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Special focus: work force issues

'At will' rule is alive and well, unless . . .

The 'At Will' Rule — inherited from English common law — protects employees' freedom to move from job to job. It also protects employers from having to justify discharge decisions to others such as an arbitrator, a judge or a jury.

The At Will Rule means an employee may quit, or may be discharged, at any time and for any cause or for no cause; with or without notice.

Even if an employee's sudden and unexplained resignation financially harms an employer, the employer can't recover damages from the employee. Nor can a sudden and unexplained discharge of an at will employee be reason to recover damages from the employer.

The At Will Rule is alive and well in all states, except Montana. It covers most employees in the other 49 states, and often disposes of discharge lawsuits. However, employers about to discharge an employee should be careful that no illegal factors are influencing the decision and that no contracts are being breached.

Exceptions to the Rule

Congress and state legislatures, as well as the courts, have created many exceptions to the At Will Rule.

- The most notable exception is the "just cause" job protection found in collective bargaining agreements. Unionized employees can't be discharged for inadequate cause. Instead, employers must be prepared to justify, to an arbitrator if necessary, that "just cause" supports the discharge.

- Discrimination laws on the federal, state, and local levels are the second notable exception to the common law rule. Not even an At Will employee may be discharged if the employee's age, color, creed, disability, marital status, national origin, public assistance status, race, religion, sex or sexual orientation was a factor in the discharge decision. These factors may vary from state to state.

- The third notable exception to the common law At Will Rule arises out of individual employment contracts. These contracts often guarantee employment for a fixed period of time, or guarantee that the employee will not be discharged except for "just cause..". In the event of discharge, the employer must be prepared to prove "just cause."

- Fourth — and this is important to note — employee handbooks can be considered an exception to the common law At Will Rule. If an employee handbook contains



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progressive discipline language, "just cause" language, or other language implying job security, the employer may have inadvertently cancelled the At Will Rule.

To avoid this problem, employee handbooks should contain "disclaimers that expressly state that the handbook is not a contract. In the absence of a disclaimer, an employer might have to prove that "just cause" warranted the discharge.

- Fifth, various federal, state, and local statutes and ordinances make it illegal to discharge even a common law at will employee if the discharge decision is influenced by the employee's:

- "whistleblowing" activities
- unionization activities
- efforts to seek worker's compensation benefits

- service on jury duty
- wage garnishment
- off-duty, off-premises use of lawful products, such as alcohol or tobacco
- refusal to donate to a charity
- refusal to undergo drug or alcohol testing, if the employer does not have a testing policy that complies with law
- use of statutory parental leave, school conference leave, sick child leave, or family and medical leave

- use of leave to donate bone marrow
- refusal to pay for a fitness-for-duty medical examination
- refusal to take a polygraph test
- refusal to undergo genetic testing
- absence due to military service
- veteran's status (applicable to public employers)

This is only a partial list of statutory exceptions. The list may vary from state to state.

In light of these exceptions to the At Will Employment Rule, here's the bottom line: An employer may discharge an employee at any time — for any cause or no cause, with or without notice — provided the employer's decision wasn't based on an illegal cause, and wasn't part of a breach of contract.

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