

## The Doctrine of Employment At-Will

The doctrine of employment at-will, which was established in the courts, means:

*When the employment relationship is of no specific duration (no employment contract exists), the employment relationship can be terminated at the whim or will of either party (employee or employer) with or without notice, with or without cause/reason, and without liability to the other party.*

**Corollary:** if an employee can resign or quit with or without notice, with or without cause/reason, and without liability, then the employer can discharge the employee with or without notice, with or without cause/reason, and without liability.

**NOTE: “Right to work” is not employment at-will. Many employers believe that when a state is a “right to work” state, as is Arizona, it means the employment relationship can be ended with or without notice, with or without cause/reason, and without liability (i.e., employment at-will).**

**Instead, “right to work” is a legal principle from the Labor-Management Relations Act (Taft-Hartley Act). “Right to work” refers to an employee’s right to work without having to be a member of a labor union in order to be hired or without having to join a labor union (or pay union dues) post-employment.**

The Arizona Employment Protection Act (A.R.S. 23-1501) provides that employment in Arizona is "at-will" [terminable by either the employee or the employer without cause/reason, without notice, and without liability] unless:

- there is a written contract of employment signed by both parties;
- there is a written agreement signed by both parties restricting the right of either to terminate the employment relationship; or,
- there is a handbook/manual distributed to the employee and the handbook/manual states that it is intended to be a contract.

While it may seem that employment at-will will allow you to fire an employee at any time, with or without notice, and with or without cause/reason, the reality is that many laws exist that restrict or limit employment at-will. Also, many court decisions have the effect of restricting or limiting employment at-will.

A list of federal, state, and local laws which affect employment at-will is on the next page; it is followed by a list of the statutory exceptions and a list of the judicial exceptions to employment at-will.

The wise employer is the one who makes him/herself aware of these laws and the compliance requirements of each. Then, the wise employer ensures that the human resource (HR) policies and practices of his/her business or organization are consistent with the compliance requirements of these laws to minimize the possibility of legal or administrative action against the business/organization.

### **LAWS THAT AFFECT OR INFLUENCE THE EMPLOYMENT RELATIONSHIP**

- Civil Rights Act of 1964
- Civil Rights Act of 1991
- OSHA - Occupational Safety and Health Act
- ADA - Americans With Disabilities Act
- FMLA - Family and Medical Leave Act
- WARN - Worker Adjustment and Retraining Notification Act
- FLSA - Fair Labor Standards Act
- IRCA - Immigration Reform and Control Act
- ERISA - Employee Income Retirement Security Act
- ADEA - Age Discrimination in Employment Act

- PDA - Pregnancy Discrimination Act
- Vietnam Veterans Readjustment Act
- Vocational Rehabilitation Act
- Equal Pay Act
- NLRA - National Labor Relations Act (Wagner Act)
- LMRA - Labor-Management Relations Act (Taft-Hartley Act)
- Drug Free Workplace Act
- Employee Polygraph Protection Act
- USERRA
  
- Arizona Civil Rights Act (and similar legislation in other states)
- Arizona Employment Protection Act
- Legal Arizona Workers Act
- Arizona Minimum Wage Act
- Smoke-Free Arizona Act
  
- City Ordinances and Acts (i.e., Affirmative Action requirements of contractors to the City of Phoenix; City of Phoenix Smoking Ordinance)

**STATUTORY EXCEPTIONS TO EMPLOYMENT "AT-WILL"**

**A. Federal Laws**

- discrimination on the basis of race, sex, national origin, religion, or age
- union activities
- pregnancy (with regard to disability benefits)
- handicapped status, disability status
- veteran status
- garnishment of wages
- assertion of statutory rights (FLSA, OSHA, ERISA, ADEA, etc.)

**B. Arizona laws/statutes**

- A.R.S. 23-425 -- safety and health
- A.R.S. 41-1463 -- civil rights, which includes handicapped status
- A.R.S. 21-236 -- jury duty
- A.R.S. 16-402 -- time off to vote
- A.R.S. 26-167 & 168 -- national guard duty

**JUDICIAL EXCEPTIONS TO EMPLOYMENT "AT-WILL"**

**A. Public Policy exceptions**

- discharge for exercise of rights
- discharge for performance of civic duty
- discharge for whistle-blowing
- discharge for refusal to commit unlawful or unethical act

- violation of anti-discrimination statutes

## **B. Implied good faith and fair dealing**

## **C. Implied Contract; promise of job security (written or oral)**

- Employee Handbooks/Manuals, Human Resource (HR) Policies and Procedures Manuals, or other written representations
- oral representations

**NOTE:** The Arizona Employment Protection Act provides that employment in Arizona is "at-will" (terminable by either the employee or the employer without cause/reason, without notice, and without liability) except when there is:

- ◆ a written contract of employment signed by both parties;
- ◆ an agreement signed by both parties restricting the right of either to terminate the employment relationship; or,
- ◆ a Handbook/Manual distributed to the employee and the Handbook/Manual states that it is intended to be a contract.

Thus, claims of "implied contract" based on language in a handbook/manual/guide (see section C., above) will not be able to proceed unless one of the three listed exceptions exist. This legislation overruled the *Leikvold v. Valley View Community Hospital* case (1984) in which the AZ Supreme Court said a terminated employee could make a breach of implied contract claim based on the language in the employer's handbook. Also, the statute of limitations for filing a wrongful discharge claim was reduced to one year.

Wrongful discharge claims tort claims may proceed when the employee was discharged in violation of state statute or in retaliation based on one or more of the following; see section A., above:

- ◆ refusal to commit an act that violates state statutes or the state constitution;
- ◆ whistleblowing;
- ◆ exercising rights under worker's comp law;
- ◆ serving on a jury;
- ◆ exercising voting rights;
- ◆ service in the armed forces or national guard;
- ◆ refusing to join a labor union; or,
- ◆ refusing to give kickbacks to the employer.

## **TIPS for ensuring employment is, and remains, at-will:**

- include a disclaimer or notice in your business/organization's Employee Handbook that employment is at-will AND that the Handbook itself is NOT an employment contract;
- do not sign the Employee Handbook; and,
- use at-will language on the Employment Application form and in offer letters that is consistent with the at-will language in the Employee Handbook.