

Employment at Will

by Sophia



WHAT'S COVERED

In this lesson, you will learn about a particular doctrine impacting the employer-employee relationship. Specifically, this lesson will cover:

1. Employment at Will in the U.S.

Under the traditional **employment at will** doctrine, an employee who is not hired for a specific period can be fired at any time, for any reason, with some exceptions.

➞ **EXAMPLE** An employee cannot be fired for reporting that his employer's paper mill is illegally polluting groundwater.

This doctrine has been much criticized: Nearly every state has employment at will (Montana is an exception), but there is a growing movement to abolish employment at will, as many other countries besides the United States have done.

Because employment at will operates widely in the U.S., the general consensus is that an employee may quit at any time for any reason and that, correspondingly, an employer may let an employee go for any reason, but, again, there are exceptions to this general rule.

IN CONTEXT

In today's business law environment, employers are subject to the risk of being sued for the tort of **wrongful discharge** of an employee. This type of lawsuit is based on claims by an employee that an employer violated some law (such as anti-discrimination laws), a contract of employment that protected the employee, or otherwise wrongfully terminated employment.



TERMS TO KNOW

Employment at Will

The idea that the employer-employee relationship may be terminated by either party at any time and for any reasons. This tends to be subject to some exceptions.

Wrongful Discharge

An employee's legal action against an employer for terminating employment in contravention of a

2. Exceptions to Employment at Will

There are three main exceptions to the employment at will doctrine:

- Discrimination
- Existence of an employment contract
- Public policy

We will now look at each of them in a bit more depth.

2a. Discrimination

The federal law of Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin. In addition, the Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination in employment against individuals age 40 and over.

The Americans With Disabilities Act (ADA) prohibits employment discrimination against employees based on disability. The Vocational Rehabilitation Act of 1973 prohibits discrimination against federal employees and contractors based on disability. The Pregnancy Discrimination Act of 1973 prohibits employment discrimination based on pregnancy.

There are numerous additional federal laws that control actions of employers when it comes to uniformed officers, participants in certain benefit plans governed by ERISA (a federal law that governs pensions and employee benefits), the Consumer Protection Act (prohibiting firing an employee for a wage garnishment), the Jury System Improvement Act (prohibiting firing an employee for jury duty), the U.S. Bankruptcy Code (prohibits firing an employee for filing for bankruptcy protection), as well as many whistleblower laws that protect people who report violations of the law.

These laws are only a sample of the many federal laws that exist in addition to state and local laws that also protect employees from being fired for discriminatory or improper reasons.

2b. Existence of an Employment Contract

The existence of an expressed contract for employment, including but not limited to a union collective bargaining agreement, will most likely abrogate, or cancel out, employment at will.

Such a contract is binding on both the employer and the employee. In addition, an implied contract may exist if the employer, for instance, states during an interview that the employee is hired, the employee quits her current job based on this, but then the prospective employer withdraws the offer.

In such cases, a court may apply the theory that in every contract (expressed or implied) there is a covenant of good faith and fair dealing, and that if an employer did not exercise good faith, an employee's wrongful termination lawsuit may go forward.

In other cases, an employee handbook has been construed to constitute a contract between an employer and an employee.

IN CONTEXT

In *Sowards v. Norbar, Inc.*, a company's handbook outlined progressive discipline steps the employer would take before terminating employment, and an employee denied progressive discipline was awarded damages for his termination.

Sowards v. Norbar, Inc., 78 Ohio App.3d 545 (1992).

2c. Public Policy

The public policy exception applies to actions an employer takes that are widely acknowledged as departures from acceptable norms of conduct, but perhaps not formally protected by statute.

➔ **EXAMPLE** This exception would likely apply to a company that fired an employee for filing a complaint for discrimination, or fired an employee for leaving a vehicle unlocked because the employee was attempting to save someone's life in a nearby car accident.



SUMMARY

In this lesson, you learned that **employment at will predominates in the U.S.** This means that either an employee or an employer may terminate the employment relationship at any time. There are **exceptions to employment at will** established by federal law. For example, employers can be held liable if they are found guilty of employment **discrimination** against a variety of protected categories. The **existence of an employment contract** cancels out employment at will. The **public policy** exception also protects employees from wrongful discharge.

Best of luck in your learning!

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Wrongful Discharge

An employee's legal action against an employer for terminating employment in contravention of a contract, statute, or tort law.