



# Learning Topic

## Employment at Will

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Transcript

**Employment at will** is a doctrine of common law that allows either the employee or the employer to terminate an employment relationship at any time, for any reason, with or without notice, and even for a morally reprehensible reason, so long as the ending of the relationship does not fall into an exception to the employment-at-will doctrine.

Employment at will is the prevailing legal doctrine concerning employment relationship termination in 49 US states (not Montana). In the overwhelming majority of the United States, employment at will and its exceptions govern the rules by which one may legally terminate an employee.

The generally accepted exceptions to employment at will include

- express contract,

- implied contract,
- promissory estoppel,
- public policy violations, and
- good faith and fair dealing.

We discuss these five exceptions below.

## Express Contract Exception

If an employer terminates an employee in violation of the terms of an express contract between the employer and employee, then the employee can sue the employer for breach of contract (and, in some states, wrongful termination).

For example, an employment contract guarantees that the employee will be employed by the employer for a definite duration of time, with cognizable boundaries, such as a "one-year period" or "for six months." The employer terminates the employee before the stated period has expired, and that termination is not otherwise permitted by the contract.

Likewise, consider a case where an employment contract states that an employee can be terminated only "for cause" or "for just cause," and the employee is terminated without cause.

## Implied Contract Exception

**Implied contracts** are contracts created by the conduct of the parties, which include any representations or assurances made by the employer prior to or during the term of employment. In some states, an implied contract is an exception to the employment-at-will doctrine.

For example, if an employer provides an employee handbook to a new employee, the provisions in the handbook may be considered part of the contractual relationship. Often, such handbooks outline a procedure for performance review, discipline, and discharge of the employee. An employer who fails to live up to procedural obligations prior to discharging an employee could be liable.

## Promissory Estoppel Exception

In many states, promissory estoppel acts as an exception to the employment-at-will doctrine. That is, when an employer makes a promise to an employee of employment or a period of employment, and the employee relies on that promise to his detriment, and it leads to injustice, then an employee may be able to have that promise enforced regardless of employment at will.

For example, John is offered a job with Widget Co. He discusses with Widget's manager that, to take the job, he needs to move from California to New Jersey and give up an already lucrative position with benefits. The manager assures John that he will have gainful employment and a substantially larger income with Widget Co. for at least a year if he makes the move. In reliance on this promise, John quits his job and moves to New Jersey to begin work at Widget Co. After one week, John is laid off. Despite being an employee at will, John may be able to recover under the theory of promissory estoppel.

## **Public Policy Violations Exception**

Most states in the United States prohibit an employer from firing an employee if the reason for the action violates some readily accepted public policy. This prohibition prevents an employer from terminating an employee for exercising a legal right, including a right contained in state and federal laws; or for failing to perform an illegal act for the employer.

Firing an employee for performing some public duty (showing up to jury duty), for exposing illegal conduct (such as reporting violation of some law to the employer or a government agency), or for exercising her rights as a US or state citizen (such as voting) are all against public policy.

This exception to employment at will encompasses the inability to terminate an employee if doing so would violate her state or federal statutory rights. If an employee is terminated because of her race, this may be a violation of Title VII of the Civil Rights Act of 1964, and so an otherwise at-will employee would have a claim against the employer for violating a federal statute.

Moreover, it is against public policy to terminate an employee for refusing to commit an illegal act, such as a crime.

## **Good Faith and Fair Dealing Exception**

A minority of states impose upon the employer a duty to exercise good faith and fair dealing in regard to all employees. This doctrine, to varying degrees, means that an employer must treat an employee fairly in the decision to fire her. This generally means that an employer would violate these duties in firing an employee without due cause or justification.

The preceding five generally accepted exceptions to employment at will allow injured parties to seek recovery even in the face of the employment-at-will doctrine. As such, they limit the circumstances by which an employer can terminate an employee.

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