ARTICLE

Fast facts about the at-will employment doctrine

A primer on the at-will employment doctrine and its exceptions to the rule

October 25, 2024 7 min

Whether you are an employer or an employee, it's important to understand the ins and outs of the “at-will” employment doctrine — particularly since most employer-employee relationships in the United States are presumed to be at will.

In the most basic sense, at-will employment means an employer can terminate employees for almost any reason, although exceptions to the rule may exist under state and federal law. Likewise, under the at-will employment doctrine, employees can decide to leave their employer whenever they want, at their own discretion. Put another way, employees are just as free to depart from the company as the employer is to fire employees — it’s a two-way street.

Who is an at-will employee?

The majority of employer-employee relationships in most states are at will. In many cases, the employer's written employee handbook or workplace policies will clearly outline this relationship.

Also, when starting a new job, some employers will even have the employee sign documents specifically addressing the issue of at-will termination. Importantly, though, the law usually doesn't require the use of the phrase “at will." The wording might simply say that the employer can terminate the employee at any time; this still counts under the at-will employment doctrine.

Not signing the at-will employment sections of the documents may result in

termination or refusal to hire, but some employers may allow negotiations or be willing to come to a mutual agreement about job security.

An interesting footnote is that Montana is the only state that is not purely an at-will state. Under the Montana Wrongful Discharge from Employment Act of 1987, employees who have been with an employer past the probationary period — usually six months, although it can be extended with written notice — cannot be discharged without showing "good cause." The statute defines good cause as "reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason."

Who is not an at-will employee?

Employees with an employment contract and employees covered by a collective bargaining agreement are not at-will employees.

- **Employees with an employment agreement.** Contracted employees for a set duration are likely exempt from the at-will employment doctrine. In such a case, the contract will typically spell out that the employer can only fire the employee for good cause, criminal reasons, or any other distinctive reason outlined in the contract. In some cases, there may not be an actual contract, but the employer might have made one or more statements clearly indicating they won't fire an employee for arbitrary reasons or that there will be opportunities to improve

performance before termination. An employee may use these to challenge a termination, but it can be very hard for them to prove. In states where this is the case, it's called an implied contract exception.

- **Employees protected by a collective bargaining agreement.** Unions negotiate contracts with their employers to determine things like compensation, benefits, hours, job tasks, and other essential employment terms. Many collective bargaining agreements outline a process for employee dismissal, so an employee covered by a collective bargaining agreement usually cannot be dismissed as easily as an at-will employee could.

Exceptions to at-will employment

The three significant exceptions to at-will employment are the following:

- **Covenant of good faith and fair dealing.** Some states, like California and New York, recognize an implied covenant of good faith and fair dealing in employment relationships, which prevents employers from terminating employees in bad faith or with malice. Often called the good faith exception, it's found in common law rather than a specific statute.

---

ed contract exception, an employee can expect employment for a certain time period — including indefinitely — based on the employer's actions. For example, if an employer only dismisses employees for just cause, then an employee fired without just cause

may have grounds for an employment lawsuit, provided they are in a state that recognizes this exception.

- **Public policy exception.** Forty-two U.S. states provide public policy exceptions from the at-will employment doctrine. Each state's definition of public policy varies, but in general, this means an employer cannot fire an at-will employee for things like:
    - Acting in the public interest, like serving on jury duty
    - Exercising a statutory right, like organizing a union or filing a workers' compensation claim
    - Refusing to break the law, like by disobeying a command to falsify reports
    - Whistleblowing, like reporting workers' rights violations

The states that do not recognize the public policy exception are Alabama, Florida, Georgia, Louisiana, Maine, Nebraska, New York, and Rhode Island.

What qualifies as a lawful reason for termination?

Employers can terminate someone under the at-will employment doctrine for nearly any reason unless the employee is protected under state or federal law, such as being a member of a "protected class."

For example, if an employer dislikes an employee's favorite sports team, the

employer could technically terminate that employee on those grounds alone. The reasons may seem incredibly petty in theory, but in reality, employers don't typically wish to waste hiring resources on terminating a person based on such minor differences.

However, the legal framework in place gives employers the leverage and power to cut employment ties with someone who isn't a great match for the workplace or team in the same way that an employee can leave a job that isn't a good match for them.

When is termination from an at-will job position unlawful?

While employers can often fire an at-will employee for virtually any reason, there are some pretty big exceptions to this rule. For example, an employer cannot fire an employee based on discriminatory reasons:

- Race
- Sex
- Age
- Disability
- National origin

- Religion
- Pregnancy status

These protected classes, among others, are expressly created under federal and often state law. Also, some — but not all — states include sexual orientation and gender identity as unlawful forms of discrimination.

Similarly, retaliation is also often an unlawful reason for termination. For instance, if an employee reports discrimination, they can't be fired because of it. But these are just a few exceptions to an employer's ability to terminate an employee.

At-will employment is not as intimidating as it sounds

Ultimately, it's not in an employer's best financial or business interest to randomly fire an employee who isn't causing an issue. For that reason, the at-will employment doctrine can seem more ominous than it actually is in practice. However, knowing the protected classes where termination isn't legal can be helpful for both parties.

Staying abreast of regularly changing state laws and exceptions to employment law can be tedious and time consuming. Consult with Practical Law's updated resources — for example, Employee Termination: Best Practices and Employment Law Issues for Startups and Growing Businesses — two of more than 90,000 resources available on the platform. Don't have Practical Law? Try it for free today.

Related insights

ARTICLE

What employers need to know about age discrimination at work

June 24, 2024 6 min

ARTICLE

5 things you need to know about non-compete agreements

March 11, 2022 3 min

ARTICLE

Critical employment law issues for in-house counsel

December 21, 2021 9 min