you do a good job," have been held by courts to be legally insufficient to modify the at will relationship. Therefore, it is recommended that parties who wish to change their at-will status do so in a carefully drafted written contract of employment.

Contracts modifying at will status need not be express. Occasionally, courts will imply an intent of the parties to modify the at-will relationship. This topic will be explored next week.

In last week's column, we explored two types of situations where parties to an employment relationship expressly contract that employment will not be at-will. The first situation was collective bargaining, where unions commonly contract that their members may not be terminated without "just cause." The second situation was a privately bargained contract modifying at-will status.

There are also certain circumstances under which an intent to alter at will status may be implied. One circumstance which the courts have considered concerns the legal enforceability of the terms of employee handbooks. Many employers publish employee handbooks to inform their employees of job expectations, policies, and rules relating to the job.

In Pennsylvania, employee handbooks and employer personnel policies do not create any job security rights for employees, unless the employer manifests an intent to be bound. This is very rare outside certain contexts (e.g., in higher education, institutions normally intend to be bound by the tenure provisions of faculty handbooks). Most employee handbooks actually contain disclaimers saying they do not create contract rights.

To alleviate some of the harshest consequences of at will employment, Pennsylvania courts have inferred an exception to at will employment in cases where the employer has received a substantial benefit other than the services the employee was hired to perform as the result of entering into the employment relationship, or where the employee has incurred a substantial detriment in entering into the relationship. The prototypical example of this type of case is the employee who is securely employed with a long term employer and not looking for a job but is wooed away from the secure job, moves to take the new job, and is terminated shortly after accepting the new position. In cases

meeting or approximating this factual description, Pennsylvania courts have implied that termination may not occur, except for cause, for a reasonable time.

In a subsequent column, other important exceptions to at will employment will be explored.

In last week's column, implied contractual exceptions to the presumption that employment is at will were explained. This week we explore another exception to the employer's right to terminate at will, cases when the termination would violate a significant public policy. This exception to at-will employment is sometimes called wrongful termination.

Pennsylvania courts have given the public policy exception to employment at will a narrow construction. Courts require that the public policy offended by the termination be an important public policy, expressed in a constitution, statute, or regulation.

In applying these principles, several categories of public policy cases have emerged. Generally, an employer may not terminate an employee because the employee seeks to exercise a public right or duty established by statute. Thus it has been held that an employer could not legally terminate an employee called to jury service. Another example is application for unemployment compensation, where Pennsylvania courts have held that terminating an employee because the employee applied for unemployment compensation was illegal. Results in this area can be difficult to predict; Pennsylvania's Superior Court has also held that an employee can be terminated for applying for worker's compensation. This case is currently before the Pennsylvania Supreme Court.

Generally, employers may not terminate employees because they refuse to engage in unlawful acts required by the employer. For example, one case held that it was illegal for a tavern to fire a waitress who had refused to serve inebriated patrons. Again, results in this area are uncertain, and there are numerous cases where employees have claimed protection through this theory without success.

Employers also may not terminate employees because they report unlawful conduct by the employer. For example, courts have held illegal the discharge of employees for reporting safety violations. Again, results in this area are uncertain, and there are numerous cases where employees have claimed protection through this theory without success.